




UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-351-844
Investigation
Public Document
AD/CVD Office I: Team

December 15, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (CRS) in Brazil, as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Case History

On July 28, 2015, the Department received countervailing duty (CVD) and antidumping duty (AD) Petitions concerning imports of cold-rolled steel from Brazil, filed in proper form by AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation (Nucor), Steel Dynamics, Inc., and the United States Steel Corporation (collectively, Petitioners).¹ On August 17, 2015, the Department initiated a CVD investigation on CRS from Brazil.² Supplements to the Petition and our consultations with the Government of Brazil are described in the Initiation Checklist.³

¹ See "Petition for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom," dated July 28, 2015 (Petition).

² See *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015) (*Initiation Notice*), and "Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from Brazil," dated August 17, 2015 (Checklist).

³ See Checklist.

In the “Respondent Selection” section of the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data. On August 19, 2015, we released CBP data to parties under the Administrative Protective Order (APO).⁴ On September 2, 2015, we received comments on the CBP data from Nucor.⁵

On September 14, 2015, the Department determined to examine individually Companhia Siderurgica Nacional (CSN) and Usinas Siderurgicas de Minas Gerais SA (Usiminas) in this investigation.⁶ On September 15, 2015, the Department issued CVD questionnaires to the GOB and instructed the GOB to forward the Initial Questionnaire to the two mandatory respondents.⁷ We received affiliation responses from CSN and Usiminas on October 9, 2015.⁸ On October 15, 2015, and October 19, 2015, Nucor submitted comments on CSN Affiliation Response and Usiminas Affiliation Response, respectively.⁹ On October 22, 2015, CSN submitted a rebuttal to the Petitioner’s comments.¹⁰ We sent supplemental affiliation questionnaires to CSN and Usiminas on October 30, 2015,¹¹ and received CSN’s responses on November 13, 2015,¹² and November 23, 2015,¹³ and Usiminas’ on November 13, 2015.¹⁴

⁴ See Memorandum “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Respondent Selection,” dated August 19, 2015.

⁵ See letter from Nucor, “Certain Cold-Rolled Steel Products from Brazil: Respondent Selection Comments,” dated September 2, 2015.

⁶ See Memorandum, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Respondent Selection,” dated September 14, 2015 (Respondent Selection Memorandum).

⁷ 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).

⁸ See letters from CSN, “Cold-Rolled Steel Flat Products From Brazil: Response to Section III – Part I ‘Affiliated Companies’ of the Department’s Initial Questionnaire” (CSN Affiliation Response); and from Usiminas “Cold-Rolled Steel Flat Products from Brazil; Response to Affiliated Companies Questionnaire” (Usiminas Affiliation Response), dated October 9, 2015.

⁹ See letters from Petitioners, “Cold-Rolled Steel Flat Products from Brazil: Comments on the Affiliated Companies Response of Companhia Siderurgica Nacional,” dated October 15, 2015 and “Certain Cold-Rolled Steel Products from Brazil: Comments on the Affiliated Companies Response of Usinas Siderurgicas de Minas Gerais S.A.,” dated October 19, 2015.

¹⁰ See letter from CSN, “Cold-Rolled Steel Flat Products From Brazil: Reply to Nucor Corporation’s Comments on CSN’s ‘Affiliated Companies’ Response,” dated October 22, 2015 (CSN Second Affiliation Response).

¹¹ See letters from the Department to CSN, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Affiliation Questionnaire,” and to Usiminas, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Affiliation Questionnaire,” dated (October 30, 2015). CSN and Usiminas submitted requests for clarification regarding our affiliation supplemental. See Memo to the File, “Countervailing Duty Investigation of Certain Cold Rolled Steel from Brazil; Clarification of Supplemental Questionnaire for Companhia Siderurgica Nacional,” dated November 9, 2015, and letter from Usiminas “Cold-Rolled Steel Flat Products from Brazil; Request for Clarification to Supplemental Questionnaire,” dated November 4, 2015. The Department clarified Usiminas’ supplemental questionnaire on November 6, 2015. See letter from the Department to Usiminas, “Countervailing Duty Investigation of Certain-Cold Rolled Steel Flat Products from Brazil: Usiminas’ Request for Clarification Regarding Affiliation Supplemental,” dated November 6, 2015. .

¹² See letter from CSN “Cold-Rolled Steel Flat Products From Brazil: Response to First Affiliation Questionnaire Regarding Itá Energetica S.A.,” dated November 13, 2015 (Itá Energetica Response).

¹³ See letter from CSN “Cold-Rolled Steel Flat Products From Brazil: Response to First Affiliation Questionnaire Regarding Vicunha Siderurgia S.A.,” dated November 23, 2015 (Vicunha Response).

¹⁴ See letter from Usiminas “Cold-Rolled Steel Flat Products from Brazil; Response to Affiliation Supplemental Questionnaire,” dated November 13, 2015.

We received responses to our Initial Questionnaire from the GOB, CSN and Usiminas on November 5, 2015 (Initial QRs).¹⁵ We requested that the GOB substantiate its claim for the treatment of its response as “Business Proprietary – Not Releasable Under APO,” as required by the regulations.¹⁶ On November 10, 2015, the GOB resubmitted its Initial QR.¹⁷ On November 16, 2015, we rejected the GOB’s Initial Questionnaire Response, finding that the GOB did not substantiate its claim for treatment of its response as “Business Proprietary – Not Releasable Under APO.”¹⁸ On November 18, 2015, we accepted the GOB’s resubmitted Initial QR.¹⁹

We sent supplemental questionnaires to CSN and to Usiminas on November 18, 2015.²⁰ We sent an additional questionnaire to Usiminas on November 24, 2015.²¹ CSN replied on November 30, 2015,²² and Usiminas replied on November 30, 2015, December 3, 2015, and December 7, 2015.²³ Finally, we sent a supplemental questionnaire to the GOB on November 24, 2015,²⁴ and we received responses on December 4, 2015, and December 9, 2015.²⁵

CSN filed pre-preliminary comments on December 8, 2015.²⁶ Usiminas and Petitioners filed pre-preliminary comments on December 9, 2015.²⁷ On December 20, 2015, CSN filed a

¹⁵ See letters from CSN, “Cold-Rolled Steel Flat Products From Brazil: CSN Questionnaire Response,” (CSN QR November 5, 2015) Usiminas, “Cold-Rolled Steel Flat Products from Brazil, Response to Section III Questionnaire,” (Usiminas QR November 5, 2015) and from the GOB “Response to the DOC’s Questionnaire for the GOB,” dated November 5, 2015.

¹⁶ See letter to the GOB, “Countervailing Duty Investigation of Certain Cold-Rolled Steel from Brazil,” dated November 6, 2015. See also Memorandum “Ex-Parte Memorandum – Discussions with the Government of Brazil Regarding Filing Procedures,” dated November 5, 2015.

¹⁷ See letter from the GOB, “Cold-Rolled Steel Flat Products from Brazil; Response to the DOC’s Questionnaire for the GOB – Section II,” dated November 10, 2015.

¹⁸ See letter to the GOB, “Countervailing Duty Investigation of Certain Cold-Rolled Steel from Brazil: Rejection of the Government of Brazil’s Initial Questionnaire Response,” dated November 16, 2015.

¹⁹ See letter from the GOB, “Cold-Rolled Steel Flat Products from Brazil; Response to the DOC’s Questionnaire for the GOB - Section II,” dated November 18, 2015 (GOB QR November 18, 2015).

²⁰ See letter to CSN, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire,” and letter to Usiminas, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire,” dated November 18, 2015.

²¹ See letter to Usiminas, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire,” dated November 24, 2015.

²² See 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).

²³ See letters from Usiminas, “Cold-Rolled Steel Flat Products from Brazil; Response to Affiliation Supplemental Questionnaire,” dated November 30, 2015 (Usiminas Affiliation SQR), “Cold-Rolled Steel Flat Products from Brazil; Response to Section III of CVD Questionnaire,” dated December 3, 2015 (UMSA QR), and “Cold-Rolled Steel Flat Products from Brazil; Response to Second Supplemental Questionnaire,” dated December 7, 2015 (Usiminas SQR December 7, 2015).

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

²⁵ See letters 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) and “Cold-Rolled Steel Flat Products from Brazil; Response to the DOC’s Supplemental Questionnaire for the GOB,” dated December 9, 2015 (GOB SQR December 9, 2015).

²⁶ See letter from CSN, “Cold-Rolled Steel Flat Products from Brazil: Comments in Advance of the Preliminary Determination,” dated December 8, 2015.

response to Petitioners' comments.²⁸ On December 14, 2015, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of CRS from Brazil.²⁹

B. Postponement of Preliminary Determination

On October 1, 2015, the Department postponed the deadline for the preliminary determination until December 15, 2015, in accordance with sections 703(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f)(1).³⁰

C. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³¹

We received several comments concerning the scope of the AD and CVD investigations of cold-rolled steel from the Russian Federation and domestic purchasers of the subject merchandise. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, the deadline of which is February 23, 2015. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-

²⁷ See letters from Usiminas, "Cold-Rolled Steel Flat Products from Brazil: Pre-preliminary Comments," and from Petitioners "Cold-Rolled Steel Flat Products from Brazil: Comments in Advance of the Department's Preliminary Determination," dated December 9, 2015.

²⁸ See letter from CSN, "Cold-Rolled Steel Flat Products From Brazil: Reply to Nucor Corporation's Comments on CSN's First Affiliation Questionnaire Response Regarding Vicunha Siderurgia S.A.," dated December 10, 2015.

²⁹ See letter from Petitioners, "Countervailing Duty Investigations of Certain Cold-Rolled Steel Flat Products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation – Petitioners' Request to Align Final Determinations in Countervailing and Antidumping Duty Investigations," dated December 14, 2015 (Petitioners' Request for Alignment).

³⁰ See *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 80 FR 60881 (October 8, 2015).

³¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 80 FR at 51207.

metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels

(UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

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

- Ball bearing steels;³²
- Tool steels;³³
- Silico-manganese steel;³⁴
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.³⁵

³² Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

³³ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

³⁴ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

³⁵ *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.³⁶

The products subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to this investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

V. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on Petitioners' request,³⁷ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of cold-rolled steel from Brazil. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than May 8, 2016, unless postponed.³⁸

³⁶ *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

³⁷ See Petitioners' Request for Alignment.

³⁸ We note that the current deadline for the final AD determination is May 8, 2016, which is a Sunday. Pursuant to Department practice, the signature date will be the next business day, which is Monday, May 9, 2016. See *Notice of*

VI. INJURY TEST

Because Brazil is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On September 17, 2015, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured and threatened with material injury by reason of imports of cold-rolled steel from Brazil.³⁹

VII. USE OF FACTS OTHERWISE AVAILABLE

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act. 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.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the 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.⁴⁰ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁴¹

GOB – Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment

As discussed under the “Programs Preliminarily Determined to be Countervailable” section, the Department is investigating the “Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment” program. As such, we requested information regarding this program in our

Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

³⁹ See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom: Investigation Nos. 701–TA–540–544 and 731–TA–1283–1290 (September 2015) (Preliminary); *Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom*, 80 FR 55872 (September 17, 2015).

⁴⁰ 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) (*Applicability Notice*).

⁴¹ *Id.*, 80 FR at 46794–95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

original questionnaire. In its initial response, the GOB did not respond to the Department's request for information for this program.⁴² Instead, the GOB indicated that the information was not available in time for the response, but that it would be provided "in due course."⁴³ In our November 24 supplemental questionnaire, we again requested that the GOB provide information regarding this program by responding to the questions in the original questionnaire and the relevant Appendices thereto. In its December 4 supplemental questionnaire response, the GOB submitted insufficient information regarding this program.⁴⁴

For the reasons discussed below, we preliminarily find that the GOB has withheld the necessary information that was requested of it and failed to provide information in the form and manner requested; thus, the Department must rely on "facts otherwise available" for purposes of the preliminary determination with regard to this program, pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, we preliminarily find that the GOB failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act.

As an initial matter, we note that in the cover letter of the initial questionnaire we explained to the GOB that:

{i}f you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request.

The Department's instructions are explicit that a statement regarding ongoing efforts to collect information is not an acceptable replacement for a proper extension request. However, the GOB did not properly request an extension of time to provide requested information regarding this program. Nonetheless, the Department provided to the GOB an additional opportunity to provide information about this program in response to a supplemental questionnaire. As noted above, the Department issued its original questionnaire on September 15, 2015. The GOB first provided information about this program on December 4, 2015. Despite having 80 days to gather and provide information about this program, the GOB's December 4 response did not provide complete information regarding this program.

⁴² See GOB QR November 18, 2015 at 14.

⁴³ *Id.* ("Information from Federal Revenue was not available in time for this response. In due course, information on the matter will be provided by GOB.")

⁴⁴ See GOB SQR December 4, 2015 at 4-15.

In its supplemental response, the GOB asserts that this program is not an actual program, but is simply a general reduction of tax rates. The GOB further states that a program “requires the establishment of requirements and/or conditions, requests from interested parties, verification of compliance with the requirements and conditions, and the monitoring of implementation, including the possibility of exclusion from the program.”⁴⁵ According to the GOB, none of these assumptions are satisfied with regard to the reduction of IPI tax rates on machinery and equipment, and thus this is not a program. Because it did not consider this to be a program, the GOB did not provide information regarding: (1) government agencies responsible for administering this program; (2) respondent companies who benefitted from this program; (3) records maintained for this program; (4) application process; or (5) usage/assistance under this program.⁴⁶ The GOB reached its own conclusion that the reduction of IPI on machinery and equipment is not a countervailable program, and based on this conclusion, the GOB determined that it was not required to provide any of the necessary information requested by the Department to make its determination.

However, it is the Department, not the GOB, that is charged under the Act to examine whether the provision of government assistance constitutes a countervailable subsidy. Because the GOB substituted its own judgment for the Department’s, and relied on that judgment as the reason for not providing information that the Department could analyze in order to determine whether this program provides a countervailable subsidy, we find that the GOB failed to act to the best of its ability to comply with the Department’s request for information.

Further, the Department finds that the information provided by the GOB is deficient and inadequate to support its claim that the reduction of IPI on machinery and equipment amounts to merely the government’s exercise of authority to establish tax rates, and does not constitute a “program.” In its response, the GOB explains that a government decision was made to reduce the costs of the productive sector by reducing the applicable IPI rate for machinery and equipment to zero. According to the GOB, in general, machinery and equipment was formerly taxed at an IPI rate of 5 percent.⁴⁷ Moreover, according to the GOB, beginning in 2004, the IPI rates for all machinery and equipment were gradually reduced from 5 percent to 3.5 percent to 2 percent, and finally, to zero percent.⁴⁸ The GOB explained that these changes are reflected in eight separate decrees issued between 2004 and 2005.⁴⁹ However, the GOB did not provide these decrees, nor did the GOB provide any other evidence, in the form of documentation, to support these claims.

For instance, the GOB has not provided any evidence that the IPI previously was assessed at a rate of five percent. Further, record information indicates that the IPI rates vary dramatically. Specifically, both respondent companies, CSN and Usiminas, as well as Petitioners have provided information indicating that IPI rates normally range from 10 to 15 percent, and in some

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 7-15.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.*

instances the rate is over 300 percent.⁵⁰ Given the fact that the record indicates that IPI rates vary significantly, the Department has been unable to find any evidence, other than the GOB's unsupported statement, that the IPI rate for machinery and equipment, in general, was five percent prior to the reduction of the rate to zero.

Similarly, the GOB cites to numerous decrees, the majority of which are not on the record of this investigation, to support its claims regarding the gradual reduction of the IPI rate.⁵¹ In fact, in its response to the Department's request to provide copies of all laws and regulations regarding this program, as well as any reports pertaining to this program, the GOB provided only Decree 7,660 of 2011.⁵² This decree implements the updated IPI table and indicates that the table is attached to the decree.⁵³ However, the GOB did not include this table in the submission. In addition, the GOB provides only an Internet address for an additional decree, Decree 4,955 of 2004,⁵⁴ despite the fact that in our supplemental questionnaire, we specifically stated that the Department cannot rely on references to website addresses.⁵⁵ Factual information must be filed on the record of the proceeding in accordance with the Department's regulations, which includes filing appropriate certifications as to the accuracy and completeness of the information. Website references that may or may not contain the requested, necessary information do not meet the regulatory requirements for submission of information on the record of the proceeding.

As such, the Department finds that there is neither an explanation nor any supporting evidence regarding how the IPI tax is administered and under what circumstances and how the rates are changed. Thus, there is no way for the Department to examine the GOB's claim that the reduction of the IPI rate to zero for equipment and machinery fits into the GOB's normal operation of the IPI tax. The GOB claims that the IPI rates were reduced to zero across all machinery and equipment, but the GOB has provided no supporting evidence to demonstrate that claim.

Finally, the Department finds that the GOB's statements are contradicted by statements made by CSN. Specifically, in a declaration provided by CSN, the company indicates that it purchased machinery and equipment during the POI and paid the IPI tax at various rates on these

⁵⁰ See e.g., CSN QR November 5, 2015, at Exhibit 6 (Priewaterhouse Coopers "Doing Business and Investing in Brazil"); see also Usiminas QR November 5, 2015, at 19; see also Petition at Exhibit V-6 (UHY Moreira "Doing Business in Brazil").

⁵¹ See e.g., GOB SQR December 4, 2015 at 6, note 5, where the GOB cites to a number of decrees that it did not provide on the record.

⁵² *Id.* at Exhibit B-1.

⁵³ *Id.* "Art. 1. It is approved the Table of Levy of the Tax on Industrialized Products - TIPI, attached to this Decree."

⁵⁴ *Id.* 6.

⁵⁵ See e.g., *id.* at 3 ("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.").

purchases.⁵⁶ As such, it appears that not all equipment and machinery was exempted from the IPI during the POI and that these rates vary, which is contrary to the GOB's claims, and that certain types of equipment and machinery may have been subject to more favorable rates than other types. Without the IPI schedule to examine for purposes of analyzing the rates at which the GOB applied IPI during the POI to machinery and equipment, and in the face of these contradictory statements and evidence, we do not have necessary information that can provide the basis for the Department's analysis.

As such, we find that the GOB has not provided evidence that would warrant a finding by the Department that the reduction of IPI rates for machinery and equipment does not constitute a program, and that the GOB should have provided a full response to the Department's request for information regarding this alleged program but failed to do so.

For these reasons, we find that the GOB has withheld information and for this program has significantly impeded this investigation, and therefore an adverse inference in selecting from the available facts is warranted under section 776(b) of the Act. As AFA, we find that the "Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment" program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of 771(5A) of the Act.

CSN and Usiminas – Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment

In addition to requesting information regarding the "Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment" program from the GOB, we also requested information regarding this program from both CSN and Usiminas. In their initial responses, neither company provided information for this program, stating that no program existed.⁵⁷ In supplemental questionnaires, the Department provided both companies an additional opportunity to provide information regarding this program. However, neither company provided the information the Department requested which is necessary for the Department to identify and measure the benefit provided by the IPI reductions; in particular, neither company identified the machinery and equipment that it purchased during the POI (or the AUL) with the application of an IPI reduced to a rate of zero. Moreover, both companies continued to claim that no such program exists.⁵⁸ Neither company provided the information that would be necessary (e.g., machinery and equipment purchases and IPI savings thereon) for the Department to identify and measure the benefit and calculate the countervailable subsidy rate for this program.

However, it is the Department, not the respondents, that is charged under the Act to examine whether the provision of government assistance constitutes a program that provides a countervailable subsidy. Because both CSN and Usiminas substituted their own judgment for

⁵⁶ See CSN SQR November 30, 2015 at Exhibit 4 ("CSN purchased substantial quantities of equipment and machinery during 2014. Certain purchased equipment and machinery received comparatively higher IPI tax rates and certain purchased equipment and machinery received comparatively lower IPI tax rates.").

⁵⁷ See CSN QR November 5, 2015 at 13-14; see also Usiminas QR November 5, 2015 at 18-23.

⁵⁸ See CSN SQR November 30, 2015 at 5-7; see also Usiminas SQR December 7, 2015 at 3-6.

the Department's, and relied on that judgment as the reason for not providing information for the Department to analyze in order to determine whether this program provided a benefit to either company, we find that the respondents failed to act to the best of their ability to comply with the Department's request for information.

When selecting an AFA rate, section 776(b) 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. Consistent with section 776(b) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.⁵⁹ When selecting rates, if there is also a cooperating respondent in the investigation (or review), we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program, including a *de minimis* rate. If there is no identical program with a rate above zero calculated for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁶⁰ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above *de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.⁶¹

As discussed below, the GOB did not provide sufficient information with respect to the Reduction of IPI for Machinery and Equipment, thus making it necessary to rely on facts otherwise available with adverse inferences under sections 776(a) and (b) of the Act, for our preliminary determination of this program. See "Reduction in IPI for Machinery and Equipment," below, under Programs Preliminarily Determined to Be Countervailable.

GOB – BNDES FINAME Loans

As discussed under the "Programs Preliminarily Determined to be Countervailable" section, the Department is investigating the Banco Nacional de Desenvolvimento Econômico e Social (BNDES) FINAME Loans program. We requested, twice, information necessary to analyze

⁵⁹ See, e.g., *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying Issues and Decision Memorandum (Shrimp IDM) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁶⁰ For purposes of selecting AFA program rates, we normally treat rates less than 0.5% to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying Issues and Decision Memorandum at 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

⁶¹ See Shrimp IDM at 13-14.

whether the program was specific on a *de facto* basis. In its Initial QR, the GOB reported the total amount of assistance approved for the industry in which the mandatory respondent companies operate⁶² but it did not report the totals for every other industry sector in which companies were approved for assistance under this program. We reiterated our request for the information to which the GOB responded to this request for information by stating “The total amount of support approved under FINAME for mandatory respondent companies in every other industry sector (*i.e.*, every other CNAE code) is beyond the scope of investigation.”⁶³ The GOB also indicated that the information requested is available on the BNDES website.⁶⁴

For the reasons discussed below, we preliminarily find that the GOB has withheld the necessary information that was requested, significantly impeded the investigation with respect to this program, and failed to provide information by the deadlines in the form and manner requested; thus, the Department must rely on “facts otherwise available” for purposes of the preliminary determination with regard to this program, pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, we preliminarily find that the GOB failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference in selecting from the available facts is warranted pursuant to section 776(b) of the Act.

It is the Department, not the GOB, that is charged under the Act to examine whether information allowing for a *de facto* analysis is “beyond the scope of {the} investigation. Because the GOB substituted its own judgment for the Department’s, and relied on that judgment as the reason for not providing information that the Department could analyze in order to determine whether this program is *de facto* specific, we find that the GOB failed to act to the best of its ability to comply with the Department’s request for information.

Accordingly, we find that the GOB has withheld information and impeded this investigation, and that an adverse inference is warranted under section 776(b) of the Act. Thus, as AFA, we find that the “BNDES FINAME Loans” program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and specific within the meaning of 771(5A) of the Act.

As discussed below, the GOB did not provide sufficient information with respect to the BNDES FINAME Loans, thus making it necessary to rely on facts otherwise available with adverse inferences under sections 776(a) and (b) of the Act in our preliminary specificity analysis of this program. See “BNDES FINAME,” below, under Programs Preliminarily Determined to Be Countervailable.

CSN and Usiminas – AUL Benefits

As discussed in detail in the “Programs Preliminarily Determined to be Countervailable” section, the Department has analyzed various tax programs whose benefits are related to purchases of capital goods. In their initial responses, both companies provided information regarding benefits

⁶² See GOB QR November 18, 2015 at 187.

⁶³ See GOB SQR December 4, 2015 at 51.

⁶⁴ *Id.*

enjoyed only during the POI for these programs.⁶⁵ However, the Department considers programs related to the acquisition of capital goods to provide non-recurring subsidies. On this basis, in our supplemental questionnaires, we requested that CSN and Usiminas report benefits received for capital goods purchased over the average useful life (AUL) for such goods (*i.e.*, 15 years, as discussed below).

In their supplemental questionnaire responses, both companies indicated that, because Brazilian law requires companies to maintain tax records for a period of five years, data going back more than five years was not readily available.⁶⁶ As such, the respondents, in general, have provided available information regarding these programs for only the POI (2014) and the prior four years. For purposes of this preliminary determination, pursuant to 776(a)(1) of the Act, as facts available, where appropriate, we are averaging the benefits received in the years for which information was provided and applying that yearly average to each year from 2000 through 2009. We will continue to gather information regarding benefits received under these programs during the entire AUL following this preliminary determination.

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.⁶⁷ The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁶⁸ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned

⁶⁵ See *e.g.*, CSN QR November 5, 2015 at 19.

⁶⁶ See CSN SQR November 30, 2015 at 10; see also Usiminas SQR December 7, 2015 at 17.

⁶⁷ See 19 CFR 351.524(b).

⁶⁸ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁶⁹

CSN

CSN is a publicly traded company engaged in the production and sale of steel products, including cold-rolled steel.⁷⁰ In its initial affiliation response, CSN identified numerous affiliated companies.⁷¹ However, for purposes of this preliminary determination, with the exception of two companies discussed below, we find that these companies do not satisfy the cross-ownership requirements under our attribution rules at 19 CFR 351.525. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily examining subsidies provided to CSN, and we are attributing subsidies received by CSN to its own sales.

In its initial affiliation questionnaire response, CSN indicated that the company's primary shareholder during the POI was Vicunha Siderurgia S.A. (Vicunha), a holding company.⁷² Further, Vicunha was the only company that owned more than five percent of CSN voting shares during the POI.⁷³ Additionally, CSN indicated that it owned 48.75 percent of Itá Energética S.A. (Itá Energética), an electric company whose subsidiary supplies electricity to CSN. On this basis, the Department requested CSN to provide full questionnaire responses for both Vicunha and Itá Energética.

Regarding Vicunha, CSN explained that at the beginning of the POI, Vicunha held 47.86 percent of CSN's shares; however, this increased to 50.29 percent in August 2014.⁷⁴ CSN stated, however, that a complete questionnaire response on behalf of Vicunha is not warranted, on the basis that Vicunha: (1) was not able to use or direct the assets of CSN in the same way it can use

⁶⁹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁷⁰ See CSN QR November 5, 2015 at 4.

⁷¹ See CSN Affiliation Response.

⁷² *Id.*

⁷³ See CSN QR November 5, 2015 at 4.

⁷⁴ See Vicunha Response at 1-2.

its own assets; (2) did not provide an input product to CSN for the production of subject merchandise; and (3) did not provide a subsidy that benefitted CSN during the POI.⁷⁵ Because, according to CSN, the company does not meet the definition of cross-ownership as defined in 19 CFR 351.525(6)(vi), CSN did not provide a complete questionnaire response for Vicunha.

However, our review of the record indicates that Vicunha may be able to direct the assets of CSN in the same way it can use its own assets. First, as noted above, Vicunha was the majority shareholder in CSN. Further, business proprietary information discussed in the CSN Preliminary Calculation Memorandum indicates that Vicunha exercised control over CSN.⁷⁶ As such, although we have not included Vicunha in our preliminary subsidy calculations for CSN, we will continue to gather information regarding Vicunha and its receipt of subsidies for purposes of the final determination.

With regard to Itá Energética, CSN stated that the company does not meet the definition of cross-ownership as defined in 19 CFR 351.525(6)(vi), because CSN was not able to use or direct the assets of Itá Energética in the same way it can use its own assets.⁷⁷ CSN states that because it does not have a majority ownership interest in Itá Energética, the entities are not cross-owned.⁷⁸ However, notwithstanding CSN's non-majority shareholding in Itá Energética, business proprietary information discussed more fully in the CSN Preliminary Calculation Memorandum indicates that CSN may exert control over all major decisions of Itá Energética.⁷⁹ CSN further explains that Itá Energética does not provide electricity to CSN because Itá Hydroelectric Facility is producing and providing the electricity.⁸⁰ However, because Itá Energética holds a majority of the shares in the Itá Hydroelectric Facility, it appears that CSN can control the assets of both Itá Energética and Itá Hydroelectric Facility as though their own. Thus, although we have not included Itá Energética in our preliminary subsidy calculations for CSN, we will continue to gather information regarding Itá Energética for purposes of the final determination.

Usiminas, MUSA, and UMSA

Usiminas responded to the Department's questionnaires on behalf of itself, Mineração Usiminas S.A. (MUSA), a subsidiary of Usiminas that supplied iron ore to Usiminas for production of the subject merchandise during the POI,⁸¹ and Usiminas Mecanica S.A. (UMSA), a subsidiary of Usiminas that provided Usiminas with steel mill parts, steel mill equipment, and services to maintain and refurbish steel production equipment.⁸²

⁷⁵ *Id.*

⁷⁶ See CSN Preliminary Calculation Memorandum.

⁷⁷ See Itá Energetica Response at 2-3

⁷⁸ *Id.*

⁷⁹ See CSN Preliminary Calculation Memorandum.

⁸⁰ See Itá Energetica Response at 3.

⁸¹ See Usiminas QR November 5, 2015 at 1.

⁸² See Usiminas Affiliation SQR at 3.

Usiminas is a publicly traded company. Its shares are traded on the Brazilian stock exchange, and a majority its shares are owned by foreign investors.⁸³

MUSA is an iron ore producer. Usiminas is one of two shareholders, and holds 70 percent of MUSA shares.⁸⁴ Although MUSA reorganized in October 2012, Usiminas retains its 70 percent shareholding.⁸⁵ MUSA provides iron ore to Usiminas for Usiminas' steel production.⁸⁶

Usiminas holds a controlling interest in MUSA based on its large majority shareholding. This shareholding enables Usiminas to control the assets of MUSA as though they were Usiminas' assets. As such, we preliminarily determine that the companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Furthermore, we preliminarily find that the iron ore supplied by MUSA to Usiminas is primarily dedicated to the production of a downstream product, and thus, for purposes of the preliminary determination and consistent with 19 CFR 351.525(b)(6)(vi), we are attributing subsidies provided to MUSA to Usiminas by dividing the benefit amounts by the combined sales of Usiminas and MUSA.⁸⁷

UMSA is a heavy industries company that is wholly-owned by Usiminas.⁸⁸ UMSA operates in the capital goods and services areas with customers in the steel, mining, automotive, energy, petrochemical, shipbuilding and infrastructure industries in Brazil.⁸⁹ UMSA's activities encompass the production of capital goods and assemblies, steel structures, bridges, blanks and forgings and similar projects, as well as industrial maintenance.⁹⁰ During the POI, UMSA provided parts for Usiminas' steel mills and equipment as well as services to maintain and refurbish steel production equipment at Usiminas' plants.⁹¹

Because Usiminas wholly owns UMSA, we find that the companies are cross-owned within the meaning of 19 CFR 251.525(b)(6)(vi). Furthermore, we preliminarily find that the equipment supplied by UMSA to Usiminas is primarily dedicated to the production of a downstream product, and thus, for purposes of the preliminary determination and consistent with 19 CFR 351.525(b)(6)(vi), we are attributing subsidies provided to UMSA to Usiminas by dividing the benefit amounts by the combined sales of Usiminas and UMSA.⁹²

⁸³ *Id.* at 8.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 9.

⁸⁷ We do not have the information that would allow the removal of intercompany transactions; we will seek this information following the preliminary determination.

⁸⁸ *Id.*

⁸⁹ See UMSA QR at 5.

⁹⁰ *Id.*

⁹¹ See letter from Usiminas, "Cold-Rolled and Hot-Rolled Steel Flat Products from Brazil; Request for Reconsideration of Response from Usiminas Mecanica and Request for Extension of Time to Respond to General Question 4 of DOC's November 19, 2015 Supplemental Questionnaire," dated November 25, 2015.

⁹² We do not have the information that would allow the removal of intercompany transactions; we will seek this information following the preliminary determination.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

D. Loan Interest Rate Benchmarks and Discount Rates

Loan Benchmarks and Interest Rates

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii).

Short-Term Reais-Denominated Loans

Both companies indicated that the only long-term loans that were outstanding during the POI were loans from BNDES.⁹³ Further, the GOB stated that BNDES did not provide any short-term loans to either respondent company during the POI.⁹⁴ As such, neither the GOB nor the respondents provided short-term interest rate benchmark information in their questionnaire responses. However, a review of the loan information provided by both companies indicates that some of these outstanding BNDES loans were provided on a short-term basis (*i.e.*, for less than one year). In the absence of company-specific short-term loan interest rate information, for purposes of the preliminary determination, pursuant to 19 CFR 351.505(a)(3)(ii), we relied on data from the International Monetary Fund's (IMF) *International Financial Statistics* for the years in which the terms of the loans were agreed to.

Long-Term Reais-Denominated Loans

During the POI, both companies had outstanding long-term Reais-denominated loans under the BNDES FINAME Loan program. As benchmarks for countervailable subsidies in the form of long-term loans, we typically use, where available, the company-specific interest rates on the

⁹³ See CSN QR November 5, 2015 at 52; see also Usiminas QR November 5, 2015 at 54.

⁹⁴ See GOB SQR December 4, 2015 at 52.

company's comparable commercial loans.⁹⁵ For certain years, we do not have loan information from the companies in the year the loan was provided. For years in which there are no comparable long-term commercial loans, pursuant to 19 CFR 351.505(a)(3)(ii), we relied on data from the IMF's *International Financial Statistics* for the years in which the terms of the loans were agreed to.

Discount Rates

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

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined To Be Countervailable

1. Reduction of IPI for Machines and Equipment

Petitioners allege that the respondents received countervailable subsidies in the form of the GOB's reduction of IPI for Machines and Equipment.⁹⁶ We requested information from both the GOB and respondents regarding benefits under this program.

As discussed in detail in the "Use of Facts Otherwise Available and Adverse Inferences" section, the GOB did not provide the information we requested regarding this program, including how it operates and who benefits from it, which is necessary for our analysis of whether the program provides a financial contribution and is specific, in law or in fact. In order to conduct the analysis of whether a program is a financial contribution under section 771(5)(D) of the Act and specific under section 771(5A) of the Act, it is essential that the government provides a complete response to the questions that are contained in the questionnaire, because it is the government that has access to the information required for a complete analysis. The GOB has not provided a complete response to the questions related to this program. As such, we preliminarily find that the GOB has withheld the necessary information that was requested of it, and failed to provide information in the form and manner requested; thus, the Department must rely on "facts otherwise available" for purposes of the preliminary determination with regard to this program, pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, we preliminarily find that the GOB failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference in selecting from the available facts is warranted pursuant to section 776(b) of the Act because the GOB did not cooperate to the

⁹⁵ See 19 CFR 351.505(a)(3).

⁹⁶ See, e.g., Initiation Checklist at 8.

best of its ability. Accordingly, we preliminarily determine that the IPI program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of 771(5A) of the Act.

When a government subject to a CVD investigation fails to provide requested information concerning alleged subsidy programs, it is the Department's practice to find that a financial contribution exists under the alleged program and that the program is specific as AFA.⁹⁷ In such circumstances, where possible, the Department will rely on the respondents' reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable.⁹⁸ However, as noted in the "Use of Facts Otherwise Available and Adverse Inferences" section, neither respondent company provided information regarding its purchases of machinery and equipment, the rate at which it paid IPI, or the amount of IPI saving it received as result of the reduction of the IPI rate to zero for machinery and equipment over the AUL period. Therefore, because both companies have withheld the necessary information that was twice requested of them, we must rely on "facts otherwise available" for purposes of the preliminary determination with regard to this program, pursuant to sections 776(a)(2)(A) and (B) of the Act. Because CSN and Usiminas failed to cooperate by not acting to the best of their ability to comply with our request for information, we find that an adverse inference in selecting from the available facts is warranted pursuant to section 776(b) of the Act. Therefore, consistent with our practice, we looked to other CVD proceedings involving Brazil to identify a calculated rate for this program.

As discussed above, 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.

When selecting rates, if there is also a cooperating respondent in the investigation (or review), we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program, including a *de minimis* rate. If there is no identical program with a rate above zero calculated for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates). If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above *de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.

⁹⁷ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 201380 FR 77318 (December 14, 2015) and accompanying *Issues and Decision Memorandum* at 35-36.

⁹⁸ *Id.*

In this investigation, with regard to this program, we do not have a cooperative respondent for whom we are calculating a rate. Therefore, consistent with our practice, we looked to other CVD proceedings involving Brazil to identify a calculated rate for this program. We have not previously calculated a countervailable subsidy rate for Reduction of IPI for Machines and Equipment. Therefore, we have determined that it is appropriate to apply the rate calculated for the Funding For Expansion Through IPI Tax Rebates program in the Final Results of Carbon Steel Products from Brazil.⁹⁹ This rate is 3.21 percent *ad valorem* for CSN and Usiminas.

2. Ex-Tarifário

According to the GOB, the Ex-Tarifário program, governed by Resolution CAMEX N. 66/2014,¹⁰⁰ is a tax regime that reduces the tariff rates on imported capital goods from 14 percent to two percent (or to zero percent for products that are in the “national interest”)¹⁰¹ where these capital goods are not produced in Brazil.¹⁰² Companies must apply for the reduced tariff rate with the Secretariat of Production Development (SDP) of the Ministry of Development, Industry and Trade (MDIC).¹⁰³ The SDP posts the description of the capital good with related technical catalogs on the MDICs website for a period of 30 days during which local manufacturers can present objections to the application.¹⁰⁴ Other government agencies also verify that there is no equivalent production in Brazil.¹⁰⁵ If approved, the tariff rate is reduced for the particular product and any company that imports the product benefits from the tariff reduction.¹⁰⁶

CSN, Usiminas, MUSA, and UMSA reported having used this program.¹⁰⁷

Although the GOB, CSN, and Usiminas assert that Ex-Tarifário is not a countervailable program,¹⁰⁸ we solicited, and the GOB provided, information enabling our analysis of this program. The GOB provided information demonstrating that, for the years 2003, 2008, and 2009, the “metalurgia” industry, which includes steel producers,¹⁰⁹ was the largest recipient of the program by value of goods imported.¹¹⁰ Additional evidence indicates that the metalurgia sector had the largest value of goods approved in 2011.¹¹¹ We also examined a report from the MDIC provided by Petitioners regarding the users of this program during the period July 2001

⁹⁹ See *Certain Carbon Steel Products From Brazil; Final Affirmative Countervailing Duty Determination*, 49 FR 1798 (April 26, 1984).

¹⁰⁰ The GOB has not provided this resolution.

¹⁰¹ See GOB SQR December 4, 2015 at 25 (“A reduction to 0% only occurs in case when the importing product is of national interest, that is, when there is clear perception that all sectors of the GOB understands the importance of liberalizing the entrance of a given capital good . . . Very few products fulfill this requirement.”)

¹⁰² See GOB QR November 18, 2015 at 15-16.

¹⁰³ *Id.* at 16. See also GOB SQR December 4, 2015 QR at Exhibit 2 for a sample application.

¹⁰⁴ See GOB November 18, 2015 at 16.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 21.

¹⁰⁷ See CSN QR November 5, 2015 at 15-20, see also Usiminas QR November 5, 2015 at 24, and UMSA QR at 17.

¹⁰⁸ See, e.g., GOB QR November 18, 2015 at 16, CSN QR November 5, 2015 at 15-20, and Usiminas QR November 5, 2015 at 26.

¹⁰⁹ See GOB December 4, 2015 QR at 22.

¹¹⁰ See GOB Primary QR at Exhibit II-3.

¹¹¹ See GOB SQR December 4, 2015 at Exhibit 3.

through May 2013.¹¹² This information provides a breakdown by industry sector of the number and value of items for which Ex Tarifário import duty reductions were granted. This information 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.

Thus, the record demonstrates that Ex-Tarifário is *de facto* specific under section 775(5A)(D)(iii)(III) to a group of industries (steelmaking and information technology) that are the predominant users of the program.

Based on the information on the record, the Department preliminarily finds that the reduced tariff rates constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of import duty otherwise due in the absence of the program.

To calculate the countervailable subsidy rate for CSN, for the POI and each year of the AUL for which CSN reported receiving benefits, we performed the “0.5 percent test” and we divided the amount of benefits (relying on facts available for the years 2001 through 2009, as discussed above in the section “Use of Facts Otherwise Available,” the subsection *CSN and Usiminas—AUL Benefits*) by the total sales. For every year, the benefits did not pass the “0.5 percent test,” and we allocated the benefits to the year of receipt. As such, we divided the benefits received by CSN during the POI by CSN’s total sales during the POI. Thus the countervailable subsidy for CSN is 0.04 percent *ad valorem*.

Usiminas reported that Usiminas, MUSA, and UMSA received benefits during the years 2004 through 2014, we performed the “0.5 percent test” as follows: for Usiminas, we divided the benefit amounts by Usiminas’ sales during the corresponding year; for MUSA, we divided the benefits by the combined sales of Usiminas and MUSA in the corresponding year; and for UMSA we divided the benefits by the combined sales of Usiminas and UMSA in the corresponding year. On this basis, only the benefits provided to Usiminas in 2009 passed the “0.5 percent test” and we allocated them over time using the discount rate discussed above in the section “Loan Interest Rate Benchmarks and Discount Rates.” Finally, we added together the benefits that were allocated to the POI with the benefits that were received during the POI, and we divided this amount by Usiminas’ total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy rate for Usiminas to be 0.26 percent *ad valorem*.¹¹³

3. BNDES FINAME Loans

According to the GOB, BNDES was founded in 1952 and is the Brazilian national development bank.¹¹⁴ BNDES finances machinery and equipment purchases, and plays a significant role in strengthening the equity and financial structure of private companies and in the development of

¹¹² See Petition at Exhibit V-13.

¹¹³ See CSN Preliminary Calculation Memorandum at and Usiminas Preliminary Calculation Memorandum.

¹¹⁴ See GOB QR November 18, 2015 at 172.

the capital market in Brazil.¹¹⁵ BNDES also plays an important role in investments of social importance in areas such as public transport, environment, health, education and agribusiness.¹¹⁶

According to the GOB, the FINAME program, which was started in 1966,¹¹⁷ provides financing for the purchase or leasing of new domestic and imported machinery and equipment. FINAME financing is provided using BNDES funds through an agent bank.¹¹⁸ With FINAME loans, BNDES charges a spread over the interest rate charged by the agent bank. The agent bank develops interest rates in accordance with its own rules and based on company risk and the risk of the particular investment.¹¹⁹ As a result, the applicable interest rate is composed of the cost of funds plus BNDES' basic spread, intermediation fee, and agent bank risk spread.¹²⁰

CSN, Usiminas, MUSA, and UMSA, reported that they have FINAME loans that were outstanding during the POI.¹²¹

With regard to specificity, the GOB claims that FINAME loans are available to any company of any size.¹²² Furthermore, although we have found that this program is *de jure* specific as an import substitution program in prior proceedings concerning Brazilian steel products,¹²³ in the current investigation, the record does not indicate that FINAME loans are available only for the purchase of Brazilian-manufactured equipment (*i.e.*, as an import substitution program) or are otherwise *de jure* specific. Thus, we must examine whether the program is specific to an enterprise or industry or group of enterprises or industries on a *de facto* basis. As discussed above in the "Use of Facts Otherwise Available" section, however, the GOB did not provide information requested by the Department regarding the use of this loan program across industry sectors in Brazil. This information is necessary to analyze whether a domestic subsidy that is not *de jure* specific is otherwise specific on a *de facto* basis.

Specifically, in its Initial QR, the GOB reported the total amount of assistance approved for the industry in which the mandatory respondent companies operate¹²⁴ but it did not report the totals for the other industry sectors in which companies were approved for assistance under this program. We reiterated our request for the information, but the GOB responded to this request for information by stating, "The total amount of support approved under FINAME for mandatory respondent companies in every other industry sector {according the GOB industry classification

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 174.

¹¹⁸ *Id.* at 173.

¹¹⁹ *Id.* at 174.

¹²⁰ *Id.*

¹²¹ See CSN QR November 5, 2015 at 47-50; see also Usiminas QR November 5, 2015 at 47 and UMSA QR at 3.

¹²² See GOB QR November 18, 2015 at 172.

¹²³ See *Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62128 (October 3, 2002) (CRS-Brazil—2002) and accompanying Issues and Decision Memorandum at 19-20. See also *Final Results of the Countervailing Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 76 FR 22868 (April 25, 2011) (HRS-Brazil—2011) and accompanying Issues and Decision Memorandum at 7-8.

¹²⁴ See GOB QR November 18, 2015 at 187.

system} is beyond the scope of investigation.”¹²⁵ The GOB also indicated that the information requested is available on the BNDES website,¹²⁶ despite the Department specifically advising the GOB in the supplemental questionnaire that reference to an Internet address does not substitute for the provision for the record of the information requested. Moreover, “{t}he 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.”¹²⁷

The GOB also referenced Internet addresses in response to our request for a description of the application process.¹²⁸ The GOB did not provide the requested copies of one completed application and approval package for each company under investigation stating, instead, that the “provision of the referred copy of a completed application is not possible, due to bank secrecy, pursuant to Supplementary Law N. 105 of 2001{.}”¹²⁹ The GOB provided the same answer in response to our reiteration of our request for the information.¹³⁰

In order to conduct the analysis of whether a program is specific under section 771(5A) of the Act, it is essential that the government provide a complete response to the questions regarding the enterprises and industries that have benefitted from a particular program. The government is the only source that has access to the information. Without the information necessary to consider whether FINAME loans were provided on a *de facto* specific basis, we are resorting to the use of facts otherwise available within the meaning of section 776(a)(1) of the Act because the GOB has not provided for the record the information concerning the manner in which this program is administered and the enterprises and industries that use it.

We also preliminarily determine that an adverse inference in selecting from the available facts is warranted because the GOB did not cooperate to the best of its ability in responding to our requests for information. Specifically, we asked, twice, for the breakdown of distribution of benefits by industrial sector, and twice the GOB did not provide the Department with this information and did not provide an explanation for why they did not provide the information.¹³¹ As such, we are preliminarily relying on facts otherwise available to determine that this program is *de facto* specific under section 771(5A)(D)(iii) of the Act. This program is operated by an authority, the government’s development bank, and provides a financial contribution in the form of loans, a direct transfer of funds under section 771(5)(D)(i).

To calculate a benefit under this program, we compared the amount of interest the respondent companies paid on these loans during the POI to the amount they would have paid under the benchmark interest rate described above. For CSN, we then divided the calculated benefit by its

¹²⁵ See GOB SQR December 4, 2015 at 51.

¹²⁶ *Id.*

¹²⁷ See letter to the GOB, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire for the Government of Brazil,” dated November 24, 2015.

¹²⁸ See GOB QR November 18, 2015 at 181.

¹²⁹ *Id.* at 181 and Exhibit V.

¹³⁰ See GOB SQR December 4, 2015 at 50.

¹³¹ See GOB QR November 18, 2015 at 187; *see also* GOB SQR December 4, 2015 at 51.

total sales. On this basis, we preliminarily calculate a subsidy rate of 0.01 percent *ad valorem* for CSN.¹³²

For Usiminas, we attributed benefits received by UMSA and MUSA to Usiminas as discussed above, to preliminarily determine the countervailable subsidy rate for Usiminas to be 0.13 percent *ad valorem*.¹³³

4. Integrated Drawback Scheme

According to the GOB, the Integrated Drawback Scheme, established in 1966 under Article 78, Law N. 37, allows exporting companies to purchase raw materials, parts, and components exempt from import duties and certain taxes, whether the raw materials are imported or purchased from domestic suppliers, when the items are used to produce products for export.¹³⁴ Companies that are “licensed as a foreign trade agent,” apply for “Drawback Concession Act” by submitting applications through the Drawback System, “Siscomex.”¹³⁵ Companies must submit data such as products to be exported and imported, or purchased in the domestic market, estimates of values and quantities for each, and import freight/insurance information.¹³⁶ Companies then have one year to fulfill their obligations, *i.e.*, buy raw materials, parts and components, produce the product to be exported and export it; this period can be extended an additional year.¹³⁷ A company may receive an “Exemption Drawback” when it purchases domestically or imports materials, without the application of the relevant taxes (import duties or domestic taxes, respectively), to resupply inputs consumed in manufacturing products that have already been exported. A “Suspension Drawback” allows a company to import or purchase domestically, without paying taxes, raw materials, parts and components that will be used to manufacture goods for export. The “Refund Drawback,” which is rarely used, provides a refund of the import duties and domestic taxes on inputs after the export of the final goods in which the inputs were used.¹³⁸

According to the GOB, certain information must be included in the application such as the identification of the products to be purchased and a demonstration of how those products will be used in the final manufactured products to be exported.¹³⁹ The quantities and values, and whether the imported or domestically purchased products will be used to replenish the inventory of inputs used to produce a products previously exported, must also be reported.¹⁴⁰ These quantities and values are expected to be consistent over successive transactions and, if they are not, the GOB can allow for an increase only in the value of purchases if the companies demonstrate an increase in their market prices.¹⁴¹ Such an increase is limited to five percent.¹⁴²

¹³² See CSN Preliminary Calculation Memorandum.

¹³³ See Usiminas Preliminary Calculation Memorandum.

¹³⁴ See GOB QR November 18, 2015 at 43, and Exhibits III-1, III-2, and III-3.

¹³⁵ *Id.* at 51.

¹³⁶ *Id.*

¹³⁷ *Id.* at 43-44.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Finally, if the final product is not exported within a two-year period, companies will have to repay the duties that would otherwise have been levied, destroy the inputs, or return the inputs to their supplier.¹⁴³

If the data submitted are within the parameters established by the application, the application is automatically approved by the system. If not, it will be analyzed by the Secretariat of Foreign Trade (SECEX).¹⁴⁴

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

In response to our questions regarding the system or procedure administered by the GOB, the GOB explained there is a system administered by the customs authority to track raw materials through import declarations invoices and export licenses, and that these are matched with the products, quantities, and values authorized for the exporter.¹⁴⁵ Moreover, their system relies on technical reports to identify and account for the allowable waste.¹⁴⁶ However, the GOB also explained that companies are entitled to receive exemptions or suspensions of domestic taxes on domestic purchases of inputs. This is an indication that the program provides more than the exemption, deferral, or remission of import charges, that would be allowable under 19 CFR 251.519(a), and that are levied on inputs consumed in the production of exports. Therefore, we preliminarily determine that the exemptions and rebates provided under this program exceed the import duties that are assessed on inputs consumed in the production of exports. 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 that the entire amount of the exemptions or rebates provided confers a benefit in accordance with 19 CFR 351.519(a)(4)(i).

Because the import duty exemptions on raw materials are contingent upon export performance, we preliminarily determine that they are specific in accordance with section 771(5A)(A) and (B) of the Act. We further preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act.

¹⁴² *Id.*

¹⁴³ *Id.* at 45.

¹⁴⁴ *Id.*

¹⁴⁵ See GOB QR November 18, 2015 at 42.

¹⁴⁶ See GOB SQR December 9, 2015 at 31.

Normally, we treat exemptions from indirect taxes and import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the countervailable subsidy rate for CSN and Usiminas, we divided the amount of their duty and tax savings under this program by their total exports during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 1.13 percent *ad valorem* for CSN and 0.82 percent *ad valorem* for Usiminas.

5. Reintegra

The Special Regime for the Reimbursement of Taxes for Exporters (Reintegra) program allows exporters of manufactured goods to recover residual indirect tax costs¹⁴⁷ levied on inputs acquired in the domestic market, used in the production of goods for export. Specifically, the program provides a refund of up to three percent of gross receipts for export goods manufactured in Brazil.¹⁴⁸ This refund can be received either as a credit against federal tax liabilities, or as a cash payment. Although Reintegra expired in December 2013, it was reinstituted by a provisional measure in July 2014 which became effective in November 2014.¹⁴⁹

To qualify for Reintegra, manufactured goods must: (1) be included in the Industrialized Products Tax Table (Tabela de Incidência do Imposto sobre Produtos Industrializados – TIPI) and listed in an act issued by the Executive branch; and (2) the cost of the imported content of the good must not exceed 40 percent of their export price.¹⁵⁰ Qualifying exports for Reintegra include direct sales of exports as well as sales to qualified domestic trading companies.¹⁵¹

To benefit from Reintegra, the exporting company adds up to three percent to the total revenue received from the exports of its domestically produced goods when submitting its tax refund request. Eligible companies have five years from the later of the quarterly closing date or shipment registration date to submit a refund request. The refund is granted as either a credit that can be applied to federal taxes owed or cash reimbursement, at the company's election.¹⁵² According to Usiminas, upon filing its declaration, a company can use its credit immediately to offset its federal taxes owed.¹⁵³

The GOB reported that the credit is currently granted at a rate of 1.0 percent,¹⁵⁴ however, the GOB has provided no evidence to establish that. Rather, the applicable law that the GOB provided on the record indicates that the credit may range from 0.1 percent to 3.0 percent.¹⁵⁵

¹⁴⁷ See Usiminas Affiliation SQR at 7 (“{r}esidual indirect taxes are prior-stage indirect taxes on goods and services used in the production of exported products that cannot be recovered by other means”).

¹⁴⁸ See GOB SQR December 9, 2015 at Exhibit D-1; CSN QR November 5, 2015 at 25; Usiminas QR November 5, 2015 at 31.

¹⁴⁹ See GOB SQR December 9, 2015 at 15.

¹⁵⁰ *Id.* at 19.

¹⁵¹ *Id.* at Exhibit D-1; Usiminas QR November 5, 2015 at 32.

¹⁵² See CSN QR November 5, 2015 at 27; Usiminas QR November 5, 2015 at 32.

¹⁵³ See Usiminas QR November 5, 2015 at 31.

¹⁵⁴ See GOB SQR December 9, 2015 at 19.

¹⁵⁵ See GOB SQR December 9, 2015 at Exhibit D-1.

Further, information submitted by CSN indicates that it received the credit at the rate of 3.0 percent.¹⁵⁶

We preliminarily determine that Reintegra constitutes a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act. We further preliminarily determine that the tax rebates, whether granted in cash or as credits applicable to other tax obligations, provided under this program are specific under section 771(5A) (B) of the Act, as eligibility is contingent upon export performance.

To determine if the Reintegra program conferred a countervailable benefit, we examine whether the amount remitted or credited to the exporters exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowances for waste.¹⁵⁷ If the amount rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, the excess amount is found to be a benefit.

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

- (i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or
- (ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts and which indirect taxes are imposed on the inputs.

The information submitted by the GOB does not demonstrate that the government had, or has, 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 GOB also 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. Therefore, we find that the requirements for non-countervailability provided for in 19 CFR 351.518(a)(4)(i) and (ii) have not been met.

¹⁵⁶ See CSN QR November 5, 2015 at 25 (noting 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). See also CSN Preliminary Calculation Memorandum and Usminas Preliminary Calculation Memorandum.

¹⁵⁷ See 19 CFR 351.518(a).

In its questionnaire responses, CSN claims that it accrued benefits under this program in December 2014, but that it was not eligible to use the benefits under the program until 2015 and, thus, did not receive any benefits under this program during the POI.¹⁵⁸ However, because a company may elect to receive its rebate in cash or as a credit to be applied later, it is appropriate to recognize that the benefit is received at the time the rebate is provided. Moreover, at the time CSN received the credit in December 2014, it accounted for the credit in its accounting system, and the credit is reflected in the company's financial statements.¹⁵⁹ As such, the record indicates that the benefit was available to the company upon receipt, during the POI. In our supplemental questionnaire, we specifically asked the earliest date at which the company could have used this accrued benefit.¹⁶⁰ CSN did not directly respond to this question.¹⁶¹ However, Usiminas reported that benefits may be used immediately upon accrual.¹⁶² As such, the Department finds that although CSN did not file its refund request until after the POI, it was eligible to do so during the POI. Thus, we are finding this benefit to be conferred during the POI.

Because the amount of the Reintegra rebate is calculated as a percentage of the "free on board" (FOB) value of the exports, the percentage rebated serves as the subsidy rate. This is consistent with the Department's treatment of a nearly identical program, the Reintegro, that the Department examined in the countervailing duty investigation of honey from Argentina.¹⁶³ Thus, we preliminarily determine that Reintegra provided a countervailable subsidy at a rate of 3.0 percent *ad valorem* for both CSN and Usiminas.

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

The Bahia State Industrial Development and Economic Integration Program (Desenvolve) is a tax incentive program for the establishment of new, and the expansion or modernization of, existing industrial enterprises in the state of Bahia.¹⁶⁴ Incentives of this program include, but are not limited to: reduction of the state tax ICMS (Tax on the Circulation of Goods and Services) for the purchase of fixed assets,¹⁶⁵ ICMS deferral for the purchase of raw materials, and a grace period of up to 72 months for the payment of up to 90 percent of the ICMS monthly debit

¹⁵⁸ See CSN QR November 5, 2015 at 25-26.

¹⁵⁹ See CSN SQR November 30, 2015 at 11 and CSN QR November 5, 2015 at Exhibit 2-C page 8.

¹⁶⁰ See CSN SQR November 30, 2015 at 11.

¹⁶¹ In responding to the Department's supplemental questions regarding this program, CSN provided a two paragraph response in addressing all four questions. The issue of the earliest date when the benefit could be used was not discussed. See CSN SQR November 30, 2015 at 11-12.

¹⁶² See Usiminas Affiliation SQR at 34.

¹⁶³ 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 (March 13, 2001); see also *Final Affirmative Countervailing Duty Determination: Honey from Argentina*, 66 FR 50613 (October 4, 2001) and accompanying Decision Memorandum at *Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)*.

¹⁶⁴ See GOB QR November 18, 2015 at 146, GOB SQR December 4, 2015 at 30.

¹⁶⁵ See GOB QR November 18, 2015 at 146 (defining fixed assets as machines and equipment intended for production).

balance relative to the company's operations generated through investments in approved projects.¹⁶⁶

According to CSN's initial questionnaire response, CSN received reduced ICMS payments under this program during the POI.¹⁶⁷ CSN also reported that certain sectors, including those involving timber processing and mining projects, are excluded from the Desenvolve program. The GOB and CSN both provided supporting documentation, including Decree No. 8205 which states:

Art. 10. The following shall not qualify for the benefits of Desenvolve:

...

III – the projects that meet the following assumptions:

- a) Industries using charcoal or wood hulling industries...;
- b) Mining projects that incorporate a rudimentary mining process or prospecting;
- c) Others, at the discretion of the Advisory Board of Desenvolve;

IV – companies that are beneficiaries of other government incentives which, at the discretion of the Advisory Board of the Program are considered incompatible with Desenvolve.¹⁶⁸

We preliminarily determine that Desenvolve is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because certain industries are explicitly ineligible. Furthermore, a financial contribution is conferred in the form of government revenue foregone under section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a)(1).

CSN's Camacari facility originally applied to participate in the Desenvolve program in 2002 and was approved in 2003. CSN continued to receive benefits through the POI based on this approval. At that time, CSN did not own the facility; rather, it was owned by Kofar Nordeste. Kofar Nordeste was acquired by Inal Nordeste S.A. (INOR), a former CSN subsidiary that was merged with CSN in May 2011.¹⁶⁹

The description of the program provided by the GOB indicates that exemptions of ICMS are available only for the acquisition of fixed assets (machinery and equipment). Purchases of inputs and raw materials can receive deferrals of the relevant taxes. Because CSN reported that it received an exemption of ICMS under this program, we preliminarily determine that CSN received this exemption for the acquisition of fixed assets. Because such benefits are non-recurring, it is appropriate for us to examine benefits received by CSN over the AUL. We intend to solicit additional information from CSN regarding its receipt of Desenvolve benefits over the AUL period after the preliminary determination. For purposes of the preliminary determination, we have calculated the subsidy rate resulting from the benefits received by CSN during the POI. To calculate the benefit, we first performed the "0.5 percent test" in accordance with 19 CFR

¹⁶⁶ *Id.* at 146, GOB SQR December 4, 2015 at 30.

¹⁶⁷ *See* CSN QR November 5, 2015 at 45.

¹⁶⁸ *Id.* at Exhibit 29; GOB SQR December 4, 2015 at Exhibit I-2.

¹⁶⁹ *See* CSN IQ November 5, 2015 at 44.

351.524(a)(2). Because the amount of benefits received was less than 0.5 percent of the CSN's total sales during the POI, we are allocating the benefits to the year of receipt, the POI. On this basis, we preliminarily determine that CSN received a countervailable subsidy rate of 0.03 percent *ad valorem* under this program.¹⁷⁰ Usiminas did not report using this program.

B. Program Preliminarily Determined to be Not Countervailable

Economic Subvention to National Innovation Program

According to the GOB, under Chapter III of Federal Law N. 11,196 of 21 November 2005 and Federal Decree N. 5,798 of 07 June 2006, the Economic Subvention to National Innovation Program allows Brazilian companies a deduction of up to 60 percent of research and development (R&D) expenses if the company is liable for the research and assumes the business risk, the management and the control of the utilization of the results of the expenses.¹⁷¹ These deductions are limited to the amount of taxable income; they cannot be carried forward to successive years; and they are to be used exclusively for corporate purposes. The GOB explains that there is no application process, but companies must submit a report of the R&D activities to the Ministry for Science Technology and Innovation (MCTI).¹⁷² The MCTI evaluates the activities reported by the companies to determine if the expenses are eligible. According to the GOB, the only criterion for eligibility is R&D development and/or activities during the year.¹⁷³

Usiminas reported using this program.¹⁷⁴ There is no indication from the information provided by the GOB that this program is *de jure* specific. Therefore, we have examined information provided by the GOB regarding the distribution of benefits by industry sector. This public report, by the MCTI,¹⁷⁵ shows the total tax deductions claimed, by industry, over the period 2007 through 2013.¹⁷⁶ This report presents overall figures including, total amount of tax benefits given, total number of companies that benefited from the tax rebates by industry, total amount of investment in R&D by the companies, and regional distribution of the benefits.¹⁷⁷ Our review of this information indicates that the number of recipients is not limited, and the steel industry is not a predominant user or disproportionate recipient of the benefits granted under this program. Therefore, we preliminarily determine that this program is not countervailable.

C. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit

We have preliminarily determined that the following programs did not confer a measurable benefit during the POI. Therefore, we do not reach a preliminary determination as to whether there is a financial contribution or specificity for these programs.

¹⁷⁰ See CSN Preliminary Calculation Memorandum.

¹⁷¹ See GOB QR November 18, 2015, at 204.

¹⁷² *Id.* at 212.

¹⁷³ *Id.*

¹⁷⁴ See Usiminas QR November 5, 2015 at 57.

¹⁷⁵ See GOB QR November 18, 2015, at 207, and Exhibit V.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

1. Regime Tributário para Incentivo á Modernização e á Ampliação da Estrutura Portuária (REPORTO)

CSN reported that it used this program.¹⁷⁸ To calculate the benefit, we divided the amount of the assistance received by CSN by its total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.¹⁷⁹ As such, this program does not have an impact on CSN's overall subsidy rate. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for CSN.¹⁸⁰

2. RIOInvest

CSN reported that it used this program.¹⁸¹ To calculate the benefit, we divided the amount of the assistance received by CSN by its total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.¹⁸² As such, this program does not have an impact on CSN's overall subsidy rate. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for CSN.¹⁸³

D. Programs Preliminarily Determined To Be Not Used

1. FINEP's Economic Subvention

Usiminas reported receiving benefits under this program in years prior to the POI.¹⁸⁴ For each year in which Usiminas reported receiving benefits, we performed the "0.5 percent test" by dividing the benefit amounts by Usiminas' sales. In all years, the benefits did not pass the "0.5 percent test." Thus, the benefits are allocated to the year of receipt, prior to the POI, and there are no benefits during the POI.

2. Exemption of Payroll Taxes
3. Brazil's Export Financing Program (PROEX)
4. Special Regime for the Acquisition of Capital Goods for Export Companies (RECAP)
3. Export Credit Insurance and Guarantees
4. Export Guarantee Fund
5. Export Promotion and Marketing Assistance
6. Pro-Industria
7. Tax Benefits in the State of Espírito Santo (FUNDAP)

¹⁷⁸ See CSN QR November 5, 2015 at 20.

¹⁷⁹ See CSN Preliminary Calculation Memorandum.

¹⁸⁰ See, e.g., *Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at 10, unchanged in final (*Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012)).

¹⁸¹ See CSN QR November 5, 2015 at 34.

¹⁸² See CSN Preliminary Calculation Memorandum.

¹⁸³ See, e.g., *Large Residential Washer from Korea*, and accompanying IDM at 10, unchanged in final.

¹⁸⁴ See Usiminas QR November 5, 2015 at 64.

8. Tax Benefits in the State of Espírito Santo (INVEST-ES)
9. Development and Participation of Espírito Santo (FUNDEPAR)
10. Northeast Region Development Authority Incentives
11. Northeast Investment Fund (FINOR)
12. Amazon Investment Fund (FINAM)
13. Federal District Development Program
14. Pernambuco Development Program (PRODEPE)
15. Program for the Development of Santa Catarina's Business (PRODEC)
16. BNDES PROGEREN
17. BNDES EXIM
18. BNDESPAR Loans
19. Automatic BNDES
20. BNDES Funtec
21. INOVA Brasil Program

E. Program Preliminarily Determined Not to Exist

Investment Maintenance Program

Both the GOB and CSN have reported that this program is a part of BNDES FINAME.¹⁸⁵ As such, see section IX.A.3 above for a full discussion and analysis.

X. CALCULATION OF THE ALL OTHERS RATE

As stated in sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, the Department will determine an all others rate by weight averaging the individual countervailable subsidy rate of each of the companies investigated. The statute further explains that the all others rate may not include zero and *de minimis* rates or any rates based solely on the facts available.¹⁸⁶

Consistent with the Department's practice, we normally calculate the all others rate based on the weighted average of the mandatory respondents' calculated subsidy rates.¹⁸⁷ In this case however, the two mandatory respondents have the same rate. Therefore, it is unnecessary to calculate an all others rate that is the weighted average of the mandatory respondents' rates. The all others rate is the rate calculated for both mandatory respondents, 7.42 percent *ad valorem*.

¹⁸⁵ See GOB QR November 18, 2015 at 175; CSN QR November 5, 2015 at 53.

¹⁸⁶ See section 705(c)(5)(A)(i) of the Act.

¹⁸⁷ See, e.g., *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015).

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after we make our final determination.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁸⁸ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁸⁹

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁹⁰ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁹¹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹⁹² Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁹³ on the due dates established above.

¹⁸⁸ See 19 CFR 351.224(b).

¹⁸⁹ See 19 CFR 351.309.

¹⁹⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁹¹ See 19 CFR 351.310(c).

¹⁹² See 19 CFR 351.303(b)(2)(i).

¹⁹³ See 19 CFR 351.303(b)(1).

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

15 DECEMBER 2015
(Date)