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July 5, 2019

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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain fabricated structural steel (fabricated structural steel) from Mexico, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On February 4, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of fabricated structural steel from Canada, Mexico, and China, filed on behalf of the American Institute of Steel Construction Full Member Subgroup (the petitioner), which was subsequently amended on February 21, 2019.[1] Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of Mexico (GOM) for consultations with respect to the Petition.[2] On February 25, 2019, Commerce initiated a CVD

[1] [1] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China," dated February 4, 2019 (Petition); and Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Amendment to Petition to Clarify Petitioner," dated February 21, 2019.
[2] *See* Commerce's Letter, "Countervailing Duty Petition on Certain Fabricated Structural Steel from Mexico," dated February 6, 2019.

investigation of imports of fabricated structural steel from Mexico.[3] On February 26, 2019, Corey S.A. de C.V. (Corey) requested treatment as a voluntary respondent and stated its intent to submit responses to Commerce's questionnaire.[4] On April 16, 2019, Commerce postponed the preliminary determination of this investigation.[5]

In the *Initiation Notice*, we stated that in the event Commerce determined that the number of companies is large and that we cannot individually examine each company given Commerce's available resources, we intended to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[6] Accordingly, on February 20, 2019, Commerce released the CBP data to all interested parties with access to information protected under Administrative Protective Order (APO) and requested comments regarding the data and respondent selection.[7]

On March 13, 2019, we issued quantity and value (Q&V) questionnaires to 18 potential respondents named in the Petition and posted the Q&V questionnaire on Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) to provide all interested parties with an opportunity to respond.[8] As detailed in our Initial Respondent Selection Memorandum, we received timely filed Q&V questionnaire responses from 13 exporters and producers of the subject merchandise.[9]

On April 1, 2019, based on the Q&V responses, we selected, in alphabetical order, Building Systems de Mexico, S.A. de C.V. (BSM) and Valmont Monterrey S. de R.L. de C.V. (Valmont) as the mandatory respondents in this investigation.[10] On April 2, 2019, we issued our Initial Questionnaire to the GOM, via ACCESS.[11] In the cover letter to the questionnaire, we notified the GOM that Commerce had selected BSM and Valmont as mandatory respondents in this investigation and stated that the GOM "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."[12]

[3] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 84 FR 7339 (March 4, 2019) (*Initiation Notice*).
[4] *See* Corey's Letter, "Fabricated Structural Steel from Mexico: Corey, S.A. de C.V.'s Request for Voluntary Respondent Treatment," dated February 26, 2019.
[5] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 15581 (April 16, 2019).
[6] *See Initiation Notice*, 84 FR at 7342-43.
[7] *See* Memorandum, "Countervailing Duty Petition on Certain Fabricated Structural Steel from Mexico: Release of Customs Data from U.S. Customs and Border Protection," dated February 20, 2019 (CBP Data Memorandum).
[8] *See* Memorandum, "Issuance of Quantity and Value Questionnaires," dated March 13, 2019.
[9] *See* Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Respondent Selection," dated April 1, 2019 (Initial Respondent Selection Memorandum) at 3.
[10] *Id*.
[11] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Countervailing Duty Questionnaire," dated April 2, 2019 (Initial Questionnaire).
[12] *Id*. at 1.

From March 2019 through July 2019, certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.[13] On April 24, 2019, the petitioner informed Commerce that it was proposing a revision to the scope to exclude certain steel poles.[14] In light of the proposed exclusion, we requested that potential respondents revise their previously submitted Q&V data, if necessary, to reflect the proposed modification to the scope.[15]

Valmont, reported, in light of the proposed changes to the scope, that it did not produce or export subject merchandise to the United States during the period of investigation (POI).[16] Accordingly, Valmont requested that Commerce deselect it as a mandatory respondent in this investigation.[17] On May 7, 2019, we selected Corey as a voluntary respondent to replace Valmont.[18]

In response to our Initial Questionnaire, as well as several supplemental questionnaires, between April 16, 2019 and June 25, 2019, we received timely responses from BSM[19] and Corey.[20]

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[13] *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[14] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China*:* Petitioner's Additional Comments on Scope," dated April 24, 2019.

[15] *See* Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Revised Quantity and Value Questionnaires," dated April 25, 2019.

[16] *See* Valmont's Letter, "Fabricated Structural Steel from Mexico: Request to be Deselected as a Mandatory Respondent," dated April 25, 2019 (Valmont Deselection Request) at 2; *see also* Valmont's Letter, "Fabricated Structural Steel from Mexico: Revised Quantity and Value Response for Valmont Monterrey S. de R.L. de C.V.," dated April 26, 2019.

[17] *See* Valmont Deselection Request at 1. Two other companies, Exportadora de Postes GDL, S.A. de C.V. and Exportadora de Postes de Monclova, S.A. de C.V., provided updated Q&V data, similarly indicating that they did not export subject merchandise during the POI. *See* Exportadora de Postes GDL's Letter, "Certain Fabricated Structural Steel from Mexico – Quantity and Value Questionnaire Response," dated April 29, 2019, at 1 (noting that Exportadora de Postes GDL, S.A. de C.V. had no shipments during the POI); and Exportadora de Postes GDL's Letter, "Certain Fabricated Structural Steel from Mexico – Quantity and Value Questionnaire Response," dated April 29, 2019, at 1 (noting that Exportadora de Postes de Monclova, S.A. de C.V. had no shipments during the POI).

[18] *See* Memorandum, "Selection of Voluntary Respondent in the Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico," dated May 8, 2019.

[19] *See, e.g.*, BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Affiliated Companies Response of Building Systems de Mexico," dated April 16, 2019 (BSM ACQR); BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Response of BSM to Section III of the Department's Initial Questionnaire," dated May 20, 2019 (BSM IQR); BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Supplemental Questionnaire Response of Building Systems de Mexico," dated June 11, 2019 (BSM June 11, 2019 SQR); BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Response of Building Systems de Mexico, S.A. de C.V. to Questions 1 Through 8 of Second Supplemental Questionnaire," dated June 24, 2019; and BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Second Supplemental Questionnaire Response of Building Systems de Mexico," dated June 25, 2019.

[20] *See, e.g.*, Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Questionnaire Response to Section III Identifying Affiliated Companies," dated April 16, 2019 (Corey ACQR); Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Section III Questionnaire Response," dated May 20, 2019 (Corey IQR); Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s First Supplemental Questionnaire Response," dated June 5, 2019; Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Second Supplemental Questionnaire Response," dated June 10, 2019; Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Response to Question 7 of the Third Supplemental Questionnaire," dated June 20, 2019; and Corey's Letter, "Certain Fabricated

Between May 20, 2019 and June 18, 2019, we received timely questionnaire responses from the GOM.[21]

On June 10, 2019, the petitioner filed a letter regarding a new subsidy allegation (NSA).[22] In the letter, the petitioner stated that, pursuant to its initial allegation regarding the Eighth Rule Permit program's exemption from import duties, a respondent's relief from antidumping or countervailing duties under the program would similarly be covered by the allegation.[23] In the alternative, the petitioner requested that Commerce initiate on a separate program relating to the Eighth Rule Permit program's relief from antidumping/countervailing duties as a program distinct from the program covering standard duties.[24] We agree with the petitioner that its initial Eighth Rule Permit allegation covers exemptions from import duties in general. As a result, specifically initiating on the Eighth Rule Permit program's provision of relief from antidumping/countervailing duties is not necessary because it would be duplicative of our original initiation.

On June 20, 2019, interested parties submitted pre-preliminary comments.[25] On June 25, 2019, Corey submitted pre-preliminary rebuttal comments.[26] On June 26, 2019, the petitioner submitted pre-preliminary rebuttal comments.[27]

B. Postponement of Preliminary Determination

On April 5, 2019, the petitioner requested that Commerce postpone the preliminary determination of this investigation.[28] Commerce granted the petitioner's request and, on April

Structural Steel from Mexico: Corey S.A. de C.V.'s Response to Questions 1-3, 6, 8 & 9 of the Third Supplemental Questionnaire," dated June 21, 2019 (Corey June 21, 2019 SQR).

[21] *See* GOM's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Initial Questionnaire Response of the Government of Mexico," dated May 20, 2019 (GOM IQR); GOM's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Response of the Government of Mexico to the Department's May 24, 2019 Supplemental Questionnaire," dated June 6, 2019 (GOM June 6, 2019 SQR); and GOM's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Second Supplemental Questionnaire Response of the Government of Mexico," dated June 18, 2019 (GOM June 18, 2019 SQR).

[22] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Mexico: New Subsidy Allegation," dated June 10, 2019.

[23] *Id.* at 2-6.

[24] *Id.*

[25] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Mexico: Pre-Preliminary Determination Comments," dated June 20, 2019; GOM's Letter, "Certain Fabricated Structural Steel from Mexico: Pre-Preliminary Comments of Government of Mexico," dated June 20, 2019; BSM's Letter, "Certain Fabricated Structural Steel from Mexico: Pre-Preliminary Comments of Building Systems de Mexico," dated June 20, 2019; and Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Pre-Preliminary Comments," dated June 20, 2019.

[26] *See* Corey's Letter, "Corey S.A. de C.V.'s Response to Petitioner's Pre-Preliminary Comments," dated June 25, 2019.

[27] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Mexico: Response to Mexican Respondents' Pre-Preliminary Determination Comments," dated June 26, 2019.

[28] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Postpone Determination," dated April 5, 2019.

10, 2019, we postponed the date of the preliminary determination until July 5, 2019, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[29]

C. Period of Investigation

The POI is January 1, 2018 through December 31, 2018.

D. Alignment

On June 19, 2019, the petitioner requested that Commerce align the date of the CVD final determination with that of the companion AD final determination. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,[30] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of fabricated structural steel from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is scheduled to be issued no later than November 18, 2019, unless postponed.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is certain fabricated structural steel from Mexico. Based on our analysis of certain scope comments, we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[31] For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

IV. INJURY TEST

Because Mexico 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 Mexico materially injure, or threaten material injury to, a U.S. industry. On March 27, 2019, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fabricated structural steel from Mexico.[32]

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails

[29] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 15581 (April 16, 2019).
[30] *See* Petitioner's June 19, 2019 Request for Alignment.
[31] *See* Preliminary Scope Decision Memorandum.
[32] *See Fabricated Structural Steel from Canada, China, and Mexico*, 84 FR 11554 (March 27, 2019).

to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among 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. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[33] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[34] At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[35] It is Commerce's practice to consider information to be corroborated if it has probative value.[36] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[37] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[38] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[39]

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[33] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[34] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), *reprinted at* 1994 U.S.C.C.A.N. 4040, 4199.
[35] *See, e.g.*, SAA at 870.
[36] *Id.* at 870.
[37] *Id.* at 869.
[38] *Id.* at 869-70.
[39] *See* section 776(c)(2) of the Act.

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[40]

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

B. Application of AFA: Non-Responsive Q&V Questionnaire Recipients

As noted above, Commerce issued Q&V questionnaires to 18 companies identified in the Petition. We issued 15 of these questionnaires via Federal Express (FedEx), and issued three of the questionnaires via ACCESS because the companies in question were represented by counsel at the time of issuance.[41] We confirmed that 15 of the 18 Q&V questionnaires were delivered.[42] Of the 15 companies for which we confirmed delivery of the questionnaire, the following five Q&V recipients did not properly respond to our request for information: Acero Technologia, S.A. de C.V.; Construcciones Industriales Tapia S.A. de C.V.; Estructuras Metalicas la Popular S.A. de C.V./MSCI; Operadora CICSA, S. A. de C. V. Swecomex – Guadalajara; and Preacero Pellizzari Mexico S.A. de C.V.

We preliminarily determine that the non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce will rely on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, each of these companies did not cooperate to the best of its ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

As facts otherwise available with an adverse inference, we find the non-responsive companies used and benefited from all programs at issue in this proceeding. For the two initiated-upon programs that were used by the cooperating mandatory respondents, we have found the programs to be specific and to provide a financial contribution.[43] For the remaining programs upon which we initiated, the GOM did not respond to our CVD questionnaire and/or supplemental questions

[40] *See* section 776(d)(3) of the Act.
[41] *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Fabricated Structural Steel from Mexico," dated March 13, 2019.
[42] *See* Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Delivery of Quantity and Value Questionnaire," dated concurrently with this memorandum.
[43] We found that the PROSEC program was used by BSM, but did not confer a measurable benefit during the POI.

on these programs. By not responding to our requests for information regarding these programs, the GOM withheld information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding. It also failed to cooperate by not acting to the best of its ability. Therefore, relying on sections 776(a)(2)(A)-(C) and 776(b) of the Act, we find that these programs constitute financial contributions and meet the specificity requirements of the Act. Accordingly, we are including all programs in the determination of the AFA rate for the non-responsive companies.[44] We selected an AFA rate for each program based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we included them in the determination of the AFA rate applied to the non-responsive companies. Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections below.

Selection of the AFA Rate

It is our practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[45] When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.[46] Accordingly, when selecting AFA rates, if we have cooperating respondents, as in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero 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).[47] If no such rate exists, we then determine if

[44] *See* Appendix.

[45] *See, e.g.*, *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum (PDM) at "X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA"; *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final*), and accompanying Issues and Decision Memorandum (IDM) at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies"; and *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences."

[46] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) and accompanying 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").

[47] For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative*

there is a similar/comparable program (based on the treatment of the benefit) in any 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 above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[48]

Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, we may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that we consider reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for our existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that we "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[49]

The Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology, and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[50]

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[51] Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its

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Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

[48] *See Shrimp from China* IDM at 13-14.

[49] *See* section 776(d)(2) of the Act.

[50] This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

[51] *See* SAA at 870; *see also Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")) (*De Cecco*).

expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[52] It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.[53]

In applying its AFA hierarchy in CVD investigations, Commerce's goal is as follows: in the absence of necessary information from cooperative respondents, we are seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that we take into account in selecting a rate are: (1) the need to induce cooperation, (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that we can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce' investigation hierarchy, we apply the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

However, if there is no identical program match within the investigation, or if the rate is zero, then we will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-

[52] *See De Cecco*, 216 F.3d at 1032.

[53] We have adopted a practice of applying this hierarchy in CVD cases. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, we apply the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.[54]

In all three steps of Commerce's AFA investigation hierarchy, if we were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[55]

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," we may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as AFA. As explained above, we are preliminarily applying AFA because each of the companies that failed to submit a response to the Q&V questionnaire chose not to cooperate by not providing the information we requested. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In applying AFA to determine a net subsidy rate for the non-cooperating companies, we applied the methodology detailed above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for mandatory respondents in the instant

[54] In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

[55] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of AFA, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying IDM at 2, dated October 17, 2007 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

investigation. Accordingly, we are applying the subsidy rate calculated for mandatory respondent Corey for the following program:

- Eighth Rule Permit

For all other programs not identified above, we are applying, where available, the highest above *de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving Mexico. For this preliminary determination, we are able to match, based on program names, descriptions, and treatment of the benefit, the following programs to the same or similar programs from other CVD proceedings involving Mexico:

- Innovation Incentive Program
- Bancomext Maquiladora Loans
- Program for the Use of Renewable Energy Sources – Accelerated Depreciation for Renewable Energy Investments
- Maquiladora Program Tax Benefit
- Immediate Deduction Program
- Deduction for New Fixed Assets for Small Companies
- Special Economic Zones
- Program of Sectoral Promotion (PROSEC)
- IMMEX Program
- Tarifa I-15 Program
- Tarifa I-30 Program
- Grants from Renewable Energy Funds (Green Fund, Emergent Technologies Fund, Rural Electrification Fund, and Research and Technological Development Fund)
- Program to Boost Industrial Productivity and Competitiveness (PPCI)
- Law for the Promotion of Investments in the State of Jalisco
- State Government of Baja California Economic Incentive Program
- Law to Promote Investment and Employment for the State of Nuevo Leon

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperating companies to be 74.01 percent *ad valorem*. The appendix contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject

merchandise."[56] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[57]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[58] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[59]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[60]

In the absence of record evidence concerning the non-responsive companies' usage of the subsidy programs at issue due to their decision not to participate in the investigation, we have reviewed the information concerning Mexican subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Mexican programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

VII. SUBSIDIES VALUATION

A. Allocation Period

Commerce 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.[61] Commerce finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, which assigns an AUL of 12 years for productive assets employed in the "manufacture of

[56] *See* SAA at 870.
[57] *Id*.
[58] *Id*. at 869-70.
[59] *See* section 776(d) of the Act.
[60] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[61] *See* 19 CFR 351.524(b).

fabricated metal products."[62] Commerce notified the respondents of the 12-year AUL in the Initial Questionnaire and requested data accordingly.

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[63]

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use

[62] *See* U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.
[63] *See Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[64]

BSM

BSM responded to Commerce's questionnaire on behalf of itself, and reported that it did not have any cross-owned affiliates involved in the sale, purchase, marketing and/or production of subject merchandise in Mexico.[65] BSM does have cross-owned affiliates that produce subject merchandise, but the companies' production takes place entirely in the United States.[66] Additionally, none of BSM's cross-owned affiliates supplied BSM with a primarily dedicated input for the production of downstream product.[67] Therefore, we will attribute subsidies received by BSM to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Corey

Corey responded to Commerce's questionnaire on behalf of itself and eight cross-owned affiliates: Inversiones de Jalisco, S.A. de C.V. (Inverjal); Aceros Corey, S.A.P.I. de C.V. (Aceros Corey); Industrias Recal, S.A. de C.V. (Industrias Recal); 6190, S.A. de C.V (6190); Servicios Integrales Corey, S.A. de C.V. (Servicios Integrales); Servicios Técnicos Corey, S.A. de C.V. (Servicios Tecnicos); Estructuras de Acero CVGS, S.A. de C.V. (Estructuras CVGS); and Operadora Industrial El Salto, S.A. de C.V. (Operadora El Salto).[68]

Corey and Industrias Recal are cross-owned through a common parent company (Aceros Corey), and both produce subject merchandise.[69] Corey, however, was the only company that exported subject merchandise to the U.S. during the POI. Therefore, we attributed export subsidies only to Corey's exports.

Prior to the POI, but during the AUL period, Estructuras CVGS and 6190 were cross-owned with Corey, and produced subject merchandise. However, based on record evidence, we preliminarily determine that Estructuras CVGS and 6190 did not receive benefits throughout the AUL period. Therefore, our attribution of benefits did not implicate the sales figures for Estructuras CVGS and 6190.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. Where the program has been found to be contingent upon export activities, we used the recipient's export sales as the denominator. For a further

[64] *See Fabrique de Fer de Charleroi S.A. v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).
[65] *See* BSM ACQR at 5.
[66] *Id.*
[67] *Id.*
[68] *See* Corey ACQR at 4-5; *see also* Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s First Supplemental Questionnaire Response (Question 3)," dated June 7, 2019.
[69] *See* Corey ACQR at 4-5.

discussion of the denominators used, and the adjustments performed, *see* the BSM Preliminary Calculation Memorandum and the Corey Preliminary Calculation Memorandum.[70]

VIII. ANALYSIS OF PROGRAMS

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

A. Program Preliminarily Determined to Be Countervailable

1. Eighth Rule Permit Program

The Eighth Rule Permit program was developed in 1972 to support the competitiveness of the manufacturing industry by establishing the exemption or reduction of tariffs on the importation of inputs, parts, components, machinery, equipment and other items related to the production process.[71] The current qualifying criteria and authorization requirements for the program were established in the "Rules and General Criteria on Foreign Trade Issues," which was published by the Secretariat of Economy in the *Official Journal of the Federation* in December 2012.[72] The Eighth Rule Permit program is also governed by the "General Import and Export Tax Act (2007)" and the "Decree that establishes the criteria to issue import permits under HTS 98.02 (2006)."[73]

Under the Eighth Rule Permit program, the Secretariat of Economy authorizes companies to temporarily or permanently import machinery, equipment, materials, supplies, parts and components without the payment of duties.[74] The program permits companies to enter the goods under a designated tariff heading that is duty free, regardless of the normal tariff classification. Companies that receive authorization for the temporary/duty-free importation of raw materials under the program are required to subsequently export the finished merchandise.[75]

To qualify for the Eighth Rule Permit program, a company must have an existing authorization under one of Mexico's import duty exemption programs, *i.e.*, Program for the Manufacturing Industry, Maquiladora and Export Services (IMMEX), or Sectoral Promotion Program (PROSEC).[76] BSM has obtained ongoing authorizations under IMMEX and PROSEC, and Corey has an existing PROSEC authorization.[77]

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[70] *See* Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Preliminary Calculation Memorandum for Corey S.A. de C.V.," dated concurrently with this memorandum (Corey Preliminary Calculation Memorandum); and Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: Preliminary Calculation Memorandum for Building Systems de Mexico, S.A. de C.V.," dated concurrently with this memorandum (BSM Preliminary Calculation Memorandum).
[71] *See* GOM IQR, Volume IV at 2.
[72] *Id.*
[73] *Id.*
[74] *Id.* at 8.
[75] *Id.*
[76] *Id.* at 1.
[77] *See* BSM IQR at 25, 28; and Corey IQR at Exhibit 33.

BSM and Corey relied on the aspect of the Eighth Rule Permit program that permits the temporary, duty-free importation of raw materials used in production.[78] Both companies imported raw material inputs which are supposed to be subsequently used in the export of subject merchandise under the program during the POI.[79]

Import duty exemptions on raw material input are not countervailable if the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.[80] However, the government in question must have in place, and apply, an adequate system to confirm which inputs are consumed in the production of the exported product, and in what amounts.[81] This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.[82] If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.[83]

The GOM did not carry out an examination of BSM's and Corey's actual inputs to confirm whether the inputs were consumed in the production of merchandise for export.[84] Therefore, we must determine whether the GOM has in place an adequate input tracking system. We preliminarily find that the record does not establish that the GOM has an adequate system in place for this purpose.

The GOM, through the Secretariat of Economy and the SAT (tax authority), can obtain data on a company's imports under the Eighth Rule Permit program, as well as information on the company's export activities.[85] However, to accurately track the temporary inputs that are consumed in the production of merchandise for export, the GOM must know how much of a given input is used to produce the finished product. We requested information and supporting documentation showing how the GOM establishes the amounts of the inputs needed to produce to the finished product. However, the GOM was not able to provide us with this information. Therefore, we preliminarily find that the GOM does not have a process in place to make such an assessment. Accordingly, consistent with our past practice concerning duty exemption programs, we find that the Eighth Rule Permit program does not meet the requirements of 19 CFR 351.519(a)(4)(i).[86]

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[78] *See* BSM IQR at Exhibit 24; and Corey IQR at Exhibit 33.
[79] *See* BSM IQR at Exhibit 24; and Corey IQR at Exhibit 33.
[80] *See* 19 CFR 351.519(a)(1)(ii).
[81] *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) and accompanying IDM at II.A.4. "EPCGS."
[82] *See* 19 CFR 351.519(a)(4).
[83] *See* 19 CFR 351.519(a)(4)(i)-(ii).
[84] *See* BSM June 21, 2019 SRQ at 3 ("The Government of Mexico has not performed any verifications of {sic} BSM's inventory management system"); and Corey June 20, 2019 ("The Government of Mexico has not conducted a verification of the Eighth Rule Permit program specifically.").
[85] *See* GOC June 11, 2019 SQR at 1-2.
[86] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) and accompanying IDM at 42 ("Prior to granting approval to companies to use the Integrated Drawback Scheme, the GOB requires the companies to prepare a 'technical

Here, we asked multiple questions to assess the GOM's mechanism for confirming that imported inputs are actually consumed in the production process. In our first supplemental questionnaire, we asked the GOM to provide a "detailed description of the procedure used to confirm which inputs are consumed in the production of the exported products and in what amounts."[87] In response, the GOM simply reiterated that companies must have an inventory control system in place to track inputs and stated that the tax authority may conduct periodic reviews of a company's data.[88] This response did not explain how the GOM knows what quantity of a given input is incorporated into one unit of exported merchandise.

Therefore, in a second supplemental questionnaire, we again requested information on the input tracking process. We asked the GOM to explain "*how* a beneficiary reconciles the quantity of inputs it imports under the program with the quantity of inputs consumed in the production of exported merchandise, *using documents submitted to the GOM by {the respondents}*."[89] The GOM responded that "companies record the quantity of imported merchandise and reconcile the quantity of inputs used in the production of the merchandise to be exported."[90] This response, again, does not support a finding that the GOM's has an adequate input tracking system in place. Rather, the GOM summarily stated that recipient companies perform reconciliations, but did not

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report' that details the inputs and the amounts that are consumed in production of the finished products. This technical report becomes the basis for tracking the purchases of inputs, whether imported or domestic, and the taxes exempted, deferred, or paid on those purchases, and for determining whether a company has fulfilled its obligation to export finished products such that the exemptions and deferrals can be finalized, or the duties and taxes paid can be rebated.") (internal citations omitted); *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM (Shrimp from Thailand IDM) at 7 (finding a program providing duty exemptions on temporary imports countervailable when the government did not establish a mechanism to "accurately measure inputs consumed in the production" of subject merchandise); *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) and accompanying IDM at 7 (same); *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973 (December 26, 2012) and accompanying IDM (Hangers from Vietnam IDM) at 29 ("The GOV has not sufficiently demonstrated that its system ensures that the imported materials, against which import duty exemptions/reimbursements are claimed, are used in the production of the products exported and that the company properly accounts for scrap. At verification, the Customs Officials stated that they performed a 'quick check' of the norms reported by SEA Hamico and that they did not corroborate that the reported per-unit amounts of raw materials and scrap were the amounts used in the production of the exported goods.").

[87] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: First Supplemental Questionnaire for the Government of Mexico," dated May 24, 2019, at 3.

[88] *See* GOM June 6, 2019 SQR at 6, 10. Although the GOM states that there is "an initial verification process that occurs before a company receives the necessary IMMEX/PROSEC authorization" and "periodic verifications that occur to ensure that a company is compliant with its obligations," subsequent questionnaire responses demonstrate that such verifications are not required for all participating companies. *See, e.g.*, BSM June 21, 2019 SRQ at 3 ("The Government of Mexico has not performed any verifications of {sic} BSM's inventory management system"); and Corey June 20, 2019 ("The Government of Mexico has not conducted a verification of the Eighth Rule Permit program specifically.").

[89] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Mexico: 2nd Supplemental Questionnaire for the Government of Mexico," dated June 11, 2019 (Commerce 2nd Supp to GOM) at 2.

[90] *See* GOM June 18, 2019 SQR at 1.

explain how the reconciliations were conducted or what documentation, if any, beneficiaries provide to the GOM to substantiate the reconciliation, *e.g.*, a production input/output formula.[91]

In a separate question, we asked the GOM to explain "how the GOM confirms the quantity of a given input that is necessary for the production of the final exported good, using documents relating to the GOM's verifications of BSM and Corey."[92] The GOM responded by providing a description of its import/export monitoring activities.[93] The GOM's response and the respondents' supplemental questionnaire responses indicate that the GOM has no basis on which it can systematically confirm input usage rates. As explained in Corey's questionnaire response, "Corey does not provide a production formula to the GOM to demonstrate the quantities of raw materials necessary to produce one unit of the merchandise for export."[94] In fact, Corey states that it "*cannot* provide a standard production formula to the GOM … because each project is tailor made and the production formula for the temporary import would only be specific to each 'piecemark' of the project."[95] As such, Eighth Rule Permit program recipients are simply not required to provide consumption data on a product, or industry-wide, basis. Therefore, although the GOM emphasizes that it can monitor or review a company's imports (*i.e.*, of raw material inputs) and exports (*i.e.*, of the eventual finished merchandise), there is no input/output formula in place that would allow the GOM to independently confirm that all of an imported input is consumed in exports.

We also find that the GOM's process for ensuring a company's compliance with the Eighth Rule Permit program is limited. The GOM states that it conducts initial verifications associated with establishing a beneficiary's eligibility under IMMEX and/or PROSEC, which are precursors to Eighth Rule eligibility.[96] The GOM further states that this initial verification includes "detailed observation of the production process and determination of whether it corresponds to the description in the application as well as a determination of whether the machinery and equipment is sufficient to carry out the stated production process."[97] Such a verification was conducted for Corey as part of its IMMEX approval process.[98] However, BSM states that its inventory control system has never been verified.[99] More importantly, both respondents state that they have never been verified following their approval for the Eighth Rule Permit program.[100] Therefore, we find that the GOM, at best, only selectively verifies companies to examine Eighth Rule Permit program usage. This finding is particularly significant in light of the GOM reliance on a beneficiary company's assertions regarding its consumption of the imported input.

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[91] *Id.*
[92] *See* Commerce 2nd Supp to GOM at 2.
[93] *See* GOM June 18, 2019 SQR at 2-5.
[94] *See* Corey June 21, 2019 SQR at 5.
[95] *Id.* at 1 (emphasis added). Additionally, although the GOM mandates annual inventory control reports to be filed for IMMEX and PROSEC, it does not impose such a requirement for the Eighth Rule Permit program. *Id.*
[96] *See* GOC 1st Supp at 6.
[97] *Id.* at 8.
[98] *See* Corey IQR at 24 and Exhibit 31.
[99] *See* BSM June 21, 2019 SRQ at 3.
[100] *Id.* at 3; and Corey June 20, 2019.

To summarize, in overseeing the Eighth Rule Permit program, the GOM does not identify the amount of an input consumed in the production of merchandise for export and does not conduct a systematic verification of participating companies. The GOM's process is, accordingly, insufficient under 19 CFR 351.519(a)(4)(i).[101]

Therefore, we preliminarily find that the GOM lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under section 19 CFR 351.519. Therefore, the entire amount of the import duty exemption provided to the respondents constitutes a benefit under section 771(5)(E) of the Act.

We find that benefits provided under the Eighth Rule Permit program are export contingent, and thus specific, under sections 771(5A)(A) and (B) of the Act because a company must confirm that it has export obligations to receive approval under the temporary import provision of the program.[102] We also find that the duty exemption provides a financial contribution in the form of revenue foregone by the GOM, *i.e.*, the duties that would otherwise be assessed on imported raw materials, under section 771(5)(D)(ii) of the Act.

Pursuant to 19 CFR 351.519(b)(2), benefits from a duty exemption program are "normally" conferred as of the date of exportation of the shipment of merchandise incorporating the duty-free inputs. However, the Eighth Rule Permit program is unique in the timing of benefit conferral; pursuant to the program, companies receive a duty exemption *upon importation*, rather than upon export of the finished merchandise. Companies enter merchandise under a designated duty-free tariff heading, and thus the full value of the duty exemption is ascertainable at the time of importation. Furthermore, the timing of exportation of the finished product can vary and therefore the only reliable date of benefit received is at the time of importation of the inputs. We note that under analogous circumstances, we have previously determined that the benefit accrues upon importation.[103]

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[101] *See, e.g.*, Shrimp from Thailand IDM at 7 (finding a program providing duty exemptions on temporary imports countervailable when the government did not establish a mechanism to "accurately measure inputs consumed in the production" of subject merchandise); and Hangers from Vietnam IDM at 29 (noting that the government's input tracking process was insufficient where, "{a}t verification, the Customs Officials stated that they performed a 'quick check' of the {input/output} norms reported," and "did not corroborate that the reported per-unit amounts of raw materials and scrap were the amounts used in the production of the exported goods.").

[102] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and accompanying IDM at 21 and Comment 24; *see also Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) and the accompanying IDM at 72 ("Section 771(5A)(B) of the Act and 19 CFR 351.514(a) state that an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as one or two or more conditions. Given that the program's application form solicits information on export activity (*e.g.*, applicants' total export sales and the share of export sale to total sales in the three prior years), we find that the program is contingent upon export performance and, thus, constitutes a specific export subsidy within the meaning of section 771(5A)(B) of the Act.").

[103] *See, e.g., Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying IDM at 55 ("This duty reduction was obtained at the time of import of the input product, and it is then that the benefit is earned. The benefit is earned at importation because Jindal SAW did not pay the full duties due at that time, and thus was conferred the benefit.").

BSM reported exemptions from standard duties, while Corey reported exemptions from standard duties and antidumping duties. Corey asserts that the antidumping duty exemptions are not countervailable. Specifically, Corey asserts that it would not have been obligated to pay the antidumping duties, and thus did not realize a benefit relating to exemptions from such duties, because the antidumping duty order covering its input specifically excluded merchandise imported under the Eighth Rule Permit program.[104] We disagree. As noted above, the key mechanism underlying the Eighth Rule Permit program is the provision that permits a company to reclassify an import under a distinct, duty-free Eighth Rule Permit tariff classification. Therefore, it is through Corey's participation in the program that the company was able to avoid the antidumping duties on the subject input.

BSM and Corey both reported the duty exemptions received pursuant to the Eighth Rule Permit program on a transaction-specific basis. We divided the total value of Eighth Rule import duty exemptions received by each respondent during the POI by their respective total POI exports. On this basis, we preliminary determine a countervailable subsidy rate of 0.01 *ad valorem* for BSM and 13.62 percent *ad valorem* for Corey.[105]

B. Programs Preliminarily Determined to Not Confer a Measurable Benefit During the POI

1. PROSEC

PROSEC is a tariff-reduction measure allowing either foreign or domestic producers to petition the GOM for a reduction or elimination of a tariff rate.[106] The program allows preferential *ad valorem* tariffs (General Import Tax) for imports of raw materials, machinery, or equipment for designated product sectors, regardless of whether the goods to be produced are destined for export or the domestic marketplace.[107]

PROSEC is administered by the Secretariat of Economy through the General Directorate of Foreign Trade and its state-level offices. The program is available to companies in a broad range of industry sectors.[108] However, to receive benefits under the program, a company must identify the tariff classification of the merchandise it produces, because not all producers and tariff headings are eligible for the program.[109]

[104] *See* Corey Pre-Prelim Comment at 10-11.
[105] *See* BSM Preliminary Calculation Memorandum; and Corey Preliminary Calculation Memorandum.
[106] *See* GOM IQR, Volume III at 1.
[107] *Id.*
[108] PROSEC is available to companies in the following industries: Electricity; Electronics; Furniture; Toys, leisure games and sporting goods; Footwear; Mining and metallurgy; Capital assets; Photographic; Agricultural Machinery; Miscellaneous industries; Chemical; Rubber and plastic manufacturing; Iron and Steel; Pharmaceutical products, medications, and medical equipment; Transportation, except the Automotive and Auto Parts Industry Sector; Paper and cardboard; Wood; Leather and furs; Automotive and Auto parts; Textile and Clothing; Chocolates, candies and similar, Coffee; Food industry; and Fertilizers. *See* GOM IQR, Volume III at 13.
[109] *See* BSM IQR at 17-19.

BSM applied for, and received authorization to use, PROSEC beginning in 2002.[110] During the POI and the AUL period, BSM imported machinery at a reduced duty rate under the program.[111] Corey was authorized under the PROSEC program but did not use the program to obtain any countervailable benefits.

This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(iii) of the Act because duty exemptions on machinery imports represent revenue forgone by the GOM. Further, it is specific under section 771(5A)(D)(i) of the Act because it is limited to a defined range of producers, namely, producers that manufacture goods that are classified within a particular set of tariff headings. A benefit is provided under the PROSEC program under 771(5)(E) of the Act and 19 CFR 351.510 in the amount of exempted duties on imported capital equipment.

In addition, we find that benefits provided under this program are non-recurring within the meaning of 19 CFR 351.524(b). Although import duty exemptions are identified as recurring in the illustrative list of recurring benefits in 19 CFR 351.524(c)(1), it is Commerce's long-standing practice to treat import duty exemptions tied to the purchase of capital assets as nonrecurring in accordance with 19 CFR 351.524(c)(2)(iii).[112] Accordingly, for BSM, we examined the import duty exemptions reported for each applicable year of the AUL period to determine whether they exceeded 0.5 percent of the company's sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt. Because the exemptions received by BSM did not pass the 0.5 percent test, the exemptions received in each year are appropriately expensed in the year of receipt.

Consequently, the benefit under this program for BSM is equal to the total amount of the exemptions received during the POI. However, the POI benefit is less than .005 percent, and therefore does not amount to a measurable benefit.

C. Programs Preliminarily Determined to Be Not Used by BSM and Corey

We preliminarily determine that BSM and Corey did not apply for, or receive, countervailable benefits during the POI under the programs listed below:

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[110] *Id.* at 24.

[111] *Id.* at Exhibit 20; *see also* BSM June 11, 2019 SQR at 3 and Exhibit Supp1-3.

[112] *See, e.g., Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying PDM at "9. VAT and Import Duty Exemptions for Use of Imported Equipment"; and *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018) and accompanying PDM at 8 ("Import duty exemptions under this program are provided for the purchase of capital equipment. The *Preamble* to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring… In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these exemptions as non-recurring benefits.") (international citations omitted); *see also Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 49622 (September 28, 2001) and the accompanying IDM at 6 ("There can be no question that machinery is a capital asset.").

National Programs:

1. Innovation Incentive Program
2. Bancomext Maquiladora Loans
3. Program for the Use of Renewable Energy Sources – Accelerated Depreciation for Renewable Energy Investments
4. Maquiladora Program Tax Benefit
5. Immediate Deduction Program
6. Deduction for New Fixed Assets for Small Companies
7. Special Economic Zones
8. IMMEX Program
9. Tarifa I-15 Program
10. Tarifa I-30 Program
11. Grants from Renewable Energy Funds (Green Fund, Emergent Technologies Fund, Rural Electrification Fund, and Research and Technological Development Fund)
12. Program to Boost Industrial Productivity and Competitiveness (PPCI)

State Programs:

1. Law for the Promotion of Investments in the State of Jalisco
2. State Government of Baja California Economic Incentive Program
3. Law to Promote Investment and Employment for the State of Nuevo Leon

IX. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒	☐
Agree	Disagree

7/5/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX – AFA RATE CHART

Program Name	Rate %	Source
Preferential Lending Programs		
Innovation Incentive Program	6.55	*Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review*, 69 FR 1972 (January 13, 2004) (*CTL from Mexico - 2004*)
Bancomext Maquiladora Loans	6.55	*CTL from Mexico - 2004*
Law for the Promotion of Investments in the State of Jalisco	6.55	*CTL from Mexico - 2004*
Direct Tax Programs		
Program for the Use of Renewable Energy Sources – Accelerated Depreciation for Renewable Energy Investments	1.98	*Sugar from Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015) (*Sugar from Mexico*)
Maquiladora Program Tax Benefit	2.57	*CTL from Mexico - 2004*
Immediate Deduction Program	2.57	*CTL from Mexico - 2004*
Deduction for New Fixed Assets for Small Companies	2.57	*CTL from Mexico - 2004*
Special Economic Zones	2.57	*CTL from Mexico - 2004*
State Government of Baja California Economic Incentive Program	2.57	*CTL from Mexico - 2004*
Law to Promote Investment and Employment for the State of Nuevo Leon	2.57	*CTL from Mexico - 2004*
Indirect Tax Programs		
IMMEX Program	5.03	*Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review*, 65 FR 13368 (March 13, 2000) (*CTL from Mexico - 2000*)
PROSEC	5.03	*CTL from Mexico - 2000*
Eighth Rule Permit	13.62	Rate Calculated for Corey
Grant Programs		
Tarifa I-15 Program	3.32	*Sugar from Mexico*
Tarifa I-30 Program	3.32	*Sugar from Mexico*

Grants from Renewable Energy Funds (Green Fund, Emergent Technologies Fund, Rural Electrification Fund, and Research and Technological Development Fund)	3.32	*Sugar from Mexico*
Program to Boost Industrial Productivity and Competitiveness	3.32	*Sugar from Mexico*
Total AFA Subsidy Rate	**74.01**	