



C-201-846  
Investigation  
POI: 01/01/2013-12/31/2013  
**Public Document**  
E&C/Office VII: DL/NC/KW

DATE: August 25, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman   
Senior Advisor  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Sugar from Mexico

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## I. SUMMARY

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

## II. BACKGROUND

### A. Initiation and Case History

On March 28, 2014, the American Sugar Coalition and its members<sup>1</sup> (collectively, Petitioners) filed a petition with the Department seeking the imposition of antidumping (AD) and countervailing duties (CVD) on sugar from Mexico.<sup>2</sup> Supplements to the Petition and our invitation for consultations to the Government of Mexico (GOM) are described in the *Initiation Notice* and accompanying Initiation Checklist.<sup>3</sup> On April 17, 2014, the Department initiated a

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<sup>1</sup> The members of the American Sugar Coalition include American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

<sup>2</sup> See Sugar from Mexico; Antidumping and Countervailing Duty Petitions (March 28, 2014) (Petition).

<sup>3</sup> See *Sugar From Mexico: Initiation of Countervailing Duty Investigation*, 79 FR 22790 (April 24, 2014) (*Initiation Notice*) and accompanying Initiation Checklist.

CVD investigation on sugar from Mexico.<sup>4</sup> On May 28, 2014, the Department postponed the preliminary determination until August 25, 2014.<sup>5</sup>

As stated in the *Initiation Notice*, we based our selection of mandatory respondents 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.<sup>6</sup> The Department released the CBP entry data under administrative protective order (APO) on April 25, 2014.<sup>7</sup>

Subsequently, we received comments and rebuttals on the CBP data and the respondent selection methodology from Petitioners and Camara Nacional de Las Industrias Azucarera Y Alcoholera (Mexican Sugar Chamber) (Camara).<sup>8</sup> Additionally, Batory Foods Inc. (Batory), Ingenio San Nicolas, S.A. de C.V. (San Nicolas), and Domino Comercio, S.A. de C.V. (Domino Comercio) filed timely voluntary respondent requests, but later withdrew them.<sup>9</sup>

On June 11, 2014, the Department selected Fondo de Empresas Expropiadas del Sector Azucarero (FEESA) and Ingenio Tala, S.A. de C.V. (Tala) as mandatory respondents.<sup>10</sup> On the same day, the Department issued a questionnaire to the GOM, requesting that it, along with the two mandatory respondents, provide information regarding the alleged subsidies contained in the Petition.<sup>11</sup> Between June 24 and July 30, 2014, we received questionnaire responses from the

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<sup>4</sup> *Id.*, 79 FR at 22790.

<sup>5</sup> See *Sugar From Mexico: Postponement of Preliminary Determination in Countervailing Duty Investigation*, 79 FR 31920 (June 3, 2014).

<sup>6</sup> See *Initiation Notice*, 79 FR at 22792.

<sup>7</sup> See Memorandum to the File, "Release of Customs Entry Data for Respondent Selection in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico," April 25, 2014.

<sup>8</sup> See Letter from Camara, "Sugar from Mexico – *Comments on CBP Data for Respondent Selection*," May 5, 2014; see also Letter from Petitioners, "Sugar from Mexico: *Comments on Respondent Selection*," May 5, 2014; Letter from Petitioners, "Sugar from Mexico: *CBP Entry Data Rebuttal Comments*," May 12, 2014; Letter from Camara, "*Rebuttal Comments Regarding Respondent Selection*," May 13, 2014.

<sup>9</sup> See Letter from Batory, "Investigation of Sugar from Mexico: *Request for Voluntary Respondent Treatment*," April 18, 2014; see also Letter from San Nicolas and Domino Comercio, "Request for Voluntary Respondent Treatment," April 21, 2014; Letter from Batory, "Investigation of Sugar from Mexico: *Withdrawal of Request for Voluntary Respondent Treatment*," May 7, 2014; Letter from San Nicolas and Domino Comercio, "Withdrawal of Request for Voluntary Respondent Treatment: *Countervailing Duty Investigation of Sugar from Mexico*," May 20, 2014.

<sup>10</sup> See Memorandum to Christian Marsh, "Countervailing Duty Investigation of Sugar from Mexico: *Respondent Selection*," June 11, 2014 (Respondent Selection Memorandum).

<sup>11</sup> See Letter from Department to the GOM, "Countervailing Duty Investigation of Sugar from Mexico: *Countervailing Duty Questionnaire*," June 11, 2014.

GOM, FEESA, and Tala.<sup>12</sup> Between June 30 and August 13, 2014, Petitioners filed comments on these questionnaire responses.<sup>13</sup>

On July 24 and August 7, 2014, Petitioners timely filed new subsidy allegations.<sup>14</sup> The Department will determine whether to initiate an investigation of any of these allegations after this preliminary determination. If we initiate on any of these allegations, we intend to address each such initiated allegation in a post-preliminary determination.

Between August 11 and 14, 2014, the GOM and Petitioners submitted pre-preliminary comments to the Department.<sup>15</sup>

On August 21, 2014, Petitioners filed a request that the Department align the final determination of this investigation with the final determination in the companion AD investigation of sugar from Mexico.

### **B. Period of Investigation**

The period of investigation (POI) is January 1, 2013, through December 31, 2013. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

### **III. ALIGNMENT**

On the same day that the Department initiated this CVD investigation, the Department also initiated an AD investigation of sugar from Mexico.<sup>16</sup> The AD and CVD investigations cover the same class or kind of merchandise from the same country. On August 21, 2014, in

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<sup>12</sup> See Letter from Tala, “Sugar from Mexico – Response to Section III – Part I of the CVD Questionnaire,” June 24, 2014 (GAM Group Cross-Ownership Questionnaire Response); see also Letter from FEESA, “Sugar from Mexico – Response to Section III – Part I of the CVD Questionnaire,” June 25, 2014 (FEESA Cross-Ownership Questionnaire Response); Letter from GAM Group, “Sugar from Mexico – CVD Questionnaire Response,” July 30, 2014 (GAM Group Questionnaire Response); Letter from FEESA, “Sugar from Mexico – CVD Questionnaire Response,” July 30, 2014 (FEESA Questionnaire Response); Letter from GOM, “Sugar from Mexico: Response to Countervailing Duty Questionnaire,” July 30, 2014 (GOM Questionnaire Response).

<sup>13</sup> See Letter from Petitioners, “Sugar from Mexico: Petitioner Comments Regarding FEESA Response to Section III – Part I of the CVD Questionnaire,” June 30, 2014; see also Letter from Petitioners, “Sugar from Mexico: Petitioner Comments Regarding Tala Response to Section III – Part I of the CVD Questionnaire,” July 1, 2014; Letter from Petitioner, “Sugar from Mexico: Petitioners’ Comments Regarding the Response of Ingenio Tala S.A. de C.V. to the Department’s CVD Questionnaire,” August 13, 2014; Letter from Petitioners, “Sugar from Mexico: Petitioners’ Comments Regarding the Fondo De Empresas Expropiadas Del Sector Azucarero’s (‘FEESA’) Response to the Department’s CVD Questionnaire,” August 13, 2014; Letter from Petitioners, “Sugar from Mexico: Petitioners’ Comments Regarding the Government of Mexico’s Response to the Department’s CVD Questionnaire,” August 13, 2014.

<sup>14</sup> See Letter from Petitioners, “Sugar from Mexico: Petitioners’ New Subsidy Allegations,” July 24, 2014; see also Letter from Petitioners, “Sugar from Mexico: New Subsidy Allegations,” August 7, 2014.

<sup>15</sup> See Letter from the GOM, “Sugar from Mexico: Government of Mexico’s Pre-Preliminary Comments,” August 11, 2014; see also Letter from Petitioners, “Sugar from Mexico: Petitioners’ Pre-Preliminary Determination Comments,” August 14, 2014.

<sup>16</sup> See *Sugar From Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014).

accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Petitioners requested alignment of the final CVD determination with the final AD determination of sugar from Mexico. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of sugar from Mexico. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 7, 2015, unless postponed.

#### **IV. 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 the signature date of the *Initiation Notice*.<sup>17</sup> On May 7, 2014, the GOM, CSC Sugar LLC, and Batory submitted scope comments, requesting that certain types of sugar be excluded from the scope of this investigation.<sup>18</sup> On May 14, 2014, Petitioners filed rebuttal comments.<sup>19</sup> Additionally, on August 5, 2014, the Department received a scope clarification request on behalf of Glinso Foods, LLC.<sup>20</sup>

Due to the limited timeframe for considering these submissions, the Department intends to address the specific scope comments and clarification request in the preliminary determination of the companion AD investigation. Any modifications to the scope or scope exclusions that may be made in the AD preliminary determination will be placed on the record of this CVD investigation and parties will be afforded an opportunity to submit comments.

#### **V. SCOPE OF THE INVESTIGATION**

The product covered by this investigation is sugar derived from sugar cane or sugar beets. Sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked via their anomeric carbons. The molecular formula for sucrose is C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>, the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1, the InChI Key for sucrose is CZMRCDWAGMREC-UGDNZRGBSA-N, the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988, and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar within the scope of this investigation includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as "high polarity" or "semi-refined"

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<sup>17</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 79 FR at 22790-91.

<sup>18</sup> See Letter from CSC Sugar LLC, "Sugar from Mexico – CSC Sugar LLC Comments on Scope," May 7, 2014; see also Letter from Batory, "Investigation of Sugar from Mexico: Scope Comments," May 7, 2014; Letter from GOM, "Brief Submission of the Government of Mexico provides," May 7, 2014.

<sup>19</sup> See Letter from Petitioners, "Sugar from Mexico: Petitioners' Rebuttal Scope Comments," May 14, 2014.

<sup>20</sup> See Letter from Glinso Foods, LLC, "Scope Clarification Request of Glinso Foods," August 5, 2014.

sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this investigation includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of this investigation includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.

Inedible molasses is not within the scope of this investigation. Specialty sugars, *e.g.*, rock candy, fondant, sugar decorations, are not within the scope of this investigation. Processed food products that contain sugar, *e.g.*, beverages, candy, cereals, are not within the scope of this investigation.

Merchandise covered by this investigation is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1025, 1701.99.1050, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known producer or exporter of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters or producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters or producers involved in the investigation.

After careful consideration, as noted above, the Department determined that it was not practicable to examine more than two respondents in this investigation.<sup>21</sup> Based upon CBP data, the Department selected the producers/exporters accounting for the largest volume of subject merchandise exported from Mexico during the POI: FEESA and Tala.<sup>22</sup>

## **VII. 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 May 12, 2014, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of sugar from Mexico.<sup>23</sup>

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<sup>21</sup> See Respondent Selection Memorandum at 4-5.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> See *Sugar from Mexico: Investigation Nos. 701-TA-513 and 731-TA-1249 (Preliminary)*, 79 FR 28550 (May 16, 2014)

## 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.<sup>24</sup> The Department finds the AUL in this proceeding to be 18 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>25</sup> The Department notified the respondents of the 18-year AUL in the initial questionnaire and requested data accordingly. Other than FEESA and Tala making a very general argument that the AUL is excessive, no party in this proceeding disputed the allocation period.

Furthermore, for non-recurring subsidies, we 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 that 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 over the AUL.

### B. Attribution of Subsidies

#### Cross-Ownership

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, additional rules at 19 CFR 351.525(b)(6)(ii)-(v) provide 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: (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.

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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the 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

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<sup>24</sup> See 19 CFR 351.524(b).

<sup>25</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

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.<sup>26</sup>

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case when determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) 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.<sup>27</sup>

### *Tala/GAM Group*

In response to the Department’s questionnaire, Tala provided questionnaire responses for the following cross-owned affiliates: (1) sugar mills Ingenio El Dorado S.A. de C.V. (El Dorado) and Ingenio Lazaro Cardenas S.A. de C.V. (Lazaro) because all three companies produce the subject merchandise and are wholly-owned subsidiaries of Grupo Azucarero Mexico S.A. de C.V. (GAM); (2) holding companies Organizacion Cultiba, S.A.B. de C.V. (Cultiba) and GAM because they are Tala’s parent companies; (3) sugarcane producer ITLC Agricola Central S.A. de C.V. (ITLC) because ITLC provided Tala with an input for sugar production during the POI and both companies are wholly-owned subsidiaries of GAM; (4) electricity supplier Tala Electric S.A. de C.V. (Tala Electric) because it provided goods or services to Tala during the POI and is a wholly-owned subsidiary of Tala; and (5) administrative services supplier Empresas y Servicios Organizados S.A. de C.V. (ESOSA) because it provided goods or services to Tala during the POI and is a wholly-owned subsidiary of GAM.<sup>28</sup> Based on the information provided by Tala, we also determined that Tala is cross-owned with the trading company Provedora de Alimentos Mexico, S.A. de C.V. (PAM) because PAM bought and sold sugar from Tala during the POI and both companies are wholly-owned subsidiaries of GAM.<sup>29</sup> As such, we preliminarily find that Tala, El Dorado, Lazaro, GAM, Cultiba, ITLC, Tala Electric, ESOSA, and PAM (collectively, the GAM Group) are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

Tala, El Dorado, and Lazaro are all sugar mills producing subject merchandise.<sup>30</sup> In accordance with 19 CFR 351.525(b)(6)(ii), we preliminarily attributed the subsidies received by any one of these mills to the combined sales of all three mills (excluding sales between the mills). In the case of ITLC, a sugarcane producer,<sup>31</sup> we attributed its subsidies to the combined ITLC and sugar mill sales of sugarcane and sugar (excluding sales between the two entities) in accordance

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<sup>26</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

<sup>27</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (Ct. Int’l Trade 2001).

<sup>28</sup> See GAM Group Cross-Ownership Questionnaire Response at 4 and Exhibit 1.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.* at 1, 4.

<sup>31</sup> *Id.* at 1-2.

with 19 CFR 351.525(b)(6)(iv). For Cultiba, GAM, Tala Electric, ESOSA, and PAM, we preliminarily find no evidence indicating that any of these entities received any subsidies. Thus, these companies have no effect on the subsidy rate calculations. Additionally, PAM is a trading company which buys sugar from the GAM Group mills and sells it to home market customers.<sup>32</sup> The GAM Group reported that PAM does not export sugar.<sup>33</sup> Because PAM does not export sugar, any subsidies it received would not be cumulated with subsidies to the remainder of the GAM Group.

Finally, we note that the GAM Group reported additional affiliates for which require more information before determining whether to include these companies in our subsidy analysis.<sup>34</sup> Subsequent to this preliminary determination, we intend to issue a supplemental questionnaire to obtain additional information regarding whether these other affiliates are cross-owned and meet the conditions established in 19 CFR 351.525(b)(6)(ii)-(v).

### *FEESA*

FEESA is comprised of expropriated assets of nine sugar mills: Fideicomiso Ingenio El Modelo (El Modelo); Fideicomiso Ingenio San Cristobal (San Cristobal); Fideicomiso Ingenio Plan De San Luis (Plan De San Luis); Fideicomiso Ingenio San Miguelito (San Miguelito); Fideicomiso Ingenio La Providencia (La Providencia); Fideicomiso Ingenio Atencingo (Atencingo); Fideicomiso Ingenio Casasano (Casasano); Fideicomiso Ingenio El Potrero (El Potrero); and Fideicomiso Ingenio Emiliano Zapata (Emiliano Zapata) (collectively, the FEESA mills).<sup>35</sup> As noted in the Respondent Selection Memorandum, “[t]he expropriation decree, as a matter of Mexican law, combined the assets of the FEESA mills into a single producer/exporter.”<sup>36</sup> In its response to the Department’s CVD questionnaire, FEESA provided responses on behalf of itself, including the FEESA mills; Promotora Azucarera, S.A. de C.V. (PROASA), a company controlled by FEESA and set up to administer the FEESA sugar mills;<sup>37</sup> and Fideicomiso Administrado y Financiero (FAF).<sup>38</sup> According to FEESA, it shares ownership of PROASA with NAFIN, a public development bank.<sup>39</sup> FEESA reported no affiliated or cross-owned producers, holding or parent companies, input suppliers, or trading companies. Thus, there are no subsidies to cross-owned corporations attributable to FEESA.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents’ receipt of benefits under each program when attributing subsidies, *e.g.*, to the

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<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See FEESA Cross-Ownership Questionnaire Response at 1.

<sup>36</sup> See Respondent Selection Memorandum at 6.

<sup>37</sup> See FEESA Cross-Ownership Questionnaire Response at 1; see also FEESA Questionnaire Response at 1-2. FEESA reported no subsidies received by PROASA directly.

<sup>38</sup> See FEESA Cross-Ownership Questionnaire Response at 3; see also FEESA Questionnaire Response at 1-2. FEESA reported no subsidies received by FAF directly.

<sup>39</sup> See FEESA Cross-Ownership Questionnaire Response at 1-2.

respondents' exports or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda" prepared for this investigation.<sup>40</sup>

#### **D. Discount Rates**

We are investigating certain grants and debt forgiveness received by FEESA and the GAM Group, which the Department treats as non-recurring benefits.<sup>41</sup>

In selecting a discount rate for allocating non-recurring benefits conferred by grants and debt forgiveness, 19 CFR 351.524(d)(3)(i)(A) directs the Department to use the company-specific cost of long-term, fixed-rate loans to allocate non-recurring benefits over the year in which the government agreed to provide the subsidy.

Both FEESA and the GAM Group provided the Department with loan information between 1996 and 2013.<sup>42</sup> However, for purposes of this preliminary determination, the Department finds that the loans do not provide an appropriate basis to calculate a discount rate.<sup>43</sup> Nor have parties suggested any other measure of the average cost of long-term, fixed rate loans in Mexico. Therefore, for calculation of non-recurring benefits from both grants and debt forgiveness, in accordance with 19 CFR 351.524(d)(3)(i)(C), we are using the "Interest Rates, Lending Rate" for the year in which such benefits were received, as published in the International Monetary Fund's International Financial Statistics.<sup>44</sup>

As discussed below in the "Creditworthiness" section, we determine that both FEESA and the GAM Group were uncreditworthy between 1998 and 2001. Thus, we added a risk premium to the discount rate in accordance with 19 CFR 351.505(a)(3)(iii) for these years.

### **IX. CREDITWORTHINESS**

The Department initiated an investigation on the allegation that both FEESA and the GAM Group were uncreditworthy between 1998 and 2001.<sup>45</sup>

The examination of creditworthiness under 19 CFR 351.505(a)(4) is an attempt to determine if the company in question could obtain long-term financing from conventional commercial

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<sup>40</sup> See Memorandum to the File, "Countervailing Duty Investigation of Sugar from Mexico: Preliminary Results Calculation Memorandum for Grupo Azucarero Mexico, S.A. de C.V.," dated concurrently with and hereby adopted by this memorandum (GAM Group Preliminary Calculation Memorandum); see also Memorandum to the File, "Countervailing Duty Investigation of Sugar from Mexico: Preliminary Results Calculation Memorandum for Fondo de Empresas Expropiadas del Sector Azucarero," dated concurrently with and hereby adopted by this memorandum (FEESA Preliminary Calculation Memorandum) (collectively, Preliminary Calculation Memoranda).

<sup>41</sup> See 19 CFR 351.524(b)(1).

<sup>42</sup> See FEESA Questionnaire Response at Exhibit 40B; see also GAM Group Questionnaire Response at Exhibit 6.

<sup>43</sup> A full discussion of FEESA and GAM Group's reported loans relies on business proprietary information. We included a discussion of each respondents' loans in their respective calculation memorandums. See Preliminary Calculation Memoranda.

<sup>44</sup> *Id.*

<sup>45</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 24, 25.

sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, “based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.” Pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department normally examines: (1) the receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm’s financial health, as reflected in various financial indicators calculated from the firm’s financial statements and accounts; (3) present and past indicators of the firm’s ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm’s future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

Petitioners provided information indicating that both respondents were uncreditworthy between 1998 and 2001.<sup>46</sup> For example, Petitioners provided documentation showing that, during this time period, the FEESA and GAM Group mills were carrying significant debt<sup>47</sup> and were not eligible to receive credit.<sup>48</sup> As a result of these issues, all of the FEESA and GAM Group mills were expropriated in 2001.<sup>49</sup> The information Petitioners provided is the publicly available information of the GOM and the respondents themselves (*e.g.*, a GOM audit of the Mexican sugar industry, the GAM Group’s financial disclosures and annual reports, and GOM records of NAFTA arbitration proceedings).<sup>50</sup>

Neither respondent provided full information regarding creditworthiness. In response to our questionnaire, FEESA stated that it was not established until 2001 and, therefore, does not have financial records for this time period; FEESA also claimed that the mills destroyed all records older than 10 years as allowed by Mexican law.<sup>51</sup> The GAM Group asserted that it was able to finance its operations through commercial loans during this time period.<sup>52</sup> As explained in detail in the Preliminary Calculation Memoranda, the loan information provided by the GAM Group in its questionnaire response is inconclusive and does not substantiate its claim. Further, information provided by the GAM Group indicates that only a small percentage of lending owed to banks lacked any apparent GOM ties.<sup>53</sup> Additionally, the GAM Group did not provide requested information (*e.g.*, ratios, profit rates, financial statements, *etc.*) regarding creditworthiness.

The GOM reported that loans owed to Financiera Nacional Azucarera, S.N.C. (FINA), discussed below, were restructured both shortly before (1995) and during (1998) the period in question.<sup>54</sup>

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<sup>46</sup> See Petition at 96-110.

<sup>47</sup> *Id.* at 101, 105.

<sup>48</sup> *Id.* at 100, 101.

<sup>49</sup> *Id.* at Exhibit III-12, *Official Gazette of the Federation*, “DECREE expropriating the shares, coupons and/or titles representing the capital or partnership interests of the companies listed herein by the nation on the grounds of public interest,” September 3, 2001.

<sup>50</sup> *Id.* at 97-107.

<sup>51</sup> See, *e.g.*, FEESA Questionnaire Response at 11-12.

<sup>52</sup> See GAM Group Questionnaire Response at 49.

<sup>53</sup> See Preliminary Calculation Memoranda.

<sup>54</sup> See GOM Questionnaire Response, Volume II at 26-30.

These restructurings resulted in two grace periods covering the entire period at issue. Such restructuring would not have been necessary if the respondents had been capable of meeting their costs and financial obligations during this period. Moreover, the expropriation of the FEESA mills and the GAM Group mills (which were, for a time, also held by the GOM) in 2001 would also not have been necessary if the mills had been in sound financial health in that year or during the years immediately preceding 2001.

Based on this record information, we preliminarily find that from 1998 to 2001 neither respondent: (1) received long-term commercial loans (from parties other than state-owned commercial banks); (2) was in good financial health; (3) had sufficient cash flow to meet its costs; or (4) had sound future financial prospects. As such, for purposes of this preliminary determination, we determine that neither respondent could have obtained long-term loans from conventional commercial sources between 1998 and 2001 and that, therefore, both respondents were uncreditworthy during these years.

## **X. ANALYSIS OF PROGRAMS**

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

### **A. Programs Preliminarily Determined to be Countervailable**

#### **1. Grant Programs**

##### **a. 1997 Export Subsidy**

Petitioners allege that, in 1997, the GOM passed and implemented legislation that subsidized domestic sugar producers that exported surplus sugar with grants calculated by measuring the difference between export price and domestic price.<sup>55</sup> According to the GOM, the Ministry of Trade and Industrial Development (SECOFI) provided benefits under this program through FINA, a bank established by the GOM to provide banking and credit services to the sugar industry.<sup>56</sup> Grants were distributed with the purpose of supporting exports of sugar to the world market that had been made between January and September of 1997.<sup>57</sup> The GAM Group reported receiving benefits under this program in 1997.<sup>58</sup> As discussed above, FEESA stated that it did not exist until 2001. Therefore, FEESA says that it did not participate in this program. However, record evidence indicates that FEESA received benefits under this program.<sup>59</sup>

The Department preliminarily finds this program to be countervailable. Grants received under this program constitute a financial contribution because it represents the direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount

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<sup>55</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 17.

<sup>56</sup> See GOM Questionnaire Response, Volume III at 2.

<sup>57</sup> *Id.* at 1.

<sup>58</sup> See GAM Group Questionnaire Response at 22.

<sup>59</sup> See GOM Questionnaire Response, Volume III at 3.

of the grant, in accordance with 19 CFR 351.504(a). Because the grant is contingent on export performance, the Department preliminarily determines that it is specific within the meaning of section 771(5A)(A) and (B) of the Act.

We preliminarily determine this grant program to provide a non-recurring benefit under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year (1997) in which the grants were received by both respondents. For grants that were less than 0.5 percent of the relevant sales figure, we expensed the grant in the year of receipt, consistent with 19 CFR 351.524(b)(2). For grants in which the benefits were greater than or equal to 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. We then divided this allocated amount by each company’s export sales during the POI. On this basis, we preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 0.16 and 0.17 percent *ad valorem*, respectively, under this program.

b. 1998 Inventory Support Subsidy

Petitioners allege that, in 1998, the GOM implemented a program that subsidized domestic sugar producers for storage of inventories with grants, as long as the producers either complied with export allocations of surplus sugar and stored sugar in bonded warehouses or exported sugar temporarily during the relevant period.<sup>60</sup> According to the GOM, SECOFI and the Ministry of Agriculture and Rural Development (SAGARPA) distributed benefits under the “1998 Inventory Support Subsidy” program through FINA.<sup>61</sup> Based on information provided by the GOM, payments under the grant program were made in monthly installments from May 1998 through December 1998.<sup>62</sup> Both FEESA and the GAM Group stated that they did not receive benefits under this program.<sup>63</sup> However, record evidence provided by the GOM indicates that both respondents benefited under this program in 1998.<sup>64</sup>

The Department preliminarily finds this program to be countervailable. Grants received under this program constitute a financial contribution because it represents a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because the legislation makes receipt of the subsidy contingent on export of sugar, the Department preliminarily determines that it is specific within the meaning of section 771(5A)(A) and (B) of the Act.

We preliminarily determine this grant program to provide non-recurring benefits under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year (1998) in which the grants were received by both respondents. For grants that were less than 0.5 percent of the relevant sales figure, we expensed

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<sup>60</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 17.

<sup>61</sup> See GOM Questionnaire Response, Volume III at 14-15.

<sup>62</sup> *Id.* at 14.

<sup>63</sup> See FEESA Questionnaire Response at 20; see also GAM Group Questionnaire Response at 23.

<sup>64</sup> See GOM Questionnaire Response, Volume III at 16-17.

the grant in the year of receipt, consistent with 19 CFR 351.524(b)(2). For grants in which the benefits were greater than or equal to 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. We then divided this allocated amount by each company’s total sales during the POI. On this basis, we preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 0.02 and 0.00 percent *ad valorem*, respectively, under this program.

c. 2001 “Special Fund” Grants

Petitioners allege that, when the GOM expropriated sugar mills in 2001, it established a “Special Fund” as a mechanism to pay off the expropriated FEESA mills’ short-term liabilities and to ensure coverage of their operating expenses on an on-going basis.<sup>65</sup> Petitioners allege that the expropriated FEESA mills received grants from this “Special Fund.”<sup>66</sup> Both FEESA and the GAM Group reported receiving grants under this program. FEESA states that, in 2001, grants were distributed through a special fund established by the GOM’s Ministry of Finance and Public Credit (SHCP) for the benefit of expropriated sugar mills.<sup>67</sup> The GOM indicated that, under this program, grants were awarded to expropriated sugar mills in response to specific applications submitted to SAGARPA and based on the recipient mill’s projected income as compared to projected expenses.<sup>68</sup>

Upon analysis of information placed on the record by the respondents, the Department determines that grants received by FEESA and the GAM Group in 2002 and reported under this program were, in fact, distributed by the GOM as part of the “Annual Budget Grants to FEESA,” described below. Therefore, benefits received by both respondents in 2002 have been attributed to that program. Additionally, the Department henceforth refers to this program as the “2001 ‘Special Fund’ Grants.”

The Department preliminarily finds this program to be countervailable. Grants received under this program constitute a financial contribution because it represents a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because receipt of the subsidy was limited by law to sugar mills for the purpose of covering mill-specific liabilities, the Department preliminarily determines that the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

We preliminarily determine this grant program to provide non-recurring benefits under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year (2001) in which the grants were received by both respondents. For grants that were less than 0.5 percent of the relevant sales figure, we expensed the grant in the year of receipt, consistent with 19 CFR 351.524(b)(2). For grants in which the

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<sup>65</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 12.

<sup>66</sup> *Id.*

<sup>67</sup> See FEESA Questionnaire Response at 21-22.

<sup>68</sup> See GOM Questionnaire Response, Volume III at 35-39.

benefits were greater than or equal to 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. We then divided this allocated amount by each company’s total sales during the POI. On this basis, we preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 1.47 and 0.88 percent *ad valorem*, respectively, under this program.

d. 2008 Programa de Apoyo al Sector Agroindustrial de la Caña de Azúcar (Support Program for the Sugar Cane Agro-Industrial Sector) (PROINCAÑA) Grants

Petitioners allege that, in 2008, the GOM’s Economy Secretariat provided all sugar mills with grants to cover the purchase price of cane for the 2007/2008 harvest year through the PROINCAÑA program.<sup>69</sup> FEESA and the GAM Group reported that they received grants under this program.<sup>70</sup> According to the GOM, beneficiaries of the program received a one-time payout proportionate to each beneficiary’s contribution to the total volume of sugar produced in Mexico during the 2007/2008 harvest year.<sup>71</sup>

The Department preliminarily finds this program to be countervailable. Grants received under this program constitute a financial contribution because it represents the direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because benefits under this program are limited to the sugar industry by law, the Department preliminarily determines that it is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

We preliminarily determine this grant program to provide non-recurring benefits under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year (1998) in which the grants were received by both respondents. For grants that were less than 0.5 percent of the relevant sales figure, we expensed the grant in the year of receipt, consistent with 19 CFR 351.524(b)(2). For grants in which the benefits were greater than or equal to 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. We then divided this allocated amount by each company’s total sales during the POI. On this basis, we preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 0.20 and 0.16 percent *ad valorem*, respectively, under this program.

e. Annual Budget Grants to FEESA

Based on Petitioners’ allegations that the GOM made grants to FEESA to cover the FEESA mills’ operating deficits and administrative expenditures, the Department initiated investigations of the following programs: “2008 Grants to FEESA Mills,” “2009 Grants to Cover Operational Deficit of FEESA Mills,” “2011 Grant to Emiliano Zapata Mill,” and “2013 Grants to FEESA

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<sup>69</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 15.

<sup>70</sup> See FEESA Questionnaire Response at 28-33; see also GAM Group Questionnaire Response at 27-33.

<sup>71</sup> See GOM Questionnaire Response, Volume IV at 15.

Mills.”<sup>72</sup> FEESA reported that it received funding under each of these programs through its authorized budget allocation from SHCP and SAGARPA.<sup>73</sup>

Record evidence indicates that FEESA’s budget allocation is granted annually by the GOM to cover losses and operational expenses of FEESA and its mills.<sup>74</sup> To the extent they were received by FEESA before the end of the POI, we find that such annual budget allocations from the GOM are countervailable grants. For purposes of this preliminary determination, all grants distributed to FEESA via the GOM’s annual budget allocation with the purpose of covering operational deficits and administrative expenses are treated as a single subsidy program.

The Department preliminarily finds this program to be countervailable. Grants received under this program constitute a financial contribution because it represents the direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). This subsidy is *de jure* specific under section 771(5A)(D)(i) of the Act because the GOM authorized funds specifically to FEESA in its annual budget allocations and expressly limited distribution of the funding to the expropriated mills that comprise FEESA.

In addition to the specifically alleged years (2008, 2009 and 2013), the Department identified budget allocation totals (via FEESA’s financial statements) for 2011 and 2012.<sup>75</sup> Furthermore, as noted above, the Department determines that grants received by the FEESA and the GAM Group mills during 2002,<sup>76</sup> initially reported as benefits under the “2001 ‘Special Fund’ Grants” program, were in fact distributed as part of this program. Specifically, FEESA reported that the 2001 and the 2002 ‘Special Funds’ were made through separate mechanisms, with the 2001 funds provided through a special fund established by the SHCP<sup>77</sup> and the 2002 funds provided through the disbursement of the authorized budget allocation for FEESA.<sup>78</sup>

We preliminarily determine this grant program to provide non-recurring benefits under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the years in which the grant was received. Because the grant amount received was always greater than 0.5 percent, consistent with 19 CFR 351.524(b)(1), we allocated the amount over the AUL using the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. We then divided this allocated amount by FEESA’s total sales during the POI. On this basis, we

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<sup>72</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 13-15.

<sup>73</sup> See, e.g., FEESA Questionnaire Response at 25-26.

<sup>74</sup> See, e.g., GOM Questionnaire Response, Volume III at 52-54.

<sup>75</sup> See FEESA Questionnaire Response, Exhibit 25 at 6. The monies received under the “2011 Grant to Emiliano Zapata Mill” are included in the total funds allocated to FEESA for 2011. See FEESA Questionnaire Response at 37. Therefore, to avoid counting this grant twice, we are not including the grant for the Emiliano Zapata Mill separately in our calculations. The Department will seek information related to annual budget allocations in additional years during the AUL in a supplemental questionnaire.

<sup>76</sup> The GAM Group mills were part of FEESA between 2001 and 2004. See GAM Group Questionnaire Response at 23.

<sup>77</sup> See FEESA Questionnaire Response at 21-22.

<sup>78</sup> *Id.*

preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 2.54 and 0.36 percent *ad valorem*, respectively, under this program.<sup>79</sup>

f. “Apoyos al Paquete Tecnológico a los Productores de Caña” (“Technological Support Package to Sugar Cane Producers”) 2013 Grant

In its questionnaire responses, the GAM Group reported that ITLC received a grant under this program during the POI.<sup>80</sup> According to the GAM Group, the program provided payment to all sugar cane growers who harvested cane during the 2012/2013 harvest season.<sup>81</sup> The payment totaled a set amount per hectare of harvested area.<sup>82</sup>

While Petitioners did not allege that the GOM provided a subsidy under this program in the Petition, section 775(1) of the Act and 19 CFR 351.311 provide that the Department will investigate subsidies that are discovered during the course of the investigation. Grants received under this program constitute a financial contribution because it represents the direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because benefits under this program are limited by law to sugar cane growers, the Department preliminarily determines that it is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we preliminarily find this program to be countervailable.

We preliminarily determine this grant program to provide non-recurring benefits under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year (2011) in which the grant was received. Because the grant amount received by the GAM Group was less than 0.5 percent, we expensed the grant to the POI, consistent with 19 CFR 351.524(b)(2). We then divided this amount by the GAM Group’s total sales during the POI. On this basis, we preliminarily determine that the GAM Group received a countervailable subsidy rate of 0.05 percent *ad valorem* under this program.

2. Government Forgiveness or Discount of Debt – Forgiveness of FEESA Mills’ FINA Debt

Petitioners allege that FINA, a GOM sugar industry-specific lending institution, extended billions of dollars of credit to sugar mills between 1953 and its liquidation by the GOM, beginning in 2000.<sup>83</sup> Petitioners further allege that, upon FINA’s liquidation, the GOM assumed

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<sup>79</sup> Benefits received by the GAM Group mills between 2001 and 2004, while their assets were held by the GOM and part of FEESA, have been allocated solely to the GAM Group for the purposes of subsidy rate calculations in this preliminary determination. Such benefits have not been included in the company-specific rate calculations for FEESA.

<sup>80</sup> It is unclear whether this program is different or the same as other programs addressed herein. The Department intends to request additional information regarding this program from the GOM and the respondents following this preliminary determination.

<sup>81</sup> See GAM Group Questionnaire Response at 49.

<sup>82</sup> *Id.*

<sup>83</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 9.

FINA's creditor rights and cancelled the outstanding FINA debt of the expropriated mills under control of FEESA.<sup>84</sup>

In response to our initial questionnaire, the GOM reported:

FINA was a National Credit Institution that provided banking and credit services to the sugar industry. When FINA was disincorporated on November 28, 2000, the debt that FINA held at the time of disincorporation was not forgiven but was transferred to other banking entities. Indeed, the financial successors to FINA were assigned the responsibility of collecting on that debt and they have pursued those collections through various court proceedings.<sup>85</sup>

The Asset Management and Disposition Agency (AMDA), which administered FINA's liquidation, became responsible for the recovery of the overdue debt transferred from FINA to its successors, including the debt owed by FEESA and the GAM Group.<sup>86</sup> While the GOM asserts that no forgiveness of the FEESA and GAM Group debt has taken place, the proprietary facts of this investigation indicate *de facto* forgiveness dating from 2001.<sup>87</sup> The events described by the record indicate that, after that point in time, there was no meaningful attempt to collect the remaining debt owed by FEESA and the GAM Group.<sup>88</sup>

The Department has previously found *de facto* debt forgiveness when the record indicates that, for all intents and purposes, the debt is no longer viable in the minds of the borrower and lender. For example, in *OTR Tires from China*, the Department found debt forgiveness given the lack of evidence supporting a "reasonable expectation" that the respondent would repay the debt.<sup>89</sup> After its overdue debt from the mid-1990s was restructured in 2004, the record indicated no attempt by the respondent tire producer to pay down its remaining debt through the 2006 POI, thus leading the Department to conclude the Government of China had effectively, if not explicitly, given up on the problematic loans that had been largely neglected by the respondent for more than 15 years.<sup>90</sup>

The facts with regards to the debt of the GAM Group sugar mills are similar. The underlying debt has been problematic since 1995, when it was first restructured and given a three-year

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<sup>84</sup> *Id.* As explained above, the GAM Group mills were part of FEESA between 2001 and 2004.

<sup>85</sup> See GOM Questionnaire Response, Volume II at 2.

<sup>86</sup> *Id.* at 3.

<sup>87</sup> *Id.* at 33; see also GAM Group Questionnaire Response at 13-16 and Exhibits 2a-2g.

<sup>88</sup> See Petition at Exhibit III-7.

<sup>89</sup> See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from China*) and accompanying Issues and Decision Memorandum at "Government Debt Forgiveness to TUTRIC;" see also *GPX Int'l Tire Corp. v. United States*, 942 F. Supp. 2d 1343, 1362 (Ct. Int'l Trade 2013) (approving the Department's debt forgiveness decision and suggesting that the Department may have underestimated the benefit from the "convoluted history of these renegotiated loans by treating them as debt forgiveness").

<sup>90</sup> See *OTR Tires from China*, and accompanying Issues and Decision Memorandum at "Government Debt Forgiveness to TUTRIC."

grace period.<sup>91</sup> It was restructured again in 1998 and given a two-year grace period.<sup>92</sup> The record indicates partial payment of the debt shortly thereafter, but no meaningful attempt at payment after 2001.<sup>93</sup> The record also demonstrates that the GAM Group no longer records the FINA debt in its financial statements.<sup>94</sup>

Likewise, at roughly the same time, a 2006 audit concluded that the GOM “will not recover” the debt of the nine FEESA mills owed to FINA and that the outstanding debt therefore represented “damages” to the GOM.<sup>95</sup> The liquidation of FINA was concluded in 2006, and the 2006 Audit report concludes that the GOM “will settle up” the debts of the mills at its own costs; *i.e.*, that the GOM assumed the responsibility for repayment of the FINA debt.<sup>96</sup> The record indicates no affirmative steps taken by FEESA after 2006 to indemnify the GOM for its assumption of the repayment obligation. Moreover, while the record indicates a partial payment of the GAM Group’s outstanding debt, the record indicates FEESA’s outstanding debt actually increased over the past several years, presumably through the capitalization of accumulated interest.<sup>97</sup>

Taken together, we preliminarily determine that there is no reasonable expectation that the FINA debt of the FEESA mills and the GAM Group will be repaid and that, therefore, *de facto* debt forgiveness benefited FEESA and the GAM Group.

Accordingly, we treated the outstanding balances of the GAM Group and FEESA debts as debt forgiveness received in 2001 and 2006, respectively. Debt forgiveness constitutes a financial contribution because it represents a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. A benefit exists within the meaning of 19 CFR 351.508(a) in the amount of the debt that the government has assumed or forgiven. The subsidy is *de jure* specific under section 771(5A)(D)(i) of the Act because the debt forgiven was financed exclusively by FINA, and FINA’s financing activities are expressly limited to members of the Mexican sugar industry by its own organic laws, as incorporated by GOM decree.<sup>98</sup>

Under 19 CFR 351.508(c), the benefit from debt forgiveness is treated as a non-recurring subsidy. Because the amounts forgiven were greater than 0.50 percent of sales in the year of receipt, we allocated the benefit across the AUL, consistent with 19 CFR 351.524(b)(1). We then divided this allocated amount by each respondent’s total sales during the POI. On this basis, we preliminarily determine that FEESA and the GAM Group received countervailable subsidy rates of 12.62 and 1.16 percent *ad valorem*, respectively, under this program.

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<sup>91</sup> See GOM Questionnaire Response, Volume II at 26-27.

<sup>92</sup> *Id.* at 32.

<sup>93</sup> See Petition at 88.

<sup>94</sup> See GAM Group Questionnaire Response at 13-16 and Exhibits 2a-2g.

<sup>95</sup> See Petition, Exhibit III-7 at 6.1.

<sup>96</sup> *Id.*

<sup>97</sup> See GOM Questionnaire Response, Volume II at 33.

<sup>98</sup> See Petition at Exhibit III-7.

### 3. Tax Benefit Program – Accelerated Depreciation for Renewable Energy Investments

Petitioners allege that the GOM’s Program for the Use of Renewable Energy Sources allows certain qualifying taxpayers, including some sugar mills, to depreciate 100 percent of a qualifying renewable energy-related investment in a single exercise.<sup>99</sup>

On December 1, 2004, the GOM amended the Income Tax Act to encourage investment in machinery and equipment for the generation of energy from renewable energy resources or from “efficiency systems.”<sup>100</sup> Under this law, taxpayers can depreciate 100 percent of a qualifying investment in a single exercise, instead of over the life of the assets (estimated to be 18 years for purposes of this investigation).<sup>101</sup> The GAM Group reported that it received benefits under this program during and prior to the POI.<sup>102</sup>

We preliminarily determine that this program constitutes a countervailable subsidy. Accelerated depreciation is a financial contribution in the form of revenue foregone by the government within the meaning of section 771(5)(D)(ii) of the Act. A benefit exists within the meaning of 19 CFR 351.509(a)(1) in the amount of reduced income taxes (*i.e.*, the taxpayer enjoys the full amount of the deduction during the year of purchase, rather than spreading the deduction across future tax years). We find that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because, by law, only a highly limited list of qualified renewable energy generation-related investments qualify for the accelerated depreciation tax deduction.

The GAM Group received benefits under this program during the POI. The benefit from an accelerated depreciation program is the amount of reduced income taxes paid as a result of the accelerated depreciation.<sup>103</sup> The benefit is based upon the income tax return filed by the GAM Group during the POI.<sup>104</sup> To calculate the benefit, we divided the reduction in the GAM Group’s income taxes resulting from the accelerated depreciation (as reported by the GAM Group<sup>105</sup>) by the GAM Group’s total sales during the POI. On this basis, we preliminarily determine that the GAM Group received a countervailable subsidy rate of 0.21 percent *ad valorem* under this program.

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<sup>99</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 20.

<sup>100</sup> See GOM Questionnaire Response, Volume VII at Exhibit VII-1.

<sup>101</sup> *Id.*

<sup>102</sup> See GAM Group Questionnaire Response at 41-45.

<sup>103</sup> See, e.g., *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) and accompanying Issues and Decision Memorandum at “Accelerated Depreciation Program” at 19-20 and Comment 42.

<sup>104</sup> See 19 CFR 351.509(b).

<sup>105</sup> See GAM Group Questionnaire Response at 45.

## **B. Programs For Which More Information Is Needed**

### **1. 1999 Inventory Support Subsidy**

Petitioners allege that, in 1999, the GOM promulgated a program that subsidized domestic sugar producers that exported a proportionate amount of the 1999 national sugar surplus with grants calculated on the basis of the amount of sugar in inventory.<sup>106</sup> According to the GOM, SECOFI and SAGARPA distributed benefits under the “1999 Inventory Support Subsidy” program through FINA.<sup>107</sup> Both FEESA and the GAM Group stated that they did not receive benefits under this program.<sup>108</sup> However, record evidence provided by the GOM indicates that both respondents may have benefited under this program in 1999.<sup>109</sup> The GOM reported that it was unable to locate the records of this program’s usage prior to filing its initial questionnaire response.<sup>110</sup> The Department intends to seek additional information in a supplemental questionnaire.

### **2. Forgiveness of FEESA Mills’ Tax Liability**

Petitioners allege that, prior to 2014, the GOM exempted 898,000,000 Mexican Pesos in taxes owed by FEESA mills.<sup>111</sup> The GOM reported a general tax “holiday” or amnesty available to all taxpayers (individuals and enterprises) for all outstanding liabilities during fiscal year 2013.<sup>112</sup> The Department intends to seek additional information regarding the beneficiaries of this tax forgiveness.

### **3. Import Duty Exemptions – PITEX**

Petitioners allege that the GOM’s re-export program, “IMMEX,” is the successor program to “PITEX,” which the Department found to provide countervailable export subsidies in prior proceedings.<sup>113</sup> Petitioners further allege that IMMEX subsidizes certain sugar producers by exempting certain equipment and machinery used in the production of products, including Mexican sugar sold to domestic food manufacturers, from import duties.<sup>114</sup> According to Petitioners, sugar sold to domestic food manufacturers is “deemed” exported by the GOM because the processed food products themselves are later exported. Thus, exemptions under the program extend to imports consumed in the production of sugar sold to both the domestic and foreign markets.

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<sup>106</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 18.

<sup>107</sup> See GOM Questionnaire Response, Volume III at 27.

<sup>108</sup> See FEESA Questionnaire Response at 20-21; see also GAM Group Questionnaire Response at 23.

<sup>109</sup> See GOM Questionnaire Response, Volume III at 27.

<sup>110</sup> *Id.*

<sup>111</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 12.

<sup>112</sup> See GOM Questionnaire Response, Volume II at 45-47.

<sup>113</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 22 (citing *Final Results of Countervailing Duty Administrative Review: Cut-to-Length Carbon Steel Plate from Mexico*, 65 FR 13368 (March 13, 2000)).

<sup>114</sup> *Id.*

The GOM states that both the IMMEX program and the PITEX program operate to defer the payment of taxes and duties on certain equipment and machinery imported by companies.<sup>115</sup> While neither of the respondents reported receiving benefits under the alleged IMMEX program, the GOM reported that both FEESA and the GAM Group received benefits under the predecessor PITEX program.<sup>116</sup>

Although the Department has previously found the PITEX program to be countervailable,<sup>117</sup> in this investigation more information is needed to determine whether this program is *de jure* specific to the sugar industry or export contingent. Furthermore, the Department does not have the information necessary to determine the benefit amounts received by FEESA and the GAM Group under this program. The Department intends to seek additional information in a supplemental questionnaire.

### **C. Programs Preliminarily Determined to be Not Used or Not to Confer a Measurable Benefit During the POI**

1. 2008 PROINCAÑA Supplementary Grant from GOM
2. 2008 PROINCAÑA Supplementary Grant from Jalisco Government
3. 2008 PROINCAÑA Supplementary Grant from Nayarit Government
4. 2008 PROINCAÑA Supplementary Grant from San Luis Potosi Government
5. 2008 PROINCAÑA Supplementary Grant from Veracruz Government
6. Green Fund Grants
7. Emergent Technologies Fund Grants
8. Rural Electrification Fund Grants
9. Biofuel Fund Grants
10. General Renewable Energy Fund Grants
11. Research and Technology Development Fund Grants
12. Import & Export Tax Exemption for Renewable Energy Investments<sup>118</sup>
13. 2012 FEESA Budget
14. SAGARPA Emerging Technology Program<sup>119</sup>
15. FINA 1998 Restructuring of Sugar Mill Debt – Preferential Loans
16. Discount of Non-FEESA Sugar Mills’ FINA Debt
17. FINA 1998 Restructuring of Sugar Mill Debt – Grace Period
18. IMMEX Import Duty Exemptions

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<sup>115</sup> See GOM Questionnaire Response, Volume VII at 25-27.

<sup>116</sup> *Id.* at 29.

<sup>117</sup> See *Initiation Notice*, and accompanying Initiation Checklist at 22 (citing *Final Results of Countervailing Duty Administrative Review: Cut-to-Length Carbon Steel Plate from Mexico*, 65 FR 13368 (March 13, 2000)).

<sup>118</sup> The GAM Group mills received benefits under this program in years prior to the POI. However, based on the results of the “0.5 percent test” conducted pursuant to 19 CFR 351.524(b)(2), these grants were expensed in the year of receipt and, thus, were not allocable to the POI. Therefore, we find that this grant program did not confer a benefit to the GAM Group during the POI.

<sup>119</sup> The GAM Group mills received benefits under this program in years prior to the POI. However, based on the results of the “0.5 percent test” conducted pursuant to 19 CFR 351.524(b)(2), these grants were expensed in the year of receipt and, thus, were not allocable to the POI. Therefore, we find that this grant program did not confer a benefit to the GAM Group during the POI.

## **XI. ITC NOTIFICATION**

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

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination no later than 45 days after the Department makes its 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.<sup>120</sup> Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>121</sup>

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.<sup>122</sup> 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*.<sup>123</sup> 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, 14th Street and 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 IA ACCESS.<sup>124</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>125</sup> on the due dates established above.

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<sup>120</sup> See 19 CFR 351.224(b).

<sup>121</sup> See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

<sup>122</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>123</sup> See 19 CFR 351.310(c).

<sup>124</sup> See 19 CFR 351.303(b)(2)(i).

<sup>125</sup> 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

25 AUGUST 2014  
(Date)