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Investigation
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DATE: September 16, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Countervailing Duty Investigation of Sugar
from Mexico

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to exporters and producers of sugar from Mexico, within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) for which we are measuring subsidies is January 1, 2013, through December 31, 2013.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the subsidy rate calculations for the respondents in this case: Fondo de Empresas Expropiadas del Sector Azucarero (FEESA)¹ and Ingenio Tala S.A. de C.V. (Tala) and certain affiliated companies owned by Grupo Azucarero Mexico S.A. de C.V. (GAM) (collectively, the GAM Group).² In addition, we have updated the scope of the investigation. We recommend that you approve the positions developed in the “Discussion of the Issues” section of this memorandum.

A complete list of the issues in this investigation on which we received comments is provided below.

¹ FEESA consists of FEESA and the following sugar mills: Fideicomiso Ingenio Atencingo (Atencingo), Fideicomiso Ingenio Casasano (Casasano), Fideicomiso Ingenio El Modelo (El Modelo), Fideicomiso Ingenio El Potrero (El Potrero), Fideicomiso Ingenio Emiliano Zapata (Emiliano Zapata), Fideicomiso Ingenio La Providencia (La Providencia), Fideicomiso Ingenio Plan De San Luis (Plan De San Luis), Fideicomiso Ingenio San Cristobal (San Cristobal), and Fideicomiso Ingenio San Miguelito (San Miguelito).

² In addition to Tala, the GAM Group consists of the following sugar mills: Ingenio El Dorado S.A. de C.V. (El Dorado) and Ingenio Lazaro Cardenas S.A. de C.V. (Lazaro Cardenas).



General Issues

- Issue 1:** Standing to Request Continuation of the Investigation
- Issue 2:** Uncreditworthiness
- Issue 3:** Calculation of Discount Rates
- Issue 4:** Treatment of Grants as Non-Recurring Subsidies
- Issue 5:** Sugarcane for Less Than Adequate Remuneration (LTAR)
- Issue 6:** Forgiveness of Tax Liability Under the “Catch Up” Tax Amnesty Program
- Issue 7:** Countervailability of 1998/1999 Restructuring of Financiera Nacional Azucarera, S.N.C. (FINA) Debt
- Issue 8:** Amount of Benefits Received from the 1999 Inventory Support Subsidy

Issues Pertaining to FEESA

- Issue 9:** Selection of FEESA as a Mandatory Respondent
- Issue 10:** Forgiveness of FEESA’s Government Debts
- Issue 11:** Forgiveness of Wastewater Discharge Debt
- Issue 12:** FEESA’s Interest-Free Social Security Debt
- Issue 13:** Preferential Lending to FEESA
- Issue 14:** Provision of General Services for LTAR
- Issue 15:** Sales Denominator Adjustments

Issues Pertaining to the GAM Group

- Issue 16:** Forgiveness of the GAM Group’s Government Debts
- Issue 17:** Accelerated Depreciation of Renewable Energy Investments
- Issue 18:** Repayment of Special Fund and Annual Budget Allocations
- Issue 19:** Amount of Benefits Received from the 1997 Export Subsidy

II. BACKGROUND

On September 2, 2014, the Department published the *Preliminary Determination* in this countervailing duty (CVD) investigation of sugar from Mexico and aligned the final determination with the final determination in the companion antidumping duty (AD) investigation of sugar from Mexico.³ In the *Preliminary Determination*, the Department stated that it would address any investigated new subsidy allegations, as well as three subsidy programs requiring additional information, in a post-preliminary analysis, which was released on June 18, 2015.⁴ The Department conducted verifications of subsidy information submitted by FEESA and the GAM Group from December 10 through 16, 2014.⁵ Verification of subsidy information

³ See *Sugar from Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 79 FR 51956 (September 2, 2014) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Department Memorandum, “Countervailing Duty Investigation of Sugar from Mexico: Post-Preliminary Analysis,” June 18, 2015 (Post-Preliminary Analysis).

⁵ See Department Memorandum, “Verification of the Sales and Subsidy Responses of FEESA in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico,” March 31, 2015 (FEESA Verification Report); see also Department Memorandum, “Verification of the Sales and Subsidy Responses of the GAM Group in the

submitted by the Government of Mexico (the GOM) was conducted from June 23 through 25, 2015.⁶

The Department issued a draft suspension agreement on October 27, 2014, and received comments from interested parties on November 18, 2014. On December 19, 2014, the Department and a representative of the GOM signed an agreement suspending this CVD investigation.⁷

On January 8, 2015, Imperial Sugar (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the International Trade Commission (the ITC) to conduct a review in accordance with section 704(h) of the Act to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the *CVD Suspension Agreement*.⁸ Based on Imperial and AmCane's requests, the ITC initiated a section 704(h) review of the *CVD Suspension Agreement*.⁹ Additionally, on January 16, 2015, Imperial and AmCane filed timely requests for the Department to continue its CVD investigation of sugar from Mexico.¹⁰ Between January 20 and February 18, 2015, the American Sugar Coalition and its members (collectively, Petitioners),¹¹ Camara Nacional de Las Industrias Azucarera y Alcoholera (the Mexican Sugar Chamber), Imperial, and AmCane filed comments regarding Imperial and AmCane's standing to request such continuation.¹²

Antidumping and Countervailing Duty Investigations of Sugar from Mexico," March 31, 2015 (GAM Group Verification Report).

⁶ See Department Memorandum, "Verification of the Responses of the Government of Mexico in the Countervailing Duty Investigation of Sugar from Mexico," July 30, 2015 (GOM Verification Report).

⁷ See *Sugar from Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014) (*CVD Suspension Agreement*).

⁸ See Letter from Imperial, "*Sugar from Mexico* – Notice of Filing of Petition for Review of Suspension Agreements to Eliminate the Injurious Effect of Subject Imports," January 8, 2015; see also Letter from AmCane, "*Sugar from Mexico: Notice of Petition for Review of Suspension Agreements*," January 8, 2015.

⁹ See *Sugar from Mexico; Institution of Reviews of Agreements Suspending Antidumping Duty and Countervailing Duty Investigations*, 80 FR 3977 (January 26, 2015).

¹⁰ See Letter from Imperial, "*Sugar from Mexico*, Inv. Nos. A-201-845 and C-201-846 – Request for Continuation of Investigations," January 16, 2015; see also Letter from AmCane, "*Sugar from Mexico: Request for Continuation of Investigations*," January 16, 2015.

¹¹ The American Sugar Coalition is comprised of the following members: 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 United States Beet Sugar Association.

¹² See Letter from Petitioners, "*Sugar from Mexico: Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC to Request Continuation of Suspended Investigations*," January 20, 2015; see also Letter from the Mexican Sugar Chamber, "*Letter Supporting Petitioners' Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC*," January 22, 2015; Letter from Imperial, "*Sugar from Mexico*, Inv. Nos. A-201-845 and C-201-846 – Response to Opposition to Standing of Imperial Sugar Company to Request Continuation of Suspended Investigations," January 27, 2015; Letter from AmCane, "*Sugar from Mexico: Response to Letter Disputing Standing of AmCane Sugar LLC to Request Continuation of Suspended Investigations*," January 28, 2015; Letter from Petitioners, "*Sugar from Mexico: Reply to Imperial's and AmCane's Responses to Petitioners' Opposition to Standing to Request Continuation of Suspended Investigations*," January 29, 2015; Letter from the Mexican Sugar Chamber, "*Investigation of Sugar from Mexico – Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC*," February 10, 2015; Letter from Sweetener Users Association, "*Sugar from Mexico – Comments of the Sweetener Users Association in Support of Determination that Certain Sugar Refiners Have Standing to Request Continuation of Investigations*," February 10, 2015; Letter from Petitioners, "*Sugar from Mexico: Comments on Continuation of Suspended Investigations*," February 10, 2015; Letter from Imperial, "*Sugar*

On March 19, 2015, the ITC found that the *CVD Suspension Agreement* eliminated completely the injurious effects of imports of sugar from Mexico.¹³ As a result, the *CVD Suspension Agreement* remained in force. On the same day, the Department announced that it would issue a decision regarding continuation of this investigation promptly after reviewing the ITC's views and findings,¹⁴ which were made available to the Department on April 10, 2015.¹⁵ The Department subsequently analyzed the comments regarding Imperial's and AmCane's standing to request continuation and, on April 24, 2015, determined that the two entities had standing to request continuation of the CVD investigation.¹⁶ Accordingly, the Department announced that, in accordance with section 704(g) of the Act, we would continue the CVD investigation and issue a final determination within 135 days of the date of publication of the *Continuation Notice*.¹⁷

Between August 13 and 20, 2015, the Department received case briefs and rebuttal briefs from Petitioners, FEESA, the GAM Group, the GOM, and Imperial.¹⁸ We did not conduct a hearing in this proceeding because all requests for a hearing were timely withdrawn.¹⁹

III. SCOPE COMMENTS

Prior to the *Preliminary Determination*, several interested parties commented on the scope of this investigation.²⁰ The Department reviewed these comments and, on October 30, 2014, proposed

from Mexico, Inv. Nos. A-201-845 and C-201-846 – Rebuttal Comments in Response to Opposition to Standing of Imperial Sugar Company to Request Continuation of Suspended Investigations,” February 17, 2015; Letter from AmCane, “Sugar from Mexico: Response to Petitioners’ Feb. 10 Comments on Continuation of Suspended Investigations,” February 17, 2015; Letter from Petitioners, “Sugar from Mexico: Rebuttal to Sweetener Users Association’s Comments on Standing of Imperial Sugar Company and AmCane Sugar LLC,” February 18, 2015.

¹³ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

¹⁴ See Department Memorandum, “Requests to Continue the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,” March 19, 2015.

¹⁵ See *Sugar from Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278, 25280 (May 4, 2015) (*Continuation Notice*).

¹⁶ See Department Memorandum, “Standing of Imperial Sugar and AmCane Sugar to Request Continuation of the AD and CVD Investigations on Sugar from Mexico,” April 24, 2015 (Standing Memorandum).

¹⁷ See *Continuation Notice*.

¹⁸ See Letter from Petitioners, “Sugar from Mexico: Petitioner’s Case Brief,” August 13, 2015 (Petitioners Case Brief); see also Letter from FEESA, “Investigation of Sugar from Mexico – Case Brief,” August 13, 2015 (FEESA Case Brief); Letter from the GAM Group, “Investigation of Sugar from Mexico – Case Brief,” August 13, 2015 (GAM Group Case Brief); Letter from the GOM, “*Sugar from Mexico*: Case Brief of the Government of Mexico,” August 13, 2015 (GOM Case Brief); Letter from Petitioners, “Sugar from Mexico: Petitioner’s Rebuttal Brief,” August 20, 2015 (Petitioners Rebuttal Brief); Letter from FEESA and the GAM Group, “Investigation of Sugar from Mexico – Rebuttal Brief,” August 20, 2015 (FEESA and GAM Group Rebuttal Brief); Letter from the GOM, “*Sugar from Mexico*: Rebuttal Brief of the Government of Mexico,” August 20, 2015 (GOM Rebuttal Brief); Letter from Imperial, “Investigation of Sugar from Mexico: Rebuttal Brief,” August 20, 2015 (Imperial Rebuttal Brief).

¹⁹ See Department Memorandum, “Withdrawal of Requests for a Hearing in the Countervailing Duty Investigation of Sugar from Mexico,” August 4, 2015.

²⁰ See Letter from CSC Sugar LLC, “*Sugar from Mexico – CSC Sugar LLC Comments on Scope*,” May 7, 2014; see also Letter from Batory Foods Inc., “*Investigation of Sugar from Mexico: Scope Comments*,” May 7, 2014; Letter from the GOM, “Brief Submission of the Government of Mexico,” May 7, 2014; Letter from Petitioners, “Sugar from Mexico: Petitioners’ Rebuttal Scope Comments,” May 14, 2014; Letter from Glinso Foods, LLC, “Sugar from Mexico: Scope Clarification Request of Glinso Foods,” August 5, 2014.

certain changes, which were applicable to both the scope of this investigation and the scope of the draft suspension agreement.²¹ At the Department's request, several parties submitted additional comments on the proposed modifications,²² which pertained to (1) blends of sugar and other products, (2) sugar imported under the U.S. Department of Agriculture re-export program, (3) sugar originating in third countries, (4) beverage mixes, and (5) inedible molasses. Based on these comments, the Department adjusted the scope, as appropriate, to clarify which products fall within the scope and which products are specifically excluded from the scope. These revisions to the scope of the investigation were included in the *CVD Suspension Agreement*.²³ The Department hereby adopts the scope language of the *CVD Suspension Agreement* as the scope of this investigation. Accordingly, the scope language in the "Scope of the Investigation" section of this memorandum is identical to the scope language in the "Product Coverage" section of the *CVD Suspension Agreement*.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C₁₂H₂₂O₁₁; 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 CZMRCDWAGMRECNUGDNZRGSBA-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 described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this investigation.

The scope of the investigation does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;²⁴ (2) sugar products produced in

²¹ See Department Memorandum, "Antidumping and Countervailing Duty Investigations of Sugar from Mexico: Proposed Scope Clarification," October 30, 2014 (Scope Clarification Memorandum).

²² See Letter from Glinso Foods, LLC, "Sugar from Mexico: Comments of Glinso Foods on the Department's Proposed Scope Clarification, Issued on October 30, 2014," November 18, 2014; see also Letter from CSC Sugar LLC, "Sugar from Mexico – CSC Sugar LLC Comments on Draft Suspension Agreements and Scope Clarification," November 18, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding Proposed Scope Clarification," November 18, 2014; Letter from Batory Foods Inc., "Investigation of Sugar from Mexico: Scope Comments," November 18, 2014; Letter from Sweetener Users Association, "Sugar from Mexico – Comments of the Sweetener Users Association on Proposed Scope Clarifications," November 18, 2014.

²³ See *CVD Suspension Agreement*, 79 FR at 78046.

²⁴ This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.*, cereals). Specialty sugars excluded from the scope of this investigation are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

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, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, 1702.90.4000 and 1703.10.3000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

V. 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 the subject merchandise.²⁵ The Department found 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.²⁶ The Department notified the respondents of the 18-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding provided information demonstrating that a different allocation period was appropriate.

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 the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, the benefits are expensed 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. 19 CFR 351.525(b)(6)(ii) through (v), however, 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: (ii) producers of the subject merchandise, (iii) holding companies or parent companies, (iv) producers of an input that is primarily dedicated to

²⁵ See 19 CFR 351.524(b).

²⁶ See PDM at 6.

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 another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two or more corporations.²⁷ In certain circumstances, a large minority voting interest (*e.g.*, 40 percent) may also result in cross-ownership.²⁸ The 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 ways it could use its own subsidy benefits.²⁹

FEESA

In the *Preliminary Determination*, the Department determined that FEESA, which is comprised of the expropriated assets of nine sugar mills, is not cross-owned with any producers, holding or parent companies, or input suppliers.³⁰ We received no comments regarding this determination, and, therefore, no other companies are included in our subsidy analysis for FEESA. In its questionnaire responses, FEESA provided information on behalf of itself, Promotora Azucarera, S.A. de C.V. (PROASA), and Fideicomiso Administrado y Financiero (FAF).³¹ During verification, FEESA explained that certain subsidy benefits are recorded in PROASA's accounts prior to being distributed to FEESA or the expropriated mills.³² As such, any reported benefits received by PROASA and subsequently distributed to FEESA or the mills are attributed to FEESA for purposes of this final determination.

Tala/GAM Group

In the *Preliminary Determination*, the Department determined that Tala is cross-owned with eight affiliated companies: El Dorado, Lazaro Cardenas, GAM, Organizacion Cultiba, S.A.B. de C.V., ITLC Agricola Central S.A. de C.V. (ITLC), Tala Electric S.A. de C.V., Empresas y Servicios Organizados S.A. de C.V., and Provedora de Alimentos Mexico, S.A. de C.V. (collectively, the GAM Group).³³ We received no comments regarding this determination and, therefore, continue to treat these companies as cross-owned with Tala, as described in the *Preliminary Determination*, for this final determination. In its questionnaire responses, the GAM Group also provided information on behalf of Ingenio Rosales S.A. de C.V. (Rosales), a sugar mill that ceased operations in 1997.³⁴ According to information provided by the GAM Group, although Rosales currently exists only as a "shell company," it was an operating sugar mill during the AUL period and, similar to the other GAM Group mills, is 99.9 percent owned by

²⁷ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

²⁸ *Id.*

²⁹ See *Fabrique de Fer de Charleroi, S.A. v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³⁰ See PDM at 8.

³¹ *Id.*

³² See, *e.g.*, FEESA Verification Report at 18

³³ See PDM at 7-8.

³⁴ See GAM Group Verification Report at 3.

GAM.³⁵ As such, in accordance with 19 CFR 351.525(b)(6)(ii), we determine that Rosales is also a cross-owned affiliate of Tala and have included Rosales in our subsidy analysis for the GAM Group.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies (*e.g.*, total sales or export sales). In the "Analysis of Programs" section of this memorandum, we describe the denominator used to calculate the countervailable subsidy rates for each subsidy program.

In its initial questionnaire response, FEESA reported sales figures for 2001 through 2013,³⁶ which were used to calculate FEESA's subsidy rates in the *Preliminary Determination*. Revised sales figures, adjusted at the request of the Department to provide free-on-board (FOB) sales values, were provided in FEESA's supplemental questionnaire response and relied upon in the Post-Preliminary Analysis.³⁷ In accordance with 19 CFR 351.525(b), we continue to attribute any subsidies received by FEESA to the combined FOB sales of the FEESA mills. The record does not include FEESA's sales values for years prior to 2001. Section 776(a)(1) of the Act allows for the application of facts available if, among other reasons, necessary information is not available on the record. Therefore, for purposes of applying the 0.5 percent test to grants received from 1997 through 2000, we have relied on, as facts available, FEESA's reported sales values for 2001, the first year for which sales values are available.

In their case brief, Petitioners argue that FEESA's sales denominator should be adjusted to exclude certain sales and other income and to more accurately reflect FOB shipping costs.³⁸ We considered Petitioners' arguments and, for the reasons discussed at Issue 15, have made no adjustments to FEESA's reported sales values.

In its initial questionnaire response, the GAM Group reported the value of its total sales and certain domestic and export sales during the POI,³⁹ which were used to calculate the GAM Group's subsidy rates in the *Preliminary Determination* and Post-Preliminary Analysis. During verification, however, the GAM Group provided revised POI sales figures, which the Department reconciled with the company's financial records.⁴⁰ Therefore, for purposes of this final determination, we are relying on the revised POI sales figures to calculate countervailable subsidy rates for the GAM Group. Furthermore, the record does not include sales values for the GAM Group for all years of the AUL period. As such, for purposes of applying the 0.5 percent

³⁵ *Id.*

³⁶ See Letter from FEESA, "Sugar from Mexico – CVD Questionnaire Response," July 30, 2014 (FEESA Initial Questionnaire Response), at Exhibit 39.

³⁷ See Letter from FEESA, "Sugar from Mexico – CVD Supplemental Questionnaire Response," September 29, 2014 (FEESA Supplemental Questionnaire Response), at Exhibit S-3; see also Department Memorandum, "Countervailing Duty Investigation of Sugar from Mexico: Post-Preliminary Calculations for Fondo de Empresas Expropiadas de Sector Azucarero," June 18, 2015.

³⁸ See Petitioners Case Brief at 36-41.

³⁹ See Letter from the GAM Group, "Sugar from Mexico – CVD Questionnaire Response," July 30, 2014 (GAM Group Initial Questionnaire Response), at Exhibit 5.

⁴⁰ See Letter from the GAM Group, "Sugar from Mexico – Verification Exhibits," December 22, 2014, at Exhibit 20; see also GAM Group Verification Report at 9.

test to grants received from 1998 through 2002 and from 2006 through 2007, we have relied on, as facts available, the GAM Group's reported sales values for 1997 and 2008, respectively, the years closest in time to the years for which sales values are unavailable.

D. Discount Rates and Benchmark

For purposes of calculating the discount rate for non-recurring subsidies, in accordance with 19 CFR 351.524(d)(3)(i)(C), as well as the benchmark interest rate for one countervailable long-term loan, the Department preliminarily relied upon the "Interest Rates, Lending Rate" for the year in which each such subsidy was received, as published by the International Monetary Fund (IMF).⁴¹ As explained in the *Preliminary Determination*, neither FEESA nor the GAM Group had comparable long-term commercial loans that could serve as discount rates or interest rate benchmarks. Petitioners, FEESA, the GAM Group, and the GOM submitted comments on our use of the IMF's "Interest Rates, Lending Rates."⁴² As discussed at Issue 3, we considered each party's arguments and continue to rely on the "Interest Rates, Lending Rate" to calculate appropriate discount rates and an interest rate benchmark for this final determination.

In the *Preliminary Determination*, the Department found that FEESA and the GAM Group were uncreditworthy from 1998 through 2001.⁴³ In the Post-Preliminary Analysis, the Department found that FEESA and the GAM Group were also uncreditworthy from 2002 through 2013 and from 2002 through 2005, respectively.⁴⁴ In accordance with these findings and 19 CFR 351.505(a)(4), we added a risk premium to the discount rates calculated for the relevant years of the AUL period.⁴⁵ In their case and rebuttal briefs, Petitioners, FEESA, and the GAM Group commented on our uncreditworthy analyses.⁴⁶ Petitioners also allege that the GAM Group was uncreditworthy during 2006.⁴⁷ We reviewed these comments and have provided a response at Issue 2. For purposes of this final determination, the Department continues to find FEESA and the GAM Group uncreditworthy from 1998 through 2013 and from 1998 through 2005, respectively.

⁴¹ See PDM at 9; see also Post-Preliminary Analysis at 2.

⁴² See Petitioners Case Brief at 12-14; see also FEESA and GAM Group Rebuttal Brief at 7-9; GOM Rebuttal Brief at 6-8.

⁴³ See PDM at 9-11.

⁴⁴ See Post-Preliminary Analysis at 2-4.

⁴⁵ See PDM at 9.

⁴⁶ See FEESA Case Brief at 13-14; see also GAM Group Case Brief at 7-8; Petitioners Rebuttal Brief at 18-23; FEESA and GAM Group Rebuttal Brief at 10-11.

⁴⁷ See Petitioners Case Brief at 21-24.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Grant Programs

a. Export Subsidy

Petitioners alleged 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.⁴⁸ According to the GOM, the Ministry of Trade and Industrial Development provided benefits under this program through FINA, a bank established by the GOM to provide banking and credit services to the sugar industry.⁴⁹ Grants were distributed with the purpose of supporting exports of sugar to the world market that had been made between January and September of 1997.⁵⁰ FEESA stated that it did not exist until 2001 and, as such, did not participate in this program. In the *Preliminary Determination*, however, the Department found that both FEESA and the GAM Group received countervailable benefits under this program.⁵¹

The Department verified the record information regarding each respondent's participation in this program,⁵² and we continue to find this program to be countervailable. Petitioners, the GAM Group, and the GOM submitted comments regarding the amount of benefits received by the GAM Group.⁵³ We calculated preliminary subsidy rates for this program based on usage information provided by the GOM and, as discussed at Issue 19, continue to do so for purposes of this final determination.⁵⁴

Grants received under this program constitute a financial contribution because they represent 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 grant is contingent upon export performance, the Department determines that it is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

In its case brief, the GOM argues that this program provides a recurring benefit.⁵⁵ As further explained at Issue 4, the Department finds that its preliminary treatment of this grant as a non-recurring subsidy, within the meaning of 19 CFR 351.524(c)(1), was proper and continues to calculate an appropriate subsidy rate based on that analysis. We first applied the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2), for the year in which the grants were approved for both respondents. Because 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

⁴⁸ See PDM at 11.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 11-12.

⁵² See GAM Group Verification Report at 24; see also GOM Verification Report at 15.

⁵³ See Petitioners Case Brief at 27; see also GAM Group Rebuttal Brief at 13-14; GOM Rebuttal Brief at 13-14.

⁵⁴ See PDM at 12.

⁵⁵ See GOM Case Brief at 22-27.

described in the “Subsidies Valuation” section of this memorandum to calculate the amount of the benefit allocable to the POI. Because this program is export contingent, we then divided the allocated amount by each company’s export sales during the POI. As such, we determine that FEESA and the GAM Group received countervailable subsidy rates of 0.15 percent and 0.17 percent *ad valorem*, respectively, under this program.

b. Inventory Support Subsidy

Petitioners alleged that, in 1998 and 1999, the GOM implemented separate programs to subsidize domestic sugar producers for storage of inventories with grants, as long as the producers stored surplus sugar in bonded warehouses during the relevant period.⁵⁶ As reported by the GOM, the amount of the grant received by each producer participating in either program was calculated based on the volume of sugar in inventory.⁵⁷

In the *Preliminary Determination*, the Department found that both respondents received countervailable benefits under the 1998 Inventory Support Subsidy program.⁵⁸ In the Post-Preliminary Analysis, we found that both respondents also received countervailable benefits under the 1999 Inventory Support Subsidy program.⁵⁹ We continue to find both programs to be countervailable. Because the GOM was not able to provide exact disbursement amounts for the 1999 Inventory Support Subsidy program, the Department calculated a preliminary subsidy rate based on constructed benefit amounts that were approximated based on each respondent’s program application.⁶⁰ At verification, however, the GOM provided documentation of the actual grant amounts received by all participants in the 1999 program, indicating that FEESA did not receive any benefits.⁶¹ Petitioners and the GOM submitted comments regarding whether or not the Department should rely on the revised numbers accepted from the GOM at verification.⁶² As discussed at Issue 8, we find that the most recent documentation provided by the GOM is the best information available on the record and, accordingly, that only the GAM Group received countervailable benefits under the 1999 Inventory Support Subsidy program.

Grants received under these programs constitute a financial contribution because they represent 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 the implementing laws limit receipt of each subsidy to the sugar industry, Department finds that the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

In its case brief, the GOM argues that these programs provide recurring benefits.⁶³ As further explained at Issue 4, the Department finds that its preliminary treatment of these grants as non-recurring subsidies, within the meaning of 19 CFR 351.524(c)(1), was proper and continues to

⁵⁶ See PDM at 12 and 20; see also Post-Preliminary Analysis at 4.

⁵⁷ *Id.*

⁵⁸ See PDM at 12.

⁵⁹ See Post-Preliminary Analysis at 4.

⁶⁰ *Id.*

⁶¹ See Letter from the GOM, “*Sugar from Mexico: Verification Exhibits of the Government of Mexico (‘GOM’)*,” June 30, 2015 (GOM Verification Exhibits 1-12), at Exhibit 1.

⁶² See Petitioners Case Brief at 19-21; see also GOM Rebuttal Brief at 10-12.

⁶³ See GOM Case Brief at 22-25, 27-28.

calculate appropriate subsidy rates based on that analysis. We first applied the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2), for the years in which the grants were approved. For grants that were less than 0.5 percent of the relevant sales figure, we expensed the benefit to the applicable year, consistent with 19 CFR 351.524(b)(2). For grants that were greater than 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described in the “Subsidies Valuation” section of this memorandum to calculate the amount of the benefits allocable to the POI. We then divided the allocated amounts by each company’s total sales during the POI. In the Post-Preliminary Analysis, we used the company’s export sales to calculate a subsidy rate for the 1999 Inventory Support Subsidy.⁶⁴ During verification, however, the GOM clarified that participation in both programs was not contingent upon exportation of sugar.⁶⁵ As such, we determine that FEESA received a countervailable subsidy rate of 0.02 percent *ad valorem* under the 1998 Inventory Support Subsidy program. For the GAM Group, we calculated a rate of 0.00 percent *ad valorem* under both the 1998 Inventory Support Subsidy program and the 1999 Inventory Support Subsidy program. Therefore, the GAM Group did not benefit from either of these programs during the POI.

c. “Special Fund” Grant

Petitioners alleged that, when the GOM expropriated sugar mills in 2001, it established a “Special Fund” as a mechanism to pay off the expropriated mills’ short-term liabilities and to ensure coverage of their on-going operating expenses.⁶⁶ Both FEESA and the GAM Group reported receiving grants under this program in 2001 and 2002.⁶⁷ The Department preliminarily determined that the 2001 grants were countervailable as “Special Fund” grants.⁶⁸ The grants received in 2002, however, were preliminarily found to be distributed as part of the “Annual Budget Allocations,” described below.⁶⁹ In its case brief, the GAM Group argues that the benefits it received from the “Special Fund” grants were subsequently repaid to the GOM and, therefore, are not countervailable.⁷⁰ As discussed at Issue 18, we determine that the record does not support the GAM Group’s argument and continue to find that both FEESA and the GAM Group received countervailable benefits from the “Special Fund” grants in 2001. The Department further determines that its preliminary treatment of the grants received in 2002 was proper.

Grants received under this program constitute a financial contribution because they represent 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 determined that the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

⁶⁴ See Post-Preliminary Analysis at 4.

⁶⁵ See GOM Verification Report at 15.

⁶⁶ See PDM at 13.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See GAM Group Case Brief at 8.

In their case briefs, the GOM, FEESA, and the GAM Group argue that this program provides a recurring benefit.⁷¹ As further explained at Issue 4, the Department finds that its preliminary treatment of this grant as a non-recurring subsidy, within the meaning of 19 CFR 351.524(c)(1), was proper and continues to calculate an appropriate subsidy rate based on that analysis. We first applied the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2), for the year in which the grants were approved. For grants that were greater than 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described in the “Subsidies Valuation” section of this memorandum to calculate the amount of the benefits allocable to the POI. We then divided the allocated amounts by each company’s total sales during the POI. We determine that FEESA and the GAM Group received countervailable subsidy rates of 1.45 percent and 0.82 percent *ad valorem*, respectively, under this program.

d. Annual Budget Allocations

Based on Petitioners’ allegations that the GOM made grants to FEESA to cover the expropriated mills’ operating deficits and administrative expenditures, the Department investigated 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 Mills.”⁷² FEESA reported receiving funding under each of these programs.⁷³ In the *Preliminary Determination*, the Department found that FEESA obtained these alleged grants, as well as additional grants distributed to cover operating losses in other years during the AUL period, through the GOM’s annual budget allocation process.⁷⁴ In particular, we preliminarily determined that FEESA received countervailable budget allocations in 2002,⁷⁵ 2008, 2009, 2011, 2012, and 2013.⁷⁶ Because the GAM Group’s mills were expropriated and part of FEESA during 2002,⁷⁷ we also determined that the GAM Group received countervailable budget allocations in that year.⁷⁸ During verification, FEESA explained that in the above-listed years, FEESA received separate budget allocations, in addition to FEESA’s standard authorized budget, which were distributed directly to the mills.⁷⁹ FEESA was required to specifically request these funds, which were used primarily to cover operational deficits, via the Secretaria de Agricultura, Ganaderia, Desarrollo Rural, Pesca y Alimentacion (Secretariat of Agriculture, Livestock, Rural Development, Fisheries, and Food) (SAGARPA).⁸⁰ As indicated in FEESA’s 2013 financial statement, FEESA did not receive such allocations in any other years during the POI.⁸¹

⁷¹ See GOM Case Brief at 22-25, 29-33; see also FEESA Case Brief at 14-15; GAM Group Case Brief at 13-14.

⁷² See PDM at 14-15.

⁷³ *Id.* at 15.

⁷⁴ *Id.*

⁷⁵ As noted above, the grants received by FEESA and the GAM Group in 2002 were originally reported as part of the “Special Fund” Grants. The Department, however, determines that these benefits were distributed as part of this program. See PDM at 13, 15.

⁷⁶ See PDM at 15.

⁷⁷ See, e.g., GAM Group Initial Questionnaire Response at 7, 23.

⁷⁸ *Id.*

⁷⁹ See FEESA Verification Report at 17-18.

⁸⁰ *Id.* at 17.

⁸¹ See Letter from FEESA, “Countervailing Duty Investigation of Sugar from Mexico – *Verification Exhibits*,” December 22, 2014 (FEESA Verification Exhibits 1-28), at Exhibit 6.

The Department continues to find these annual budget allocations to be countervailable. The grants received constitute a financial contribution because they represent 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). The subsidies are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because the GOM authorized funds specifically for FEESA in its annual budget allocations and expressly limited distribution of the funding to the expropriated mills that comprise FEESA.

In their case briefs, the GOM, FEESA, and the GAM Group argue that these grants are a recurring benefit.⁸² As further explained at Issue 4, the Department finds that its preliminary treatment of these grants as non-recurring subsidies, within the meaning of 19 CFR 351.524(c)(1), was proper and continues to calculate an appropriate subsidy rate based on that analysis. We first applied the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2), for the years in which the grants were approved. For grants that were less than 0.5 percent of the relevant sales figure, we expensed the benefit to the applicable year, consistent with 19 CFR 351.524(b)(2).⁸³ For grants that were greater than 0.5 percent, we allocated the amount over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rates described in the “Subsidies Valuation” section of this memorandum to calculate the amount of the benefits allocable to the POI. For purposes of this final determination, we combined each respondent’s allocated benefit from each grant to determine the total benefit received by each respondent from budget allocations during the POI. We then divided each respondent’s total allocated amount by its total sales during the POI. We determine that FEESA and the GAM Group received countervailable subsidy rates of 3.32 percent and 0.41 percent *ad valorem*, respectively, under this program.

- e. Programa de Apoyo al Sector Agroindustrial de la de Azucar (Support Program for the Sugarcane Agroindustrial Sector) (PROINCAÑA)

Petitioners alleged that, in 2008, the GOM’s Secretaria de Economia (Secretariat of the Economy) provided all sugar mills with grants to cover the purchase price of sugarcane for the 2007/2008 harvest year through the PROINCAÑA program.⁸⁴ FEESA and the GAM Group both reported receiving grants under this program.⁸⁵ According to the GOM, beneficiaries of the program received a one-time payout proportionate to their contribution to the total volume of sugar produced in Mexico during the 2007/2008 harvest year.⁸⁶

The Department preliminarily found this program to be countervailable.⁸⁷ We verified the record information regarding each respondent’s participation in this program and continue to find this program to be countervailable.⁸⁸ 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

⁸² See GOM Case Brief at 22-25, 29-33, 35-36; see also FEESA Case Brief at 14-15; GAM Group Case Brief at 13-14.

⁸³ The budget allocation received by FEESA in 2012 was expensed.

⁸⁴ See PDM at 14.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See FEESA Verification Report at 18-19; see also GAM Group Verification Report at 25.

with 19 CFR 351.504(a). Because the grant is legally limited to the sugar industry, the Department determines that it is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

In their case briefs, the GOM, FEESA, and the GAM Group argue that this program provides a recurring benefit.⁸⁹ As further explained at Issue 4, the Department finds that its preliminary treatment of this grant as a non-recurring subsidy, within the meaning of 19 CFR 351.524(c)(1), was proper and continues to calculate an appropriate subsidy rate based on that analysis. We first applied the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2), for the year in which the grants were approved for both respondents. Because 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 in the “Subsidies Valuation” section of this memorandum to calculate the amount of the benefit allocable to the POI. We then divided the allocated amount by each company’s total sales during the POI. As such, we determine that FEESA and the GAM Group received countervailable subsidy rates of 0.26 percent and 0.15 percent *ad valorem*, respectively, under this program.

f. Apoyos al Paquete Tecnológico a los Productores de Cana
(Technological Support Package to Sugarcane Producers)

The GAM Group reported that ITLC received a benefit under this program during the POI.⁹⁰ According to the GAM Group, the program provided a per-hectare payment to all sugarcane growers who harvested cane during the 2012/2013 harvest season. In accordance with section 775(1) of the Act and 19 CFR 351.311, the Department preliminarily found this program to be countervailable. We verified the record information regarding the GAM Group’s participation in this program and continue to find this program to be countervailable.⁹¹ Grants received under this program constitute a financial contribution because they represent 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 sugarcane growers, the Department determined that it is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

We continue to determine that this grant program provides 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 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). In accordance with 19 CFR 351.525(b)(6)(iv), we then divided this amount by the GAM Group’s total sales during the POI. On this basis, we determine that the GAM Group received a countervailable subsidy rate of 0.05 percent *ad valorem* under this program. No party commented on this program.

⁸⁹ See GOM Case Brief at 22-25, 34-35; see also FEESA Case Brief at 15-16; GAM Group Case Brief at 14.

⁹⁰ See PDM at 16.

⁹¹ See GAM Group Verification Report at 25.

2. Government Forgiveness of Debts

a. Forgiveness of FINA Debt

Petitioners alleged that FINA, a GOM lending institution specific to the sugar industry, extended billions of pesos worth of credit to sugar mills between 1953 and 2000, when it was liquidated.⁹² Petitioners further alleged that, upon FINA's liquidation, the GOM assumed FINA's creditor rights and cancelled the outstanding FINA debt of the expropriated mills, including the mills currently associated with FEESA and the GAM Group.⁹³ Based on the information available at the time of the *Preliminary Determination*, the Department preliminarily found that FEESA and the GAM Group benefited from *de facto* forgiveness of their FINA debts in 2006 and 2001, respectively.⁹⁴ Our determination was based on evidence supporting the conclusion that, for all intents and purposes, the FINA debt was no longer viable in the minds of the borrowers or the lender and that there was no reasonable expectation that the debts would be repaid.⁹⁵ Since the *Preliminary Determination*, additional information pertaining to the respondents' FINA debts has been provided.⁹⁶ Furthermore, in their case briefs, FEESA, the GAM Group, and the GOM refute our preliminary finding that the respondents benefited from countervailable debt forgiveness.⁹⁷ As discussed below, however, the Department continues to find that both FEESA and the GAM Group benefited from countervailable forgiveness of their FINA debts.

Moreover, Petitioners have repeatedly argued that both FEESA and the GAM Group benefited from additional subsidization arising from the restructuring of their FINA debt in 1998.⁹⁸ As discussed at Issue 7, however, the Department continues to find that such restructuring provided no additional countervailable benefit to either respondent.

Forgiveness of FEESA's FINA Debt

In its supplemental questionnaire response and case brief, FEESA explained that its FINA debt is currently being pursued by the GOM in bankruptcy proceedings.⁹⁹ As discussed at Issue 10, additional business proprietary evidence suggests that there is no reasonable expectation that FEESA's FINA debt will be repaid. Therefore, the Department continues to find that FEESA benefited from *de facto* debt forgiveness.

Accordingly, we treated the outstanding balance of FEESA's FINA debt, as recorded in the relevant bankruptcy proceedings, as debt that was forgiven. 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 facto*

⁹² See PDM at 16.

⁹³ *Id.*

⁹⁴ *Id.* at 17.

⁹⁵ *Id.*

⁹⁶ See, e.g., GOM Verification Report at 2-6.

⁹⁷ See FEESA Case Brief at 3-8; see also GAM Group Case Brief at 2-5; GOM Case Brief at 2-9, 12-14.

⁹⁸ See Petitioners Case Brief at 14-18.

⁹⁹ See FEESA Supplemental Questionnaire Response at 5; GOM Verification Report at 2-6.

specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to FEESA.

Under 19 CFR 351.508(c), the benefit from debt forgiveness is treated as a non-recurring subsidy. Because the amount forgiven was greater than 0.5 percent of FEESA's 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 FEESA's total sales during the POI. On this basis, we determine that FEESA received a countervailable subsidy rate of 31.33 percent *ad valorem* under this program.

Forgiveness of the GAM Group's FINA Debt

The Department continues to find that the GAM Group benefited from countervailable forgiveness of its FINA debt. The details of this debt forgiveness, along with the Department's discussion of comments received under Issue 16, are explained in a business proprietary memorandum.¹⁰⁰

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 facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to the GAM Group (*i.e.*, the terms of the forgiveness were specific to the GAM Group).

Under 19 CFR 351.508(c), the benefits from debt forgiveness are treated as non-recurring subsidies. Because the amounts forgiven were greater than 0.5 percent of the GAM Group's sales in the relevant years, we allocated the benefit across the AUL, consistent with 19 CFR 351.524(b)(1). For purposes of this final determination, we combined the allocated benefit from each instance of forgiveness to determine the total benefit received by the GAM Group during the POI. We then divided the total allocated amount by the GAM Group's total sales during the POI. On this basis, we determine that the GAM Group received a countervailable subsidy rate of 1.45 percent *ad valorem* under this program.

b. Forgiveness of Comision Nacional del Agua (CONAGUA) Water Consumption Debt

Petitioners alleged that, at the time of their expropriation, the FEESA mills were "heavily indebted" to CONAGUA, which is a GOM agency.¹⁰¹ Petitioners further alleged that the GOM abstained from collecting such debts, thereby effectuating *de facto* debt forgiveness.¹⁰² In the Post-Preliminary Analysis, the Department identified two separate forms of CONAGUA debt owed by the FEESA mills during the AUL: (1) overdue payments for water consumption and (2)

¹⁰⁰ See Department Memorandum, "Countervailing Duty Investigation of Sugar from Mexico: Final Calculations for Ingenio Tala S.A. de C.V. and certain affiliates cross-owned by Grupo Azucarero Mexico S.A. de C.V.," September 16, 2015 (GAM Group Final Calculations Memorandum), at 5-12.

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

overdue payments for wastewater discharge.¹⁰³ Based on available information, we preliminarily found that FEESA benefited from *de facto* forgiveness of its CONAGUA water consumption debt.¹⁰⁴ Our determination was based on indications that, for all intents and purposes, the water consumption debt was no longer viable in the minds of the borrower or the “lender” and that there was no reasonable expectation that the debt would be repaid.¹⁰⁵ Forgiveness of overdue payments for wastewater discharge, under the Programa Federal de Saneamiento de Aguas Residuales (Federal Program for the Treatment of Wastewater) (PROSANEAR), was treated as a separate program and was preliminarily determined to be not countervailable.¹⁰⁶ In their case brief, Petitioners argue that the Department erred in its finding that the PROSANEAR program is not countervailable.¹⁰⁷ As discussed at Issue 11, however, the Department continues to find that benefits received under the PROSANEAR program are not specific and, therefore, do not constitute a countervailable subsidy.

Since the Post-Preliminary Analysis, additional information demonstrating that FEESA’s CONAGUA water consumption debt is currently being pursued by the GOM in bankruptcy proceedings has been provided.¹⁰⁸ In their case briefs, FEESA and the GOM refuted our preliminary finding that FEESA benefited from countervailable debt forgiveness.¹⁰⁹ As discussed at Issue 10, however, business proprietary evidence on the record suggests that there is no reasonable expectation that FEESA’s CONAGUA water consumption debt will be repaid. Therefore, the Department continues to find that FEESA benefited from *de facto* forgiveness of its CONAGUA water consumption debt.

Accordingly, the forgiveness of FEESA’s CONAGUA water consumption debt constitutes a countervailable subsidy. 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 facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to FEESA.

Under 19 CFR 351.508(c), the benefit from debt forgiveness is treated as a non-recurring subsidy. For purposes of this final determination, we relied on clarified benefit amounts provided by the GOM during verification. These clarified amounts exclude CONAGUA debts forgiven under the not-countervailable PROSANEAR program. Because the amount forgiven was greater than 0.5 percent of FEESA’s 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 FEESA’s total sales during the POI. On this basis, we determine that FEESA received a countervailable subsidy rate of 3.56 percent *ad valorem* under this program.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 6-7.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See Petitioners Case Brief at 32-34.

¹⁰⁸ See Letter from FEESA, “Sugar from Mexico – *New Subsidy Allegation Questionnaire Response*,” October 14, 2014 (FEESA NSA Questionnaire Response), at 1; see also Letter from the GOM, “*Sugar from Mexico: Response to New Subsidy Allegation Questionnaire*,” October 15, 2014 (GOM NSA Questionnaire Response), at 1; FEESA Verification Report at 20; GOM Verification Report at 6-7.

¹⁰⁹ See FEESA Case Brief at 8-9; see also GOM Case Brief at 9-10.

c. Forgiveness of Social Security Payment Debts

Petitioners alleged that the FEESA mills accrued “considerable liabilities” to Instituto Mexicano del Seguro Social (Mexican Social Security Institute) (IMSS), a GOM agency, during the AUL.¹¹⁰ Petitioners further alleged that the GOM abstained from collecting such debts, thereby effectuating *de facto* debt forgiveness.¹¹¹ In the Post-Preliminary Analysis, the Department identified two separate forms of IMSS debt held by FEESA during the AUL: (1) debt subject to judicial proceedings and (2) debt subject to administrative review.¹¹² Based on available information, we preliminarily found that FEESA benefited from *de facto* forgiveness of its IMSS debt that is subject to judicial proceedings.¹¹³ Our determination was based on indications that, for all intents and purposes, the IMSS debt was no longer viable in the minds of the borrower or the “lender” and that there was no reasonable expectation that the debts would be repaid.¹¹⁴ The debt subject to administrative review was analyzed separately and preliminarily determined to provide a countervailable benefit in the form of an interest-free loan.¹¹⁵

Since the Post-Preliminary Analysis, additional information pertaining to FEESA’s IMSS debt has been provided.¹¹⁶ In addition to certain business proprietary information, during verification, the GOM explained that FEESA’s IMSS debt is currently being pursued by the GOM in bankruptcy proceedings.¹¹⁷ In their case briefs, FEESA and the GOM refuted our preliminary finding that FEESA benefited from countervailable debt forgiveness and argued that we erred in finding that the debt subject to administrative review is countervailable.¹¹⁸ Nevertheless, as discussed below, the Department continues to find that FEESA received countervailable benefits in regards to both its IMSS debt subject to judicial proceedings and its IMSS debt subject to administrative review.

IMSS Debt Subject to Judicial Proceedings

As explained in the Post-Preliminary Analysis, FEESA’s outstanding IMSS debt that originated prior to the FEESA mills’ expropriation is currently being pursued by the GOM in bankruptcy proceedings.¹¹⁹ Proprietary information on the record, however, indicates that FEESA benefited from *de facto* forgiveness of its pre-expropriation IMSS debts, as analyzed in detail at Issue 10.

Accordingly, the forgiveness of FEESA’s pre-expropriation social security debt constitutes a countervailable subsidy. 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

¹¹⁰ See Post-Preliminary Analysis at 7.

¹¹¹ *Id.*

¹¹² *Id.* at 8.

¹¹³ *Id.* at 8-9.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 9.

¹¹⁶ See, e.g., GOM Verification Report at 2-6, 8-9.

¹¹⁷ *Id.* at 8-9.

¹¹⁸ See FEESA Case Brief at 9; see also GOM Case Brief at 10-11.

¹¹⁹ See Post-Preliminary Analysis at 8.

government has assumed or forgiven. The subsidy is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to FEESA.

Under 19 CFR 351.508(c), the benefit from debt forgiveness is treated as a non-recurring subsidy. Because the amount forgiven was greater than 0.5 percent of FEESA's 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 FEESA's total sales during the POI. On this basis, we determine that FEESA received a countervailable subsidy rate of 3.45 percent *ad valorem* under this program.

IMSS Debt Subject to Administrative Review

In the Post-Preliminary Analysis, we preliminarily found FEESA's IMSS debt currently subject to administrative review to be countervailable as an interest-free loan, pursuant to 19 CFR 351.505(d)(1). In their case briefs, FEESA and the GOM argued that such debt should not be countervailed because the administrative review is ongoing and, after its conclusion, any necessary payment will be calculated in a manner accounting for the time-value of money. For reasons discussed at Issue 12, however, the Department continues to find that this debt is countervailable as an interest-free loan.

Provision of an interest-free loan 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 351.505(a) in the amount of interest the company would have paid on a comparable commercial loan at the time when interest would have been due. The subsidy is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to FEESA.

To calculate the benefit from this program, we used the discount rates discussed in the "Subsidy Valuation" section of this memorandum. We determine that FEESA received a countervailable subsidy rate of 0.03 percent *ad valorem* under this program.

d. Forgiveness of Additional Debts Pursuant to Settlement Agreement

As explained in the Post-Preliminary Analysis, the Department determined that loans received from certain GOM authorities (other than FINA) were ultimately forgiven, in part, while the GAM Group was in a "suspension de pagos" proceeding.¹²⁰ Therefore, the Department preliminarily determined that the GAM Group received a countervailable benefit from the partial forgiveness of the loans provided by these authorities.¹²¹

In its case brief, the GAM Group argued that it did not benefit from any debt forgiveness.¹²² In the Department's view, however, proprietary information on the record indicates that the GAM Group did, in fact, benefit from partially forgiven loans and we continue to find such loan forgiveness countervailable.

¹²⁰ *Id.* at 10.

¹²¹ *Id.*

¹²² *See* GAM Group Case Brief at 6-7.

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 facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual receipt of the benefit was limited to the GAM Group (*i.e.*, the terms of the forgiveness were specific to the GAM Group).

Under 19 CFR 351.508(c), the benefits from debt forgiveness are treated as non-recurring subsidies. Because the amounts forgiven by each government authority were greater than 0.5 percent of the GAM Group's sales in the relevant year, we allocated the combined benefit across the AUL, consistent with 19 CFR 351.524(b)(1). We then divided the allocated amount by the GAM Group's total sales during the POI. On this basis, we determine that the GAM Group received a countervailable subsidy rate of 0.42 percent *ad valorem* under this program.

e. "Catch Up" Tax Liability Forgiveness

Petitioners alleged that the GOM forgave millions of pesos worth of tax liabilities owed by FEESA and the GAM Group.¹²³ Both respondents reported participating in the GOM's "Catch Up" tax amnesty program, which resulted in the forgiveness of tax liabilities that were outstanding during 2013.¹²⁴ In the Post-Preliminary Analysis, we determined that this program constitutes a countervailable subsidy.¹²⁵

The Department verified FEESA and the GAM Group's participation in this program,¹²⁶ and we continue to find this program to be countervailable. 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 the government has assumed or forgiven. The GAM Group, and the GOM submitted comments regarding the Department's preliminary finding that this program is *de facto* specific under section 771(5A)(D)(iii)(III) of the Act.¹²⁷ As discussed at Issue 6, the Department continues to find this program *de facto* specific because FEESA and the GAM Group received disproportionately large amounts of the subsidy.

Under 19 CFR 351.508(c), the benefit from debt forgiveness is treated as a non-recurring subsidy. The Department calculated preliminary subsidy rates for this program based on benefit amounts reported by FEESA and the GAM Group.¹²⁸ At verification, however, the GOM provided information indicating that FEESA received additional benefits.¹²⁹ Petitioners and the GOM submitted comments regarding whether or not the Department should rely on the revised

¹²³ See PDM at 20.

¹²⁴ See FEESA Initial Questionnaire Response at 17; *see also* GAM Group Initial Questionnaire Response at 17, Exhibits 8A-8B; GOM Verification Report at 9; GOM Verification Exhibit 1.

¹²⁵ See Post-Preliminary Analysis at 5-6.

¹²⁶ See GOM Verification Report at 9.

¹²⁷ See FEESA Case Brief at 9; *see also* GAM Group Case Brief at 10; GOM Case Brief at 15.

¹²⁸ See Post-Preliminary Analysis at 5-6.

¹²⁹ See GOM Verification Exhibit 1.

numbers received from the GOM at verification.¹³⁰ We find that the documentation provided by the GOM is the best information available on the record and, accordingly, have relied on that data for purposes of this final determination. Because the amount of each respondent's debt that was forgiven was greater than 0.5 percent of the its sales in the relevant year, we allocated the benefit across the AUL, consistent with 19 CFR 351.524(b)(1). We then divided the amount allocated to the POI by each respondent's total sales during the POI. On this basis, we determine that FEESA and the GAM Group received countervailable subsidy rates of 0.36 percent and 0.33 percent *ad valorem*, respectively, under this program.

3. Accelerated Depreciation of Renewable Energy Investments

Petitioners alleged that the GOM's Renewable Energy Investments program allows certain qualifying taxpayers, including sugar mills, to depreciate 100 percent of a qualifying renewable energy-related investment in a single exercise.¹³¹ According to the GOM, the Income Tax Act was amended in 2004 to include this program.¹³² The GAM Group reported that it received benefits under this program during the POI, and, in the *Preliminary Determination*, we determined that this program constitutes a countervailable subsidy.¹³³

The Department verified the record information regarding the GAM Group's participation in this program,¹³⁴ and we continue to find this program to be countervailable. 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 the reduced income taxes. The GAM Group, the GOM, and Petitioners submitted comments regarding the Department's preliminary finding that this program is *de jure* specific under section 771(5A)(D)(i) of the Act.¹³⁵ As discussed at Issue 17, the Department continues to find the program *de jure* specific because, by law, only a highly limited list of qualified renewable energy generation-related investments qualify for the accelerated depreciation tax deduction.

In their case brief, Petitioners argue that this program provides a recurring benefit.¹³⁶ As further explained at Issue 17, the Department agrees with Petitioners and finds that its preliminary treatment of this program as a non-recurring subsidy, within the meaning of 19 CFR 351.524(c)(1), was improper. As such, we calculated the appropriate subsidy rate by dividing the amount of the benefit received during the POI by the GAM Group's total sales during the POI. We determine that the GAM Group received a countervailable subsidy rate of 1.98 percent *ad valorem* under this program.

¹³⁰ See Petitioners Case Brief at 19-21; *see also* GOM Rebuttal Brief at 10-12.

¹³¹ See PDM at 19.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See GAM Group Verification Report at 20-21; *see also* GOM Verification Report at 12.

¹³⁵ See Petitioners Case Brief at 27; *see also* GAM Group Rebuttal Brief at 13-14; GOM Rebuttal Brief at 13-14.

¹³⁶ See GOM Case Brief at 22-27.

B. Programs Determined to be Not Countervailable

1. Sugarcane for LTAR

Petitioners alleged that FEESA and the GAM Group received a countervailable subsidy in the form of sugarcane purchases for LTAR.¹³⁷ Specifically, Petitioners argued that a mandatory reference price scheme, which is imposed by article 58 of the Mexican Law for Sustainable Development of Sugarcane (the LDSCA) and calculated based on the weighted average sale price of Mexican refined sugar in three markets (Mexico, North American Free Trade Agreement countries, and third-countries), resulted in Mexican sugar mills purchasing sugarcane for LTAR, by virtue of the GOM entrusting and directing private sugarcane growers to provide sugarcane to the mills at less than market value, during the POI.¹³⁸ Petitioners further argued that the alleged reference price scheme is an export subsidy.¹³⁹

In the Post-Preliminary Analysis, the Department found that the GOM did not entrust or direct sugarcane growers to provide a financial contribution to sugar mills, in the form of sugarcane for LTAR, within the meaning of section 771(5)(B)(iii) of the Act.¹⁴⁰ As such, we preliminarily determined that this alleged program was not countervailable.¹⁴¹ In their case brief, Petitioners contend that the Department erred in its preliminary analysis and that the evidence on the record indicates that there is GOM pressure, influence, guidance, and regulation of the processes that set the sugarcane reference price such that the GOM is entrusting and directing the provision of sugarcane to sugar mills for LTAR.¹⁴² FEESA, the GAM Group, and the GOM rebut Petitioners' arguments.¹⁴³ The Department analyzed these comments and, as discussed at Issue 5, determines that the evidence on the record, as a whole, supports our preliminary analysis regarding the alleged entrustment and direction. Accordingly, we continue to find this program to be not countervailable.

2. Forgiveness of Wastewater Discharge Debt

The Post-Preliminary Analysis identified two separate categories of debt owed by FEESA to CONAGUA, which were allegedly forgiven during the AUL: (1) overdue payments for water consumption and (2) overdue payments for wastewater discharge.¹⁴⁴ The forgiveness of FEESA's CONAGUA water consumption debt was found to confer a countervailable subsidy and is discussed as a separate program above. The forgiveness of overdue payments for wastewater discharge under the PROSANEAR program, however, was preliminary found to be not specific and, as such, not countervailable. In their case brief, Petitioners contend that the Department erred in its preliminary analysis and that evidence on the record indicates that this program is *de facto* specific to the sugar industry and, in particular, FEESA.¹⁴⁵ FEESA and the

¹³⁷ See Post-Preliminary Analysis at 10.

¹³⁸ *Id.* at 10-11.

¹³⁹ *Id.* at 10.

¹⁴⁰ *Id.* at 13-14.

¹⁴¹ *Id.* at 14.

¹⁴² See Petitioners Case Brief at 4-12.

¹⁴³ See FEESA and GAM Group Rebuttal Brief at 2-6; see also GOM Rebuttal Brief at 2-6.

¹⁴⁴ See Post-Preliminary Analysis at 7.

¹⁴⁵ See Petitioners Case Brief at 32-33.

GOM rebut Petitioners' arguments.¹⁴⁶ The Department analyzed these comments and, as discussed at Issue 11, continues to find this program not specific and, therefore, not countervailable.

3. Import Duty Exemption for Renewable Energy Investments

In the *Preliminary Determination*, we found that this program did not confer a benefit to either respondent during the POI.¹⁴⁷ During verification, the GOM clarified that the relevant import duty exemptions are, in fact, not exemptions, but standard zero tariff rates for all environmentally-friendly equipment imported under certain tariff codes and, thus, do not provide a financial contribution.¹⁴⁸ Furthermore, these rates are applicable to all such imported equipment, regardless of importer or country of origin.¹⁴⁹ Therefore, for purposes of this final determination, we determine that the import duty exemption for renewable energy investments is not a countervailable program.

C. Programs Determined to be Not Used or to Not Confer a Countervailable Benefit During the POI

The Department verified that none of the company respondents received benefits under the following programs during the POI. In their case brief, Petitioners argue that FEESA benefited from preferential financing that was not countervailed in the Post-Preliminary Analysis. As discussed at Issue 13, however, the Department continues to find that such financing provided no countervailable benefit to FEESA.

1. Preferential Lending to FEESA
2. PILEX Import Duty Exemptions
3. IMMEX Import Duty Exemptions
4. PROINCAÑA Supplementary Grant from the GOM
5. PROINCAÑA Supplementary Grant from Jalisco Government
6. PROINCAÑA Supplementary Grant from Nayarit Government
7. PROINCAÑA Supplementary Grant from San Luis Potosi Government
8. PROINCAÑA Supplementary Grant from Veracruz Government
9. Green Fund Grant
10. Emergent Technologies Fund Grant
11. Rural Electrification Fund Grant
12. Biofuel Fund Grant
13. General Renewable Energy Fund Grant
14. Research and Technology Development Fund Grant
15. SAGARPA Emerging Technology Program
17. PROSEC

¹⁴⁶ See FEESA and GAM Group Rebuttal Brief at 17-18; see also GOM Rebuttal Brief at 16-17.

¹⁴⁷ See PDM at 21.

¹⁴⁸ See GOM Verification Report at 12.

¹⁴⁹ *Id.*

VII. Discussion of the Issues

A. General Issues

Issue 1: Standing to Request Continuation of the Investigation

FEESA's and the GAM Group's Comments

- Imperial and AmCane do not qualify as parties to this investigation and, thus, did not have standing to request its continuation.¹⁵⁰
- Because Imperial and AmCane did not have standing to request continuation of the investigation, the Department's continuation of this investigation was erroneous.¹⁵¹

Imperial's Rebuttal

- FEESA and the GAM Group have incorporated by reference their arguments submitted in the proceeding when the Department was considering Imperial and AmCane's standing.¹⁵²
- The Department has already considered respondents' arguments that Imperial and AmCane are not parties to the investigation and, on April 24, 2015, determined that Imperial and AmCane were parties to the investigation.¹⁵³
- The Department reviewed these comments and determined that Imperial and AmCane's comments on the suspension agreements were sufficient to support a decision that the companies had standing to request the continuance of this investigation.¹⁵⁴
- There is no basis for the Department to reconsider its position on Imperial and AmCane's standing and neither FEESA nor the GAM Group articulates why the Department should reconsider its determination.¹⁵⁵

Department's Position: The Department continues to find that Imperial and AmCane had standing to request continuation of the investigation. FEESA and the GAM Group have reiterated or incorporated by reference arguments that the Department addressed in its April 24,

¹⁵⁰ See FEESA Case Brief at 18-19 (citing Letter from Petitioners, "Sugar from Mexico: Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC to Request Continuation of Suspended Investigations," January 20, 2015; Letter from the Mexican Sugar Chamber, "Letter Supporting Petitioners' Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC," January 22, 2015; Letter from Petitioners, "Sugar from Mexico: Reply to Imperial's and AmCane's Responses to Petitioners' Opposition to Standing to Request Continuation of Suspended Investigations," January 29, 2015; Letter from the Mexican Sugar Chamber, "Investigation of Sugar from Mexico – Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC," February 10, 2015; Letter from Petitioners, "Sugar from Mexico: Comments on Continuation of Suspended Investigations," February 10, 2015; Letter from Petitioners, "Sugar from Mexico: Rebuttal to Sweetener Users Association's Comments on Standing of Imperial Sugar Company and AmCane Sugar LLC," February 18, 2015); see also GAM Group Case Brief at 14-15.

¹⁵¹ See FEESA Case Brief at 19; see also GAM Group Case Brief at 15.

¹⁵² See Imperial Rebuttal Brief at 1.

¹⁵³ *Id.* at 1-2 (citing Standing Memorandum at 7, 12).

¹⁵⁴ *Id.* at 2.

¹⁵⁵ *Id.* at 3.

2015 memorandum.¹⁵⁶ For instance, the Department addressed the claim that, despite filing comments on the proposed suspension agreement on November 18, 2014, Imperial and AmCane did not participate in the investigation segment of this proceeding.¹⁵⁷ As the Department explained:

{S}uspension agreements and the negotiations that give rise to them are not distinct from investigations. That being the case, participating in suspension agreement negotiations (*e.g.*, but submitting comments on a draft suspension agreement) constitutes participating in the investigation. This view has been confirmed by the Court of International Trade, which has stated that "...the negotiations leading up to the suspension of the investigation...actually were part of (*i.e.*, were subsumed in) the resumed antidumping investigation."¹⁵⁸

The Department also addressed the claim that Imperial and AmCane do not qualify as "parties to the investigation" because a party to the investigation purportedly must be a party that the Department is required to notify of the proposed suspension agreement 30 days in advance of signing.¹⁵⁹ The Department explained that it had found no support in the statute, regulations, or Department practice, for the argument that the 30-day notice of the proposed suspension agreements to the interested parties acted as a cut-off date for becoming a party to the investigation.¹⁶⁰ The Department also noted that a distinct suspension agreement segment of the proceeding can only begin on the date that the agreement is formally signed.¹⁶¹ As such, when Imperial and AmCane submitted their comments on the proposed suspension agreements, they were necessarily participating in the investigation, not in the new segment that could only begin once the suspension agreements were signed.¹⁶²

Because the parties have made no new arguments regarding Imperial's and AmCane's standing to request continuation of the investigation, the Department finds that there is no basis to reconsider its April 24, 2015 standing determination.

Issue 2: Uncreditworthiness

Petitioners' Comments

- The GAM Group's uncreditworthiness extends through 2006.¹⁶³
- During 2006, the GAM Group was still under a court ordered stay that did not allow it to borrow additional funds. Thus, it could not have obtained long-term loans from "conventional commercial sources," which is the definition of uncreditworthy.¹⁶⁴

¹⁵⁶ See Standing Memorandum.

¹⁵⁷ *Id.* at 6-7.

¹⁵⁸ *Id.* at 7 (citing *San Vicente Camalu SPR DE RI v. United States*, 491 F. Supp. 2d 1186, 1205 (CIT 2007)).

¹⁵⁹ *Id.* at 7-9.

¹⁶⁰ *Id.* at 8.

¹⁶¹ *Id.* at 9-10.

¹⁶² *Id.*

¹⁶³ See Petitioners Case Brief at 21.

¹⁶⁴ *Id.*

- The GAM Group’s “dispositive evidence” of creditworthiness is not comparable to a long-term commercial loan.¹⁶⁵

FEESA’s Comments

- Lack of long-term financing during the AUL is not dispositive of uncreditworthiness.¹⁶⁶
- The sugar industry typically relies on short-term financing; there is no need to seek funds beyond a mill’s immediate working capital needs.¹⁶⁷
- It is unreasonable to rely only on current and quick ratios; low ratios are not always indicative of bad financial health.¹⁶⁸
- In prior cases, the Department has also relied on annual sales growth, net income, and ability to meet interest expenses/issue convertible bonds.¹⁶⁹
- The FEESA mills have been profitable for many years and, in particular, during the period at issue.¹⁷⁰
- The totality of the circumstances shows that FEESA was creditworthy from 2006 through 2013.¹⁷¹

The GAM Group’s Comments

- The receipt of a long-term loan is dispositive of the GAM Group’s creditworthiness from 1998 through 2005.¹⁷²
- The GAM Group was creditworthy because it was able to finance its operations through commercial lenders, even during its commercial insolvency proceeding.¹⁷³

Petitioners’ Rebuttal

- The Department looked at many factors in addition to quick and current financial ratios, which support that FEESA was uncreditworthy from 1998 through 2013.¹⁷⁴
- Receipt of financing other than long-term loans from conventional commercial sources is irrelevant.¹⁷⁵
- The FEESA mills are government-owned entities; therefore, even receipt of commercial loans is not dispositive of creditworthiness.¹⁷⁶
- The FEESA mills were heavily-leveraged by long-term debts.¹⁷⁷

¹⁶⁵ *Id.* at 23.

¹⁶⁶ *See* FEESA Case Brief at 13.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 13-14.

¹⁶⁹ *Id.* at 14 (citing *Coated Free Sheet Paper from the People’s Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007)).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *See* GAM Group Case Brief at 7.

¹⁷³ *Id.*

¹⁷⁴ *See* Petitioners Rebuttal Brief at 18.

¹⁷⁵ *Id.* at 19.

¹⁷⁶ *Id.* at 20.

¹⁷⁷ *Id.*

- The GAM Group’s assertion of creditworthiness from 1998 through 2005 is unsupported because (1) the GAM Group was not required to repay any loans during the suspension of payments and (2) evidence demonstrates that the GAM Group had no long-term financing options from conventional commercial sources during the relevant period.¹⁷⁸

FEESA and the GAM Group’s Rebuttal

- Petitioners’ allegation regarding the GAM Group’s creditworthiness during 2006 is untimely.¹⁷⁹
- Given that the factual record is now closed, the GAM Group would be deprived of the opportunity to defend itself if the Department accepts this allegation.¹⁸⁰

Department’s Position: The Department continues to find that FEESA and the GAM Group were uncreditworthy from 1998 through 2013 and from 1998 through 2005, respectively.

With respect to FEESA’s claims, the Department disagrees that it was creditworthy from 2006 through 2013. As noted by Petitioners, we considered all financial indicators available in our preliminary analysis of FEESA’s creditworthiness during the AUL, including 2006 through 2013.¹⁸¹ Pursuant to 19 CFR 351.505(a)(4)(i), the Department requested that FEESA provide information pertaining to its creditworthiness, including (1) receipt of comparable commercial long-term loans, (2) present and past indicators of financial health, (3) present and past cash flow, and (4) evidence of future financial position.¹⁸² As explained in the Post-Preliminary Analysis, however, FEESA failed to provide a complete response.¹⁸³ Therefore, we based our uncreditworthiness analysis on the limited financial indicators that were on the record, such as FEESA’s current and quick ratios, profits and earnings, and cash flows.¹⁸⁴ In particular, we found FEESA’s current and quick ratios were consistently below 2.0 and 1.0, respectively, indicating poor financial health during the alleged uncreditworthy years.¹⁸⁵

Contrary to FEESA’s assertions, the Department’s preliminary conclusion was supported by record evidence beyond the company’s weak current and quick ratios. Although these statistics alone are not indicative of a firm’s creditworthiness, the Department generally considers a current ratio below 2.0 and a quick ratio below 1.0 to denote poor financial health.¹⁸⁶ Additional evidence available on the record, however, further supports this benchmark presumption drawn from the current and quick ratios. In particular, as noted in the *Preliminary Determination*, the Department’s analysis finds that FEESA received no “comparable” commercial long-term loan

¹⁷⁸ *Id.* at 21.

¹⁷⁹ See FEESA and GAM Group Rebuttal Brief at 10.

¹⁸⁰ *Id.* at 11.

¹⁸¹ See Post-Preliminary Analysis at 3, note 18.

¹⁸² See FEESA NSA Questionnaire Response at 18.

¹⁸³ See Post-Preliminary Analysis at 3. FEESA did not provide requested information pertaining to financial ratios and adjustments calculated from 2002 through 2005, audits and feasibility reports, or the company’s credit rating. See FEESA NSA Questionnaire Response at 18.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 3-4.

¹⁸⁶ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 65788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum (IDM).

from 2006 through 2013.¹⁸⁷ FEESA's claims that the sugar industry relies primarily on short-term financing appear irrelevant because the Department's regulations do not consider short-term loans to be evidence of a firm's creditworthiness.¹⁸⁸ FEESA itself has acknowledged that, during the relevant period, it required annual budget allocations to cover operating losses and purchase raw materials.¹⁸⁹

Furthermore, FEESA has not contradicted the business proprietary information Petitioners cited in their original uncreditworthiness allegation, all of which FEESA confirmed with its initial questionnaire response. It chose not to clarify or explain any of this information during verification.¹⁹⁰ As noted in the Department's verification report, FEESA indicated that it had no information or supporting documentation in addition to what was provided in the questionnaire responses already on the record and declined the opportunity to discuss or present any information regarding its creditworthiness during the AUL.¹⁹¹ Finally, FEESA has pointed to its profitability, sales growth, net income, and ability to meet interest expenses as evidence of creditworthiness. FEESA's arguments, however, ignore additional business proprietary data contradicting such indicators of FEESA's general and mill-specific positive financial health.¹⁹² Even acknowledging, for the sake of argument, that there may have been some positive indicators of FEESA's financial health during the years in question, the Department must consider all available information in determining whether or not a respondent is creditworthy. In this case, the Department believes the evidence of uncreditworthiness far outweighs any evidence of creditworthiness. For this reason, the Department properly determined that FEESA was uncreditworthy from 2006 through 2013.

The Department also disagrees with the GAM Group's claims that it was creditworthy from 1998 through 2005. In support of its argument, the GAM Group reiterates prior contentions that it received comparable long-term commercial loans during the relevant years and, as such, cannot be found uncreditworthy. As we explained in the Post-Preliminary Analysis, however, the GAM Group provided incomplete loan information.¹⁹³ Because this information was incomplete, it is

¹⁸⁷ See FEESA Case Brief at 13.

¹⁸⁸ See 19 CFR 351.505(a)(4).

¹⁸⁹ See "Analysis of Programs" section, *supra*.

¹⁹⁰ See Department Memorandum, "Countervailing Duty Investigation of Sugar from Mexico: Analysis of New Subsidy and Creditworthiness Allegations," September 17, 2014, at 10-12; see also FEESA Verification Report at 24.

¹⁹¹ *Id.*

¹⁹² A complete discussion of the business proprietary information indicating that FEESA was in poor financial health from 2006 through 2013 is provided in the Department Memorandum, "Countervailing Duty Investigation of Sugar from Mexico: Final Calculations for Fondo de Empresas Expropiadas del Sector Azucarero" (FEESA Final Calculations Memorandum), dated concurrently with this memorandum.

¹⁹³ See Post-Preliminary Analysis at 3; see also Letter from the GAM Group, "Sugar from Mexico – CVD Supplemental Questionnaire Response," October 2, 2014 (GAM Group Supplemental Questionnaire Response), at Exhibit S-10A. The GAM Group failed to provide most of the loan information requested concerning the years at issue, 1998 through 2005. For example, the Department's template loan worksheet contains a column asking respondents to report the "life of the loan." Under this column, the GAM Group Loan Worksheet has nothing but dashes for the relevant years. Similarly, nothing is reported in the columns requesting information about interest rates, dates of interest payments, and amounts of interest payments. While the GAM Group also provided a sample loan contract, at Exhibit S-11, it is for a loan that is irrelevant to the time period at issue. The Department examined the GAM Group's loan history at verification, but focused on loans from government-owned lenders, rather than

not a reliable indicator of creditworthiness; *i.e.*, we cannot determine whether the GAM Group's loans are long-term loans that would "normally" be dispositive under 19 CFR 351.505(a)(4)(ii).

The GAM Group also appears to argue that the receipt of *any* commercial financing during its commercial insolvency proceeding should be viewed as evidence of creditworthiness. Under our regulatory framework, however, only evidence of long-term commercial lending is relevant, not evidence of any commercial lending. The concept of creditworthiness affects only the determination of long-term interest rate benchmarks and discount rates. Thus, we look only at whether a respondent has succeeded in obtaining long-term loans or "loan equivalents." Indeed, too much short-term financing indicates a respondent may not have access to long-term financing. This is why we examine the current and quick ratios discussed above, which are measures of the extent to which a respondent has relied excessively on short-term financing. Because the GAM Group has not pointed to any additional evidence indicative of financial health between 1998 and 2005, the Department finds that there is no basis to reconsider its preliminary finding that the GAM Group was uncreditworthy during those years.

Finally, the Department disagrees with Petitioners' allegation that the GAM Group was uncreditworthy during 2006. Although the GAM Group was under a court ordered "suspension de pagos" (suspension of payments) at the time,¹⁹⁴ Petitioners first raised this argument in their case brief, well after the factual record was closed. Thus, we were unable to request additional information (*i.e.*, financial ratios and other data typically examined under 19 CFR 351.505(a)(4) when considering an uncreditworthiness allegation), which would have allowed us to fully evaluate this claim. There is insufficient evidence on the record for the Department to properly analyze the company's financial health and make a determination regarding its creditworthiness in 2006.¹⁹⁵

Issue 3: Calculation of Discount Rates

Petitioners' Comments

- The Department used IMF "lending rates" to calculate benchmark interest and discount rates in its preliminary and post-preliminary calculations.¹⁹⁶
- Lending rates are "usually" short-term or medium-term rates; the Department should recalculate its benchmark and discount rates using long-term interest rates.¹⁹⁷
- The GOM and respondents did not provide any long-term interest rates; thus the Department should rely on other interest rates available on the record as facts available.¹⁹⁸

loans from the private sector. *See* GAM Group Verification Report at 16-19. Thus, the record of the GAM Group's commercial lending remains incomplete.

¹⁹⁴ As explained in the Post-Preliminary Analysis, a suspension of payments protects the debtor and its creditors by staying repossession of assets and the payment or collection of debts while the parties negotiate a settlement of the outstanding balance. *See* Post-Preliminary Analysis at 10.

¹⁹⁵ The Department's boilerplate questionnaire concerning creditworthiness allegations includes 11 questions. *See, e.g.*, FEESA Initial Questionnaire Response at 47-50.

¹⁹⁶ *See* Petitioners Case Brief at 12.

¹⁹⁷ *Id.* at 12-13.

¹⁹⁸ *Id.* at 13.

- As facts available, the Department should use other interest rates on the record.

FEESA and the GAM Group's Rebuttal

- 19 CFR 351.524(d)(3)(i) establishes the Department's hierarchy for selecting a discount rate.¹⁹⁹
- The Department has relied on IMF lending rates in prior cases.²⁰⁰
- The record does not indicate that the IMF lending rates for Mexico relate only to short-term loans.²⁰¹
- The use of facts available as suggested by Petitioners would amount to the application of adverse facts available.²⁰²

The GOM's Rebuttal

- The Department determined that the IMF's lending rate was the most appropriate benchmark interest rate for long-term loans.²⁰³
- This is consistent with Department practice in prior cases.²⁰⁴
- The alternative rates proposed by Petitioners are not "commercial" loan rates within the meaning of the regulations.²⁰⁵
- Both respondents provided loan information between 1996 and 2014, and the Department did not ask the respondents to supplement the provided loan information. Thus, there is no basis to apply facts available.²⁰⁶

Department's Position: We are continuing to use the same lending rate as the basis for our discount rate calculation for this final determination. 19 CFR 351.524(d)(3) states that the Department will base a discount rate on one of the following, in order of preference: (A) the cost of the company's actual long-term, fixed-rate loans, (B) the average cost of long-term, fixed rate loans in the country in question, or (C) a rate that the Department considers to be most appropriate.²⁰⁷ Given the respondents' questionnaire responses, the record does not contain usable information under (A), and no party has sought to provide information under (B).²⁰⁸

¹⁹⁹ See FEESA and GAM Group Rebuttal Brief at 7.

²⁰⁰ *Id.* (citing *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 2-3, 12; *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 76 FR 76948 (December 9, 2011) (*PET Film from India*), and accompanying IDM Memorandum at 4).

²⁰¹ *Id.* at 8.

²⁰² *Id.* at 8-9.

²⁰³ See GOM Rebuttal Brief at 6.

²⁰⁴ *Id.* at 7 (citing *PET Film from India* and accompanying IDM at 4).

²⁰⁵ *Id.* at 7-8.

²⁰⁶ *Id.* at 8.

²⁰⁷ See also 19 CFR 351.505(a)(2) (specifying that a "commercial loan," for purposes of determining the subsidy benefits received from a government loan, should be a loan taken out by the firm from a commercial lending institution, not including any loan provided under a government program or by a government-owned special purpose bank).

²⁰⁸ Petitioners state: "Neither the Respondents nor the GOM provided any long-term interest rates." See Petitioners Case Brief at 13. FEESA and the GAM Group state that the Department properly exercised its discretion under 19 CFR 351.524(d)(3)(i)(C) after determining there was no appropriate information to consider under (A) or (B).

Thus, parties appear to agree that the Department must exercise its discretion to choose the most appropriate rate under 19 CFR 351.524(d)(3)(i)(C).

Petitioners argue that the Department's use of IMF lending rates in the *Preliminary Determination* and Post-Preliminary Analysis was inappropriate because these rates are "usually" for short-term and medium-term loans. Petitioners argue that, instead, the Department should use other interest rates available on the record as facts available because the respondents and the GOM did not provide long-term interest rates for the relevant period. We disagree with Petitioners' proposed approach. The rates Petitioners suggest do not appear to correspond with "commercial loans," as defined by 19 CFR 351.505(a)(2). These rates are not contemporaneous with most of the non-recurring subsidies being countervailed and, thus, do not reflect the respondents' long-term cost of borrowing during most of the years at issue.²⁰⁹ Furthermore, interest rates, especially in countries with high inflation, can be volatile, changing dramatically from year to year. As the respondents note, the alternative rates suggested by Petitioners reflect atypical circumstances, such that they do not accurately reflect the respondents' long-term cost of borrowing for all years at issue.²¹⁰ For these reasons, we believe the chosen IMF rates are the most appropriate rates to use as benchmark rates.

Furthermore, Petitioners' only argument for not using the IMF rates is that they are "usually" for short-term or medium-term loans, referring to IMF "metadata" concerning the rates.²¹¹ The IMF metadata, however, notes only that "lending rates" in general (*i.e.*, not Mexican rates specifically) are "usually" for short-term or medium-term loans; it does not identify any particular rates as definitively short-term or medium-term. As the respondents also note, we have relied on the same IMF "lending rates" in the past, despite the metadata. Regardless, these rates are superior to all other options on the record, for the reasons discussed above.²¹²

Therefore, pursuant to 19 CFR 351.524(d)(3), we find that the IMF rates are the appropriate rates on the record to use to calculate a discount rate and, accordingly, decline to apply facts available to determine a discount rate because the record does not lack any necessary information.

Issue 4: Treatment of Grants as Non-Recurring Subsidies

FEESA's and the GAM Group's Comments

- Pursuant to the criteria in 19 CFR 351.524(c)(2), the special fund and annual budget allocations should be expensed as recurring subsidies because (1) they are granted virtually every year and, therefore, are not exceptional, (2) they are made via the GOM's

²⁰⁹ See GAM Group Verification Report at 16-19.

²¹⁰ *Id.*

²¹¹ See Letter from Petitioners, "Sugar from Mexico; Antidumping and Countervailing Duty Petitions," March 28, 2014 (Petition), Volume III at Exhibit III-19.

²¹² See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010), and accompanying IDM; see also *Usinor Scilor v. United States*, 893 F. Supp. 1112, 1135 (CIT 1995) (rejecting plaintiff's claim that IMF lending rates are not long-term rates because plaintiffs' reliance on a passage indicating that the lending rates reflect costs of short-term and medium-term financing was not probative of whether the IMF rates apply to loans that are long-term, as defined by the Department).

normal budget allocation procedures without separate approval or authorization, and (3) they did not provide for the mills' capital structure or capital assets.²¹³

- The Department erred in preliminarily determining that payments made under the PROINCAÑA program provided non-recurring benefits. This program provided payments to offset raw material costs and should be expensed to the year of receipt.²¹⁴

The GOM's Comments

- The Department provided no analysis regarding whether the grants countervailed were recurring or non-recurring.²¹⁵
- "Grants" are listed in the regulations' illustrative list of non-recurring programs, but the term "grant" describes a method of payment and is too general to be credibly included.²¹⁶
- The regulations describe a typical non-recurring subsidy as (1) exceptional, (2) requiring express government authorization/approval, and/or (3) tied to the receiving firm's capital structure/assets; in prior cases, the Department has emphasized ties to capital structure/assets.²¹⁷
- Non-recurring subsidies are generally aimed at acquiring capital equipment or a production facility and/or are linked to the recipient's long-term financial structure.²¹⁸
- Recurring subsidies are typically related to or consumed in the recipient's regular/ongoing production and sales processes.²¹⁹
- The export and inventory support subsidies are recurring in that they were granted under similar programs, are tied to specific sugarcane crop years, and are analogous to price supports.²²⁰
- The special fund and annual budget allocations are recurring in that they (1) serve the same recurring purpose; (2) are provided *almost* every year; (3) are not tied to capital assets; (4) went primarily toward purchases of sugarcane and, therefore, are analogous to sugarcane for LTAR; (5) were grouped together as one program by the Department; and (6) are tied to specific sugarcane crop years.²²¹
- The PROINCAÑA subsidy is recurring in that it serves the same recurring purpose (covering the cost of sugarcane) as the annual budget allocations; was tied to the 2007/2008 sugarcane crop year; automatically granted benefits to mills meeting all requirements; and was analogous to sugar cane for LTAR.²²²

²¹³ See FEESA Case Brief at 14-15; see also GAM Group Case Brief at 13-14.

²¹⁴ See FEESA Case Brief at 15-16; see also GAM Group Case Brief at 14.

²¹⁵ See GOM Case Brief at 22-23.

²¹⁶ *Id.* at 23 (citing 19 CFR 351.524(c)).

²¹⁷ *Id.* at 24 (citing S. Rep. 96-24 (96th Cong., 1st Sess.) at 85-86).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 25-28.

²²¹ *Id.* at 29-36.

²²² *Id.* at 30, 34-35.

Petitioners' Rebuttal

- The GOM has admitted that each of the subsidy programs it wants expensed are exceptional and require the government's express authorization.²²³
- There is no support for GOM's assertion that the Department puts the greatest weight on whether or not the benefit is tied to a capital asset.²²⁴
- In drafting the regulations, Congress wanted allocation methodologies to reflect the true competitive benefit felt by the firm.²²⁵

Department's Position: We continue to find that each of the grants countervailed in this final determination confer a non-recurring benefit. 19 CFR 351.524(c)(1) provides an illustrative list of the types of countervailable programs "normally" treated as recurring and non-recurring subsidies. 19 CFR 351.524(c)(2) further states that, if a subsidy is not on the illustrative list or a party argues for different treatment, the Department will consider three criteria to determine how to treat the subsidy: (i) whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year; (ii) whether the subsidy required the government's express authorization or approval; or (iii) whether the subsidy was provided for, or tied to, the recipient's capital structure or assets.

In this case, each of the subsidy programs that FEESA, the GAM Group, and the GOM argue should be treated as recurring subsidies are undisputedly "grant programs." Therefore, the illustrative list in 19 CFR 351.524(c)(1) indicates that any benefits received under these programs should be treated as non-recurring subsidies. The Department notes, however, that the illustrative list is not dispositive because it states how the Department will "normally" treat the listed subsidies. In this case, FEESA, the GAM Group, and the GOM have argued for different treatment. Therefore, we must consider each of the factors described under 19 CFR 351.524(c)(2) and listed above. Contrary to the GOM's assertions that particular emphasis should be placed on whether or not the relevant subsidy is tied to the recipient's capital structure or assets, the regulation indicates that all factors should have equal weight. As explained below, we continue to find that each grant confers a non-recurring benefit.

1997 Export Subsidy/1998 Inventory Support Subsidy/1999 Inventory Support Subsidy

We continue to find that these three grants provided a non-recurring benefit. With respect to 19 CFR 351.524(c)(2)(i), Petitioners accurately point out that, in its initial questionnaire response, the GOM identified each of the relevant programs as one-time events.²²⁶ Specifically, the 1997 Export Subsidy, 1998 Inventory Support Subsidy, and the 1999 Inventory Support Subsidy were created independently from each other under completely separate pieces of legislation.²²⁷ Each of the three programs provided a one-time grant to eligible applicants between 1997 and 1999. The GOM now argues that these grants are not exceptional because,

²²³ See Petitioners Rebuttal Brief at 28.

²²⁴ *Id.* at 32.

²²⁵ *Id.* at 33.

²²⁶ See Petitioners Rebuttal Brief at 28-33 (citing Letter from the GOM, "Sugar from Mexico: Response to Countervailing Duty Questionnaire," July 30, 2014 (GOM Initial Questionnaire Response), Volume III at 3 (stating, *e.g.*, "The {mandatory respondents} were granted a one-time benefit under the program..."), 14, 25).

²²⁷ See GOM Initial Questionnaire Response, Volume III at 1, 14, 25.

taken together, the programs provided grants in three successive years. However, as noted, each program was created under a separate piece of legislation and, even within the three-year period covered by these programs, recipients had no certainty in one year that a similar grant would be available in the following year.²²⁸ As such, an applicant could only expect to receive benefits as a one-time payment made under the particular grant program.²²⁹

The fact that the grants were tied to the oversupply of sugarcane does not indicate that a recipient could expect to receive an ongoing benefit in subsequent years. In fact, it indicates the opposite, such that the enactment of similar programs in the future was linked to uncertain market variations and how the GOM might choose to respond to each occurrence of a surplus of sugar. The GOM acknowledges this lack of predictability when it states that the subsidy was dependent on “market conditions (including volume of production and pricing) and production costs {that} differ from year to year.”²³⁰ Moreover, the record contains no evidence that the GOM provided similar grants related to the oversupply of sugar after 1999. Thus, these subsidies were exceptional, one-time grants, requiring legislative authority and leaving the recipient with no certain expectation of similar benefits in the future.

Furthermore, pursuant to 19 CFR 351.524(c)(2)(ii), receipt of benefits under the grant programs required express government authorization or approval. In its initial questionnaire response, the GOM described the application procedures for each subsidy, indicating that express approvals/authorizations were required for each of these programs and describing the various factors evaluated in determining the validity of the application (*e.g.*, whether or not the applicant is current on tax payments, whether or not the applicant is complying with certain commitments related to inventory levels and exports, etc.).²³¹ The GOM also provided the express approvals/authorizations for the 1997 Export Subsidy program.²³² It further stated that it was unable to locate the approval documents for the 1998 and 1999 Inventory Support Subsidy programs, thereby acknowledging that such documents once existed.²³³

We do not disagree with the argument that none of the relevant grants were clearly tied to the recipient’s capital structure or assets. However, we find that the evidence regarding factors (i) and (ii), coupled with the fact that “grants” are included in the illustrative list of non-recurring benefits, supports treating these programs as non-recurring subsidies. As noted above, whether or not a subsidy is tied to capital structure or assets is not dispositive. For example, if it were dispositive, then the illustrative list would not include “coverage for operating losses,” which is not tied to capital structure, under “non-recurring subsidies,” and “grants” would be divided between grants for capital and grants for operating expenses. Likewise, we do not agree that grants linked to annual export and inventory volumes must be treated as recurring subsidies. This argument is merely a restatement of the GOM’s argument that the lack of a tie between the

²²⁸ *Id.*, Volume III at 1 (identifying the legislation creating the 1997 Export Subsidy), 14 (identifying the legislation creating the 1998 Inventory Support Subsidy), 25 (identifying the legislation creating the 1999 Inventory Support Subsidy).

²²⁹ *Id.* at 3, 16, 26.

²³⁰ *See* GOM Case Brief at 27.

²³¹ *See* GOM Initial Questionnaire Response, Volume III at 7-30 (describing the application process for the 1997 Export Subsidy, 1998 Inventory Support Subsidy, and 1999 Inventory Support Subsidy).

²³² *See* GOM Initial Questionnaire Response, Volume III at Exhibits III-1 and III-2.

²³³ *See* GOM Verification Report at 15.

subsidy and capital assets indicates that it is recurring (*i.e.*, only a subsidy for capital is non-recurring and, therefore, subsidies for annual operations, such as exports and cyclical inventory-levels, must be recurring). When, as in this case, a company has no expectation that similar grants will recur in the future, we cannot assume it will fully expense a grant to its sales in the year of receipt.

Special Fund Grants

The special fund grants were provided in only one year and, as such, could not be expected to occur regularly.²³⁴ Moreover, the GOM states that the administrative authority “could” provide disbursements to the mills, not that it was required to.²³⁵ Finally, the GOM states that these grants required multiple special budget authorizations and extensions between September and December of 2001. Accordingly, the size of the grants was contingent on the size of the approved budget authorizations.²³⁶ Therefore, the record demonstrates that these payments are exceptional.

Furthermore, receipt of benefits under these programs required express government authorization or approval. In its initial questionnaire response, the GOM described application procedures for each subsidy.²³⁷ The GOM stated that “there is no specific application form” and that “the mills requested specific amounts to cover specific categories of expenses, and these were reviewed and approved by SAGARPA.”²³⁸ Thus, while there is no specific application form, the record clearly demonstrates that beneficiaries had to apply for disbursements, contrary to the respondents’ claims that approval was not required for this program and that payments were granted via the GOM’s normal budget allocation procedures.

Although the relevant grants may not be directly tied to their recipients’ capital structure or assets, we find that the evidence regarding factors (i) and (ii), coupled with the fact that “grants” and “coverage for operating losses” are included in the illustrative list of non-recurring benefits, supports treating these programs as non-recurring subsidies.

2008 PROINCAÑA Program

The record indicates that the 2008 PROINCAÑA program was authorized as an exceptional, one-time grant.²³⁹ Furthermore, the record indicates that receipt of benefits under this program required express government authorization or approval. The GOM provided copies of completed applications for two mills and stated that the board of directors overseeing the program “determines the acceptability of the applications of companies that apply for PROINCAÑA support.”²⁴⁰ Thus, we disagree with the GOM’s characterization of these payments as automatic.

²³⁴ See FEESA Verification Exhibit 6 at note 10 (indicating that FEESA did not receive countervailable annual budget allocations (“fiscales”) in 2003, 2004, 2005, 2006, 2007, or 2010).

²³⁵ See GOM Initial Questionnaire Response, Volume III at 36.

²³⁶ *Id.*, Volume III at 36-38.

²³⁷ *Id.*, Volume III at 36-37 (describing the application process for “Special Fund” grants).

²³⁸ *Id.*, Volume III at 45.

²³⁹ *Id.*, Volume IV at 1.

²⁴⁰ *Id.*, Volume IV at 11.

Once again, respondents argue that a link between a subsidy and its recipient's capital structure is critical in finding a program to be non-recurring. Therefore, FEESA and the GAM Group's arguments focus on the ultimate use of the PROINCAÑA grants to offset the cost of sugarcane. Similarly, the GOM argues that, because they are not tied to capital structure or assets, these payments are analogous to the provision of sugarcane for LTAR, which the Department would treat as a recurring subsidy. Although the grant may not be directly tied to its recipients' capital structure or assets, we find that the evidence regarding factors (i) and (ii), coupled with the fact that "grants" and "coverage for operating losses" are included in the illustrative list of non-recurring benefits, supports treating these programs as non-recurring subsidies.

Annual Budget Allocations

Although the annual budget allocations were provided to FEESA for several consecutive years, they could not be expected to occur regularly because the amount of each grant was entirely dependent upon FEESA's operating losses during the relevant year.²⁴¹ The record further demonstrates that in several years during the AUL the subsidy did not exist.²⁴² Thus, pursuant to 19 CFR 351.524(c)(2)(i), the subsidy is exceptional.

Moreover, receipt of these grants required express government authorization or approval. For example, the 2008 budget allocation grants to FEESA required a special request from FEESA for a budget authorization that was subsequently reviewed and approved by SAGARPA.²⁴³ FEESA provided additional information that emphasizes that the annual budget allocations were approved by the GOM through a specific request and authorization process, in addition to FEESA's normally-allocated budget, to account for unforeseen expenses or operating deficits.²⁴⁴ Therefore, the record contradicts FEESA and the GAM Group's claims that express authorization is not required for these grants and that these payments are part of the GOM's normal budget allocation procedures.

Although the relevant grants may not be directly tied to the recipient's capital structure or assets, we find that the evidence regarding factors (i) and (ii), coupled with the fact that "grants" and "coverage for operating losses" are included in the illustrative list of non-recurring benefits, supports treating these programs as non-recurring subsidies.

Issue 5: Sugarcane for LTAR

Petitioners' Comments

- The record indicates that there is GOM pressure, influence, guidance, and regulation of the processes that set the sugar cane reference price and remove surplus sugar.²⁴⁵

²⁴¹ See FEESA Verification Report at 17.

²⁴² See FEESA Verification Exhibit 6 at note 10 (indicating that FEESA did not receive countervailable annual budget allocations ("fiscales") in 2003, 2004, 2005, 2006, 2007, or 2010).

²⁴³ See GOM Initial Questionnaire Response, Volume III at 56.

²⁴⁴ See FEESA Initial Questionnaire Response at 25-26 (explaining that the countervailed budget allocations were amendments or supplements to the regularly-authorized GOM budget for FEESA and outlining the eight step application process).

²⁴⁵ See Petitioners Case Brief at 6.

- The reference price mechanism is mandatory and the GOM is heavily involved in setting export quotas.²⁴⁶
- The larger the surplus that must be removed by export, as determined by the GOM, the lower the reference price.²⁴⁷
- The net raw material cost reduction, as a direct result of the reference price’s export component, is the same regardless of how the reference price is blended; therefore, this program is *at least* a domestic subsidy.²⁴⁸
- The GOM sets the reference price, which serves as a benchmark for all sugar cane transactions.²⁴⁹
- The final sugarcane reference price, as published by the government, is calculated purely based on the legally-mandated formula; it is not freely negotiated.²⁵⁰
- Any negotiations between sugar mills and sugarcane growers pertain to how payment of the final price will be apportioned across advanced payments/deposits and the final adjustment.²⁵¹
- The sugarcane’s sucrose content, as measured in “kilograma de azucar recuperable base estandar” (KARBE), is an objective component that cannot be negotiated.²⁵²
- The private trust of sugar mills and sugarcane growers, Fideicomiso Maestro para la Exportacion de Excedentes Azucareros (FIMAE), directed the GOM to set an export quota for sugar.²⁵³
- FIMAE’s anti-circumvention function allows growers to sue a quota-violating mill for 400 percent of the relevant sugar’s reference price.²⁵⁴
- FIMAE clearly would not be able to impose its quotas via private transactions; therefore, it must have significant government assistance.²⁵⁵
- FIMAE’s GOM-owned trustee plays a major role in the trust’s operations.²⁵⁶

FEESA and the GAM Group’s Rebuttal

- Actual grower compensation is privately negotiated—not just apportionment of deposit/settlement; therefore, final sugar cane price is negotiable.²⁵⁷
- GOM does not mandate sugar exports or set any enforceable export quotas.²⁵⁸
- The GOM, as the official source of sugar market information, only collects and publishes data regarding the supply and demand of sugar in a given harvest cycle.²⁵⁹
- FIMAE does not mandate export; as a private trust, it has no legal authority to bind the sugar mills or enforce quotas.²⁶⁰

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 7.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.* at 9.

²⁵³ *Id.* at 10.

²⁵⁴ *Id.* at 11.

²⁵⁵ *Id.* at 11-12.

²⁵⁶ *Id.* at 12.

²⁵⁷ *See* FEESA and GAM Group Rebuttal Brief at 2.

²⁵⁸ *Id.* at 4.

²⁵⁹ *Id.*

- FIMAE has no role in the determination of sugar cane prices.²⁶¹
- FIMAE's GOM-owned trustee is not dispositive of GOM involvement.²⁶²
- The sugar cane reference price reflects market conditions; it is based on actual consumption and actual export volumes *after* the end of the harvest cycle.²⁶³
- The same reference price applies to *all* sugar mills.²⁶⁴

The GOM's Rebuttal

- This alleged program does not satisfy any of the elements necessary to find a countervailable subsidy.²⁶⁵
- The purpose of the sugar reference price law is to eliminate any leverage the sugar mills have over sugar cane growers and ensure that sugar cane growers are fairly compensated.²⁶⁶
- The reference price serves only as a public benchmark.²⁶⁷
- The GOM is removed from transactions between the sugar mills and the growers.²⁶⁸
- The GOM has no authority to obligate payment of the reference price and cannot void subsequent private negotiations or agreements.²⁶⁹
- FIMAE is a completely private entity that is not owned or controlled by the GOM.²⁷⁰
- FIMAE membership is voluntary and the trust's creation was not compelled by the GOM.²⁷¹
- The GOM's sugar supply and demand data is merely used by FIMAE to calculate the amount of surplus sugar.²⁷²
- There is no separate price for sugar cane used to produce sugar for export.²⁷³
- The fact that FIMAE's trustee is GOM-owned does not establish GOM entrustment or direction; FIMAE could have chosen a private bank.²⁷⁴
- The trustee does not have a vote on FIMAE's technical committee.²⁷⁵

Department's Position: The Department continues to find that the GOM did not entrust or direct sugarcane growers to provide Mexican sugar mills with sugarcane for LTAR. As described in the Post-Preliminary Analysis, record evidence contradicts several assertions made by Petitioners. Specifically, the record evidence does not support the following assertions that: (1) the GOM is directly involved in setting sugar export quotas, (2) the GOM has an active or

²⁶⁰ *Id.*

²⁶¹ *Id.* at 5.

²⁶² *Id.*

²⁶³ *Id.* at 6.

²⁶⁴ *Id.*

²⁶⁵ *See* GOM Rebuttal Brief at 2.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 3.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 4.

²⁷¹ *Id.*

²⁷² *Id.* at 5.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 6.

influential role in the management of FIMAE, or (3) the purpose of the reference price is to promote the sugar mills' sugar exports.²⁷⁶

Furthermore, the Department preliminarily found that the purchase price of sugarcane in Mexico is negotiable,²⁷⁷ despite Petitioners' characterization of the reference price as mandatory.²⁷⁸ Petitioners quoted the GOM Verification Report as, "{T}he final adjustment {of the sugarcane price} is calculated based purely on the LDSCA-mandated reference price formula and cannot be negotiated." The complete sentence, however, states "{W}hile the final adjustment is calculated based purely on the LDSCA-mandated reference price formula and cannot be negotiated, the GOM and CONADESUCA {(Mexican National Committee for the Sustainable Development of Sugarcane)} have no authority to obligate payment of the final adjustment price and cannot void any subsequent private agreements."²⁷⁹ As such, the record demonstrates that, although the methodology for calculating the final reference price is mandatory and the reference price is the same for all sugar mills in Mexico, the actual price paid by sugar mills is open to negotiation. Therefore, Petitioners are confusing statements about the mandatory nature of the reference price calculation process with the question of whether or not payment of the reference price is mandatory.

As noted, the GOM stated at verification that payment of the reference price is not mandatory.²⁸⁰ The final reference price, as published, serves merely as a public benchmark "used as a basis to determine the price that sugar mills must pay to growers."²⁸¹ In fact, during verification of the questionnaire responses submitted by FEESA, the GAM Group, and the GOM, we collected evidence that, in 2013, the final sugarcane purchase price was privately negotiated between certain sugar mills and the sugarcane growers after publication of the final reference price and that the GOM was not involved.²⁸² In light of this clarification and direct evidence of negotiations, Petitioners' arguments that the reference price is mandatory are incorrect. In particular, Petitioners' claim that negotiations pertain only to how payment of the final price will be apportioned across advanced payments/deposits and the final adjustment is wrong and contradicted by the Department's findings at verification of FEESA, the GAM Group, and the GOM. While it is true that parties can negotiate how much of the payment to apportion to preliminary deposits, the final price paid is also subject to negotiation, as explained above.²⁸³

Petitioners claim that, contrary to the Department's findings at verification of the GOM, the GOM-owned trustee of FIMAE has responsibilities within FIMAE, which does set sugar export quotas, beyond basic administrative tasks "akin to those of any other organization's clerk or treasurer."²⁸⁴ To support this claim, they refer to an expert opinion solicited for purposes of

²⁷⁶ See Post-Preliminary Analysis at 11-12.

²⁷⁷ *Id.* at 12.

²⁷⁸ See Petitioners Case Brief at 6.

²⁷⁹ See GOM Verification Report at 11.

²⁸⁰ *Id.*

²⁸¹ See GOM NSA Questionnaire Response, Volume II at 1; see also GOM Rebuttal Brief at 2.

²⁸² See Post-Preliminary Analysis at 12; see also GOM Verification Report at 10-11.

²⁸³ See Post-Preliminary Analysis at 13 for a discussion of company-specific evidence and GOM Verification Report for the GOM's statements regarding the non-mandatory nature of reference price payments.

²⁸⁴ See GOM Verification Report at 11. Petitioners cite a "professional opinion" regarding Mexican trust laws, which was requested by Petitioners in regards to respondent selection in this investigation, in support of their claim that a trustee plays a more central role in the administration of a trust than described in the GOM Verification

evaluating whether or not FEESA should be selected as a respondent in this investigation. This opinion does not specifically examine the FIMAE trust or the role of the trustee in that trust. The Department finds the first-hand information gathered at verification to be more probative than the opinion of a third party expert, as the first-hand information comes from those intimately aware of the operations of the trust. Petitioners also infer from certain functions of FIMAE that it must be endowed with certain government authority. In particular, Petitioners claim that the ability to establish and enforce export quotas is evidence of the existence of government authority. As noted above, however, the FIMAE trust seems largely irrelevant to the countervailability of this program. As explained above, payment of the reference price is not mandatory. Therefore, the role the GOM might play in affecting that price through a government-controlled trust does not matter because the price is negotiable between the parties. In general, any role the GOM plays in directly influencing the reference price, either through the establishment of export quotas, by otherwise encouraging exports (exports being a key component of the reference price formula), or by fixing the KARBE component of the formula is irrelevant.

For the reasons stated above, we continue to find that this program provided no financial contribution by means of GOM entrustment or direction.

Issue 6: Forgiveness of Tax Liability Under the “Catch Up” Tax Amnesty Program

FEESA’s and the GAM Group’s Comments

- It is undisputed that the “Catch Up” program was available to all Mexican taxpayers, including individual tax payers, and that the amount forgiven was automatic, as long as the applicant met general program criteria.²⁸⁵
- The *Statement of Administrative Action* cites tax credits as an example of programs that are widely available, such that the benefit is spread throughout the economy.²⁸⁶
- The Servicio de Administracion Tributaria (Mexican Tax Administration) (SAT) had no discretion in determining the amount of taxes forgiven under the program.²⁸⁷
- The fact that one industry received a larger benefit than other industries does not establish specificity by dominant or disproportionate use.²⁸⁸
- Benefits received by FEESA and the GAM Group were still less than one percent of the program total.²⁸⁹

The GOM’s Comments

- It is undisputed that the program is not *de jure* specific.²⁹⁰

Report. See Petitioners Case Brief at note 25 (citing Letter from Petitioners, “Sugar from Mexico: Comments on Respondent Selection,” May 5, 2014, Exhibit 3 at Appendix 1).

²⁸⁵ See FEESA Case Brief at 10; see also GAM Group Case Brief at 11-12.

²⁸⁶ See FEESA Case Brief at 10 (citing *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, reprinted in 1994 U.S.C.A.N. 3773 (SAA), at 260); see also GAM Group Case Brief at 12.

²⁸⁷ See FEESA Case Brief at 10; see also GAM Group Case Brief at 12.

²⁸⁸ See FEESA Case Brief at 11 (citing *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1369 (CIT 2001) (*Bethlehem Steel*)); see also GAM Group Case Brief at 12.

²⁸⁹ See FEESA Case Brief at 11; see also GAM Group Case Brief at 12-13.

²⁹⁰ See GOM Case Brief at 15.

- It is undisputed that the program was widely used. Thus, there is no basis for *de facto* specificity.²⁹¹
- The Department’s specificity finding is “patently unreasonable” and ignores the fact that it is normal for some users to receive greater benefits than other users when a program is so widely available. The program, by definition, will provide greater benefits to companies that generate greater tax liability than individuals.²⁹²
- The Department’s disproportionality analysis should not include individual taxpayers who received tax liability forgiveness under this program.²⁹³
- Every taxpayer was eligible for the same level of forgiveness, depending only on tax year and nature of the obligation.²⁹⁴

Department’s Position: We continue to find that this program was *de facto* specific to the sugar industry. As discussed in the Post-Preliminary Analysis, the GOM provided information regarding the general usage of the “Catch Up” tax amnesty program.²⁹⁵ Upon reviewing the data, the Department preliminarily determined that, although the program was open and used by individuals and enterprises across a variety of economic sectors, a disproportionate amount of the program’s overall benefits were granted to the sugar sector and, in particular, FEESA and the GAM Group.²⁹⁶ Therefore, in accordance with section 771(5A)(D)(iii)(III) of the Act, we found the program to be *de facto* specific.

The respondents argue that our preliminary analysis, based on a comparison of the percentage of benefits received by each respondent to the percentage of benefits received by the average program participant, is “unreasonable” and contend that, instead, we should focus on the fact that the program was widely available to *all* Mexican taxpayers. In particular, FEESA and the GAM Group point to the SAA, which cites tax credits as an example of generally widespread and non-specific programs. In this case, however, the general availability of the Catch Up program is irrelevant to our finding of disproportionate receipt of benefits. We acknowledge that the tax amnesty program was made available, by law, to all Mexican taxpayers. Nevertheless, when a program is not specific on a *de jure* basis, we must determine whether or not the program is specific on a *de facto* basis.²⁹⁷ The statutory criteria for *de facto* specificity are set forth under sections 771(5A)(D)(iii)(I) through (IV) of the Act. In accordance with the statute, when the numbers of users of a subsidy is very large, the Department must assess factors of predominant use and disproportionality. Furthermore, the SAA explicitly states that, because the weight accorded to the individual *de facto* specificity factors is likely to differ from case to case, section 771(5A)(D)(iii) of the Act makes clear that the Department shall find *de facto* specificity if one or more factors exists.²⁹⁸ The Act, however, does not mandate any specific methodology in conducting a *de facto* specificity analysis, and the Department has discretion to apply any

²⁹¹ *Id.*

²⁹² *Id.* at 16.

²⁹³ *Id.* at 17.

²⁹⁴ *Id.* at 20.

²⁹⁵ See Post-Preliminary Analysis at 5.

²⁹⁶ *Id.*

²⁹⁷ See, e.g., *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 6.

²⁹⁸ See SAA at 931.

reasonable methodology in making a *de facto* determination in light of the facts and circumstances of each particular case.²⁹⁹

In this case, the Department has examined information on the record and used a reasonable methodology to analyze whether disproportionate benefits are provided to the companies under investigation. In the Post-Preliminary Analysis, the Department compared benefits received by FEESA and the GAM Group to the average amount of the benefits received by 110,810 other program participants and found that both respondents received a disproportionate percentage of all benefits granted under this program. Specifically, while the average participating taxpayer received approximately 0.0009 percent of the total benefits distributed, FEESA and the GAM Group received a significantly larger percentage of the benefits.³⁰⁰ Even if the Department were to exclude individual taxpayers from our analysis and comparing the benefits received by FEESA and the GAM Group to the average amount of benefits received by other legal entities participating in the program, as suggested by the GOM, it is clear that FEESA and the GAM Group received disproportionate benefits.³⁰¹ FEESA argues that such a comparison of “simple averages” is unreasonable. However, because the GOM did not provide the amounts of benefits provided to individual companies, we were limited to examining the amount of tax liability forgiveness that FEESA and the GAM Group received in comparison to the total number of participating taxpayers and the total amount of debt forgiven under the program. Although the actual percentage of benefits received by the respondents is less than one percent of the total benefits distributed, it is significant that FEESA and the GAM Group received a disproportionately larger amount than the average participant.

FEESA and the GAM Group claim that our analysis is inconsistent with *Bethlehem Steel*, which found that “{t}he mere fact that {one industry} received a larger benefit from the program than other participants is not determinative of whether that industry was ‘dominant’ or receiving ‘disproportionate’ benefits.”³⁰² Similarly, the GOM argues that we ignored the fact that it is normal for some users to receive greater benefits than other users when a program is so widely available. Our disproportionality analysis, however, goes beyond the general question of whether or not one user received a greater benefit than another user or the average user, which is always true for at least one user. In this instance, the amount that FEESA and the GAM Group received is not just “greater” but disproportionate to the amount received by the average user. This *de facto* specificity analysis is consistent with the Department’s established practice, as upheld by the CIT.³⁰³

²⁹⁹ See, e.g., *AK Steel Corp. v. United States*, 192 F.3d 1367, 1385 (CAFC 1999) (stating, “[D]eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case.”); see also *Bethlehem Steel*, 140 F. Supp. 2d at 1369.

³⁰⁰ A comparison of the actual benefits received by each respondent and the benefits received by the average program participant is provided in the FEESA Final Calculations Memorandum and the GAM Group Final Calculations Memorandum.

³⁰¹ See FEESA Final Calculations Memorandum at 8; see also GAM Group Final Calculations Memorandum at 13.

³⁰² See *Bethlehem Steel*, 140 F. Supp. 2d at 1369.

³⁰³ See, e.g., *Washers from Korea* and accompanying IDM (affirmed by *Samsung Electronics Co., Ltd. v. United States*, 37 F. Supp. 2d 1320 (CIT 2014) (*Samsung Electronics*)).

FEESA and the GAM Group argue that this program is not *de facto* specific because SAT had no discretion in determining the amount of each participant's debt that was forgiven. We note that this argument is irrelevant because it goes to a finding of *de facto* specificity under section 771(5A)(D)(iii)(IV) of the Act, whereas the Department preliminarily found this program to be specific under section 771(5A)(D)(iii)(III) of the Act. Because there has been no new information regarding the usage of this program since the Post-Preliminary Analysis and neither FEESA, the GAM Group, nor the GOM have presented an argument effectively contradicting the Department's preliminary finding, the Department continues to find that FEESA and the GAM Group received a disproportionate amount of the benefits granted under this program, thus mandating our determination that this program is *de facto* specific under section 771(5A)(D)(iii)(III) of the Act.

Issue 7: Countervailability of 1998/1999 Restructuring of FINA Debt

Petitioners' Comments

- The Department properly found forgiveness of the respondents' FINA debt to be countervailable. FEESA and the GAM Group, however, would have accrued more liability without FINA's 1998/1999 loan restructuring, resulting in repayment/interest grace periods from 1995 to 1998 and from 1998 to 2000.³⁰⁴
- The Department should capitalize the unpaid interest, which was effectively forgiven.³⁰⁵

FEESA and the GAM Group's Rebuttal

- Petitioners' assertion that interest was forgiven through the restructuring of loans is erroneous.³⁰⁶
- Any interest that was suspended during insolvency proceedings was due to the normal rules and procedures of the applicable commercial insolvency laws and, therefore, was not forgiven.³⁰⁷

The GOM's Rebuttal

- The CAZE Group and the GAM Group's interest, which was deferred during a post-restructuring repayment and interest grace period, was ultimately capitalized.³⁰⁸
- The relevant capitalized interest was included in the FINA claims being pursued by Servicio de Administracion y Enajenacion de Bienes (Mexican Asset Management and Disposal Service) (SAE) and in the GAM Group's suspension of payments.³⁰⁹

Department's Position: We continue to find that this alleged program provided no countervailable benefit to either respondent. Proprietary evidence on the record directly contradicts Petitioners' assertions that interest that was deferred pursuant to the restructuring of

³⁰⁴ See Petitioners Case Brief at 14.

³⁰⁵ *Id.* at 18.

³⁰⁶ See FEESA and GAM Group Rebuttal Brief at 9.

³⁰⁷ *Id.* at 9-10.

³⁰⁸ See GOM Rebuttal Brief at 9.

³⁰⁹ *Id.*

FEESA's and the GAM Group's FINA debts in 1998 and 1999 was effectively forgiven.³¹⁰ Rather, the available information supports the GOM's claim that any interest deferred pursuant to a repayment and interest grace period was subsequently capitalized.³¹¹ As such, the full amount of the deferred interest is already captured in the Department's calculations for forgiveness of FEESA's and the GAM Group's FINA debts.

Issue 8: Amount of Benefits Received from the 1999 Inventory Support Subsidy

Petitioners' Comments

- The GOM's minor corrections pertaining to use of the 1999 Inventory Support Subsidy were deficient and unverifiable.³¹²
- The provided table shows that additional GAM Group companies received subsidies.³¹³
- A certain amount of the program's authorized funding is unaccounted for in the GOM's table; it cannot be demonstrated that such funding was not disbursed to FEESA.³¹⁴
- The Department should apply adverse facts available and countervail the unaccounted for program funds as if they were granted to FEESA.³¹⁵

The GOM's Rebuttal

- The Department accepted the GOM's documentation of which mills received benefits under this program.³¹⁶
- The additional GAM Group companies listed in the GOM's table are no longer part of the GAM Group and are not mandatory respondents.³¹⁷
- Petitioners' argument relies on two unsupported claims: (1) the relevant government checkbook was used only to issue checks for this program, and (2) the total amount authorized under the program must have been disbursed.³¹⁸
- The 2006 sugar sector audit report states that MXN 115,301,000 were authorized, but only MXN 67,800,100 were disbursed, which matches the GOM minor correction document.³¹⁹

Department's Position: We have relied on the 1999 Inventory Support Subsidy usage information provided by the GOM as a minor correction for purposes of this final determination. During its verification of the GOM, the Department accepted revised data pertaining to the amount of benefits received by each respondent under the 1999 Inventory Support Subsidy

³¹⁰ See GOM Verification Report at 5. For a discussion of the relevant business proprietary information, see the FEESA Final Calculations Memorandum at 8.

³¹¹ *Id.*; see also GOM Verification Exhibit 3.

³¹² See Petitioners Case Brief at 19.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.* at 20.

³¹⁶ See GOM Rebuttal Brief at 10.

³¹⁷ *Id.* at 10-11.

³¹⁸ *Id.* at 11.

³¹⁹ *Id.*

program.³²⁰ The data provided individual disbursement amounts for each participating mill,³²¹ as opposed to the constructed amounts we relied upon in the Post-Preliminary Analysis.³²² As noted by the GOM, this data matches the total amount disbursed, as recorded in the 2006 government audit of the sugar sector.³²³

Petitioners' arguments regarding FEESA's receipt of benefits are based on the assumption that a certain portion of the total amount of funding authorized for the program must have been distributed. The GOM notes, however, that of the total MXN 115,301,000.00 authorized under the program, only MXN 67,800,100.00 was paid.³²⁴ The amount of funds disbursed, as published in the 2006 government audit of the sugar sector, matches the amount reported by the GOM at verification.³²⁵ Therefore, there is no basis for any claims that additional disbursements, potentially made to FEESA, are unaccounted for in the data provided by the GOM.

Furthermore, although Petitioners argue that the number of GAM Group companies listed in the usage data contradicts the number of GAM Group beneficiaries reported by the GOM,³²⁶ the GOM properly reported the benefits received by *current* GAM Group mills,³²⁷ which were found to be cross-owned with Tala for purposes of this final determination.³²⁸ Accordingly, the Department finds no support for Petitioners' allegations that the 1999 Inventory Support Subsidy usage information, which was accepted as a minor correction, is deficient or unreliable. Because it constitutes the only verified data pertaining to the amount of the benefits received by each respondent, the figures reported by the GOM have been properly relied on for purposes of this final determination.

Finally, contrary to Petitioners' assertions, we find that the GOM has not failed to provide any necessary information, nor has it failed to cooperate by not acting to the best of its ability in regard to the Department's requests for information pertaining to the 1999 Inventory Support Subsidy program. As noted above, there is no indication that the evidence provided by the GOM is incomplete or inaccurate, and the Department had sufficient data to make all applicable determinations. Accordingly, application of facts available or adverse inferences under section 776(a) and (b) of the Act is not warranted.

³²⁰ See GOM Verification Exhibit 1.

³²¹ *Id.*

³²² See Post-Preliminary Analysis at 4-5.

³²³ See GOM Rebuttal Brief at 11 (citing Petition, Volume III at Exhibit III-7).

³²⁴ See Petition, Volume III at Exhibit III-7.

³²⁵ *Id.*; see also GOM Verification Exhibit 1.

³²⁶ See Petitioners Case Brief at 19.

³²⁷ See GOM Verification Exhibit 1.

³²⁸ See "Subsidies Valuation" section of this memorandum, *supra*.

B. Issues Pertaining to FEESA

Issue 9: Selection of FEESA as a Mandatory Respondent

FEESA's Comments

- FEESA is not a producer or exporter of sugar and, therefore, was erroneously selected as a mandatory respondent in this investigation.³²⁹
- FEESA's selection by aggregating the import volumes of nine mills contradicts the Department's established practice of selecting mandatory respondents based on volumes as they appear in the Customs and Border Protection (CBP) entry data.³³⁰
- The Department has never before relied on foreign law to determine an exporter's legal status for the purposes of respondent selection.
- The Department incorrectly interpreted the 2001 expropriation decree; it did not combine the assets of the individual mills as a matter of Mexican law but, instead, only nationalized the assets of the sugar mills and directed certain government agencies to take necessary actions to manage those expropriated assets.³³¹
- The record demonstrates that FEESA does not directly manage, own or control the expropriated mills; the mills are separate legal entities with separate administrative authority.³³²

Department's Position: The Department finds that it properly selected FEESA as a mandatory respondent in this investigation. FEESA's primary arguments are that the Department (1) misinterpreted record information and, thus, mistakenly concluded that FEESA and the mills operate as a single entity, and (2) violated its standard practice of not combining import volumes based on alleged affiliation for purposes of respondent selection.

As an initial matter, we disagree with FEESA's argument that the Department misinterpreted the expropriation decree in finding that the decree, as a matter of Mexican law, combined the expropriated sugar mill assets into a single producer-exporter, FEESA.³³³ According to the terms of the decree, the capital or partnership interests of the sugar mills would be "expropriated by the nation on the grounds of the public interest."³³⁴ The GOM's expropriation included "the industrial units called sugar mills, with all machinery and equipment, {etc.}, the sugar contained

³²⁹ See FEESA Case Brief at 18.

³³⁰ *Id.* at 16-17 (citing Department Memorandum, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Respondent Selection," November 29, 2012, at 3-4; Department Memorandum, "Respondent Selection for the Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China," March 20, 2014, at 5; Department Memorandum, "Antidumping Duty Investigation of Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Respondent Selection Memorandum," June 4, 2013, at 5; Department Memorandum, "Antidumping Duty Investigation of Steel Wire Garment Hangers from Taiwan: Respondent Selection Memorandum," March 9, 2012, at 4; Department Memorandum, "Antidumping Duty Investigation of Non-Oriented Electrical Steel from Japan: Respondent Selection Memorandum," December 16, 2013, at 4).

³³¹ *Id.* at 17 (citing Petition at Exhibit III-12)).

³³² *Id.* at 18 (citing FEESA Verification Report at 3).

³³³ *Id.* at 17; see also Department Memorandum, "Countervailing Duty Investigation of Sugar from Mexico: Respondent Selection," June 11, 2014 (Respondent Selection Memorandum), at 6.

³³⁴ See Petition at Exhibit III-12.

in them, and all other personal and real property.”³³⁵ The decree also provided for the appointment of “individuals to administer the assets expropriated . . . who will have the authority to take the necessary measures in the interest of the optimal operation of said units...”³³⁶

As a generally-accepted definition, government expropriation means that the government is taking private property out of the owner’s hands and placing it into the hands of the government.³³⁷ In this particular situation, while the expropriation decree did not specify that the sugar mill assets were to be combined into a single legal entity, the act of expropriating the separate, privately-owned mills had the practical effect of combining the assets of those mills and placing the assets into the hands of a single owner—the GOM—through a legal declaration. Accordingly, we find that we appropriately considered the record information available at the time of our respondent selection determination and properly concluded that the assets of the mills were to be considered a single producer-exporter via the 2001 GOM expropriation decree.

Furthermore, as FEESA notes, the 2001 expropriation decree established the GOM’s ability to appoint an administrator of these assets. FEESA is the entity that was ultimately established for this purpose.³³⁸ FEESA maintains that, because the mills are administered through PROASA and NAFIN, with FEESA’s oversight, FEESA cannot be considered a producer or exporter of subject merchandise and, as such, should not have been selected as a mandatory respondent. Nevertheless, the FEESA organization manual, an official GOM document submitted as an exhibit in the Petition, specifically states that “by means of respective financial, fiduciary and, in general, legal vehicles created in order to run the administration of the expropriated sugar mills, FEESA maintains that responsibility with the following sugar mills...”³³⁹ Accordingly, while FEESA may rely on the use of different legal vehicles and structures to manage these mill assets, that fact is immaterial. To find otherwise would mean placing undue emphasis on form over function. As noted in the Respondent Selection Memorandum, we focused not on FEESA’s ownership or legal structure but, instead, on the fact that the expropriation decree ultimately resulted in the establishment of FEESA for the purpose of overseeing the administration of the expropriated assets.³⁴⁰ While FEESA has established a variety of vehicles to ensure proper administration of the assets, the fact remains that FEESA is still ultimately responsible for these assets. This analysis resulted in the Department determining that it was appropriate to select FEESA as a mandatory respondent in this investigation.

FEESA also argues that information on the record proves that the mills operate as separate entities.³⁴¹ While it may be the case that each mill maintains separate financial records, this fact alone does not mean that the mills are separate producer-exporters. We note that it is common for separate plants or divisions within a company to maintain separate accounting records and financial information while still belonging to the same company. In this case, FEESA’s organization manual states that FEESA’s “primary object . . . consists of administrating and

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *See, e.g.,* Black’s Law Dictionary (10th ed. 2014) (defining “expropriation” as “[a] governmental taking or modification of an individual’s property rights, esp. by eminent domain”).

³³⁸ *See* FEESA Case Brief at 17-18.

³³⁹ *See* Petition at Exhibit III-62.

³⁴⁰ *See* Respondent Selection Memorandum at 6-7.

³⁴¹ *See* FEESA Case Brief at 18.

operating the expropriated assets, as well as commercializing the products and byproducts arising thereof, by means of financial, fiduciary and, in general, legal vehicles deemed necessary in order to obtain optimum utilization and . . . efficiency and effectiveness”³⁴² Thus, FEESA’s own statement demonstrates that the mills are regarded as collectively operated by FEESA rather than separately-operating entities.

Moreover, while each of the nine mills is held in a separate trust, this is simply a result of the structure that has emerged from the expropriation process, rather than an attempt to create functionally separate entities that act independently of one another. The expropriation process was intended to place assets temporarily within the custodial care of the GOM, through FEESA. FEESA’s organization manual highlights this by noting that its legal department, among other duties, “participate{s} in the decision of the legal schemes, by means of the financial, fiduciary and, in general, legal vehicles for an eventual reincorporation of the Expropriated Sugar Mills into the private sector.”³⁴³ By establishing separate trusts for each expropriated mill, FEESA upholds its fiduciary responsibilities while maintaining the assets of each mill in a manner that would facilitate their eventual reincorporation on a mill-by-mill basis, as it has already done for some of the other originally-expropriated mills.³⁴⁴ Therefore, we find that the creation of several trusts, as well as and the maintenance of several sets of books, is not an indication of how the mills are used in practice but, instead, a function of FEESA’s fiduciary responsibilities in light of the fact that the GOM intends to privatize the mills in the future.

We have reviewed the record of the proceeding to analyze this comment and we have found no information submitted prior or subsequent to our respondent selection determination that contradicts our conclusion that FEESA and the mills are a single producer-exporter. Indeed, information collected following respondent selection provides additional support to our determination that FEESA was the appropriately selected respondent. While some of this information is proprietary in nature and cannot all be addressed in detail in this public memorandum, we note the following as examples. First, FEESA’s verification, which included verification of the nine mills, was conducted at a single, central location in Mexico City, Mexico, that oversees the administration of the nine mills.³⁴⁵ The Department was able to access the accounting, sales, and inventory records of all nine mills at this central location, just like PROASA and the other administrating entities.³⁴⁶ While the mills may maintain separate accounting records and, by extension, prepare separate financial statements, they all enter their separate information into the same accounting program, which is centrally supervised by PROASA and FAF. Additionally, the mills’ financial information is ultimately consolidated into a collective financial statement prepared by FEESA.³⁴⁷

As another example, PROASA selects the technical committee members responsible for overseeing the operations of each mill.³⁴⁸ The technical committee selects the mill’s general

³⁴² See Petition at Exhibit III-62.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ See FEESA Verification Report at 4.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 3.

³⁴⁸ *Id.*

manager and ensures that each mill reports to PROASA, which, in turn, reports to FEESA.³⁴⁹ Furthermore, PROASA manages the FEESA mills' entire sales and production process; it negotiates prices on behalf of the mills, assigns production to the mills, and serves as an intermediary between the mills and sugarcane growers.³⁵⁰ This indicates that, contrary to FEESA's argument that each mill operates as a separate, independent entity, PROASA is actually in charge of the operations and administration of the mills. This also aligns with the statement in FEESA's organization manual, as discussed above, that FEESA is responsible for the commercialization of all products and byproducts generated by the expropriated assets. As a final example, when the GOM provided annual budget grants to cover operating expenses, it provided those funds to FEESA, not to the nine mills themselves, and entrusted FEESA with allocating those grants among its nine constituent mills.³⁵¹ Thus, the record gathered over the course of this investigation affirms the Department's interpretation of the decree and our treatment of the nine FEESA mills as a single producer-exporter for respondent selection purposes.

After the Department determined that the nine FEESA mills were a single producer-exporter, we aggregated the entries of those nine mills as they appeared in the CBP entry data placed on the record of the proceeding.³⁵² Contrary to FEESA's claim, the Department's action was not inconsistent with its practice of not aggregating entry data based on a collapsing, cross-ownership, or affiliation analysis. To be clear, the Department did not conduct a collapsing, cross-ownership, or affiliation analysis. Instead, we simply aggregated the entry volumes of a single producer-exporter based on the 2001 expropriation decree.³⁵³ As such, there was no need for the Department to conduct a collapsing, cross-ownership or affiliation analysis and therefore, we did not do so.³⁵⁴

When we aggregated the CBP entry data for the nine FEESA mills, we did so only to ensure we had correctly calculated the total shipment volume for the producer-exporter FEESA. We noted in the Respondent Selection Memorandum that, had we not aggregated the FEESA entry data, we would have acted inconsistently with section 777A(c)(2)(B) of the Act.³⁵⁵ Specifically, this section establishes that, when it is not practicable for the Department to make individual weighted average dumping margin determinations for each known exporter and producer of the subject merchandise because of the large number of exporters and producers involved in the investigation, the Department may limit its examination to a reasonable number of exporters or producers by limiting its examination to either (1) a sample of exporters and/or producers that is statistically valid or (2) exporters and/or producers accounting for the largest volume of the subject merchandise. Because we chose to investigate the exporters and/or producers with the

³⁴⁹ *Id.*

³⁵⁰ *Id.* at 6-7.

³⁵¹ *Id.* at 17.

³⁵² *See* Respondent Selection Memorandum at 6.

³⁵³ *Id.* We note that the Department routinely accounts for minor variations in company names and aggregates CBP entry data related to the same company (*e.g.*, "Company X" versus "Company X Ltd."), but this does not relate to any collapsing, cross-ownership or affiliation analysis.

³⁵⁴ *Id.* at 6-7.

³⁵⁵ *Id.* at 6.

largest volumes, we could not reasonably ignore information on the record indicating the nine mills were one and the same producer-exporter.³⁵⁶

Issue 10: Forgiveness of FEESA's Government Debts

FEESA's Comments

- The GOM has taken all steps to pursue collection of the full amount of FEESA liabilities in the relevant administrative and bankruptcy proceedings.³⁵⁷
- The GOM—as FINA, CONAGUA, and IMSS—is listed in the definitive lists of creditors.³⁵⁸
- The bankruptcy proceedings are ongoing, as demonstrated by the online docket, and, given the complexity of the issues, the duration of the proceedings is not surprising.³⁵⁹
- The Department misinterpreted the 2006 audit report; there is no GOM indemnification and any compensation provided by the GOM was related to expropriation, separate and apart from the relevant debts.³⁶⁰
- According to precedent, bankruptcy proceedings are not countervailable unless specific or otherwise preferential.³⁶¹

The GOM's Comments

- No debt obligations have been forgiven.³⁶²
- SAE has actively pursued the FINA debt, but there is no legal deadline for the court's final award in commercial insolvency proceedings.³⁶³
- CONAGUA is listed in the definitive list of creditors.³⁶⁴
- Since issuing the definitive list of creditors, the bankruptcy court has asked for updates; the bankruptcy court recently requested, and IMSS submitted, updated debt documentation.³⁶⁵
- IMSS is legally precluded from debt forgiveness.³⁶⁶
- Once submitting its claim in a bankruptcy proceeding, there is nothing else for a creditor to do before the final award.³⁶⁷

³⁵⁶ *Id.*

³⁵⁷ See FEESA Case Brief at 4, 6, 8.

³⁵⁸ *Id.* at 5, 9.

³⁵⁹ *Id.* at 4, 6.

³⁶⁰ *Id.* at 7.

³⁶¹ *Id.* at 7-8 (citing *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*Sheet and Strip from Korea*), and accompanying IDM at Comment 4; *Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002) (*Steel Wire Rod from Germany*), and accompanying IDM at 24-25).

³⁶² See GOM Case Brief at 2.

³⁶³ *Id.* at 3, 4.

³⁶⁴ *Id.* at 9.

³⁶⁵ *Id.* at 4, 10-11.

³⁶⁶ *Id.* at 11.

³⁶⁷ *Id.* at 5.

- The facts of this case are distinguishable from the Department’s previous findings of *de facto* debt forgiveness, as this is not a “facts available” analysis.³⁶⁸
- The Department’s analysis should not be based on a “*de facto*” or “reasonable expectation” standard.³⁶⁹
- Once the debt entered bankruptcy, the GOM recognized full repayment was unlikely and does not expect fully repayment in this case.³⁷⁰
- According to precedent, bankruptcy proceedings are not countervailable unless specific or otherwise preferential; in Mexico, use of bankruptcy proceedings is proportionate across all sectors.³⁷¹
- If the Department chooses to countervail this CONAGUA debt, we must exclude the debt forgiven under PROSANEAR.³⁷²

Petitioners’ Rebuttal

- The record supports the Department’s conclusion that the GOM appears to have assumed FEESA’s GOM-held debts.³⁷³
- The GOM’s paper claims to the debt are irrelevant.³⁷⁴
- The GOM and FEESA have not contradicted the Department’s finding of *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.”³⁷⁵
- In light of proprietary information on the record, GOM can have no reasonable expectation of debt repayment.³⁷⁶
- The Department’s *Preliminary Determination* is consistent with its prior decisions regarding debt forgiveness.³⁷⁷
- The GOM was actively involved in FEESA’s debt forgiveness via expropriation, which severed the mill assets from the mill debt, thereby “cleansing” them of debt and allowing them to continue operations.³⁷⁸
- But for expropriation/separation from debt, the FEESA mills would have been liquidated through the normal bankruptcy process.³⁷⁹

³⁶⁸ *Id.* at 6 (citing *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 the PRC*), and accompanying IDM; *GPX Int’l Tire Corp. v. United States*, 942 F. Supp. 2d 1343, 1362 (CIT 2013)).

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 7.

³⁷¹ *Id.* at 7-8.

³⁷² *Id.* at 10.

³⁷³ See Petitioners Rebuttal Brief at 3, 10.

³⁷⁴ *Id.* at 3, 9.

³⁷⁵ *Id.* at 4, 11.

³⁷⁶ *Id.* at 4.

³⁷⁷ *Id.* at 6 (citing *OTR Tires from the PRC*).

³⁷⁸ *Id.* at 7-8.

³⁷⁹ *Id.* at 8.

FEESA and the GAM Group's Rebuttal

- Interest was properly suspended in the normal course of the bankruptcy proceedings and should not be capitalized.³⁸⁰

Department's Position: The Department continues to find that FEESA benefited from substantial forgiveness of government-held debt. Based on record evidence, we find that FEESA benefited from *de facto* forgiveness of its FINA, CONAGUA water supply, and pre-expropriation IMSS debts. Contrary to arguments presented by the GOM, our preliminary analyses were consistent with prior determinations.³⁸¹ The Department applied the same analysis used in *OTR Tires from the PRC* to reach the conclusion that one tire producer had benefited from *de facto* debt forgiveness; *i.e.*, we asked whether parties had a reasonable expectation that the debt would be repaid.³⁸² Likewise, this decision is consistent with our prior determinations regarding debt forgiven pursuant to bankruptcy proceedings, which establish that the results of bankruptcy proceedings are not in themselves countervailable unless there is evidence that the proceedings were otherwise specific or preferential to the respondent.³⁸³ While FEESA and the GOM continue to cite these prior decisions as relevant to our specificity determination in this proceeding, Mexican bankruptcy law and the bankruptcy proceedings involving the debt owed to FINA and other Mexican authorities are not pertinent to our specificity determinations in this case. In the *Preliminary Determination*, the Department did not conclude that FEESA's debt had been forgiven pursuant to Mexican bankruptcy law or a bankruptcy proceeding. Instead, we concluded that there was no longer any reasonable expectation of debt repayment because the bankruptcy proceeding was not moving forward, the GOM did not appear to be seriously pursuing the debt, and FEESA had made no payments.³⁸⁴ On this basis, we concluded there was *de facto* debt forgiveness. As stated above, we continue to find that the debt forgiveness provided to FEESA was limited to FEESA in fact and, thus, was *de facto* specific. We reviewed the Mexican bankruptcy law and the bankruptcy proceeding and, based on the facts in this investigation (*i.e.*, the debt forgiveness was not the result of this bankruptcy law or these proceedings), we find them irrelevant to specificity.

For this final determination, we continue to find *de facto* debt forgiveness because there is no reasonable expectation of repayment, rather than as a result of the bankruptcy proceedings. To the contrary, the debt forgiveness is the result of the lack of any meaningful effort by the GOM to obtain repayment, through bankruptcy proceedings or otherwise.³⁸⁵ Moreover, since our preliminary analyses, the parties provided additional information regarding the history of the relevant liabilities and any expectation of collection from FEESA, which further supports our preliminary conclusion that the GOM does not expect to collect payment from FEESA.

³⁸⁰ See FEESA and GAM Group Rebuttal Brief at 9.

³⁸¹ See PDM at 17 (regarding forgiveness of FINA debt); see also Post-Preliminary Analysis at 6-9 (regarding forgiveness of CONAGUA water supply and IMSS debt); *OTR Tires from the PRC* and accompanying IDM (finding *de facto* debt forgiveness where there is no evidence on the record that the government bank continued to expect repayment, even though the debtor continued to carry the outstanding principal and interest payable in its financial records).

³⁸² *Id.*

³⁸³ See, e.g., *Sheet and Strip from Korea* and accompanying IDM at Comment 4; *Steel Wire Rod from Germany* and accompanying IDM at 24-25.

³⁸⁴ See PDM at 17; see also Post-Preliminary Analysis at 6-9.

³⁸⁵ See, e.g., GOM Verification Report at 3.

As stated in the *Preliminary Determination* and Post-Preliminary Analysis, the facts of this investigation indicate *de facto* forgiveness of FEESA's government-held debts because, for all intents and purposes, the debt is no longer viable in the minds of the borrower and lenders.³⁸⁶ In addition to proprietary information on the record, we preliminarily relied on a 2006 audit of the sugar sector, which concluded that the GOM "will not recover" the FEESA mills' FINA debt.³⁸⁷ We further noted that FEESA took no affirmative steps to make payments.

FEESA and the GOM have subsequently clarified several facts related to these outstanding liabilities. In particular, the GOM provided a largely-proprietary overview of several court determinations relevant to the proceedings in which the GOM is pursuing the FEESA mills' FINA, CONAGUA water supply, and pre-expropriation IMSS debts.³⁸⁸ The GOM also identified the extent of each government creditor's collection authority, explaining that IMSS, in particular, has the coercive authority to seize assets without first obtaining judicial approval.³⁸⁹ Finally, FEESA explained the purpose and status of the compensatory payments made by the GOM to the former owners of the FEESA mills.³⁹⁰ While these facts may modify our interpretation of the abovementioned 2006 audit report, they do not change the crux of our countervailability analysis, which finds that the GOM does not expect to collect payment from FEESA.³⁹¹ In fact, as discussed in a separate proprietary memorandum, our analysis of this information, taken in its entirety, lends further support to our finding of *de facto* forgiveness.³⁹²

The GOM and FEESA raise several arguments regarding the evidence we relied on in our preliminary analyses. First, they argue that the 2006 audit report does not support the Department's findings because it was prepared before relevant judicial decisions and was based on information available at the time. As we explained in the *Preliminary Determination*, the audit report clearly states that the GOM has no expectation of recovering the FINA debt.³⁹³ When the report was prepared in relation to the relevant bankruptcy proceedings and other judicial decisions is irrelevant because, as demonstrated by business proprietary evidence on the record, such proceedings offer no realistic assurance that the debts will be repaid.³⁹⁴ Contrary to FEESA's arguments, the Department is not attaching any legal authority to the audit report. Rather, we view the audit report as another convincing indicator, on the public record, of the GOM's expectations of recovering the expropriated mills' outstanding liabilities. Regardless of any events that occurred after the audit report's publication, additional business proprietary information leads to the same conclusion.³⁹⁵ The record, as a whole, continues to support our original position that FEESA's government debts were forgiven. Specifically, the record demonstrates that the relevant debts were severed from the expropriated FEESA mill assets via the expropriation process and the FEESA-specific expropriation decree.³⁹⁶ As such, there is no indication that the FEESA mills, as the actual producers of the product under investigation, will

³⁸⁶ *Id.* at 3-4; Petition, Exhibit III-7 at 6.1.

³⁸⁷ *Id.*

³⁸⁸ See GOM Verification Report at 4-5.

³⁸⁹ *Id.* at 8.

³⁹⁰ See FEESA Supplemental Questionnaire Response at Exhibit S-6M.

³⁹¹ A complete discussion of the relevant facts is provided in the FEESA Final Calculations Memorandum.

³⁹² See FEESA Final Calculations Memorandum at 6-7.

³⁹³ See Petition, Exhibit III-7 at 6.1.

³⁹⁴ See FEESA Final Calculations Memorandum at 6-7.

³⁹⁵ *Id.*

³⁹⁶ *Id.* at 6.

ever be held responsible for those liabilities. In accordance with our prior determinations, as described above, because there is no expectation that FEESA will repay the relevant FINA, CONAGUA water supply, and/or pre-expropriation IMSS debts, FEESA has benefitted from *de facto* debt forgiveness.

Issue 11: Forgiveness of Wastewater Discharge Debt

Petitioners' Comments

- PROSANEAR usage data indicates that the program is *de facto* specific.³⁹⁷
- Inclusion of certain usage data masks the disproportionate benefit to the sugar industry.³⁹⁸
- If such data is excluded, the sugar sector received a disproportionate amount of the program's benefits.

FEESA and the GAM Group's Rebuttal

- PROSANEAR was available to all industries and users.³⁹⁹
- The sugar industry and FEESA account for a small percentage of all program beneficiaries.⁴⁰⁰
- There is no basis to exclude a large segment of participants to gerrymander a finding of disproportionality.⁴⁰¹

The GOM's Rebuttal

- The proportionality of a program must be decided on a case-by-case basis.⁴⁰²
- Disparity without indication of industry-specific benefit is not countervailable.⁴⁰³
- A program like PROSANEAR would be expected to provide a greater level of benefits to large companies that generate greater amounts of wastewater.⁴⁰⁴
- The program was available to all water users on the same terms and conditions, and it was automatic based on the applicable criteria.⁴⁰⁵

Department's Position: We continue to find this program not to be specific. There is no dispute that this program is not *de jure* specific. As discussed in the Post-Preliminary Analysis, the GOM provided information regarding the general usage of the PROSANEAR program.⁴⁰⁶ Upon reviewing the data, the Department preliminarily determined that neither the participating respondent, FEESA, nor the Mexican sugar industry as a whole received a disproportionate

³⁹⁷ See Petitioners Case Brief at 32.

³⁹⁸ *Id.* at 32-33.

³⁹⁹ See FEESA and GAM Group Rebuttal Brief at 17.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at 18.

⁴⁰² See GOM Rebuttal Brief at 16.

⁴⁰³ *Id.* at 17.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ See Post-Preliminary Analysis at 14.

benefit from PROSANEAR's debt forgiveness.⁴⁰⁷ Therefore, in accordance with section 771(5A)(D)(iii) of the Act, we found that the program was also not *de facto* specific.

Petitioners argue that our preliminary analysis, based on a comparison of the percentage of benefits received by FEESA and the sugar industry to the percentage of benefits received by the average program participant, is skewed by the inclusion of certain usage data and contend that it should be excluded from the Department's *de facto* specificity analysis. We disagree with Petitioners' argument for several reasons. In this instance, the Department considered *all* of the program's participants when conducting its predominant or disproportionate use *de facto* specificity analysis.⁴⁰⁸ Aside from a vague assertion that the Department should exclude certain users, Petitioners cite no legal authority or past practice to support their argument that we should exclude an entire group of users from our specificity analysis. In this regard, Petitioners have provided no compelling reason or factual basis for the Department to consider whether it is appropriate or not to alter its specificity analysis by excluding a particular class of the PROSANEAR program's beneficiaries. Petitioners' assertion that these users should be excluded from the disproportionate use analysis does not appear to have an evidentiary basis except for undue reliance on certain terminology in the GOM questionnaire response.⁴⁰⁹ Therefore, as noted above, in this instance, the Department has no factual foundation to decide whether or not it is appropriate to exclude a group of users.

Furthermore, as noted in our discussion of Issue 6, the Department has discretion to apply any reasonable methodology in making a *de facto* determination in light of the facts and circumstances of each particular case.⁴¹⁰ We find that our specificity analysis for the PROSANEAR program is consistent with the Department's established practice, as upheld by the CIT.⁴¹¹ As such, based on the facts on the record of this investigation, we find that our preliminary specificity analysis was appropriate and that the PROSANEAR wastewater discharge debt forgiveness program is not countervailable.

Issue 12: FEESA's Interest-Free Social Security Debt

FEESA's Comments

- FEESA is properly challenging the relevant overdue payments pursuant to an administrative proceeding.⁴¹²
- The amount subject to administrative review cannot be considered an interest-free loan because there is no final resolution definitively finding FEESA liable.⁴¹³

⁴⁰⁷ *Id.* at 5.

⁴⁰⁸ *See, e.g., Washers from Korea* (affirmed by *Samsung Electronics*, 37 F. Supp. 2d at 1320).

⁴⁰⁹ *See* Petitioners Case Brief at 32-33 (*citing* GOM NSA Questionnaire Response at 16-18).

⁴¹⁰ *See, e.g., AK Steel Corp. v. United States*, 192 F.3d 1367, 1385 (CAFC 1999) (stating, “[D]eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case.”); *see also Bethlehem Steel*, 140 F. Supp. 2d at 1369.

⁴¹¹ *See, e.g., Washers from Korea* and accompanying IDM (affirmed by *Samsung Electronics*).

⁴¹² *See* FEESA Case Brief at 12.

⁴¹³ *Id.*

- If FEESA is found liable, interest will be taken into account in final debt value calculations, which will account for the time value of money.⁴¹⁴
- Use of the administrative review process is not specific to FEESA and is available to any entity subject to IMSS payments.⁴¹⁵

The GOM's Comments

- IMSS has not yet officially determined that FEESA is liable for the debt under review.⁴¹⁶
- If FEESA is found liable, the debt will be paid in Unidad de Inversion (Mexican Investment Units) (UDIs), accounting for the time value of money.⁴¹⁷
- The applicable review process is not specific.⁴¹⁸

Department's Position: The Department continues to find that the IMSS debt currently subject to administrative review is countervailable in the form of an interest-free loan. As described in the Post-Preliminary Analysis, we preliminarily determined that, in light of proprietary information on the record, a portion of FEESA's post-expropriation IMSS debt was outstanding during the POI.⁴¹⁹ The specific debt was discovered pursuant to an audit.⁴²⁰ As such, we calculated an applicable subsidy rate by treating the date of the audit report as the date the interest-free loan was received.⁴²¹

During verification, the GOM provided additional proprietary information regarding the status of the review proceedings, indicating that the issue has not yet been concluded.⁴²² The GOM also indicated that, generally, when such proceedings are resolved in favor of the GOM, the outstanding debt is paid in the form of UDIs.⁴²³ As summarized above, FEESA and the GOM have reiterated these facts in their case briefs, arguing that the debt should not be treated as an interest-free loan. We find, however, that these facts support the Department's post-preliminary analysis. Specifically, neither FEESA nor the GOM have demonstrated significant progress in the review proceedings. As such, FEESA is receiving a specific and seemingly perpetual benefit while the debt remains unpaid and interest remains uncapitalized. Furthermore, contrary to claims made by the GOM, calculating the debt in UDIs will not account for unaccrued interest during the life of the loan. As explained by the GOM at verification, payment in UDIs accounts only for *inflation* between the date the relevant social security contributions were originally due and the date of actual payment, rather than unaccrued interest.⁴²⁴ While inflation is one component of nominal interest rates, it does not encompass the entire cost of borrowing.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *See* GOM Case Brief at 12.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *See* Post-Preliminary Analysis at 9.

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *See* GOM Verification Report at 9.

⁴²³ *Id.*

⁴²⁴ *Id.*

Issue 13: Preferential Lending to FEESA

Petitioners' Comments

- The Department incorrectly considered FEESA's preferential loan to be a short-term loan.⁴²⁵
- "Short-term" means repayment is due within one year.⁴²⁶
- The contractual term of FEESA's loan was longer than one year.⁴²⁷

FEESA and the GAM Group's Rebuttal

- Petitioners base their argument on the fact that the relevant loan is a long-term loan, but the Department's reasoning was based on the fact that no benefit was received during the POI.⁴²⁸
- The loan agreement and payment documentation specify that the payment date was after the POI.⁴²⁹
- The loan is not specific or preferential; the lender provides financing to many industries.⁴³⁰
- The Department's disproportionality analysis is inappropriate.⁴³¹
- Another loan received by FEESA from a commercial bank had a lower interest rate.⁴³²
- FEESA was subject to the same application and review process as all other borrowers, and the loan was granted based on purely commercial considerations.⁴³³

The GOM's Rebuttal

- Regardless of how the loan is characterized, FEESA received no benefit during the POI.⁴³⁴
- There is no evidence the loan was specific to FEESA or the sugar industry.⁴³⁵
- The Department's specificity finding, based on the disproportionate size of FEESA's loan, is flawed.⁴³⁶
- There is no evidence that the loan was provided on preferential terms or that the recipient received preferential considerations.⁴³⁷

⁴²⁵ See Petitioners Case Brief at 34.

⁴²⁶ *Id.*

⁴²⁷ *Id.* at 34-35.

⁴²⁸ See FEESA and GAM Group Rebuttal Brief at 19.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.* at 20.

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ See GOM Rebuttal Brief at 17.

⁴³⁵ *Id.* at 18.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

Department’s Position: The Department agrees with Petitioners regarding the term of the loan, but we continue to find that FEESA received no countervailable benefit during the POI. The regulations state that a “long-term loan” is “a loan, the *terms* of repayment for which are greater than one year.”⁴³⁸ In the Post-Preliminary Analysis we characterized the relevant preferential loan as a short-term loan because the loan was repaid in full within one year of receipt.⁴³⁹ Upon further consideration, however, we agree with Petitioners that, because the contractual term of the loan was greater than one year, the loan should be treated as a long-term loan.

Nevertheless, in this case, we find that the term of the loan is irrelevant because the record demonstrates that FEESA received no benefit during the POI. According to the loan agreement, interest for this loan is calculated using a variable rate.⁴⁴⁰ Therefore, under 19 CFR 351.505(b), no benefit was received by FEESA until it made its first payment. It is undisputed that FEESA, in accordance with the normal terms of its loan agreement, made no principle or interest payments on this particular loan until after the POI. Because we have determined that no countervailable benefit was received during the POI, FEESA and the GOM’s arguments regarding specificity are moot and need not be addressed in this memorandum.

Issue 14: Provision of General Services for LTAR

Petitioners’ Comments

- FEESA and PROASA carry out the FEESA mills’ general sales and administrative activities.⁴⁴¹
- Such services were provided to the FEESA mills for LTAR and should be countervailed.⁴⁴²

FEESA and the GAM Group’s Rebuttal

- The Department has treated FEESA, PROASA, and the FEESA mills as a single respondent.⁴⁴³
- Any services provided by FEESA or PROASA to the FEESA mills cannot be countervailed because that would amount to an entity subsidizing itself.⁴⁴⁴
- The Department has already countervailed the annual budget allocations that pay for the alleged services.⁴⁴⁵

The GOM’s Rebuttal

- Because the Department has treated FEESA, PROASA, and the FEESA mills as a single entity, Petitioners are arguing that the company is subsidizing itself.⁴⁴⁶

⁴³⁸ 19 CFR 351.102(b)(32) (emphasis added).

⁴³⁹ See Post-Preliminary Analysis at 15; see also FEESA NSA Questionnaire Response at 15.

⁴⁴⁰ See FEESA NSA Questionnaire Response at Exhibit 7.

⁴⁴¹ See Petitioners Case Brief at 35.

⁴⁴² *Id.* at 36.

⁴⁴³ See FEESA and GAM Group Rebuttal Brief at 21.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

- The relevant GOM contributions were already countervailed as part of the annual budget allocations.⁴⁴⁷

Department’s Position: Petitioners raised this issue for the first time in their case brief, well after the factual record was closed. Consideration of Petitioners’ argument would require that the Department seek and verify additional information pursuant to 19 CFR 351.511, such as the price FEESA paid for general sales and administrative services and the appropriate market-determined price for such services, as well as the extent to which FEESA provided these services to itself and/or any alleged benefit is already countervailed under the Annual Budget Allocations program, discussed above. Because this information is not on the record, we cannot properly analyze whether or not the alleged program provided a countervailable benefit to FEESA during the POI.

Issue 15: Sales Denominator Adjustments

Petitioners’ Comments

- FEESA’s sales denominator figures need to be adjusted.⁴⁴⁸
- FEESA-reported figures include certain sales that the Department is required to exclude from the CVD sales denominator.⁴⁴⁹
- Sales figures, supported by FEESA’s income statements that show income exclusively from sugar, molasses, and bagasse, may include income from non-production related activities.⁴⁵⁰
- Certain other methodologies used to calculate the reported sales values are “highly questionable.”⁴⁵¹

FEESA and the GAM Group’s Rebuttal

- All sales were properly included in FEESA’s reported sales figures and the CVD sales denominator, as verified by the Department.⁴⁵²
- All reported revenues were production related.⁴⁵³
- FEESA’s FOB adjustments, as verified by the Department, were based on a reasonable proxy.⁴⁵⁴

Department’s Position: The Department requires sales denominators to be reported on an FOB basis and has, in the past, excluded sales of “traded goods” not produced by respondents on the

⁴⁴⁶ See GOM Rebuttal Brief at 20.

⁴⁴⁷ *Id.*

⁴⁴⁸ See Petitioners Case Brief at 36.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* at 38.

⁴⁵¹ *Id.* at 39.

⁴⁵² See FEESA and GAM Group Rebuttal Brief at 24.

⁴⁵³ *Id.* (citing *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) (*OCTG from the PRC*), and accompanying IDM at Comment 36).

⁴⁵⁴ *Id.* at 24.

theory that subsidies offset the cost of production, not sales expenses.⁴⁵⁵ We also exclude intercompany sales when necessary to avoid counting the same sale more than once. If Petitioners had raised their concerns regarding these adjustments earlier in the proceeding, the Department could have further investigated. The Department, however, cannot adjust the verified sales denominators for this final determination based on Petitioners' suspicions. Petitioners cite sales records and verification materials, but our examination of these documents finds no obvious mistakes and does not support making any adjustments to the reported figures.⁴⁵⁶

C. Issues Pertaining to the GAM Group

Issue 16: Forgiveness of the GAM Group's Government Debts

The Department's summarization of parties' comments and our response to those comments is contained in a business proprietary memorandum.⁴⁵⁷

Issue 17: Accelerated Depreciation of Renewable Energy Investments

Petitioners' Comments

- Pursuant to 19 CFR 351.524(c)(1), the Department should treat this program as a recurring subsidy under the category of "direct tax exemption and deduction" programs.⁴⁵⁸
- The criteria in 19 CFR 351.524(c)(2) also support treating this program as providing a recurring benefit.
- According to the Department's prior determinations, accelerated depreciation is a recurring benefit.⁴⁵⁹

The GAM Group's and the GOM's Comments

- The program is not specific because it is open to all taxpayers investing in assets used to make equipment for disabled people or to generate energy from renewable sources.⁴⁶⁰
- The program is not limited to any industry or company.⁴⁶¹
- Receipt of benefits is automatic for qualified investments.⁴⁶²
- If the Department countervails this program, the benefit should be allocated to 2013.⁴⁶³

⁴⁵⁶ See also 19 CFR 351.525(b)(3) (stating, "The secretary will attribute a domestic subsidy to *all* products sold by a firm..." (emphasis added)).

⁴⁵⁶ See, e.g., FEESA Verification Report at 8.

⁴⁵⁷ See GAM Group Final Calculations Memorandum at 6-9.

⁴⁵⁸ See Petitioners Case Brief at 28.

⁴⁵⁹ *Id.* (citing *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Belgium*, 64 FR 15567 (March 31, 1999) (*SSPC from Belgium*); *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa*, 64 FR 15553 (March 31, 1999) (*SSPC from South Africa*)).

⁴⁶⁰ See GAM Group Case Brief at 9; see also GOM Case Brief at 21.

⁴⁶¹ See GAM Group Case Brief at 9; see also GOM Case Brief at 21.

⁴⁶² See GAM Group Case Brief at 9; see also GOM Case Brief at 21-22.

⁴⁶³ See GAM Group Case Brief at 9.

Petitioners' Rebuttal

- The accelerated depreciation law explicitly limits program usage to a group of enterprises.⁴⁶⁴
- It is specifically tied to the production of equipment for people with disabilities and energy from renewable energy sources.⁴⁶⁵

FEESA and the GAM Group's Rebuttal

- The Department has found tax programs to be non-recurring if the benefit is dependent on or tied to the use of capital assets.⁴⁶⁶
- There is no dispute that this program is tied to capital assets.⁴⁶⁷

Department's Position: We continue to find that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because, by law, only a highly limited list of investments qualify for the 100 percent accelerated depreciation tax deduction.⁴⁶⁸ The GOM limits the 100 percent deduction to machinery and equipment for the generation of energy from renewable sources, which, it explains, includes solar, wind, "kinetic and potential water power," "ocean energy," geothermal, and energy from biomass or waste.⁴⁶⁹ Although any enterprise could, theoretically, qualify for the deduction by purchasing such assets, this does not overcome the fact that the law expressly limits access to the subsidy to certain enterprises with the requisite investments and the program is, thus, *de jure* specific. The Department routinely finds programs limited to enterprises using particular assets to be specific, including: tax deductions for research and development in eligible high-technology sectors;⁴⁷⁰ import tariff and value-added tax exemptions for "encouraged projects;"⁴⁷¹ grants for solar electricity-generation projects;⁴⁷² and loans to the renewable energy industry.⁴⁷³

For this final determination, we have treated the deduction as a recurring subsidy for benefit calculation purposes. 19 CFR 351.524(c) names subsidies associated with capital assets as non-recurring as part of an "illustrative" and "non-binding" list indicating how certain types of subsidies will "normally" be treated. Thus, the capital asset-related tax programs cited by the GAM Group in its rebuttal brief are contemplated as "normally" being treated as non-recurring subsidies. As discussed above at Issue 4, while the Department considers whether or not a subsidy is "tied" to capital structure, that question alone is not determinative of whether a

⁴⁶⁴ See Petitioners Rebuttal Brief at 25

⁴⁶⁵ *Id.*

⁴⁶⁶ See FEESA and GAM Group Rebuttal at 16.

⁴⁶⁷ *Id.*

⁴⁶⁸ See GOM Initial Questionnaire Response, Volume VII at Exhibit VII-1 (limiting qualifying investments used to make equipment for people with disabilities or used to make energy from renewable energy sources).

⁴⁶⁹ *Id.*

⁴⁷⁰ See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) and accompanying IDM at "Enterprise Income Tax Law, R&D Program."

⁴⁷¹ *Id.* at "Import Tariff and VAT Exemptions for Imported Equipment."

⁴⁷² See *Solar Cells from the PRC* and accompanying IDM at "Golden Sun Demonstration Program."

⁴⁷³ *Id.* at "Preferential Policy Lending."

subsidy is recurring or non-recurring. The Department, in fact, has a long-established exception to treat accelerated depreciation programs as recurring subsidies, despite their obvious relation to capital purchases.⁴⁷⁴ Most recently, we discussed this particular exception in *OCTG from the PRC* and noted that this exception dates back to 1993.⁴⁷⁵

In *OCTG from the PRC*, we explained that it would be impossible to assess the benefits from an accelerated depreciation program across the AUL because the long-term benefits depend on the respondent's taxable profits in the future. For this reason, we determined to treat the program as recurring and to calculate the benefit as an exemption from income tax in the period of investigation or review. We stated:

{W}e cannot be certain that the benefits of an accelerated depreciation program will be offset by higher taxes in the future...factors such as changes in tax provisions and government tax policies, the provision of additional future tax benefits, or the possibility that the recipient company is in a tax loss position in the future might prevent higher taxes from materializing. We find that our methodology from {prior investigations} is necessary to account for these factors.⁴⁷⁶

Although the GAM Group notes that tax benefits associated with capital assets are typically treated as non-recurring subsidies, it does not address this particular exception or the underlying reasoning for treating accelerated depreciation programs differently. In fact, none of the past cases relied on by the GAM Group discuss the treatment of accelerated depreciation programs.⁴⁷⁷ As such, for purposes of this final determination, *OCTG from the PRC* and other cases specifically analyzing and identifying accelerated depreciation programs as recurring subsidy programs are applicable to our analysis.⁴⁷⁸

Finally, we note that accelerated depreciation under this program is clearly not “extraordinary” and benefits are provided automatically. Like most income tax programs, the program at issue is claimed through the taxpayer's self-assessment, whereby it calculates its costs using the depreciation schedule it believes to be most appropriate.⁴⁷⁹ Such accelerated depreciation benefits can be deducted repeatedly each year as the taxpayer purchases new assets. No applications or approval documents are necessary.⁴⁸⁰

⁴⁷⁴ See, e.g., *SSPC from Belgium*; *SSPC from South Africa*.

⁴⁷⁵ See *OCTG from the PRC* and accompanying IDM at Comment 42.

⁴⁷⁶ *Id.* (citations omitted).

⁴⁷⁷ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616 (August 25, 2014), and accompanying IDM at 14; see also *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 26-27.

⁴⁷⁸ See *OCTG from the PRC*; see also *SSPC from Belgium*; *SSPC from South Africa*.

⁴⁷⁹ See GOM Verification Report at 10.

⁴⁸⁰ *Id.*

Because we are now treating this program as a recurring subsidy, the GAM Group's claim regarding a clerical error, based on the allocation of benefits received from a *non-recurring* subsidy program, is now moot.

Issue 18: Repayment of Special Fund and Annual Budget Allocations

The GAM Group's Comments

- Business proprietary information indicates that the 2001 special fund and annual budget allocations received by the GAM Group were repaid.⁴⁸¹

Petitioners' Rebuttal

- The GAM Group admitted at verification that it had no direct knowledge leading to the conclusion that these allocations were repaid.⁴⁸² Thus, the GAM Group's assertion that it repaid the allocations is just speculation.⁴⁸³

Department's Position: Our analysis determines there is inadequate information on the record to support the GAM Group's assertions that these allocations were repaid. The analysis depends heavily on business proprietary information reported during the GAM Group's verification and, therefore, is discussed in a separate proprietary memorandum.⁴⁸⁴

Issue 19: Amount of Benefits Received from the 1997 Export Subsidy

Petitioners' Comments

- The GAM Group verification report indicates that the GAM Group received more than what was reported by the GOM.⁴⁸⁵
- The verification amount should be used instead of the preliminary determination amount, which was based on the GOM's questionnaire response.⁴⁸⁶

FEESA and the GAM Group's Rebuttal

- In its questionnaire response, the GAM Group relied on its financial statements to report the total amount of benefits it received under the program, which were distributed among all mills under the GAM Group's control in 1997.⁴⁸⁷
- GAM Group referred to the GOM for mill-specific amounts.⁴⁸⁸

⁴⁸¹ See GAM Group Case Brief at 8.

⁴⁸² See Petitioners Rebuttal Brief at 23.

⁴⁸³ *Id.* at 24.

⁴⁸⁴ See GAM Group Final Calculations Memorandum at 5.

⁴⁸⁵ See Petitioners Case Brief at 27.

⁴⁸⁶ *Id.*

⁴⁸⁷ See GAM Group Rebuttal Brief at 13-14.

⁴⁸⁸ *Id.*

The GOM's Rebuttal

- The amount reported by the GAM Group is the amount awarded to all mills owned by the GAM Group in 1997.⁴⁸⁹
- The GAM Group's reported data was too high because it included information about all mills that were controlled by the GAM Group at the time, including, for example, Ingenio Presidente Benito Juarez, S.A.de C.V. (Benito Juarez), rather than only mills subject to this investigation.⁴⁹⁰
- The amounts reported by the GOM were verified by the Department.⁴⁹¹

Department's Position: As noted above, the Department has concluded the GAM Group consists of four cross-owned sugar mills within the context of 19 CFR 351.525(b)(6): Tala, Lazaro Cardenas, El Dorado, and Rosales. We received no comments regarding whether or not Benito Juarez, another affiliated sugar mill, or any other mill associated with the GAM Group over the AUL, was also cross-owned under 19 CFR 351.525(b)(6). Therefore, we are relying on the verified, mill-specific subsidy amounts provided by the GOM, and not the amount reported for the entire GAM Group. While Benito Juarez may have been affiliated at one time, because we have not found it to be cross-owned within the meaning of our regulation, its receipt of subsidies is not relevant to this investigation.

⁴⁸⁹ See GOM Rebuttal Brief at 13-14.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

VIII. CONCLUSION

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

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

September 16, 2015

Date