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DATE: September 25, 2017

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
performing the duties of Deputy Assistant Secretary for
Enforcement and Compliance

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Affirmative Preliminary
Determination in the Countervailing Duty Investigation of 100- to
150-Seat Large Civil Aircraft from Canada

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers of 100- to 150-seat large civil aircraft (aircraft) in Canada, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On April 27, 2017, the Department received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of aircraft from Canada, filed on behalf of The Boeing Company (the petitioner).¹ On May 17, 2017, we initiated AD and CVD investigations on aircraft from Canada.²

In the *Initiation Notice*, the Department stated that, although we normally rely on the number of producers/exporters identified in the petition and/or import data from U.S. Customs and Border

¹ See Letter from the petitioner, “In the Matter of 100- to 150-Seat Large Civil Aircraft from Canada – Petitions for the Imposition of Antidumping and Countervailing Duties” (April 27, 2017) (the Petition).

² See *100- to 150-Seat Large Civil Aircraft from Canada: Initiation of Countervailing Duty Investigation*, 82 FR 24292 (May 26, 2017) (*Initiation Notice*).



Protection (CBP) to determine whether to select a limited number of producers/exporters for individual examination in CVD investigations, the petitioner identified only one company in Canada: Bombardier, Inc. (Bombardier).³ Because we knew of no additional producers/exporters of merchandise under consideration from Canada and because the petitioner provided information from an independent third party source as support, we stated our intention to examine the sole producer/exporter identified in the petition.⁴ We did not receive further comments from any party regarding respondent selection.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation.⁵ The Department received timely scope comments on the record of this investigation, as well as on the record of the companion AD investigation. The Department intends to issue its preliminary decision regarding comments concerning the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the average useful life (AUL) applicable to producers of aircraft.⁶ The Department received timely comments on the AUL. See the “Average Useful Life” section, below.

B. Questionnaires and Responses

On May 19, 2017, we issued CVD questionnaires to both the Government of Canada (GOC) and the Government of the United Kingdom (U.K.). On June 2, 2017, we received a timely response to the “affiliated companies” section of the CVD questionnaire from Bombardier.⁷ On June 5, 2017, we issued a supplemental questionnaire to Bombardier regarding its “affiliated companies” response.

On June 12 and 14, 2017, we received a timely response to the supplemental “affiliated companies” questionnaire from Bombardier.⁸ On June 22, 2017, the Department issued a second supplemental questionnaire to Bombardier regarding its “affiliated companies” responses. On July 6, 2017, Bombardier provided a response to the Department’s second supplemental questionnaire regarding Bombardier’s “affiliated companies” responses.⁹

On July 24, 2017, the GOC, Government of Québec (GOQ), and Caisse de Dépôt et Placement du Québec (CDPQ) submitted timely responses to the initial CVD questionnaire.¹⁰ On July 25,

³ See *Initiation Notice*, 82 FR at 24295.

⁴ *Id.*

⁵ *Id.* at 24293.

⁶ *Id.*

⁷ See Bombardier’s June 2, 2017 Affiliation Response (Bombardier June 2, 2017 AFFR).

⁸ See Bombardier’s June 12, 2017, and June 14, 2017 Supplemental Affiliation Response (Bombardier June 12 and 14, 2017 SAFFR).

⁹ See Bombardier’s July 6, 2017 Second Supplemental Affiliation Response (Bombardier July 6, 2017 SSAFFR).

¹⁰ See GOC’s July 24, 2017 Initial Questionnaire Response (GOC July 24, 2017 IQR); GOQ’s July 24, 2017 Initial Questionnaire Response (GOQ July 24, 2017 IQR); and CDPQ’s July 24, 2017 Initial Questionnaire Response (CDPQ July 24, 2017 IQR).

2017, the U.K. and Bombardier submitted timely responses to the initial CVD questionnaire.¹¹ On August 2, 2017, the GOQ filed translations for certain exhibits as a supplement to its initial response.¹²

On August 11, 2017, we issued supplemental questionnaires to the GOQ, CDPQ, and Bombardier for additional documents referenced in, but not included in, their initial questionnaire responses. On August 15, 2017, the GOQ, CDPQ, and Bombardier submitted these documents.¹³

On August 16, 2017, the petitioner timely filed new subsidy allegations.¹⁴ On August 18, 2017, the Department initiated an investigation of these new subsidy allegations,¹⁵ and on this same date, issued questionnaires to Bombardier, the GOQ, and the GOC related to the new subsidy allegations.¹⁶

On August 18, 2017, we issued supplemental questionnaires to Bombardier, the GOC, the GOQ, CDPQ, and the U.K. On August 21, 2017, the petitioner submitted a report on the equityworthiness of the investments made by *Investissement Québec* and CDPQ.¹⁷

On August 23, 2017, the GOQ requested that it be permitted to withdraw its initial questionnaire response and resubmit it without an exhibit for which it claimed parliamentary privilege and stated that it had mistakenly submitted. On August 24, 2017, the petitioner filed a letter objecting to the withdrawal of the exhibit. On September 6, 2017, the Department permitted the GOQ to withdraw and resubmit its initial questionnaire response without the exhibit for which it claimed parliamentary privilege. On September 7, 2017, the GOQ timely refiled its initial questionnaire response.

On September 5, 2017, Bombardier, the GOC, the GOQ, CDPQ, and the U.K. submitted timely responses to their supplemental questionnaires.¹⁸ On September 6, and September 8, 2017, Bombardier timely submitted English translations for certain exhibits contained in its

¹¹ See Bombardier's July 25, 2017 Initial Questionnaire Response (Bombardier July 25, 2017 IQR) and the U.K.'s July 25, 2017 Initial Questionnaire Response (U.K. July 25, 2017 IQR).

¹² See GOQ's August 2, 2017 Initial Questionnaire Response Supplement (GOQ August 2, 2017 IQRS).

¹³ See GOQ's August 15, 2017 Additional Documents (GOQ August 15, 2017 QRAD); CDPQ's August 15, 2017 Additional Documents (CDPQ August 15, 2017 QRAD); and Bombardier's August 15, 2017 Additional Documents (Bombardier August 15, 2017 QRAD).

¹⁴ See letter from the petitioner, "100- To 150-Seat Large Civil Aircraft from Canada: New Subsidy Allegations," dated August 16, 2017.

¹⁵ See Memorandum, "Decision Memorandum on New Subsidy Allegations," dated August 18, 2017 (NSA Memorandum).

¹⁶ We issued questions regarding the new subsidy allegations as part of our supplemental questionnaires, which we issued on August 18, 2017.

¹⁷ See the Petitioner's Rebuttal Factual Information Submission dated August 21, 2017, at Exhibit 1 (Gompers Report).

¹⁸ See Bombardier's September 5, 2017 Supplemental Questionnaire Response (Bombardier September 5, 2017 SQR); GOC's September 5, 2017 Supplemental Questionnaire Response (GOC September 5, 2017 SQR); GOQ's September 5, 2017 Supplemental Questionnaire Response (GOQ September 5, 2017 SQR); CDPQ's September 5, 2017 Supplemental Questionnaire Response (CDPQ September 5, 2017 SQR); and U.K.'s September 5, 2017 Supplemental Questionnaire Response (U.K. September 5, 2017 SQR).

supplemental response to the Department's supplemental questionnaire. Additionally, on September 13, 2017, Bombardier timely submitted additional exhibits which were referenced in its supplemental questionnaire response.

C. Average Useful Life

On June 6, and June 16, 2017, we received comments and rebuttal comments from the petitioner and Bombardier on the appropriate AUL. On June 29, and June 30, 2017, we received requests from Bombardier, the GOC, and GOQ to modify the AUL reporting period set forth in the questionnaire to 10 years. Therefore, on June 30, 2017, we issued a letter to the GOC and U.K. notifying interested parties to provide data for subsidies provided or received during the 10-year AUL period (*i.e.*, from January 1, 2007, through December 31, 2016).¹⁹ See the "Allocation Period" section, below.

D. Postponement of the Preliminary Determination

On June 26, 2017, the petitioner requested that the Department postpone the preliminary determination.²⁰ The Department granted the petitioner's request and, on July 5, 2017, published the notification of postponement of the preliminary determination, until September 25, 2017, in the *Federal Register*, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).²¹

E. Alignment

On September 11, 2017, the petitioner requested that the Department align the date of the CVD final determination with that of the AD final determination. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,²² we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aircraft from Canada. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is scheduled to be due no later than December 18, 2017, unless postponed.

F. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is 100- to 150-seat large civil aircraft from Canada. A full description of the products covered by this investigation is provided in Appendix I of the preliminary determination published in the *Federal Register*.

¹⁹ See Department Letter re: Modification to Average Useful Life Reporting Period, dated June 30, 2017.

²⁰ See Petitioner's June 26, 2017, Request for Postponement.

²¹ See *100- to 150-Seat Large Civil Aircraft from Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 31045 (July 5, 2017).

²² See Petitioner's September 11, 2017, Request for Alignment.

IV. INJURY TEST

Because Canada is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On June 12, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with injury by reason of imports of aircraft from Canada.²³

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s (IRS) 1977 Class Life Asset Depreciation Range System.²⁴ In the *Initiation Notice*, the Department notified parties of an opportunity to comment on the AUL applicable to producers of aircraft.²⁵ The Department received timely comments on the AUL. Ultimately, no party in this investigation disputed the 10-year AUL period.

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

B. Attribution of Subsidies

Cross-Ownership

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

²³ See *100- to 150-Seat Large Civil Aircraft from Canada; Determinations*, 82 FR 27524 (June 15, 2017).

²⁴ See IRS Publication 946 (dated February 27, 2017) at asset class 37.2 (this table was placed on the record by the Department; see Memorandum, “Class Life for Manufacture of Aerospace Products,” dated May 17, 2017).

²⁵ See *Initiation Notice*, 82 FR at 24293.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²⁶

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁷

Bombardier

Bombardier responded to the Department's questionnaire on behalf of the following affiliated companies:²⁸

- Bombardier, Inc. (Bombardier), a manufacturer of subject merchandise and parent company
- C Series Aircraft Limited Partnership (CSALP), a manufacturer of subject merchandise
- 9268430 Canada Inc. (CanCo1), an aerospace holding company
- 9268448 Canada Inc. (CanCo2), an aerospace holding company
- C Series Aircraft Managing GP Inc. (Gesco), a holding company
- C Series Aircraft Properties Inc. (CSAP), a real estate holding company
- Short Brothers PLC (Shorts), an aerospace company and a manufacturer of wings for C Series aircraft
- BT (Investment) UK Limited (BT Holdco), a holding company
- Bombardier Aerospace Services Ltd. (BASL), an aerospace company

²⁶ See *Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*Preamble*).

²⁷ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁸ See Bombardier June 12 and 14, 2017 SAFFR.

- Bombardier Aerospace Europe Ltd. (BAEL), an aerospace holding company
- Bombardier Aerospace U.K. Ltd. (BAUK), a corporate holding company

Because Bombardier is a parent company, we are using Bombardier's consolidated sales (net of intercompany transactions) to construct the denominator.²⁹ Further, because Bombardier and CSALP are both producers of large civil aircraft, we are preliminarily attributing the benefit from subsidies that Bombardier received to the combined sales (net of intercompany transactions) of Bombardier and CSALP, in accordance with 19 CFR 351.525(b)(6)(ii).

Because Shorts is an input supplier of Bombardier, and the production of the input product is primarily dedicated to the production of aircraft, we are preliminarily attributing subsidies received by Shorts to the combined sales (net of intercompany transactions) of input products and large civil aircraft sold by Shorts and Bombardier, respectively, in accordance with 19 CFR 351.525(b)(6)(iv).

In the case where a subsidy is tied to the production and sales of C Series aircraft, pursuant to 19 CFR 351.525(b)(5)(i), we have attributed subsidies only to sales of C Series aircraft. Additionally, in the case of the equity infusion into CSALP, because the equity infusion was intended entirely for CSALP, we have attributed the subsidy to CSALP's sales, in accordance with 19 CFR 351.525(b)(6)(iii).³⁰

Further, as noted above, while we find that CanCo1, CanCo2, Gesco, CSAP, BT Holdco, BASL, BAEL, and BAUK are cross-owned with Bombardier within the meaning of 19 CFR 351.525(b)(6)(vi), we find no record information indicating that these companies either: 1) received any measurable subsidies under any of the programs under investigation pursuant to 19 CFR 351.525(b)(6)(iii); or 2) served as a conduit for the transfer of a subsidy to Bombardier that would be attributable to Bombardier under 19 CFR 351.525(b)(6)(v). Finally, Bombardier also identified additional affiliated companies that may meet the definition of cross-ownership provided in 19 CFR 351.525(b)(6)(vi).³¹ However, because these companies do not meet any of the criteria in 19 CFR 351.525(b)(6)(ii)-(v), we have not included them in our analysis.³²

C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail in the "Programs Preliminarily Determined to be Countervailable" section below, where the program has been found to be tied to a particular entity or particular program (*e.g.*, the C Series or CSALP), we have used the relevant sales (calculated on a free, on-board basis consistent with 19 CFR

²⁹ See 19 CFR 351.525(b)(6)(iii).

³⁰ *Id.* "If the Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary."

³¹ See Bombardier June 2, 2017 AFFR and Bombardier June 12 and 14, 2017 SAFFR.

³² *Id.*

351.525(a)) as our denominator for the program. Additionally, because Bombardier reports its financial statements in U.S. dollars, we have, where necessary, converted the benefit figure into U.S. dollars. For this preliminary determination, where a benefit required conversion, we have used the Federal Reserve exchange rate for the conversion from Canadian dollars or British pounds into U.S. dollars.³³

D. Creditworthiness

In the Petition, the petitioner alleged that, not only was Bombardier uncreditworthy at the time launch aid was provided for the C Series program by the GOC, GOQ, and U.K., but also the C Series program itself was uncreditworthy and that Bombardier was unable to find commercial financing for the C Series program.

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. Additionally, 19 CFR 351.505(a)(4)(i) provides that the Department will determine uncreditworthiness on a case-by-case basis, and may, in appropriate circumstances, focus its creditworthiness analysis on the project being financed, rather than the company as a whole. The *Preamble* explains that “for loans that are provided to fund a large investment project into new products, processes, or capacity (*e.g.*, a plant expansion or new model or product line, where repayment of a loan is contingent upon the success of the particular project being funded), our traditional analysis focusing primarily on the creditworthiness of the company as a whole may be inappropriate because the risk associated with a new project may be much higher or lower than the average risk of the company’s existing operations.”³⁴

In making its creditworthiness determination, according to 19 CFR 351.505(a)(4)(i), the Department may examine, among other factors, the following four types of information: (1) the receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm’s financial health; (3) present and past indicators of the firm’s ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm’s future financial position.

With respect to the first item, pursuant to 19 CFR 351.505(a)(4)(ii), in the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee (either explicit or implicit), will normally constitute dispositive evidence that the firm is not uncreditworthy. However, according to the *Preamble*, in situations such as where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a

³³ *See* the Department’s Preliminary Calculation Memorandum, dated concurrently with this memorandum (Preliminary Calculation Memorandum) at Exhibit 18a.

³⁴ *See Preamble*, 63 FR at 65366-67.

commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness.³⁵

Based on the analysis below, we preliminarily determine that Bombardier's C Series program was uncreditworthy, including during the following relevant periods: 1) the time when the launch aid was provided in 2009; 2) the periods in which the equity infusions were provided; and 3) the periods in which Bombardier received non-recurring grants tied to the C Series which were allocable.

Bombardier provided its credit ratings, which are published as part of its public annual report, for the entire 10-year AUL. During the period 2006 through 2015, Bombardier's credit rating was below investment grade, in the range of marginally speculative (*i.e.*, Ba2 for Moody's and BB for Standard and Poor's).³⁶ In December 2015, Bombardier's credit rating went down further to highly speculative (*i.e.*, B2 for Moody's and B to B- for Standard and Poor's).³⁷ Additionally, Bombardier has neither reported any loans from commercial banks during 2009 (*i.e.*, when the launch aid was received), nor are there any other indications that Bombardier had active borrowing from commercial lenders during the AUL.³⁸ While Bombardier appeared to have some long-term bonds outstanding during the AUL, the evidence on the record indicates that they were not tied to any particular assets or security related to the C Series project. Further, we are making a project-specific determination regarding the C Series because, consistent with the *Preamble*, the C Series is a large investment project that received loans for which repayment is contingent upon its success; therefore, any other outstanding and unrelated bonds issued by Bombardier are not dispositive as to the C Series project's creditworthiness. Bombardier also did not report any active loans to finance the C Series, and the terms of the launch aid provided by the GOC, GOQ, and U.K. do not represent typical loans. Moreover, the European Commission's report on the launch aid provided by the U.K. indicates that Bombardier and Shorts were unable to obtain loans or other financing from commercial banks or other financial institutions for the C Series project and that Bombardier's credit rating was below investment grade.³⁹

Further, as demonstrated by its financial ratios, Bombardier was in poor financial health during the AUL. Data from Infionals, an equity analysis firm, demonstrates that Bombardier was much weaker than its peers for all ratios pertinent to the Department's analysis and, for much of the AUL, was nearly insolvent.⁴⁰ According to Infionals, Bombardier's current ratio, quick

³⁵ See *Preamble*, 63 FR at 65367.

³⁶ See Bombardier September 5, 2017 SQR at 6-8 and Exhibit 7A.

³⁷ *Id.*

³⁸ *Id.* at 8. Although Bombardier did have a revolving credit facility available to it, it did not use it. Further, an examination of Bombardier's financial statements does not show any long-term debt issued by commercial banks during the AUL, only bond issuances and long-term lease obligations.

³⁹ See U.K. September 5, 2017 SQR at Exhibit 3, pages 20-21. Additionally, the European Commission report on the U.K.'s launch aid to Bombardier notes that "Debt financing option was not a credible solution as well... its credit rating remains the lowest among its peers, rated at a sub-investment grade of BB+, or equivalent, by all three credit rating agencies... Bombardier's credit rating was below investment grade even before the start of the recent financial crisis." *Id.* at paragraph 126.

⁴⁰ See Petitioner August 28, 2017 NFI at Exhibit 1 and the Preliminary Calculation Memorandum at Attachment 7a.

ratio (or acid test), and interest coverage ratio were all below an acceptable, creditworthy level (as indicated by Bombardier's "speculative" credit rating).⁴¹ As the Department explained in *Solar Cells from the PRC*, a company's current and quick "ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow... {and} the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not."⁴² Further, in *Solar Cells from the PRC*, the Department noted that the benchmark for a quick ratio is 1.0, or funds available to cover 100 percent of upcoming obligations, and a current ratio of 2.0.⁴³ We have calculated quick ratios for Bombardier below 1.0 for the entire AUL, and we found only two instances over the AUL (for the years ending January 31, 2009, and January 31, 2010) where Bombardier's quick ratio was above 0.70. Similarly, Bombardier's current ratio only rose above 1.50 during the same two years noted above, with the current ratio near 1.0 for much of the AUL.⁴⁴ In *Solar Cells from the PRC*, the Department also considered a debt-to-equity ratio above 1.0 to be "high."⁴⁵ Bombardier's debt-to-equity ratio was consistently high or very high during the AUL, dipping to a low of 1.10 in 2010 and 1.84 in 2007-2008, but remaining above 2.0 (and in some years above 4.0) throughout the remainder of the AUL.⁴⁶ Additionally, Bombardier's CEO admitted that Bombardier was "on the brink of bankruptcy in 2015" and "needed liquidity," largely due to major delays and budget overruns with the C Series program.⁴⁷ Therefore, we find that Bombardier's financial ratios, which do not meet the standard for creditworthiness, serve as a conservative proxy for the likely worse financial ratios of the C Series project. As a result, we preliminarily find the C Series project to be uncreditworthy.

Therefore, pursuant to 19 CFR 351.505(a)(3)(iii), we derived an "uncreditworthy" interest rate for the C Series program for each instance in which it was required. Pursuant to our regulations, we used the probability of default for Caa to C-rated companies in Moody's study of historical default rates of Canadian corporate bond issuers, and average cumulative default rates for Aaa to Baa-rated companies in Moody's study of historical default rates of Canadian corporate bond issues (*i.e.*, investment grade companies).⁴⁸ We used a time period of five years for the term of the loan because the Moody's study data covered up to a five-year time window for default probabilities. For the launch aid programs, we used the investment grade bond ratings provided by Bombardier and applied the formula specified in 19 CFR 351.505(a)(3)(iii) to determine the uncreditworthy discount rate.⁴⁹ For the equity infusions, we used average corporate bond rates

⁴¹ *Id.* The Department's own calculations of these ratios are consistent with those of Infinancials.

⁴² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum (IDM) at Comment 17.

⁴³ *Id.*

⁴⁴ See Preliminary Calculation Memorandum at Attachment 7a.

⁴⁵ See *Solar Cells from the PRC* and accompanying IDM at Comment 17.

⁴⁶ See Preliminary Calculation Memorandum at Attachment 7a.

⁴⁷ See Petition at Exhibit 25 ("Bombardier was on 'brink of bankruptcy,' CEO says," *Globe and Mail*, November 12, 2016).

⁴⁸ See GOC August 25, 2017 NFI at Exhibit 2 (Moody's Investors Service, "Default and Recovery Rates of Canadian Corporate Issuers, 1989-2013," May 2014).

⁴⁹ See Preliminary Calculation Memorandum at Exhibit 7b.

for the year in which the investment was initiated for the uncreditworthy calculation.⁵⁰ For other grants which we allocated and Bombardier received in Canadian dollars or British pounds, we used Bank of Canada or Bank of England official rate data to calculate the uncreditworthy discount rate, and we used an average rate for the year in which the grant was disbursed.⁵¹

E. Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507(a)(1) state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. Pursuant to 19 CFR 351.507(a)(2), an equity infusion is considered inconsistent with the usual investment practice if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same newly issued shares.

If private investor prices are not available, then pursuant to 19 CFR 351.507(a)(3), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. Under 19 CFR 351.507(a)(4)(i), the Department will consider a firm to be equityworthy if it determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In making this determination, the Department may examine the following factors, among others: (1) objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question; (2) current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles; (3) rates of return on equity in the three years prior to the government infusion; and (4) equity investments in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department's regulations further stipulates that the Department will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. The Department will not necessarily make such a determination if the absence of an objective analysis is consistent with actions of a reasonable private investor in the country in question.

In the Initiation Checklist, we indicated that we would investigate the equityworthiness of the CSALP and BT Holdco investments.⁵² Therefore, we obtained information from Bombardier,

⁵⁰ *Id.* at Exhibit 7c.

⁵¹ *Id.* at Exhibits 7d and 7e.

⁵² See document entitled, "Enforcement and Compliance, Office of AD/CVD Operations, Countervailing Duty Investigation Initiation Checklist," (Initiation Checklist), dated May 17, 2017, at 8 and 9.

CDPQ, and the GOQ regarding the equityworthiness of CSALP and BT Holdco at the time of these investments. Our detailed analysis of this information is contained in the Equityworthiness Memo.⁵³

As discussed in the Equityworthiness Memo, we preliminarily find that the information on the record overwhelmingly demonstrates that, at the time of *Investissement Québec's* equity infusion, CSALP did not show an ability to generate a reasonable rate of return within a reasonable period of time from the perspective of a reasonable private investor. We also preliminarily find that there is ample record evidence to demonstrate that *Investissement Québec's* investment in CSALP was inconsistent with the practice of private investors.⁵⁴ As a result, we preliminarily determine that CSALP was not equityworthy at the time of *Investissement Québec's* equity infusion. For an analysis of *Investissement Québec's* equity infusion in CSALP, see the “Analysis of Programs,” section, below.

Furthermore, as discussed in the Equityworthiness Memo, we preliminarily find that, from the perspective of a reasonable private investor, CDPQ's investment in BT Holdco showed an ability to generate a reasonable rate of return within a reasonable period of time, and was, therefore, an equityworthy investment.⁵⁵ Consequently, we preliminarily find that CDPQ's investment in BT Holdco provided no benefit to Bombardier. For an analysis of CDPQ's equity infusion in BT Holdco, see the “Analysis of Programs,” section, below.

F. Loan Benchmarks and Interest Rates

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market” the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, the Department “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates.⁵⁶ In the absence of reported long-term loan interest rates, we are

⁵³ See Memorandum entitled, “Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada: Analysis of the Equityworthiness of *Investissement Québec's* (IQ's) Equity Infusion in the C Series Aircraft Limited Partnership (CSALP) and Caisse de dépôt et Placement du Québec's (CDPQ's) Equity Infusion in Bombardier Transportation (Investment) UK Ltd (BT Holdco)” (Equityworthiness Memo), dated concurrently with this memorandum. This analysis relies on business proprietary information that cannot be discussed in this public memorandum.

⁵⁴ See Equityworthiness Memo at 6 and 7.

⁵⁵ *Id.* at 10. CDPQ negotiated a minimum return of 9.5 percent return on its investment, and the size of its equity stake in BT Holdco was in line with market valuations.

⁵⁶ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*), and accompanying IDM at “Benchmark and Discount Rates” section.

preliminarily using the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time, pursuant to 19 CFR 351.524(d)(3)(i)(B).⁵⁷

Short-Term and Long-Term Loans

Based on Bombardier's response, we preliminarily determine that the Bombardier C Series project did not receive comparable short-term or long-term loans from commercial banks for certain years for which we must calculate benchmark and discount rates.⁵⁸ Thus, we do not have loan information from Bombardier for the C Series project in the years in which subsidies were provided. As such, loan rates were not available, and because we have preliminarily determined that Bombardier's C Series program is uncreditworthy (*see* discussion above), we are preliminarily using the uncreditworthy interest rates calculated pursuant to 19 CFR 351.505(a)(3)(iii) for programs tied to the C Series. For programs which are not tied to the C Series, we are preliminarily using the benchmark borrowing rates in the appropriate currency which are contemporaneous with the time period of the loan.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(ii), as discussed above, we preliminarily found Bombardier's C Series program to be uncreditworthy under 19 CFR 351.505(a)(4). Thus, for all programs tied to the C Series, we have preliminarily used as our discount rates the uncreditworthy rates we calculated for Bombardier, according to the methodology described in 19 CFR 351.505(a)(3)(iii) for the year in which the governments provided non-recurring subsidies. For programs which are not tied to the C Series, where we required a discount rate, we have preliminarily used the benchmark borrowing rates in the appropriate currency which are contemporaneous with the time period of the loan. The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.⁵⁹

VI. ANALYSIS OF PROGRAMS

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

⁵⁷ See, e.g., *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015), and accompanying IDM at "C. Loan Benchmarks and Discount Rates."

⁵⁸ See Bombardier July 25, 2017 IQR at 158 ("Shorts does not have external borrowing through commercial banks or bonds, etc."); and Bombardier September 5, 2017 SQR at 8 ("Bombardier did not take out any long-term loans in 2009").

⁵⁹ See Preliminary Calculation Memorandum at Exhibits 7b to 7e.

A. Programs Preliminarily Determined to Be Countervailable

Equity Infusion

1. Equity Infusion by *Investissement Québec*

On October 26, 2015, the GOQ's Ministry of Economic Development, Innovation and Trade Export (which is now the Ministry of Economy, Science and Innovation, or MESI) signed a memorandum of understanding (MOU) with Bombardier concerning an investment in the C Series aircraft.⁶⁰ GOQ Decree 972-2015, published on October 28, 2015, outlined a "financial contribution of a maximum amount of US\$1 000 000 000 in the limited partnership that shall pursue {sic} the design, manufacture and commercialization of the C Series' CS100 and CS300 twin-engine aircraft and an advance from the Minister of Finance to the Economic Development Fund."⁶¹ The decree also states that "Bombardier Inc.'s C Series program is of major economic significance to Québec," and that "when the Government gives it the mandate to do so, *Investissement Québec* must grant and administer any one-time financial assistance the Government determines for the completion of projects that are of major economic significance for Québec."⁶² The terms of the agreement between the GOQ and Bombardier were further defined and modified by the GOQ's June 22, 2016, Decree number 558-2016, and a subscription agreement was signed by *Investissement Québec*, Bombardier, and CSALP on the same date.⁶³ Pursuant to the terms of the agreement, on June 30, 2016, *Investissement Québec* paid five hundred million U.S. dollars to CSALP, and on September 1, 2016, *Investissement Québec* paid another five hundred million U.S. dollars to CSALP.⁶⁴ In return, *Investissement Québec* received 49.5 percent of the shares in CSALP for its investment.⁶⁵

Investissement Québec was established by an act of the Québec government and the GOQ is its sole shareholder. The Act Respecting *Investissement Québec* stipulates that, among other things: 1) "The Company is a mandatory of the State;" 2) "The mission of the Company is to contribute to the economic development of Québec in accordance with the economic policy of the Government. Its goal is to stimulate the growth of investments and support employment in all regions of Québec;" 3) "In pursuing its mission, the Company... carries out any mandate it is given by this Act or the Government;" 4) "When the Government gives it the mandate to do so, *Investissement Québec* must grant and administer any one-time financial assistance the Government determines for the completion of projects that are of major economic significance for Québec;" 5) "The Company must carry out any other mandate given to it by the government;" 6) "The government appoints the members of the board of directors...;" 7) "The Government appoints the chair of the board of directors...;" and 8) "On the recommendation of the board of directors, the Government appoints the president and chief executive officer..."⁶⁶ In view of the fact that *Investissement Québec* is a mandatory of the state, its sole mission is to contribute to the economic development of Québec, the government appoints its board of

⁶⁰ See GOQ July 24, 2017 IQR at 2.

⁶¹ *Id.* at Exhibit QC-IQI-2.

⁶² *Id.*

⁶³ *Id.* at 3 and Exhibit QC-IQI-3.

⁶⁴ *Id.* at 7. See also Bombardier July 25, 2017 IQR at 61.

⁶⁵ See GOQ July 24, 2017 IQR at 3.

⁶⁶ *Id.* at QC-IQLA-7.

directors and executive leadership, and that it must grant and administer financial assistance as directed by the government, we preliminarily find that *Investissement Québec* constitutes an “authority” within the meaning of section 771(5)(B) of the Act.

The equity infusion by *Investissement Québec* is specific to Bombardier as a matter of law, within the meaning of section 771(5A)(D)(i) of the Act, because it was a cash infusion given to Bombardier by *Investissement Québec*, and limited to that company, pursuant to a government decree. The equity infusion constitutes a financial contribution in the form of a direct transfer of funds from an authority under section 771(5)(D)(i) of the Act. As discussed in the “Equityworthiness” section, above, we find that CSALP did not show an ability to generate a reasonable rate of return within a reasonable period of time from the perspective of a reasonable private investor. Therefore, we preliminarily find that within the meaning of section 771(5)(E)(i) of the Act, a benefit was conferred on the recipient, Bombardier, in the form of an equity infusion because *Investissement Québec*’s investment decision was inconsistent with the usual investment practice of private investors.

As of September 1, 2016, the equity infusion provided by Québec was fully disbursed. To calculate the benefit, we performed the 0.5 percent test by dividing the benefit received by Bombardier by CSALP’s total 2016 sales. Because the resulting ratio exceeded 0.5 percent of CSALP’s total sales, we allocated a portion of the benefit to the POI using the Department’s standard allocation formula.⁶⁷ We used the 10-year AUL described in the “Allocation Period” section, above, when conducting the allocation calculation. Because the equity infusion was directly tied to CSALP, we used CSALP’s sales as the denominator. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 147.28 percent *ad valorem*.⁶⁸

Launch Aid

2. Launch Aid by Canadian Federal Government

In response to proposals from Bombardier to the GOC in February 2008, the GOC set up the Bombardier C Series Program (BCP) in September 2008.⁶⁹ The BCP is currently administered by Innovation Canada, under Innovation, Science and Economic Development Canada (ISED) (formerly known as Industry Canada).⁷⁰ BCP provided 350 million Canadian dollars to Bombardier on a cost share basis for two programs under the agreement: the “Generic Technologies” project and the “C Series Technologies” project.⁷¹ The GOC’s contribution is to be repaid through royalties on each C Series aircraft Bombardier delivers.⁷² According to the GOC, “{t}he amount of royalty on a given aircraft depends on the total number of C Series aircraft that have been previously delivered. The BCP contributions will be fully repaid at {a

⁶⁷ See 19 CFR 351.524(d)(1).

⁶⁸ See Preliminary Calculation Memorandum at Attachment 8.

⁶⁹ See GOC July 24, 2017 IQR at Volume IV, pages 1-10.

⁷⁰ *Id.* From 2008 to 2016, BCP was administered by Aerospace, Defence and Marine Branch.

⁷¹ *Id.* at 1-10.

⁷² *Id.* at 2.

specified number of units}; additional deliveries will increase the GOC's return on its contributions."⁷³ The launch aid provided by the GOC is specific to Bombardier as a matter of law, within the meaning of section 771(5A)(D)(i) of the Act, because the granting authority expressly limited it to Bombardier. Further, this program constitutes a financial contribution in the form of a direct transfer of funds from an authority under section 771(5)(D)(i) of the Act.

As of December 31, 2013, the launch aid provided by the GOC was fully disbursed to Bombardier.⁷⁴ Thus, we find that the repayable launch aid from the GOC to Bombardier constitutes a contingent liability, interest-free loan. As a result, a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(d)(1) is conferred on Bombardier in the form of an interest-free loan, in the amount of the interest that would otherwise be due on the outstanding principal. We converted the outstanding loan balance during the POI into U.S. dollars using the Federal Reserve exchange rate for 2016. Because repayment of the contribution was tied to the C Series program, we used C Series sales as the denominator.⁷⁵ On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 28.99 percent *ad valorem*.⁷⁶

3. Launch Aid by Québec Provincial Government

On June 10, 2009, the GOQ adopted Decree 666-2009, ordering *Investissement Québec* to grant Bombardier a repayable financial contribution up to 117 million Canadian dollars to finance research and development of the C Series aircraft.⁷⁷ *Investissement Québec*'s contribution is to be repaid based upon the success of the C Series program.⁷⁸ The launch aid provided by *Investissement Québec* is specific to Bombardier as a matter of law, within the meaning of section 771(5A)(D)(i) of the Act, because it was provided pursuant to government decree and expressly limited to Bombardier. Further, this program constitutes a financial contribution in the form of a direct transfer of funds from an authority under section 771(5)(D)(i) of the Act.

As of December 27, 2013, the launch aid provided by Québec was disbursed to Bombardier.⁷⁹ Thus, we find that the repayable launch aid from the GOQ to Bombardier constitutes a contingent liability, interest-free loan. As a result, a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(d)(1) is conferred on Bombardier in the form of an interest-free loan, in the amount of the interest that would otherwise be due on the outstanding principal. We converted the outstanding loan balance during the POI into U.S. dollars using the Federal Reserve exchange rate for 2016. Because the contribution was tied to the C Series program, we used C Series sales as the denominator. On this basis, we preliminarily determine

⁷³ *Id.*

⁷⁴ *Id.* at 1.

⁷⁵ Although a portion of the funds were tied directly to work on the C Series aircraft, repayment of the liability is tied solely to sales of the C Series; thus, it is appropriate to use C Series sales as the denominator. See GOC July 24, 2017 IQR at Volume IV, page 2 ("Under BCP, these contributions are to be repaid through royalties on each C Series aircraft delivered").

⁷⁶ See Preliminary Calculation Memorandum at Attachment 4.

⁷⁷ See GOQ July 24, 2017 IQR at 37-38.

⁷⁸ *Id.* at 38 and 56.

⁷⁹ *Id.* at 42.

the countervailable subsidy rate for Bombardier under this program to be 9.16 percent *ad valorem*.⁸⁰

4. Launch Aid by the U.K. Government

The U.K. established Repayable Launch Investment (RLI) in 1946, under the Civil Aviation Act; its current authority derives from the revised 1982 Civil Aviation Act.⁸¹ Requests for RLI are submitted to the Department for Business, Energy, and Industrial Strategy, which, in 2016, assumed the functions of the Department for Business, Innovation and Skills, which had itself in 2009 assumed the functions of the Department for Business, Enterprise and Regulatory Reform (BERR). The U.K. considers RLI to be a repayable loan, the repayment rate of which is negotiated with the recipient of the loan, and which is repaid on the basis of the delivery of units of the finished product to customers.⁸² As part of the terms of RLI, the U.K. provides up to one-third of the non-recurring capital costs during the design and development phase of an aerospace project.⁸³ The RLI was jointly furnished from U.K. government revenue by BERR and through the Northern Ireland Executive.

On January 18, 2008, Shorts submitted an application to BERR for RLI.⁸⁴ BERR conducted an assessment of the application and, upon the recommendation of the Industrial Development Advisory Board, a statutory body, the Secretary of State for BERR made the decision to support Shorts' application for RLI.⁸⁵ On April 21, 2009, Shorts, Bombardier, Inc. (acting as guarantor of Shorts' performance), and BERR signed the agreement for repayable advances (*i.e.*, launch aid).⁸⁶

We preliminarily determine that the launch aid provided by the U.K. is specific to the aerospace industry as a matter of U.K. law and, thus, *de jure* specific, pursuant to section 771(5A)(D)(i) of the Act. Further, this program constitutes a financial contribution in the form of a direct transfer of funds from an authority under section 771(5)(D)(i) of the Act.

Such a subsidy from the U.K. government is relevant to this countervailing duty investigation concerning aircraft from Canada. Section 701(d) of the Act provides:

if the members (or other participating entities) of an international consortium that is engaged in the production of subject merchandise receive countervailable subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such countervailable subsidies, as well as countervailable

⁸⁰ See Preliminary Calculation Memorandum at Attachment 5.

⁸¹ See U.K. July 25, 2017 IQR at RLI-1 through RLI-8 and Exhibit RLI-4.

⁸² *Id.* at RLI-1 through RLI-3.

⁸³ *Id.*

⁸⁴ *Id.* at RLI-10 and Exhibit RLI-5.

⁸⁵ *Id.* at RLI-11.

⁸⁶ See Bombardier July 25, 2017 IQR at 153.

subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

The legislative history indicates that this section of the Act is intended to address precisely the type of situation presented by this program. Specifically, the “international consortium” language was added in response to Airbus Industrie’s subsidies from various European Union member nations to manufacture sections of the aircraft in their home countries before final assembly.⁸⁷ The legislative history further provides that the Department “administer the provision by collapsing its subsidy analysis so that the consortium members would be treated as one company for purposes of determining the level of multi-country subsidization attributable to the final product manufactured and exported by the consortium and its members.”⁸⁸

We preliminarily find that Bombardier’s situation is similar. Shorts, as Bombardier’s wholly-owned subsidiary, is the same company and should be treated as one company for purposes of the Department’s analysis of multi-country subsidization of subject merchandise. Bombardier was formally involved in obtaining the U.K. launch aid, acting as Shorts’ guarantor. The law defines an international consortium as consisting of “members” and “other participating entities,” which may encompass a broad set of relationships, including among them, as in this case, a clearly defined legal relationship in which the companies in question have common ownership and a common project in the C Series.⁸⁹

Furthermore, because the Bombardier/Shorts wing is designed solely for use in C Series aircraft, the U.K. financing provided to Shorts is an integral part of the overall C Series program. According to the U.K., “{o}nce completed, the wings will be shipped to Bombardier in Canada where the C Series Aircraft will be assembled.”⁹⁰ Additionally, the European Commission has examined the financing provided by the U.K. to Bombardier/Shorts under EU State Aid rules and determined that the financing constituted “aid” and the project would have been abandoned without public funding.⁹¹ According to the European Commission, “major risk sharing suppliers and/or Bombardier subsidiaries, placed in different geographical locations ... manufacture self-contained sections of the aircrafts (such as wings, center fuselage, and empennage) to be integrated by Bombardier in a short cycle-time, high-rate final assembly.”⁹² Thus, we preliminarily determine that the U.K. launch aid serves to “assist, permit, or otherwise enable {Shorts} participation in th{e} consortium through production or manufacturing operations,” in the U.K., its respective home country.⁹³

⁸⁷ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100-576, pt. B, at 589-590 (1988) (Conf. Rep.) (“The conferees are aware of the fact that bilateral discussions are currently underway between the United States and the European Community on the issue of subsidies provided to Airbus Industrie it is the intent of the conferees to make it perfectly clear that the U.S. countervailing duty law may be applied to remedy subsidies provided by multiple governments to an international consortium which exports its product to the United States.”).

⁸⁸ *Id.* at 589.

⁸⁹ See section 701(d) of the Act.

⁹⁰ See U.K. July 25, 2017 IQR at RLI-5.

⁹¹ See U.K. September 5, 2017 SQR at Exhibit 3, European Commission publication titled “State aid N 654/2008 – United Kingdom: Large R&D aid to Bombardier,” dated June 17, 2009, at paragraphs 169-170.

⁹² *Id.* at paragraph 24.

⁹³ See section 701(d) of the Act.

Moreover, we note that the launch aid packages from the U.K., the GOC, and the GOQ, were all provided within the same time period (2008 to 2009) and were all for the same purpose: to help Bombardier launch the C Series aircraft.⁹⁴ Further, all three launch aid programs: 1) have repayable contributions tied to Bombardier's production and sales of C Series aircraft; and 2) were designed to keep jobs in their respective locations and to enhance or build skill centers in each of the respective locations.⁹⁵ Although the U.K. and Canada did not have a formal bilateral agreement with respect to assisting the consortium, and none is required under section 701(d) of the Act, the record evidence demonstrates that the U.K., in addition to Canada, provided subsidies to assist the C Series project through Shorts' manufacture of the planes' wings within its domestic territory.⁹⁶ Therefore, we preliminarily determine that it is appropriate to consider the launch aid provided by the U.K. to Bombardier/Shorts as a countervailable subsidy. As a result, and consistent with our practice, we are cumulating all countervailable subsidies provided by the U.K. to Shorts in determining the countervailing duty on C Series aircraft imports, under sections 701(a)(1) and 701(d) of the Act.⁹⁷

We find that the repayable launch aid from the U.K. to Shorts constitutes a contingent liability, interest-free loan. As a result, a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(d)(1) is conferred on Shorts in the form of an interest-free loan, in the amount of the interest that would otherwise be due on the outstanding principal. As of the end of the POI, the launch aid provided by the U.K. was not fully disbursed and Bombardier had yet to

⁹⁴ See GOQ July 24, 2017 IQR at 37 (“The “launch aid” that Petitioner referred to in its Petition concerns the repayable financial contribution from the Government of Québec (GOQ) to Bombardier, issued in parallel with the Bombardier C Series Program (BCP). The BCP is a federal program administered by *Innovation, Sciences et Développement économique Canada* (Innovation, Sciences and Economic Development) (ISED), a department of the government of Canada. The BCP was initiated in September 2008 to provide repayable contributions to Bombardier Inc. for the development of new commercial aircraft technologies.”).

⁹⁵ See GOC July 24, 2017 IQR at Volume IV, page 1 (“BCP’s objective was to encourage research and development that would result in the development of: (i) generic technologies, including advanced materials, technologies and manufacturing processes, applicable to a variety of aircraft platforms and other commercial applications, and (ii) technologies for a new fixed-wing commercial aircraft, the Bombardier C Series aircraft.”) See also GOQ July 24, 2017 IQR at 46-47 (in authorizing the launch aid, the GOQ considered “financial consequences for Québec (job creation, job conservation at Bombardier in Québec, payroll and indirect financial consequences) and cost-benefit analyses related to the project,” including “the Québec aerospace industry” as a whole). See also U.K. July 25, 2017 IQR at Exhibit RLI-3, paragraph 150 (“The aerospace industry in Northern Ireland accounts for approximately 30% of the overall share of the manufacturing output. It encompasses 40 companies with a combined turnover of circa GBP 750 million and employs 8 000 people (out of 89 000 manufacturing jobs in Northern Ireland). Shorts is a key player within the sector employing 5 300 people.”).

⁹⁶ Further, we note that Shorts is a cross-owned supplier of an input primarily dedicated to the production of subject merchandise, and not merely an affiliated provider of any input product used in the production of subject merchandise. Therefore, this situation falls within both the international consortium provision and 19 CFR 351.525(b)(6)(iv), not the international consortium provision and 19 CFR 351.523. See *Preamble*, 63 FR at 65390 (noting that the Department specifically removed the cross-ownership standard from 19 CFR 351.523).

⁹⁷ See *Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom*, 66 FR 65903 (December 21, 2001), and accompanying IDM at “International Consortium” (“we cumulated all countervailable subsidies received by the member companies... in order to calculate one countervailing duty rate applicable to the production and exportation of the subject merchandise from this consortium.”).

make any repayments.⁹⁸ We converted the outstanding loan balance during the POI into U.S. dollars using the Federal Reserve exchange rate for 2016. Because the contribution was tied to the C Series program, we used C Series sales as the denominator, in accordance with 19 CFR 351.525(b)(5)(i).⁹⁹ Furthermore, because Shorts supplies inputs to Bombardier (*i.e.*, the C Series wing), and the production of the input product is primarily dedicated to the production of the C Series, we are preliminarily attributing subsidies received by Shorts to the combined sales of Shorts and Bombardier (net of intercompany transactions), of the input wings and the C Series aircraft, respectively, in accordance with 19 CFR 351.525(b)(6)(iv). On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 17.55 percent *ad valorem*.¹⁰⁰

Land for Less Than Adequate Remuneration (LTAR)

5. Government Provision of Production Facilities and Land at Mirabel for LTAR

The Department is investigating the petitioner's allegation that Bombardier selected Mirabel, Québec as the production site for the C Series aircraft in 2005 because of an offer from the GOQ to help build the production facility for the C Series aircraft. The petitioner contended that the available evidence indicated that the GOQ is likely providing production facilities and land to Bombardier at rates below fair market value.¹⁰¹ The GOQ denied that a program for the sublease of land to Bombardier exists, and stated that although potential financial support regarding a manufacturing facility was discussed with Bombardier, this support never actually materialized.¹⁰² The GOC also denied that a program for the sublease of land to Bombardier exists, and stated that Bombardier's lease at Mirabel was negotiated between Bombardier and the Aéroports de Montréal (ADM) without any involvement from the GOC.¹⁰³ Bombardier also denied that a program through which it subleases land at Mirabel airport exists, and stated that it obtained its leases at Mirabel airport at commercially negotiated terms.¹⁰⁴

Nonetheless, information on the record demonstrates that the GOC owns and leases all airport land in Canada and leases it to non-profit corporations (Airport Authorities) pursuant to long-term leases.¹⁰⁵ At Mirabel Airport, the GOC leases the airport's land to ADM, while maintaining an active role as the owner-lessor.¹⁰⁶ Additionally, ADM's by-laws and "Letters Patent" ensure that control of the board rests with the Governments of Québec, Montréal, and Canada.¹⁰⁷ The by-laws provide that there may be a maximum of 15 members on ADM's board of directors and

⁹⁸ See Bombardier July 25, 2017 IQR at 155 and Exhibit LA-UK-8.

⁹⁹ Repayment of the liability is tied solely to sales of the C Series. See U.K. July 25, 2017 IQR at RLI-6 ("the UK is repaid via a levy on aircraft").

¹⁰⁰ See Preliminary Calculation Memorandum at Attachment 6.

¹⁰¹ See Exhibit 137 of the Petition containing "Québec offer de construire l'usine avec le privé," La Presse (January 28, 2005); see also Exhibit 138 of the Petition containing Brazil WTO Request for Consultations, WT/DS552/1 (February 15, 2017), at 2.

¹⁰² See GOQ September 5, 2017 SQR at 21-22; see also GOQ July 24, 2017 IQR at 95-96.

¹⁰³ See GOC July 24, 2017 IQR at Volume VII, page 1-22; see also GOC September 5, 2017 SQR at 3-16.

¹⁰⁴ See Bombardier July 25, 2017 IQR at 120-125; see also Bombardier September 5, 2017 SQR at 28-29.

¹⁰⁵ See GOC July 24, 2017 IQR at Volume VII, page 1; see also Exhibit GOC-Land-3.

¹⁰⁶ See GOC July 24, 2017 IQR at Volume VII, page 1 and 5; see also Exhibit GOC-Land-5.

¹⁰⁷ *Id.* at 11.

eight of those seats are reserved for government appointees, ensuring government control of ADM. Specifically, of the total 15 ADM board members, the GOC appoints two seats, the GOQ appoints one seat, and the Government of Montréal appoints five seats.¹⁰⁸ In view of the fact that the ultimate control of ADM's board rests with the government, and that the GOC is the ultimate owner of the airport land that ADM leases to Bombardier, we preliminarily find that ADM constitutes an "authority" within the meaning of section 771(5)(B) of the Act.

Furthermore, we preliminarily determine that the lease of land to Bombardier constitutes a financial contribution in the form of a good, under section 771(5)(D)(iii) of the Act. We also preliminarily determine that the program is *de facto* specific in accordance with section 771(5A)(D)(iii)(II) of the Act, because land leased at Mirabel Airport is used predominantly by the aircraft manufacturing and component repair industry.¹⁰⁹

To determine whether Bombardier received a benefit from the land it leased from ADM, we evaluated potential benchmarks in accordance with 19 CFR 351.511(a)(2) and section 771(5)(E)(iv) of the Act. First, we examined whether there are market-determined prices from actual transactions (referred to as tier-one prices in the LTAR regulation) within the country under investigation.¹¹⁰ As described above, in Canada, all airport land is owned by the GOC and leased to government-controlled corporations, such as ADM.¹¹¹ As a result of the GOC's sole ownership of this land, and the fact that the land is subleased to private companies by a government-controlled corporation, we find there are no airport land prices that are independent of the government's financial contribution to be analyzed for use as a possible benchmark. Additionally, during the allotted time, no party submitted benchmarks for leases of privately-owned land in Canada, or evidence of competitively-run government auctions; the only benchmark information the GOC submitted is for leases governed by ADM. Because, as noted above, we preliminarily determine that ADM is a government authority, we preliminarily determine that these benchmarks are not useable for the lease rates for the land at Mirabel.¹¹² Because of the significant government involvement in airport land in Canada in general, and at Mirabel and Montréal airports in particular, we preliminarily determine, consistent with our regulations for government-provided goods, that a tier-one price is not available. Furthermore, we preliminarily determine that a world market price would not be available to land purchasers in Canada under 19 CFR 351.511(a)(2)(ii), because land is not sold across borders. For these reasons, we are examining whether the government's price for land is consistent with market principles under 19 CFR 351.511(a)(2)(iii), by comparing the price that Bombardier paid for land at Mirabel Airport with comparable market-based prices for land leases in a country that is a

¹⁰⁸ See GOC September 5, 2017 SQR at 3.

¹⁰⁹ See Memorandum, "Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada: New Factual Information Pertaining to Aéroports de Montréal," dated September 14, 2017, at 4 (the "breakdown of direct added value by industry" shows "aircraft manufacturing and component repair" to represent 53 percent of the total added value, followed by "air transportation" at 19 percent, and "aeronautics support services" at 16 percent; therefore, it appears that the aircraft manufacturing industry is a predominant user of the airport land leased by ADM at the Montréal-Mirabel and Montréal-Trudeau airports).

¹¹⁰ See 19 CFR 351.511(a)(2)(i).

¹¹¹ See GOC July 24, 2017 IQR at Volume VII, 1.

¹¹² We note that we are requesting additional information from the GOC regarding appropriate Canadian benchmarks to consider for the final determination.

reasonable proxy for, but outside of Canada (referred to as tier-three prices in the LTAR regulation). Specifically, we are comparing the prices that Bombardier paid in 2016 to the average price of land and office space, as relevant, at certain airports in the United States in 2013, 2015, and 2017.¹¹³ Where necessary, we inflated or deflated the benchmark prices using Producer Price Index data from the International Monetary Fund's International Financial Statistics.¹¹⁴

Pursuant to 19 CFR 351.511(b) and (c), and 351.524(c), we preliminarily determine that this program provides a recurring benefit; therefore, we are allocating the benefit in the year of receipt, in accordance with 19 CFR 351.524(a). To calculate the benefit, we calculated the difference between the price Bombardier paid for land in Mirabel (converted to U.S. dollars using the Federal Reserve exchange rate for 2016), and the U.S. benchmark described above. Further, because Bombardier leased more than one tract of land from ADM during the POI, we cumulated the total benefit accrued to Bombardier. Because Bombardier's production at Mirabel is related primarily to the C Series, we used C Series sales during 2016 as the denominator. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 1.44 percent *ad valorem*.¹¹⁵

Québec Province Tax Programs

6. Tax Incentives and Other Support Provided by the City of Mirabel

On December 15, 2012, the City of Mirabel passed By-law No. 1915, establishing a new program to provide a property tax credit for the construction, expansion, or renovation of an industrial building in the aerospace sector.¹¹⁶ According to Bombardier, the tax benefits under this program were specific to CSALP and its production facility at Mirabel, and the credit is received on a recurring annual basis.¹¹⁷

Because this program is limited by law to the aerospace sector, we preliminarily find that it is *de jure* specific, pursuant to section 771(5A)(D)(i) of the Act. We preliminarily determine this program provides a financial contribution in the form of revenue forgone on behalf of the government, under 771(5)(D)(ii) of the Act. In addition, we preliminarily determine the tax credit confers a benefit equal to the amount of Bombardier's tax savings, pursuant to 19 CFR 351.509(a)(1). Because this program is recurring under 19 CFR 351.524(c)(1), and because this credit was recognized by, and only pertains to CSALP's facilities at Mirabel which are dedicated to producing the C Series, we divided the sum of the tax savings by the total sales of the C Series, as described in the "Attribution of Subsidies" section of this memorandum. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.18 percent *ad valorem*.¹¹⁸

¹¹³ See Petitioner's September 6, 2017, "Submission of Factual Information to Measure the Adequacy of Remuneration," at Exhibits 2 and 6.

¹¹⁴ See Preliminary Calculation Memorandum at Attachment 11b.

¹¹⁵ *Id.* at Exhibit 11a.

¹¹⁶ See GOQ July 24, 2017 IQR at 82-92.

¹¹⁷ See Bombardier July 25, 2017 IQR at 113-117.

¹¹⁸ See Preliminary Calculation Memorandum at Attachment 13.

7. PR@M Tax Credit

The PR@M-Industry Program (PR@M) is administered by the City of Montréal. The program provides owners of non-residential buildings on the island of Montréal that meet certain design or energy efficiency criteria an annual non-repayable contribution of up to one million Canadian dollars for five years, based on the increase in the general property tax that results from the construction, conversion, or expansion of an eligible building.¹¹⁹

In order to be eligible for the PR@M Tax Credit, a company must be located in certain industrial areas in Montréal and the list of activities for which the building may be used is limited.¹²⁰ Therefore, we preliminarily determine that this program is regionally specific pursuant to section 771(5A)(D)(iv) of the Act. This program provides a financial contribution in the form of revenue forgone on behalf of the government, under 771(5)(D)(ii) of the Act. The tax credit confers a benefit equal to the amount of Bombardier's tax savings, pursuant to 19 CFR 351.509(a)(1). Because this program is recurring under 19 CFR 351.524(c)(1), we divided the sum of the tax savings by the total sales of Bombardier and CSALP, less inter-company transfers, as described in the "Attribution of Subsidies" section of this memorandum. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.01 percent *ad valorem*.¹²¹

8. Tax Credits from the GOQ for the C Series

Established in 1983, the Scientific Research & Experimental Development (SR&ED) tax credit is designed to stimulate research and development (R&D) by providing tax credits for salaries and wages for R&D work.¹²² If a taxpayer carries on a business in Canada which performs R&D, or has R&D performed on its behalf, in Québec, the taxpayer can claim a tax credit for the salaries and wages and other eligible expenses incurred in Québec.¹²³ The GOQ provides these tax credits at a rate of 30 percent for small and medium sized businesses (SMBs) and 14 percent for large corporations. SMBs and large corporations can claim R&D tax credits for eligible expenditures over 50,000 Canadian dollars and 225,000 Canadian dollars, respectively.¹²⁴

Based on record evidence, we find that the number of recipients that received the SR&ED tax credit, compared to the total corporate tax filers in the province, is limited in number on an enterprise basis.¹²⁵ Therefore, we preliminarily determine that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act. This program provides a financial contribution in the form of revenue forgone on behalf of the government, under section 771(5)(D)(ii) of the Act. The tax credit confers a benefit equal to the amount of Bombardier's tax savings, pursuant to 19 CFR 351.509(a)(1).

¹¹⁹ See GOQ July 24, 2017 IQR at 110-111.

¹²⁰ *Id.* See also Bombardier July 25, 2017 IQR at 131 and Exhibit QC-PR@M-1.

¹²¹ See Preliminary Calculation Memorandum at Attachment 13.

¹²² See GOQ July 24, 2017 IQR at 112-119.

¹²³ *Id.* at 112.

¹²⁴ *Id.*

¹²⁵ See GOQ July 24, 2017 IQR at Exhibits QC-RQSRED-23 and QC-RQSRED-24.

Bombardier provided estimates showing the portion of the tax credit attributable to the C Series and the portion of the tax credit which was not tied specifically to the C Series. Additionally, there is no record evidence that the untied portion of the tax credit is tied to the production of non-subject merchandise. Therefore, we calculated two separate portions of the tax credit; one tied specifically to design, production, and sales of the C Series, and one portion for Bombardier's general R&D. Because this program is recurring under 19 CFR 351.524(c)(1), we divided the tax savings by either: 1) POI sales of the C Series, for the tax credit tied directly to this program; or 2) Bombardier's total POI sales, for the remaining portion of the tax credit. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 9.68 percent *ad valorem*.¹²⁶

U.K. Tax Programs

9. U.K. R&D Tax Credits

The U.K. established R&D tax credits for small and medium enterprises in 2000 pursuant to the Finance Act of 2000 and extended these tax benefits to large companies in 2002.¹²⁷ The tax credits are designed to encourage greater R&D spending and investment in innovation. Her Majesty's Revenue and Customs is responsible for administering this U.K. tax regime; under the program, the Department for Business, Energy, and Industrial Strategy is responsible for setting the criteria for R&D tax credits.¹²⁸ There is no limit on the amount of qualifying costs that R&D tax relief can be claimed on, and a company may choose to receive R&D tax credits in a cash sum, rather than carrying forward a loss.¹²⁹

Based on record evidence, we find that the number of recipients that received the U.K. R&D tax credit, compared to total corporate tax filers in the U.K., is limited in number on an enterprise basis.¹³⁰ Specifically, there were 21,525 claims for all R&D tax credits by corporate filers in 2014-2015, the most recent period for which data is available and, during that same period, there were 1,392,511 corporations with "gross taxable trading profit."¹³¹ Therefore, we preliminarily determine that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act. This program provides a financial contribution in the form of revenue forgone on behalf of the government, under section 771(5)(D)(ii) of the Act. As explained above under the U.K. Launch Aid program description, we have preliminarily determined that Shorts and Bombardier are part of an international consortium under section 701(d) of the Act, and therefore we are preliminarily cumulating all countervailable subsidies received by Shorts in our analysis of the total subsidies received by Bombardier for producing the C Series aircraft. The tax credit conferred a benefit equal to the amount of Shorts' tax savings, pursuant to 19 CFR 351.509(a)(1).

¹²⁶ See Preliminary Calculation Memorandum at Attachment 12.

¹²⁷ See U.K. July 25, 2017 IQR at OUK-7 to OUK-8 and Exhibits OUK-10 and OUK-13. The program was further modified in 2013 and 2016. *Id.*, at OUK-23 to OUK-25 and Exhibit OUK-14.

¹²⁸ *Id.* at OUK-9.

¹²⁹ *Id.* at OUK-24.

¹³⁰ See U.K. September 5, 2017 SQR at Exhibits 8 and 9.

¹³¹ *Id.* at Exhibit 9 (page 6 and Annex A) and Exhibit 8 (page 27, Table 11.3).

Because this program is recurring under 19 CFR 351.524(c)(1), we divided the sum of the tax savings by the combined POI sales of Shorts and CSALP, less intercompany transactions, as described in the “Attribution of Subsidies” section of this memorandum. On that basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 1.80 percent *ad valorem*.¹³²

Grant Programs

The Department initiated an investigation of certain grant programs for Bombardier. Additionally, Bombardier reported that its cross-owned affiliate, Shorts, received additional grants; the U.K. also provided program information for grants identified by Bombardier/Shorts.

Canadian Federal Grant Programs

10. Technology Demonstration Program

The GOC Department of Innovation, Science and Economic Development Canada (ISED) administers this grant program. ISED provides non-repayable contributions in support of R&D and large-scale technology demonstration projects in the aerospace, defense, space, and security sectors.¹³³ This program was established in September 2013, and the GOC contributes up to a maximum of 54 million Canadian dollars per year. Bombardier reported receiving funds under this grant program during both the AUL and the POI.¹³⁴

We preliminarily determine that the Technology Demonstration Program (TDP) is *de jure* specific under section 771(5A)(D)(i) of the Act because the funds provided by the GOC are limited to the aerospace, defense, space, and security sectors. Additionally, we preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act.

We examined the assistance provided under the project for which Bombardier received approval in years prior to the POI to determine whether the assistance exceeded 0.5 percent of the company’s sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt.¹³⁵ Because the assistance Bombardier received under the TDP program did not pass the 0.5 percent test, the grant amounts received in each year are appropriately expensed in the year of receipt. Therefore, the benefit under this program is the amount of the grant provided under the TDP program to Bombardier during the POI. To calculate the benefit to Bombardier, and in accordance with 19 CFR 351.524(a) and 19 CFR 351.525(b)(6)(ii), we divided the total grant amount received in 2016 by the combined POI sales of Bombardier and CSALP, less intercompany transactions. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.01 percent *ad valorem*.¹³⁶

¹³² See Preliminary Calculation Memorandum at Attachment 14.

¹³³ See GOC July 24, 2017 IQR at Volume II (pages 1-2).

¹³⁴ See Bombardier July 25, 2017 IQR at 13-19.

¹³⁵ See 19 CFR 351.524(b)(2).

¹³⁶ See Preliminary Calculation Memorandum at Attachment 10.

Québec Province Grant Programs

11. Emploi-Québec

Emploi-Québec is a specific administrative department in the *Ministère du Travail, de l'Emploi et de la Solidarité Sociale* (MTESS), translated as “Ministry of Work, Employment and Social Solidarity,” and is responsible for administering the program within MTESS.¹³⁷ MTESS is part of the Québec government. Bombardier received worker training grants from *Emploi-Québec* under: 1) the *Mesure de Formation de la Main-d'oeuvre* (translated as “Manpower Training Measure”) (MFOR) program; and 2) the *Fonds de développement et de reconnaissance des compétences de la main d'oeuvre* (translated as “Workforce Skills Development and Recognition Fund”) (FDRCMO) program; and (3) *Projet économique d'envergure* (translated as “large-scale economic project”) (PÉE). The purpose of the MFOR program is to support skills development for workers at risk of losing their jobs and to support low-skilled workers who want to improve basic training, while the purpose of the FDRCMO program is to fund projects related to skills development, primarily through French courses.¹³⁸ The purpose of the PÉE program is, primarily, to support job creation, and to a lesser extent, job maintenance; the grant amounts may be larger than under the MFOR program.¹³⁹

We preliminarily determine that the *Emploi-Québec* MFOR and FDRCMO grants are *de facto* specific under section 771(5A)(D)(iii)(III) of the Act, because the aerospace products and parts industry received a disproportionate share of the benefits disbursed to the manufacturing sector.¹⁴⁰ Further, we preliminarily determine that the *Emploi-Québec* PÉE grants are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the large PÉE grants are given to a limited number of enterprises.¹⁴¹ Additionally, we preliminarily determine that these grant programs provide a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act.

In accordance with 19 CFR 351.524(c)(1) and (2), we have treated these grants as non-recurring subsidies because separate, project-specific government approval was required to receive benefits, and funding for all projects under the PÉE, MFOR, and FDRCMO programs were limited in duration. To calculate the benefit, we performed the expense test, as explained in the Allocation Period section above, and found that, for certain grants specific to production of the C Series, the benefits approved in each year were more than 0.5 percent of sales of the C Series. Therefore, for these grants, we allocated benefits over time. For those grants which were untied, and did not pass the 0.5 percent test, we have expensed the grants in the year of receipt. For certain grants which were tied to production of non-subject merchandise, we have not used those grants in the calculation of the subsidy rate for this program. We used the grant methodology

¹³⁷ See GOQ July 24, 2017 IQR at 70.

¹³⁸ *Id.* at 69.

¹³⁹ See GOQ SQR at 27 and Exhibits QC-SUPP1-38 through QC-SUPP1-45. See also Bombardier July 25, 2017 IQR at 107-108.

¹⁴⁰ See GOQ July 24, 2017 IQR at Exhibit QC-MFOR-8.

¹⁴¹ See GOQ SQR at 27 and Exhibits QC-SUPP1-38 through QC-SUPP1-45.

described in 19 CFR 351.524(d) to calculate the amount of benefit allocable to the POI. For the grants which were tied to production and sales of the C Series, we have used POI sales of the C Series as the denominator; for the untied grants, we used Bombardier's total POI sales as the denominator. We preliminarily determine that Bombardier received a countervailable subsidy rate of 1.03 percent *ad valorem* under these programs.¹⁴²

U.K. Grant Programs

12. Invest Northern Ireland (INI)

INI Grant for the C Series - Selective Financial Assistance (SFA) - INI, Northern Ireland's regional economic development agency, approved Shorts, with Bombardier acting as the guarantor, to receive SFA in the form of a grant for the C Series.¹⁴³ INI only invests in operations in Northern Ireland.¹⁴⁴ This grant was approved in 2009 to: 1) develop the technology and skills training of employees in Northern Ireland to work with new materials; 2) establish a center of excellence; and 3) develop core design and engineering skills in Northern Ireland.¹⁴⁵

We preliminarily determine that the INI grant for the C Series is specific under section 771(5A)(D)(iii)(III) of the Act, because Shorts received a disproportionately large amount of SFA benefits when compared to other recipients.¹⁴⁶ Additionally, we preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act. As noted above, we have preliminarily determined that Shorts and Bombardier are part of an international consortium under section 701(d) of the Act, and are preliminarily cumulating all countervailable subsidies received by Shorts in our analysis of the total subsidies received by Bombardier for producing the C Series aircraft.

We preliminarily determine that this program is non-recurring, in accordance with 19 CFR 351.524(c)(1). Because the grant was tied specifically to production and sales of the C Series, we have used C Series sales as our denominator for this program, in accordance with 19 CFR 351.525(b)(5)(i). Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over the AUL by dividing the approved amount by sales of the C Series during 2009. Because the resulting ratio was less than 0.5 percent, we allocated the benefit to the POI. Furthermore, because Shorts supplies inputs to Bombardier (*i.e.*, the C Series wing), and the production of the input product is primarily dedicated to the production of the C Series, we are preliminarily attributing subsidies received by Shorts to the combined sales of Shorts and Bombardier (net of intercompany transactions), of the input wings and the C Series aircraft, respectively, in accordance with 19 CFR 351.525(b)(6)(iv). On this

¹⁴² See Preliminary Calculation Memorandum at Attachment 9.

¹⁴³ See Bombardier July 25, 2017 IQR at 175.

¹⁴⁴ *Id.* at 181.

¹⁴⁵ See U.K. July 25, 2017 IQR at INI-6.

¹⁴⁶ *Id.* at Exhibits INI-3, INI-17, INI-18 and INI-2 ("steel, coal, and shipbuilding" are not eligible to receive funds under the SFA).

basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 2.22 percent *ad valorem*.¹⁴⁷

Skills Growth – In May 2014, Shorts was awarded assistance under the Skills Growth program.¹⁴⁸ The Industrial Development (Northern Ireland) Order 1982 is the legislative basis for the Skills Growth program.¹⁴⁹ Shorts reported receiving payments pursuant to this award during the AUL through the end of the POI.¹⁵⁰ This program aids businesses in order to encourage competitiveness through the investment in training and development activities and is only open to manufacturing and internationally-tradable service companies located within Northern Ireland, or foreign direct investment companies looking to establish such companies within Northern Ireland.¹⁵¹ This program is also administered by INI.¹⁵² This program was originally known as Company Development program, which later became the Business Improvement Training program before becoming known as the Skills Growth program.¹⁵³

We preliminarily determine that the Skills Growth program grant is specific under section 771(5A)(D)(iii)(III) of the Act, because Shorts received a disproportionately large amount of Skills Growth program grant benefits when compared to other recipients.¹⁵⁴ Additionally, we preliminarily determine that this program provides a financial contribution in the form of direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act and section 701(d) of the Act.

We preliminarily determine that this program is non-recurring, in accordance with 19 CFR 351.524(c)(1). To calculate the benefit received by Shorts, we summed the total amount received under the Skills Growth grant during the POI. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the benefit from the grant over the AUL by dividing the approved amount by Shorts' total sales during the POI. Because the resulting ratio was less than 0.5 percent of Shorts' total sales, we allocated the benefit to the POI. We divided the grant benefit by the combined POI sales of Shorts and CSALP, less intercompany transactions, as described in the "Attribution of Subsidies" section of this memorandum. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.03 percent *ad valorem*.¹⁵⁵

Apprenticeships - In 2007, under the banner heading "Training for Success," the Northern Ireland Department for Employment and Learning carried out a public procurement exercise for the award of a contract to deliver: 1) apprenticeships; and 2) youth training for unemployed 16

¹⁴⁷ See Preliminary Calculation Memorandum at Attachment 15.

¹⁴⁸ See U.K. July 25, 2017 IQR at INI-18.

¹⁴⁹ *Id.* at INI-4.

¹⁵⁰ *Id.* at INI-18.

¹⁵¹ *Id.* at INI-5.

¹⁵² See Bombardier July 25, 2017 IQR at 186.

¹⁵³ See U.K. July 25, 2017 IQR at INI-4 and Exhibits INI-12 and INI-18.

¹⁵⁴ *Id.* at INI-42 ("Within the classification scheme used by INI, aerospace companies such as Shorts fall into the Transport Equipment sector.") and Exhibits INI-3 and INI-12.

¹⁵⁵ See Preliminary Calculation Memorandum at Attachment 15.

and 17 year-olds in Northern Ireland.¹⁵⁶ The procurement process was open to all participants for the provision of this training across Northern Ireland. The 2007 procurement exercise resulted in the award of contracts to 53 training providers, including one to Shorts for the delivery of the apprenticeship training element.¹⁵⁷

Further, in 2010, the Northern Ireland Department for Employment and Learning carried out an additional public procurement exercise for the award of a contract to deliver training under two broad headings: 1) Training for Success; and 2) ApprenticeshipsNI in Northern Ireland.¹⁵⁸ The 2010 procurement was open to all participants for the provision of this training across Northern Ireland. The 2010 procurement exercise resulted in the award of the ApprenticeshipsNI contracts to 42 training providers, including one to Shorts awarded in August 2013.¹⁵⁹

Based on record evidence, we find that the number of recipients that received the contracts for apprenticeships under the INI's 2007 and 2010 apprentice programs is limited on an enterprise basis (*i.e.*, the INI awarded these contracts to only 53 providers in the first round and 42 providers in the second round), compared to 10,000 corporate tax filers in Northern Ireland.¹⁶⁰ Therefore, we preliminarily determine that Northern Ireland's apprenticeship program grants are *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients on an enterprise basis are limited in number. Additionally, we preliminarily determine that the apprentice program grants provide a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act and section 701(d) of the Act. We also preliminarily determine that these apprentice program grants provide a benefit to Shorts "to the extent that the assistance relieves a firm of an obligation that it normally would incur," in accordance with 19 CFR 351.513(a). Specifically, under these apprentice program grants, the U.K. is paying some of the training costs that Shorts would normally otherwise incur to hire and train new workers. Thus, due to the nature of these apprentice programs as worker-related subsidies, we are preliminarily expensing the benefit to Shorts at the time of receipt, in accordance with 19 CFR 351.513(b) and (c).

To calculate the benefit to Bombardier, and in accordance with 19 CFR 351.524(a) and 19 CFR 351.525(b)(6)(iv), we divided the benefit by the combined POI sales of Shorts and CSALP, less intercompany transactions, as described in the "Attribution of Subsidies" section of this memorandum. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.06 percent *ad valorem*.¹⁶¹

¹⁵⁶ See U.K. July 25, 2017 IQR at INI-9 to INI-10.

¹⁵⁷ See U.K. September 5, 2017 SQR at 8.

¹⁵⁸ *Id.* at INI-10 to INI-11 and Exhibits INI-8 and INI-9. Statistics provided by the U.K. show that approximately one percent of corporate tax filers in the U.K. are located in Northern Ireland and, in the years 2009 to 2015 the total number of companies with "Gross taxable trading profit" ranged from 951,829 to 1,392,511 companies.

¹⁵⁹ See U.K. September 5, 2017 SQR at 10.

¹⁶⁰ *Id.* at Exhibits 8 and 9.

¹⁶¹ See Preliminary Calculation Memorandum at Attachment 15.

Resource Efficiency Grant – INI established this grant as way to help businesses in Northern Ireland achieve financial savings in their use/consumption of water and material.¹⁶² In 2016, Shorts received the Resource Efficiency grant from INI.

We preliminarily determine that the Resource Efficiency grant is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy, on an enterprise basis, are limited in number, compared to 10,000 corporate tax filers in Northern Ireland.¹⁶³ Additionally, we preliminarily determine that the Resource Efficiency grant provides a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act and section 701(d) of the Act.

We preliminarily determine that this program is non-recurring, in accordance with 19 CFR 351.524(c)(1). To calculate the benefit received by Shorts, we summed the total amount received under the Resource Efficiency grant during the POI. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over the AUL by dividing the approved amount by Shorts’ total sales during the POI. Because the resulting ratio was less than 0.5 percent of Shorts’ total sales, we allocated the benefit to the POI. We divided the grant benefit by the combined POI sales of Shorts and CSALP, less intercompany transactions, as described in the “Attribution of Subsidies” section of this memorandum. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.01 percent *ad valorem*.¹⁶⁴

13. Innovate UK and ATI Grants

Innovate UK, formerly called Technology Strategy Board (TSB), is the innovation agency for the United Kingdom. The agency works with people, companies, and partner organizations in efforts to grow the U.K. economy through science and technology innovations. Innovate UK aims to deliver productivity, new jobs and exports, and to keep the U.K. globally competitive.¹⁶⁵ Innovate UK funds numerous programs, including the Aerospace Technology Institute (ATI) program. ATI was established in 2013 to encourage the development of the aerospace sector.¹⁶⁶

We preliminarily determine that the grants from Innovate UK (*i.e.*, from ATI) which are listed below are *de jure* specific under section 771(5A)(D)(i) of the Act, because only the aerospace industry is eligible to receive these grants.¹⁶⁷ Furthermore, we preliminarily determine that these grants provide a financial contribution in the form of a direct transfer of funds from the government, within the meaning of section 771(5)(D)(i) of the Act.

¹⁶² See U.K. July 25, 2017 IQR at INI-6.

¹⁶³ *Id.* at Exhibits INI-8, INI-9, and INI-19. Statistics provided by the U.K. show that approximately one percent of corporate tax filers in the U.K. are located in Northern Ireland and, in the years 2009 to 2015 the total number of companies with “Gross taxable trading profit” ranged from 951,829 to 1,392,511 companies.

¹⁶⁴ See Preliminary Calculation Memorandum at Attachment 16.

¹⁶⁵ See U.K. July 25, 2017 IQR at Exhibit OUK-7.

¹⁶⁶ *Id.* at OUK-5.

¹⁶⁷ *Id.*

During the POI and AUL period, Bombardier reported that Shorts received Innovate UK and ATI funding under numerous grants.¹⁶⁸ We find the following grants to have provided non-recurring benefits, and they constituted more than 0.5 percent of Shorts' relevant sales in the year of approval; thus, we have allocated the following grants to the AUL, pursuant to 19 CFR 351.524(d)(1):

1. Structures Technology Maturity Project¹⁶⁹
2. Validation and integration of manufacturing enablers for future wing structures

The following grants constituted less than 0.5 percent of Shorts' relevant sales in the year of approval; thus, we have expensed the grant amounts received in the year of receipt, pursuant to 19 CFR 351.524(b)(2):

1. Wing Drilling Test Cutters (Wing Drilling)¹⁷⁰
2. System Advances in Nacelle Technology Aerodynamics
3. Acclaim
4. Icenite
5. Lightblank
6. Hyperflux
7. Colm

To calculate the benefit received by Shorts for the Innovate UK and ATI grants, we divided the grant benefit by the combined POI sales of Shorts and CSALP, less intercompany transactions, as described in the "Attribution of Subsidies" section of this memorandum. We then summed the total amount of the grants received under the Innovate UK and ATI grant program during the POI. On this basis, we preliminarily determine the countervailable subsidy rate for Bombardier under this program to be 0.18 percent *ad valorem*.¹⁷¹

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

1. Equity Infusion by Caisse de Dépôt et Placement du Québec

On November 19, 2015, CDPQ announced an investment of \$1.5 billion in BT Holdco. CDPQ's \$1.5 billion investment was disbursed on February 11, 2016. In return for its investment, CDPQ received a 30 percent equity stake in BT Holdco, a guaranteed annual return on its investment, and warrants to purchase shares in Bombardier.¹⁷²

CDPQ was established by an act of the Québec government, entitled, "ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC."¹⁷³ It is a "mandatary of the state"

¹⁶⁸ See Bombardier September 5, 2017 SQR at Exhibit 53.

¹⁶⁹ *Id.* at 8.

¹⁷⁰ *Id.* ("The Wing Drilling Test Cutters Grant was listed in Exhibit OUK-1 as 'Factory of the Future for Aircraft Wing Manufacture and Assembly,' project number 113045").

¹⁷¹ See Preliminary Calculation Memorandum at Attachments 16 and 17.

¹⁷² See CDPQ July 24, 2017 IQR at 1, 9, and 11.

¹⁷³ *Id.* at Exhibit 1.

whose head office, by law, is located in Ville de Québec and its property, by law, “shall be the property of the State.”¹⁷⁴ CDPQ’s mission is “to receive moneys on deposit as provided by law and manage them with a view to achieving optimal return on capital within the framework of depositors’ investment policies while at the same time contributing to Québec’s economic development.”¹⁷⁵ CDPQ’s board of directors is appointed by the GOQ and the GOQ sets their remuneration. The GOQ must approve both the appointment of CDPQ’s President/CEO and any dismissal of board members or the President/CEO.¹⁷⁶ The GOQ sets the conditions for remuneration of all employees of CDPQ, while the board of directors and the CEO control CDPQ’s investments.¹⁷⁷ Because CDPQ is a mandatary of the state, its mission includes contributing to Québec’s economic development, and the government appoints and controls the remuneration of its board of directors and executive leadership, we preliminarily find that CDPQ is an “authority” within the meaning of section 771(5)(B) of the Act.

Nonetheless, as discussed in the “Equityworthiness” section, above, we preliminary find CDPQ’s investment in BT Holdco to be equityworthy. As a result, we preliminarily find that the equity infusion CDPQ provided to Bombardier conferred no benefit.

2. Other Programs Conferring No Measurable Benefit During the POI

Bombardier and its cross-owned affiliates reported receiving benefits under various programs, some of which were specifically alleged and others of which were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs: 1) were fully expensed prior to the POI; 2) are less than 0.005 percent *ad valorem* when attributed to the respondent’s applicable sales as discussed above in the “Attribution of Subsidies” section above; 3) are only tied to the production of non-subject merchandise; or 4) in the case of export subsidies, were not tied to U.S. sales of subject merchandise. Consistent with the Department’s practice,¹⁷⁸ we have not included these programs in our preliminary subsidy rate calculations for Bombardier. Moreover, we determine that it is unnecessary for the Department to make a preliminary determination as to the countervailability of the following programs:

Canadian Federal Programs

1. Export Development Canada Export Financing
2. Consortium for Aerospace Research and Innovation in Canada

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (emphasis added).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See e.g., *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at “Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;” *Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at “Income Tax Reductions for Firms Located in the Shanghai Pudong New District;” *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at “Programs Used By the Alnan Companies;” and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at “Tax Deduction for Research and Development Expenses.”

3. Defence Industry Productivity Program
4. Green Aviation Research and Development Network
5. National Research Council
6. Natural Sciences and Engineering Research Council of Canada
7. Ontario Centers of Excellence
8. Regional Aircraft Credit Facility
9. Water Bomber (CL-215 Amphibious Aircraft) Nose Wheel Steering Kit Purchase Agreement
10. Tax Credits from the Government of Canada for the C Series

Québec Province Programs

11. *Investissement Québec* Export Financing
12. Consortium for Research and Innovation in Aerospace Québec
13. Fuel Tax Refund
14. *Investissement Québec* Loan Guarantees for Non-Subject Aircraft
15. MESI Support for Events
16. Systemes Aeronautiques D'Avante-Garde Pour L'Environnement I
17. Systemes Aeronautiques D'Avante-Garde Pour L'Environnement II
18. Tax Credit for Investment (CR 85)
19. Tax Credit for Private Partnership Pre-Competitive Research (CR 79))

U.K. Programs

20. INI Grants Tied to Non-Subject Merchandise
21. R&D Grants Expensed Prior to the POI
22. Aeronautical Engineering Transitional Funding Project

C. Programs Preliminarily Found Not to Be Used During the POI

1. CDPQ Line of Credit
2. Innovation, Science, and Economic Development Canada Support for Aerospace R&D
3. Technology Partnerships Canada Program

D. Programs Preliminary Found Not to Be Countervailable

1. Tax Credit for On-the-Job Training Period (CR 9)

In 1994, the GOQ established a tax credit for on-the-job training, to encourage businesses to hire trainees and improve their professional skills.¹⁷⁹ A corporation that hires a student or an apprentice enrolled in a qualified training program can claim a tax credit at a rate of 24 percent for: 1) the salary or wages paid to the student or apprentice; and 2) the salary or wages paid to an employee for the hours they devote to supervision of the students and apprentices. Individuals engaged in business activities can also claim the tax credit but the tax credit rates for individuals are reduced by 50 percent. Bombardier received a tax credit under this program during the POI.¹⁸⁰

¹⁷⁹ See GOQ July 24, 2017 IQR at 128.

¹⁸⁰ *Id.* See also Bombardier July 25, 2017 IQR at 145 and Bombardier September 5, 2017 SQR at 43.

Based on record evidence, we preliminarily determine that we lack the information to determine if the number of recipients that received the on-the-job training tax credit, compared to total corporate tax filers in Québec, is limited in number, on an enterprise basis.¹⁸¹ Additionally, we preliminarily determine that this program does not appear to be specific under any other provision of the Act. Therefore, we preliminarily determine that this program not specific. However, we are requesting additional information from the GOQ to determine the specificity of this program for use in our final determination.

E. Programs for Which Additional Information Is Needed

Shorts also reported receiving certain grants from the European Commission (EC). The U.K. did not provide a response for these programs. These programs were not specifically alleged and we did not send a CVD questionnaire to the EC. Additionally, though these grants do not represent less than 0.005 percent of Shorts’ relevant sales, these grants are nonetheless very small amounts. Therefore, due to the limited time in this investigation, we preliminarily determine, pursuant to 19 CFR 351.311(c), that is appropriate to delay requesting information regarding these grant programs from the EC until the first administrative review, should this investigation result in a CVD order.

Further, as noted in the “Land for Less Than Adequate Remuneration” section, above, we are requesting further information from the GOC regarding the appropriate benchmark to use for land at Mirabel.

VII. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

9/25/2017

X *Carole Showers*

Signed by: CAROLE SHOWERS

Carole Showers
Executive Director, Office of Policy
performing the duties of the Deputy Assistant Secretary
for Enforcement and Compliance

¹⁸¹ See GOQ July 24, 2017 IQR at 128 and Exhibit QC-RQOTHER-2.