

Department is using the original allocation period of 15 years. For non-recurring subsidies received since the original investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables did not reasonably reflect the AUL of the renewable physical assets for the firm or industry under review. Therefore, in accordance with 19 CFR 351.524(d)(2), we have allocated all of AHMSA's non-recurring subsidies received since the original investigation over 15 years, the AUL listed in the IRS tables for the steel industry.

Facts Available

In the course of this proceeding, we have repeatedly sought information from AHMSA concerning its creditworthiness status during calendar year 2000, in connection with the renegotiation of a loan. See questions C.1 through C.7 of the Department's June 3, 2003, supplemental questionnaire. See also question B.1 of the Department's June 30, 2003, supplemental questionnaire. In both instances, AHMSA responded that it was "unable to respond to the Department's questions on creditworthiness at this time."²

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, AHMSA has failed to provide information regarding its creditworthiness during calendar year 2000 in the manner explicitly and repeatedly requested by the Department; therefore, we must resort to the facts otherwise available. Lacking a questionnaire response from AHMSA on the issue of its creditworthiness in 2000, we have relied on primary source information from AHMSA that was submitted onto the record of this proceeding prior to the initiation of our creditworthiness investigation. Namely, we have used, as facts available, AHMSA's financial statements for the years 1997 through 2000, as well as information obtained during verification concerning AHMSA's financial standing in 2000. Using this primary source information, we have determined that, for purposes of these preliminary results, AHMSA was uncreditworthy during 2000. For a discussion of our creditworthiness analysis, see the

September 2, 2003 memorandum from the team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, a public document which is on file in the CRU (*Creditworthiness Memorandum*) as well as the "Creditworthiness and Calculation of Discount Rate" section of this preliminary results notice.

Change in Ownership

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA.

In accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (*Delverde III*), the Department addresses this fact pattern by first determining whether the person who received the subsidies is, in fact, distinct from the person that produced the subject merchandise exported to the United States during the POR. If the two are distinct, the original subsidies may not be attributed to the new producer/exporter. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, in the latter case, we will determine that a "financial contribution" has been made by a government and a "benefit" has been conferred upon the "person" that is the firm under investigation. Assuming that the original subsidy had not been fully amortized under the Department's normal allocation methodology as of the POR, the Department would continue to countervail the remaining benefits of that subsidy. See e.g., the "Change in Ownership" section of the Decision Memorandum that accompanied the *Final Results of the Administrative Review of the Countervailing Duty Order (CVD) on Certain Cut-to-Length Carbon Steel Plate from Mexico—Calendar Year 1998*, 66 FR 14549 (March 12, 2001) (*1998 Review of CTL Plate*).

In making the "same person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will

necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity sold in the change-in-ownership transaction can be considered a continuous business entity because it was operated in substantially the same manner before and after the change-in-ownership. *Id.*

In the previous segment of the proceeding, we found that the privatized AHMSA was essentially the same person as that which existed prior to the privatization as a separately-incorporated, GOM-owned steel producer of the same name. As a result of our analysis, we found the subsidies received by the pre-privatized AHMSA to be countervailable. See the "Application of Methodology" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. No new information or evidence of changed circumstances has been submitted requiring us to reconsider our finding in this segment of the proceeding (i.e., calendar year 2001). Therefore, for purposes of these preliminary results, we continue to find that the privatized AHMSA is essentially the same person as that which existed prior to the privatization. We further preliminarily determine that allocable subsidies bestowed prior to AHMSA's privatization continue to benefit AHMSA, to the extent that the benefit stream extends into the POR of this segment of the proceeding.³

Inflation Methodology

In the underlying investigation, we determined, based on information from the GOM, that Mexico experienced significant inflation from 1983 through 1988. See *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 58 FR 37352 at 37355 (July 9, 1993) (*CTL Plate Investigation*). In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to

² We note that, at AHMSA's request, we extended the due date of the June 3, 2003, questionnaire by 10 days. See the Department's June 10, 2003, letter to AHMSA on, "Extension Request on Behalf of Altos Hornos de Mexico, S.A. de C.V."

³ On June 23, 2003, the Department published a notice that our practice regarding the "same person test" would be modified. See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the "same person test." We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003.