subject merchandise for the same periods also shows massive increases in shipments.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel and steel plate from Spain that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1992, the date 90 days before the date of publication of our preliminary determination in the **Federal Register**.

The products under investigation are also subject to a countervailing duty investigation. The Department has determined that no benefits which constitute export subsidies within the meaning of the CVD law are being provided to manufacturers, producers, or exporters of the subject merchandise in Spain, and, therefore, no adjustment to the estimated dumping margins is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Cold-rolled Steel:	
Ensidesa	43.12
All Others	43.12
Steel Plate:	
Ensidesa	105.61
All Others	105.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before 45 days after our final determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 93-15626 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-401-805]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0922 or 482-1769, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from Sweden are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our January 26, 1993, preliminary determination (58 FR 7122, February 4, 1993), the following events have occurred:

On February 10, 1993, we requested clarification of certain information that respondent, Svenskt Staal AB (SSAB) had provided in its questionnaire responses. SSAB responded to this letter on February 17.

On February 15 and March 5, 1993, SSAB filed responses to section D of our questionnaire. (Section D was issued on January 19, 1993, and dealt with SSAB's production costs for it products sold in the HM and United States.)

During March 1993, we conducted verification of respondent's cost and sales responses to our questionnaire at the Oxelösund, Sweden, facilities of SSAB.

Respondent requested a public hearing on February 16, 1993. Respondent and petitioners filed case briefs on May 3, 1993, and rebuttal briefs on May 6, 1993. On May 11, 1993, we held a public hearing.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We based our such or similar comparisons on the same methodology described in the preliminary determination.

Fair Value Comparisons

To determine whether SSAB made sales of steel plate from Sweden in the United States at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because of significant deficiencies in the data submitted by SSAB in response to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

As noted in our preliminary determination, respondent failed to report sales to the first unrelated customer. Further, the related-customer prices that respondent did report were determined not to be arm's length in nature. For our final determination, we re-tested the sales to the related customer to determine whether they were at arm's-length prices. Our final-determination arm's-length test compared SSAB's related-customer prices only to prices that SSAB charged unrelated customers at the same level of trade. SSAB's prices to its related customer still proved not to be arm's length in nature.

Based on the results of the arm's-length test, we determined that we could not include in our analysis any reported HM prices to SSAB's related customer. This resulted in an extremely large proportion of U.S. sales for which there were no corresponding FMVs when we used SSAB's proposed model match concordance.

After weighing the effect of the arm's-length test results and other major deficiencies discovered at, or unresolved by, verification, we determined that there was insufficient reliable data left on which to base a final determination. Therefore, we used BIA as the basis for this final determination.

Because SSAB cooperated with our requests for information but failed to provide the information requested in the form required, and was the only respondent in this investigation, we have used as BIA the higher of: (1) The average of margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. See, e.g., Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany (54 FR 18992, 19033; May 3, 1989). In this case, as BIA, we have used the average of margins alleged in the petition.

United States Price

We calculated USP using the methodology described in the preliminary determination. We reviewed the methodology and made corrections where necessary.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination. We reviewed the methodology and made corrections where necessary.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including examination of relevant sales and financial records, as well as relevant original documentation that supported information provided in the questionnaire response.

Interested Party Comments

Comment 1: Petitioners argue that the Commerce Department ("the Department") should reject SSAB's questionnaire response and resort to total BIA because (a) SSAB did not report HM sales to related end users; (b) SSAB neither reported resales by its related HM customer (known as "downstream" sales) nor demonstrated that reported sales to the related customer were at arm's-length prices; and (c) verification revealed numerous errors and inconsistencies in SSAB's questionnaire response.

Petitioners contend that as BIA the Department should use the highest margin based on information in the petition because it represents the best estimate of what the actual margin would have been and that resorting to non-punitive BIA would inappropriately reward SSAB's intransigence.

Respondent claims that it did not need to report sales to its related end users because it does not consider the sales to be arm's-length transactions.

With respect to sales of subject merchandise by its related customer, respondent contends that it should not have been required to report such sales because: (a) To do so would have been impossible; (b) downstream sales would have produced few more similar matches than did the sales reported; and (c) downstream sales by the related customer are at different levels of trade and different quantities than are U.S. sales.

Respondent contends that it cooperated fully, that its responses were essentially complete and accurate, and that it reported the appropriate sales in the home market. Therefore, respondent contends, there is no basis for BIA.

DOC Position: We agree with petitioners in part. SSAB failed to report HM sales to related end-users despite the questionnaire's instructions to do so. SSAB also failed to report HM sales by its related customer, despite both the questionnaire's instructions and repeated supplemental requests that it do so. SSAB did not state that reporting such sales would be burdensome until its November 19, 1992, supplemental questionnaire response (i.e., three months after it received our questionnaire), and it never requested any relief from reporting requirements (e.g., permission to report only a sample of its HM sales). SSAB's defense that such sales would not have been more similar to U.S. models or of comparable quantities is a determination that must be left to the Department and can only be made when all relevant sales information is on the record for examination. SSAB ignored explicit and repeated instructions from the Department, unilaterally deciding which sales to report. Since SSAB's relationship to its related customer proved not to be arm's length in nature (see the "Fair Value Comparisons" section of this notice, above), the reported prices to this related customer cannot be compared to U.S. sale prices.

Verification also revealed, or did not resolve, numerous problems with SSAB's data. Movement charges, adjustments, and expenses had been misreported, and U.S. prices had been routinely overstated.

In view of the number of unmatched U.S. sales and the unreliability of respondent's reported data, we must resort to BIA. Because SSAB substantially participated in this investigation, we have determined SSAB to be a cooperative respondent (refer to our discussion of BIA in the "Fair Value Comparisons" section of this notice, above).

Comment 2: SSAB contends that the Department's arm's-length test is flawed because (a) the benchmark for comparability (99.5 percent of weighted-average prices to unrelated parties for the same product) is too high, effectively requiring prices to be identical; (b) the Department should omit from its analysis sales of second-choice plate because they are made at lower prices and thus distortive; (c) the Department's definition of "comparable" merchandise is "identical for matching purposes," even though such products may in fact be different and sold at different prices; and (d) it relies on POI weighted-average prices, thus risking distorted comparisons due to non-contemporaneous prices.

Petitioners counter that (a) no reasonable benchmark shows SSAB's related customer sales prices to be arm's length; (b) inclusion of seconds in the analysis is not a significant factor; (c) there is no evidence that the definition of identical merchandise is distortive in the arm's-length test; and (d) there is no evidence that contemporaneity influenced the results of the arm's-length test.

DOC Position: We agree with respondent in part. We have revised the test to compare prices to related customers only against prices to unrelated customers at the same level of trade (where possible). Furthermore, because SSAB had no sales of seconds in the United States market, we excluded seconds from FMV and from consideration in the related party test.

We reject SSAB's claim that the 99.5 percent benchmark is too high. Section 353.45(a) of the Department's regulations provides that, ordinarily, the Department "* * * will calculate foreign market value based on that sale [a sale to a related customer] if satisfied that the price is comparable to the price at which the producer or reseller sold * * * to a person not related to the seller." In this case, the analysis provided by SSAB did not satisfy us that its related-customer prices were comparable to its unrelated-customer prices. Further, our own test, based on the reasonable assumption that prices' comparability could be established if, on average, the prices were nearly the same, produced the same result.

With respect to our selection of comparable merchandise and the contemporaneity of prices, respondent has not provided a reasonable basis for us to consider these items differently in determining the comparability of home market prices (i.e., in conducting the arm's-length test) than we do in determining the comparability of home market and U.S. prices (i.e., in making LTFV comparisons).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication in the Federal Register of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Svenskt Staal AB	24.23
All Others	24.23

ITC Notification

We have notified the International Trade Commission (ITC) of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the steel plate from Sweden, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duty deposits on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-15627 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-412-814]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-0108, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination in this investigation on January 26, 1993, (58 FR 7124, February 4, 1993), the following events have occurred:

We received a request for a public hearing from British Steel plc (British Steel), the respondent in this investigation, on February 12, 1993. On February 12, 1993, petitioners indicated their intent to participate in a public hearing. On February 19, 1993, Caterpillar Inc. (Caterpillar), an importer of the subject merchandise, also indicated its intent to participate in a hearing.

Petitioners, British Steel, and Caterpillar filed case briefs on April 27, 1993. Petitioners filed a rebuttal brief on April 30, 1993. The Department held a public hearing on May 4, 1993.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of steel plate from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because respondent failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. Since British Steel did not cooperate in this investigation, we have assigned a BIA margin based on the most adverse assumptions. Accordingly, we compared U.S. prices to home market prices, as provided in the petition. As BIA, given that British Steel has been uncooperative, we based our determination on the comparison that yielded the highest margin.

United States Price

We calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect during the quarter of the U.S. sale as certified by the Federal Reserve Bank.

Final Negative Determination of Critical Circumstances

For this final determination, we made the critical circumstances determination pursuant to section 735(a)(3) of the Act, based upon the methodology described in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

When critical circumstances are alleged and the respondent has been deemed uncooperative, resulting in the antidumping duty determination being based on BIA, Department practice has been to use, where possible, the volume of imports provided in the United States Import Statistics (IM–146) to analyze whether or not imports have been massive over a relatively short period of time (see, e.g., Pure and Alloy Magnesium from Canada, 57 FR 30939, 30941 (July 13, 1992) (Magnesium from Canada); Silicon Metal from the PRC, 56 FR 18570, 18571 (April 23, 1991)). The relevant Harmonized Tariff Schedule (HTS) categories under which import data for steel plate are collected consist of both "basket" (i.e., inclusive of both subject and non-subject merchandise) and "non-basket" (i.e., limited exclusively to the subject merchandise) categories. For our analysis, we examined the level of imports in the pre- and post-petition periods using those HTS categories limited exclusively to the subject merchandise. We also examined a comparison of imports using all of the HTS categories identified in the scope of investigation, as well as a comparison of non-basket HTS categories in the pre-petition period, to both basket and non-basket HTS categories in the post-petition period. This last comparison makes the most adverse assumption with respect to critical circumstances in that it assumes that none of the basket category imports in the pre-petition period were of subject merchandise, but that all of the basket category imports in the post-petition period were of subject merchandise.

To determine the length of the comparison periods, the Department normally uses the longest period for which information is available up to the effective date of the preliminary determination. However, where there is a concurrent countervailing duty (CVD) investigation involving the same merchandise, we normally perform the comparison up to the suspension of liquidation resulting from the affirmative preliminary determination in the CVD investigation (see, Magnesium from Canada). Since there is a CVD investigation of steel plate from the United Kingdom, our comparison period for this investigation is five months, to take into account the December 7, 1992, effective date of suspension of liquidation under the CVD investigation.

Based on our analysis of the IM–146 statistics of non-basket categories using five-month comparison periods, as described above, we do not find that there has been a massive increase in imports. We also note that we did not observe a massive increase under the other analyses examined. Because we find that imports have not been massive over a relatively short period of time, we do not need to determine whether there was a knowledge or history of dumping. Therefore, in accordance with section 735(a)(3) of the Act, we determine that critical circumstances do not exist with respect to imports of steel plate from the United Kingdom.

Interested Party Comments

Comment 1: British Steel claims that the margin used in the preliminary determination is inappropriate as BIA because it is based on a comparison of USP derived from average unit import values with a foreign market value based on actual home market price quotes. According to British Steel, this methodology artificially inflates the disparity between U.S. price and foreign market value because it includes a comparison of a high-priced home market sale to a USP based on an average of product prices. British Steel states that this comparison is also incorrect because it is based on a product which British Steel claims was not sold in the U.S. during the POI. Instead, British Steel proposes that the margin be based on the most adverse comparison of actual U.S. price quotes to actual home market price quotes contained in the petition.

Petitioners state that the use of average unit import values is reasonable and consistent with the Department's normal practice. In support of their position, petitioners cite a number of recent cases, such as Final Determination of Sales at LTFV: Ferrosilicon from the People's Republic of China, 58 FR 5356 (January 21, 1993), where the Department based a BIA rate on a comparison of average unit U.S. import values to foreign market value.

DOC Position: We agree with petitioners. British Steel did not respond to our antidumping duty questionnaire and thus is properly deemed to be an "uncooperative" respondent. Our standard and consistent practice in such cases is to assign such a respondent the highest margin found in the petition, unless there is another firm under investigation with an even greater margin. This was the approach used in the preliminary determination for this case and in all other cases involving non-cooperating respondents in the steel investigations, and also has been continued in recent final determinations such as Final Determination of Sales at LTFV: Certain Helical Spring Lock Washers from Taiwan, 58 FR 27709 (May 11, 1993), and Final Determination of Sales at LTFV: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea, 57 FR 61881 (December 29, 1992). Given this longstanding practice, which has been consistently applied by the Department since such cases as Final Determination of Sales at LTFV: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19033 (May 3, 1989), British Steel should have recognized that it would be subject to the highest rate alleged in the petition if it chose not to respond. British Steel's status as a non-cooperative respondent has not changed since the preliminary determination. Consequently, we find no basis to depart from our BIA methodology in the final determination.

We further note that the use of average unit import values as the basis for USP is appropriate, as it is based on information reasonably available to the petitioners, and has been used in a number of cases, as cited by the petitioners. British Steel's claim that it did not sell the product identified in the U.S. import statistics used to derive USP cannot be accepted because it did not submit a questionnaire response and thus there is no information on the record, subject to a verification, that would support this contention.

Comment 2: British Steel and Caterpillar contend that the preliminary determination of critical circumstances is improper. These parties state that, for comparison periods of four, five, and six months before and after the filing of the petition, there is no evidence of "massive" imports according to U.S. Department of Commerce import statistics. Consequently, Caterpillar contends that, as British Steel was the exclusive or virtually exclusive exporter of the subject merchandise to the United States during the relevant period, it was improper for the Department to rely exclusively on the petitioners' allegations without any analysis of its own. Based on such analysis, these parties contend that there cannot be a finding of critical circumstances.

DOC Position: The Department has analyzed the available data, as discussed under the "Critical Circumstances" portion of this notice, and has made a negative determination of critical circumstances.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of steel plate from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
British Steel plc	109.22
All Others	109.22

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its affirmative final determination in the concurrent countervailing duty investigation involving sales in the United States of steel plate from the United Kingdom, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping deposit rates.

Because we now determine that critical circumstances do not exist, the retroactive suspension of liquidation ordered at the time of the preliminary determination are terminated for entries of steel plate from the United Kingdom. All cash deposits or bonds placed on entries of steel plate from the United Kingdom prior to February 4, 1993, shall be refunded.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-15628 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-433-804]

Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan, Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0114.

Final Determination

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of certain steel products.

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary affirmative determination in the **Federal Register** (57 FR 57781, December 7, 1992), the following events have occurred.

On December 8, 1992, we issued a final supplemental questionnaire to respondents. On December 23, 1992, we received a response from the Government of Austria (GOA). On January 8 and 15, 1993, we received responses from Voest-Alpine Stahl Linz Ges.m.b.H. (VA Linz) and Voest-Alpine Stahl AG (VAS).

In accordance with section 776(b) of the Act, we verified the responses of the GOA, VA Linz, VAS, and Austrian Industries (AI) (which provided information for Voest-Alpine AG (VAAG)) from January 25 through February 5, 1993.

On February 26, 1993, the Department returned to respondents a submission dated February 17, 1993, because it contained unsolicited factual information and was submitted after verification.

Petitioners and respondents filed case and rebuttal briefs on March 8-9 and March 12, 1993, respectively. A public hearing was held on March 15, 1993. A public hearing regarding general issues in this and the 11 other countervailing duty (CVD) investigations of certain steel products from various countries was held on May 5-6, 1993.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determination in this investigation in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (see Suspension of Liquidation section, below).

Scope of Investigation

The products covered by this investigation, certain steel products, constitute the following single "class or kind" of merchandise, as found in the Scope Appendix attached to this notice: certain cold-rolled carbon steel flat products.

Injury Test

Because Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Austria materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Austria of the subject merchandise (57 FR 38064, August 21, 1992).

Corporate History

Prior to 1987, the subject merchandise was produced in the steel division of VAAG, a large conglomerate which also contained engineering and finished products divisions. Vereinigte Edelstahlwerke (VEW), a producer of specialty steel products not subject to investigation, was an incorporated subsidiary of VAAG. In 1987, VAAG underwent a major restructuring and several new companies were incorporated to operate the three major divisions of VAAG. The steel division became VA Linz. VAAG became a holding company for these new companies and for VEW.

In 1988, the production assets of VEW were distributed to its two incorporated subsidiaries, Böhler and Schoeller Bleckmann. VEW was renamed VAS and it became a steel holding company (under VAAG) with VA Linz and Böhler two of its incorporated subsidiaries.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung Ges.m.b.H. (IBVG). In 1990, IBVG, in turn, renamed Austrian Industries AG (AI). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

Respondents

We have determined that the GOA, VAAG, VAS, and VA Linz are respondents for the class or kind of merchandise subject to this investigation. As discussed below in the Best Information Available section, we have determined that VAAG and VAS, as holding companies for VA Linz in 1987–88 and 1988-present, respectively, received subsidies that benefitted VA Linz.

Best Information Available

Petitioners argue that the Department should reject the responses of VA Linz and VAS as deficient and apply best information available (BIA). Although VAS claimed that it did not have to respond to the Department's questionnaire, that is incorrect.

Petitioners state that, at verification, the Department discovered for the first time that VAS performed certain activities on behalf of VA Linz (*e.g.*, raw materials purchasing). Petitioners assert that these activities required a full response from VAS. Petitioners argue that these circumstances reflect those in Final Determination of Sales at Less Than Fair Value: Certain Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany ("AFBs from the FRG"), 54 FR 18992 (May 3, 1989), where, due to the magnitude of the problems encountered at verification, the Department had no alternative but to use BIA.

Respondents argue that both VA Linz and VAS provided full responses to the Department's original questionnaire. However, based on the Department's November 2, 1992, letter regarding whether related parties were required to respond to deficiency questionnaires, VAS did not respond to parts of the Department's deficiency questionnaire. The functions performed by VAS on behalf of VA Linz that were cited by petitioners as actions which require a response from VAS (e.g., raw materials purchasing), were, in respondents' view, simply intermediary functions for which VAS received reimbursement plus a fee. Respondents argue that no "transfer of assets" or "assumption of financial obligations" occurred which would have required a response from VAS. Respondents further contend that, in any event, the information not provided by VAS was trivial and cannot be likened to the situation in AFBs from the FRG where numerous errors and discrepancies were found (*Id.* at 19033–41).

As stated above by respondents, the Department issued a letter to respondents on November 2, 1992, clarifying the basis on which to identify the appropriate related parties that must respond to the Department's questionnaires. The following excerpt from that letter is instructive as to the determination of the appropriate respondents:

"You do not have to provide a complete response for a supplier, trading company that does not sell the subject merchandise, or a holding company (*i.e.*, a company that confines its activities to owning stock in, and supervising management of, other companies, including respondent) merely because it is related to the respondent. However, if the related supplier, trading company, or holding company has had 'financial transactions' with the respondent, as described below, please provide a complete response, along with an explanation of these transactions. If a holding company is in turn 'related' to other companies, other than a producer or seller of the subject merchandise, you do not have to supply a response for these other companies.

3. Please provide complete responses for all related companies that conducted either of the following types of financial transactions:

a. Any transfer of funds (*e.g.*, grants, financial assets) or physical assets to the respondent, the benefits of which were still enjoyed by the producer of the subject merchandise during the POI; or

b. Any assumption of a debt or other financial obligation of the respondent (e.g., loan payments, dividend payments, wage compensation) that the respondent would have had to pay during the POI.

In addition, please explain the nature of these financial transactions, including all relevant terms and conditions."

In response to the November 2, 1992, letter, VAS stated that it did not engage in "financial transactions," as described, with VA Linz. Therefore, it did not answer most of the questions contained in the supplemental/deficiency questionnaire.

On December 8, 1992, the Department issued a second supplemental/deficiency questionnaire requesting respondents to detail any functions performed by VA Linz's holding companies since 1987. Respondents stated that VAS only provides cash clearing and foreign currency management on behalf of VA Linz. No mention of any other activities was made, nor did the response indicate that any functions were performed by VAAG. We accepted these responses and stated that the responses of VA Linz, VAS, VAAG, and the GOA would be subject to verification (see Letter from Susan H. Kuhbach to Honorable Dr. Freidrich Hoess, dated December 8, 1992).

Contrary to the claims of respondents, we discovered at verification that both VAAG (through June 1988) and VAS (after June 1988) performed various functions on behalf of VA Linz (*e.g.*, raw materials purchasing, acting as an intermediary for financial services). Despite repeated requests at verification that respondents document their assertion that these functions comprise the universe of functions performed by VAAG and VAS on behalf of VA Linz, respondents failed to do so.

In order to know whether VAAG or VAS should have responded to the Department's questionnaire, it was incumbent upon the respondents to identify any interactions between VA Linz and its past and present holding companies. Then, these interactions would have to be analyzed to see if they fell within the term "financial transactions," as defined by the Department in its November 2, 1992, letter. As discussed below, no such analysis was provided to the Department either in a response or at verification.

When VAS contended that it did not have to provide a response and, in a subsequent letter, that the only transactions between it and VA Linz involved management in foreign currencies and cash-clearing, the Department accepted those responses, subject to verification. At verification, expecting to verify these claims, the Department instead found that the statement that VAS performed only cash clearing and foreign currency management was inaccurate. It was clear that, prior to our questioning at verification, no systematic analysis of the interactions between VA Linz and its holding companies had ever been done for purposes of this investigation, despite the number and manner of transactions between VA Linz and VAS.

With respect to VAAG, despite repeated requests by the Department, respondents never addressed the role of VAAG as VA Linz's holding company from 1987 through June 1988. As explained above, at verification we discovered that VAAG purchased raw materials for VA Linz, acted as an intermediary for internal and external financing, provided workers to VA Linz, and may have provided a data processing system to VA Linz. As with VAS, prior to our questioning at verification no systematic analysis of the interactions between VA Linz and VAAG had been done.

The information discovered at verification did not correspond to the information or conclusions provided in the responses (or, in the case of VAAG, not provided at all). This fact, combined with the apparent lack of any analysis by respondents of the interactions between VA Linz and VAAG or VAS, compels us to determine that an adequate response was not provided. Lacking comprehensive information concerning the nature and degree of intercompany relationships, as well as any information not already on the record concerning the receipt of subsidies by VAAG and VAS, we are unable to determine whether and to what extent VA Linz benefitted from subsidies received by its holding companies.

Because of these deficiencies, we determine that BIA is appropriate with respect to subsidies received by VAAG and VAS and benefitting VA Linz.

We disagree with petitioners that the magnitude of these deficiencies warrants our rejection of all responses. In all other aspects, the responses provided by VA Linz and the GOA were complete and accurate. Therefore, we are only applying BIA with respect to subsidies given to VAAG and VAS while each was a holding company to VA Linz. We have used the responses to calculate subsidy rates for programs used by VA Linz.

We have based the BIA for subsidies to VAAG and VAS on information collected at verification and from public sources. These subsidies are equity infusions and grants given to VAAG in 1987–1988 as well as grants given to VAS in 1988–89.

We have analyzed the equityworthiness of VAAG for 1987, the only year in which an equity infusion was given. We determine VAAG to be unequityworthy in the 1987, as explained more fully in the Equityworthiness section, below. Therefore, the equity infusion given to VAAG in 1987 was inconsistent with commercial considerations.

Further, we determine that only a portion of those subsidies given to the holding companies benefit VA Linz because both VAAG and VAS were holding companies for subsidiaries other than VA Linz. We calculated the share attributable to VA Linz using the ratio of VA Linz's assets to its holding company's assets for each year in which subsidies were provided to VAAG or VAS. This methodology is consistent with the Restructuring section of the General Issues Appendix.

For 1988, we determine that the relevant share of only half of those subsidies given to VAAG in that year benefit VA Linz because VAAG was the holding company for VA Linz only through June 1988. With respect to the subsidies given to VAS, however, we determine that all subsidies given to VAS in 1988 benefit VA Linz proportionately. We did not halve the benefit from the subsidies received by VAS in 1988 because VAS did not exist until July 1988.

To determine the benefit from the portion of the countervailable subsidies allocable to VA Linz, we applied the methodology outlined in the Allocation and Equity sections of the General Issues Appendix. For the discount rate, we used the relevant industry bond rate from the Austrian National Bank Annual Report (see Comment 3, below). This discount rate was also used for all programs, where appropriate, in the Analysis of Programs section, below.

We then divided the benefit by total sales of VA Linz products during the period of investigation (POI). Based on BIA, we determine the net subsidies to be 2.08 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

Petitioners note that we found VAAG to have used the österreichische Kontrollbank Aktiengesellschaft (ÖKB) Export Financing program in Final Affirmative Countervailing Duty Determination of Certain Carbon Steel Products from Austria (Carbon Steel), 50 FR 33369 (August 19, 1985). While VAAG may have used the ÖKB Export Financing program in 1984, we determine that VAAG and VAS would not use any export financing or insurance programs or a tax deferral program for export receivables after 1987 because, as holding companies, neither would export. Therefore, we find it reasonable to conclude, as BIA, that VAAG and VAS received only the equity infusions and grants described above.

General Issues

Several issues raised by interested parties in this investigation and in other CVD investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to this notice.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the POI) is calendar year 1991, which corresponds to the fiscal year of VA Linz.

In determining the subsidies received under the various programs described below, we calculated a country-wide rate for each program. This rate equaled the *ad valorem* subsidy received by VA Linz because it is the sole Austrian exporter of the subject merchandise. The rates for all programs were then summed to arrive at the final subsidy rate listed in the Suspension of Liquidation section, below.

Based upon our analysis of the petition and the verified responses to our questionnaires, we determine the following:

Equityworthiness

A detailed equityworthiness analysis can be found in Appendix 2 of the Concurrence Memorandum dated June 9, 1993. A summary of that analysis follows.

In this investigation, the Department preliminarily determined VAAG to be unequityworthy in the period 1978–84. This concurred with our decision in Carbon Steel, in which we determined VAAG to be unequityworthy during the same period. Respondents have not questioned this and no additional information concerning that period has come to light. Therefore, we determine VAAG to be unequityworthy during 1978–84.

In our preliminary determination, we also found VAAG to be unequityworthy in 1986. Respondents have claimed that the Department should include in its analysis additional information available in 1986. This information, which the Department did not consider for the preliminary determination, is two cost-cutting studies and restructuring plans.

One of the studies prepared by VAAG (called "VA Neu") was not supplied in the response and was first available to the Department at verification. Because respondents did not supply the Department with this study or an adequate summary of this study prior to verification, thereby denying the Department and petitioners an adequate opportunity to analyze its contents, we determine that any information contained therein cannot be considered in the Department's analysis.

The other study was prepared by McKinsey & Company ("the McKinsey study"). This study was a cost-cutting study done for the steel division which became VA Linz. Despite an explicit request by the Department that respondents submit this study in full (see Letter from Susan H. Kuhbach to Honorable Dr. Freidrich Hoess dated December 8, 1992) so that it could be properly analyzed, only a summary and sample pages were submitted immediately prior to verification. Respondents argue that this study was too voluminous to translate and submit.

A summary of a voluminous study such as this may be considered adequate if it thoroughly reviews such aspects as the scope and purpose of the analysis, the methodological approach used, and the conclusions drawn. These aspects are necessary so that the Department and petitioners have a sufficient basis upon which to evaluate the study prior to verification. The summary provided by respondents falls well short of the information needed on the record to perform such an evaluation. Therefore, we did not consider the contents of the McKinsey study or the summary in the equityworthiness analysis.

With respect to the planned restructuring of VAAG, a reasonable private investor would consider the anticipated benefits from these plans over past results. No information regarding the expected results from restructuring was presented other than the information contained in the two studies which are not being considered. Thus, there are no conclusions regarding the restructuring which affect the equityworthiness determination. With no information to counter the past performance of VAAG, we determine VAAG to be unequityworthy in 1986.

Since VA Linz was incorporated effective 1987, our equityworthiness analysis for 1987 shifts to that company. VA Linz's performance prior to 1987 is included in the financial statements of VAAG. As discussed above, VAAG performed poorly. Respondents have claimed, however, that VA Linz on its own was equityworthy in 1987 and based this claim on the restructuring and the cost-cutting studies discussed above.

As noted above, we did not consider the VA Neu or McKinsey studies. In addition, the restructuring plans submitted to Finanzierungsgarantie Gesellschaft (the Federal Guaranty Corporation—FGG) in 1987 were derived from the VA Neu study. These plans were not submitted, either entirely or in summary form, on the record prior to verification. Moreover, as noted above, no information regarding the expected results from restructuring was presented.

Respondents have also cited VAAG's annual reports for the years 1984–86, where references are made to the profitability of the steel division's operations at Linz. For a reasonable private investor examining the prospects of an investment in VA Linz in 1987, such brief references, devoid of any financial data, would not provide a sufficient basis to counteract the actual, documented, poor performance contained in the remainder of VAAG's annual reports. While we recognize that VAAG's financial data reflects more than just VA Linz, without any additional information, we are compelled to rely on VAAG's results as a surrogate for VA Linz.

We gathered at verification an internal OIAG memorandum which contained profit forecasts for the steel division at VA Linz. No analysis was associated with this memorandum which a private investor could examine in order to determine its accuracy.

Therefore, we determine VA Linz to be unequityworthy in 1987 because the evidence submitted does not provide a sufficient evidentiary basis to overcome the historical record of poor performance by VAAG.

As discussed above, we are applying partial BIA and assuming that a proportional amount of an equity infusion received by VAAG in 1987, while acting as holding company for VA Linz, benefitted VA Linz. Hence, we have also analyzed whether VAAG was equityworthy during 1987.

For 1987, the information on the record indicates that VAAG's past performance was poor. While the restructuring of VAAG had begun, we have no information regarding forecasts available in 1987 that VAAG as a whole would begin to perform better. Therefore, we determine that VAAG was unequityworthy in 1987.

A. Programs Preliminarily Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of certain steel products under the following programs:

1. Equity (Capital) Infusions to Voest-Alpine AG (VAAG): 1983–84, 1986

1983–1984

The GOA provided capital infusions through Österreichische Industrieholding-Aktiengesellschaft (ÖIAG) to VAAG while VAAG owned the facilities which became VA Linz, the producer of the subject merchandise. We verified that VAAG received capital infusions in 1983 and 1984.

At verification, we discovered that an equity infusion reported by respondents as received in 1978 was actually received in 1975. Therefore, since we have determined that the benefits from non-recurring subsidies should be allocated over 15 years (see Allocation section of the General Issues Appendix), benefits from this infusion would not be allocated to the POI.

The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. Law 589/1983 provides authority for disbursement of funds to companies of ÖIAG, of which VAAG is one. Therefore, we determine the infusions given under this law to be specific.

As discussed above, we determined that VAAG was unequityworthy in 1978–84. Therefore, these equity infusions were given on terms inconsistent with commercial considerations.

When VAAG was restructured and VA Linz became a separate company, we have determined that these subsidies continue to benefit steel production. In accordance with the methodology outlined in the Restructuring section of the General Issues Appendix, we have applied the following methodology.

We divided VA Linz's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (i.e., pre-restructuring). This ratio best reflects the proportion of total VAAG assets accounted for in 1986 by what became VA Linz in 1987.

We applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to VA Linz. We then applied the methodology described in the Allocation and Equity sections of the General Issues Appendix to calculate the benefit to VA Linz from these equity infusions. We divided the benefit by total sales of VA Linz products during the POI. On this basis, we determine the net subsidies for this program to be 0.20 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

1986

Petitioners alleged that an equity infusion was given by ÖIAG to VAAG in 1985 while VAAG was the holding company for VA Linz. However, the responses and verification indicate that, in fact, these funds were received by VAAG in 1986. The 1986 capital infusion was given as an advance payment under Law 298/1987 (the ÖIAG Financing Act). The companies eligible to receive funds were the same as those under Law 589/1983. Therefore, we find this infusion to be specific.

As stated above in the Equityworthiness section, we determine VAAG to be unequityworthy in 1986. Thus, we determine that this equity infusion was given on terms inconsistent with commercial considerations.

To calculate the benefit from this program, we used the same methodology described in the 1978–84 section, above. We then divided the benefit by total sales of VA Linz products during the POI. On this basis, we determine the net subsidies for this program to be 0.64 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

2. Grants Provided to VAAG: 1978–86

The GOA provided grants to VAAG through ÖIAG during the years 1978–86, pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In Carbon Steel, the Department found grants disbursed under Law 602/1981 and Law 589/1983 to be countervailable (50 FR at 33370–71). In addition, as stated above, we determine that benefits provided under Law 298/1987 are specific and, hence, grants under this law are countervailable.

As with the equity infusions to VAAG discussed above, respondents have argued that the funds provided by these grants were not disbursed to facilities which produced the subject merchandise and, therefore, did not benefit the subject merchandise. As discussed above, the Department has addressed this issue in the Denominator and Restructuring sections of the General Issues Appendix.

In accordance with the Allocation section of the General Issues Appendix, the grant amounts were combined with equity infusions provided under the same program in each year, if any, to determine whether the amount exceeded 0.5 percent of total VAAG sales in that year. In each year except 1981, the value was greater than 0.5 percent of sales. The 1981 grant was expensed in that year. To calculate the benefit from the other grants, we used the methodology described in Equity Infusions to VAAG: 1983–84, 1986 section, above. On this basis, we determine the net subsidies for this program to be 2.26 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

3. Assumption of Losses at Restructuring by VAAG on Behalf of VA Linz

Petitioners argue that if VAAG assumed debts or liabilities of VA Linz during the restructuring then subsidies given to VAAG after January 1, 1987, could be used to liquidate those debts or liabilities. Petitioners state that respondents do not indicate whether VAAG used any alleged programs.

At verification, we examined the distribution of liabilities and assets by VAAG to its newly incorporated subsidiaries. Any assets or liabilities not clearly associated with a new subsidiary, including general debts, were retained by VAAG.

We find no indication that VAAG retained liabilities or poorly-performing assets as a result of this distribution which were specifically related to any of the newly created subsidiaries, including VA Linz. In addition, even though VAAG retained all general liabilities, it appeared that VAAG attempted to allocate some of the cost associated with those liabilities by creating debt obligations to VAAG on the subsidiaries' books. Therefore, we conclude that the method used to allocate liabilities and assets to the new subsidiaries was reasonable and that no countervailable benefit was conferred in this action.

However, we did observe that VAAG retained a loss carried forward on its balance sheets which was not assigned to any of its newly created subsidiaries, including VA Linz. For VAAG, this loss carried forward nearly created a situation of negative equity. If VAAG had assigned these losses to its new companies, then each of the new companies would have been in a similar, precarious financial position. However, equity was established in each company, including VA Linz, and VAAG retained all the losses carried forward. VAAG later received funds from the GOA under Law 298/1987 to offset these losses.

Consistent with our analysis of the distribution of VAAG's assets and liabilities to the newly-formed subsidiaries, we have concluded that a portion of the losses should also have been allocated to the subsidiaries.

Based on our analysis of this distribution, we determine that VA Linz benefitted by not assuming any losses. Moreover, although VAAG did not receive funds to cover these losses until 1989, we have determined that VA Linz benefitted in 1987 when the restructuring occurred.

We calculated the benefit by treating the losses not distributed to VA Linz as a grant in 1987, determining VA Linz's share of the losses by reference to its asset value relative to total VAAG assets.

Using the methodology outlined in the Allocation and Equity sections of the General Issues Appendix, we calculated the benefit attributable to the POI and divided this amount by VA Linz's total sales to reach an *ad valorem* subsidy. On this basis, we determine the net subsidies for this program to be 0.76 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

4. Equity Infusion to VA Linz—1987

Two equity investments were made in VA Linz in 1987, one directly from ÖIAG and one from VAAG. The infusion by ÖIAG was made pursuant to Law 298/1987 (the ÖIAG Financing Act). The equity investment by VAAG is discussed below under Programs Determined Not to be Countervailable.

With respect to the ÖIAG infusion, the companies eligible to receive funds under Law 298/1987 were the same as those that were eligible under Law 589/1983. Therefore, we find this infusion to be specific. As stated above in the

Equityworthiness section, we determine VA Linz to be unequityworthy in 1987. Therefore, the ÖIAG infusion was given on terms inconsistent with commercial considerations.

Since the infusion was made directly in VA Linz and VA Linz was separately incorporated as of that year, we calculate the benefit from the entire equity infusion using the methodology described in the Allocation and Equity sections of the General Issues Appendix. We divided the calculated benefit by total sales of VA Linz during the POI to determine the *ad valorem* subsidy. On this basis, we determine the net subsidies for this program to be 0.10 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

5. Income Tax Deferral on Export Receivables

Under this program, the GOA, pursuant to section 6(2)(c) of the Austrian Income Tax Law (EStG), permits Austrian companies to deduct from their taxable income and place in a reserve 15 percent of receivables originating from exports. This income remains tax exempt until payment on the receivable is made.

Petitioners allege that this confers a countervailable benefit because by deferring payment of taxes on export receivables, an interest-free loan is being provided to the exporter for the deferral period. Respondents argue that this program is not a subsidy but, rather, exists to provide companies a mechanism for dealing with the risks associated with export receivables. VA Linz also argues that, due to the fact that the conglomerate, VAS, incurred losses during the POI, it paid no taxes. Therefore, it did not benefit from the program.

Regardless of accounting rules which require Austrian corporations to reflect the actual market value of assets in their books, including riskiness of receivables, this program specifically provides that a portion of export receivables may be placed in a reserve and go untaxed. There is no similar provision for domestic receivables. Thus, we determine that this program provides a countervailable benefit to exporters.

However, we find no benefit to VA Linz during the POI because VAS did not pay taxes in 1991 and, hence, no taxes were deferred.

B. Program Determined Not to be Countervailable

We determine that the following program does not provide subsidies to manufacturers, producers, or exporters in Austria of certain steel products:

Equity Investment in VA Linz by VAAG: 1987.

When VAAG restructured in 1987 and formed separate, incorporated subsidiaries, the start-up equity was merely a result of the distribution of its pre-existing assets and liabilities to VA Linz. As stated above, we determine this distribution to be reasonable, with the exception of the retention of losses by VAAG. Thus, benefits to VA Linz by the equity investment from VAAG are captured in the Assumption of Losses at Restructuring by VAAG on Behalf of VA Linz program, above.

C. Programs Determined Not to be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Austria of certain steel products:

1. Grants to VEW: 1981–1987
2. ÖKB Export Financing
3. Foreign Investment Credits
4. ÖKB Export Insurance

D. Program Determined Not to Exist

Loan Guarantee Program Under Law 569/1978

Petitioners alleged that under section 77 of the Insurance Supervisory Law of October 18, 1976 (Law 569/1978), the GOA provided guarantees on loans issued by Austrian insurance companies to VAAG. Petitioners further alleged that there is no evidence that VAAG paid for the guarantees and, therefore, these guarantees were provided at a rate lower than commercially available guarantees. The guarantees also permitted VAAG and VAS to obtain financing at a lower rate than they would otherwise have had to pay.

We discovered at verification, however, that section 77 of this law did not provide for the GOA to give guarantees to companies but rather provided guidelines for insurance companies' investments. Therefore, we determine that this program does not exist.

Interested Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Petitioners state that the 1989–90 equity infusions to VA Linz, which the Department preliminarily determined to be not countervailable, were given to VA Linz by VAAG in 1987. The Department verified that VAAG was subsequently reimbursed by ÖIAG for these infusions in 1989–90 under Law 298/1987. Insofar as VAAG was merely a holding company with no operations, the only need for an infusion from ÖIAG was to reimburse VAAG for its infusions to VA Linz. Petitioners argue, therefore, that 1987 is the year in which the equity infusion was made.

Respondents argue that the initial equity infusion of AS 3,700 million in 1987 was provided to VA Linz by VAAG, not the GOA. Moreover, there was no real transfer of funds from VAAG to VA Linz; this was merely a paper transaction. Respondents assert that the proper years of focus are 1989–90, when the GOA provided actual funds to VAAG to refinance the equity position it had previously taken in VA Linz. In addition, ÖIAG and its companies were required to fulfill conditions (e.g., submit business plans) before any funds were disbursed. Therefore, the equity infusions took place only when the conditions were met, which was in 1989–90.

DOC Position: As stated above in the Assumption of Losses By VAAG on Behalf of VA Linz and the Equity Investment in VA Linz: 1987 programs, the equity investment in VA Linz by VAAG in 1987 was merely a redistribution of existing assets. However, VAAG also retained losses instead of distributing them to its newly incorporated subsidiaries. We have determined that VAAG's failure to distribute these losses to the new subsidiaries amounted to a grant in VA Linz. Although VAAG was not reimbursed for this grant by ÖIAG until 1989–90, the benefit to VA Linz occurred at the time of restructuring, i.e., when it received assets and liabilities from VAAG.

Comment 2: Petitioners argue that the Department correctly determined at the preliminary determination that the Income Tax Deferral for Export Receivables Program conferred a benefit on VA Linz. Petitioners contend that funds placed in this reserve benefit VA Linz because VA Linz is permitted to defer payment of taxes on these funds until collection of the receivables is made. Petitioners assert that the Department should countervail VA Linz's contributions to this reserve not only in 1990 but in 1988–89 as well. These prior years should be examined because the Austrian Income Tax Law does not limit the time period for deferral. The tax which should have been paid should be treated as an interest-free, short-term loan.

Respondents contend that this program confers no preferential treatment on exporters. All Austrian companies are required to write off a portion of assets in accordance with the risks associated with these assets. Therefore, the benefits are not linked to export sales (see *Can-Am Corp.* v. *United States*, 664 F. Supp. 1444, 1450 (CIT 1984)). Respondents also maintain that the law does, in fact, indicate there to be a time limit on the period for deferral.

DOC Position: The issue of whether this program is countervailable is addressed in the Income Tax Deferral for Export Receivables Program section, above. Furthermore, because we find no benefit from this program to VA Linz during the POI, no calculation of benefits under this program is required.

Comment 3: Petitioners contend that neither VAAG nor VA Linz supplied adequate information regarding its cost of long-term debt. Petitioners further argue that the national average long-term fixed interest rates provided by the GOA relate to "single issue" bonds, as listed in the Austrian National Bank annual report. Petitioners assert that the rates for these bonds, where the issuer is not known, were lower than the rates on bonds issued by low-risk borrowers. This makes the use of single issue rates highly questionable. VAAG, a borrower of considerable risk, has not shown, nor can the Department assume, that it could have borrowed or floated bonds at such rates.

Petitioners also contend that the Department should not use the long-term cost of debt reported by VA Linz for 1987–91. In 1987, VA Linz was newly incorporated; therefore, it had no debt on which a long-term rate could be based. For 1988–91, VA Linz incorrectly calculated its cost of long-term debt on the loans outstanding during the relevant period instead of basing it on new loans taken out in that period (see, e.g., Preliminary Countervailing Duty Determination: Certain Steel Products from Mexico, 57 FR 57813, 57816 (December 7, 1992)). Petitioners argue that the Department should use, as BIA, the commercial interest rates for loans from banks to prime customers submitted in its petition.

Respondents argue that the Department should use VA Linz's cost of long-term debt for the years 1987–1991 and the national average long-term interest rates the GOA provided for the years prior to 1987. VA Linz's reported interest rates were based on the loan amount outstanding each year, not the loans taken out in the relevant period. Respondents contend that neither the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations) nor its questionnaire require respondents to report the interest rates for loans taken out in a period. Rather, the questionnaire requests the cost of long-term debt incurred in a period.

For the period prior to 1987, respondents argue that the long-term rates reported by the GOA represent average yields for newly issued bonds as opposed to secondary market yields. Since large companies in Austria use the bond market to raise funds, this is an appropriate measure. It would be inappropriate, respondents argue, to use bank interest rates, as offered by petitioners, since only small- and medium-sized companies use banks for financing. Respondents contend that petitioners' interest rates are short-term and merely a sample of rates, while the GOA's rates are more technically precise.

DOC Position: We verified that the rates reported by VA Linz for 1987–91 corresponded to its cost of long-term debt outstanding in each year rather than the cost of long-term debt taken out in each year. We regret that the Department's questionnaire may have been vague by asking for the company's cost of long-term fixed rate debt incurred in each year. However, at verification we gave respondents the opportunity to amend their calculations to reflect the Department's methodology and they chose not to do so.

In calculating benchmarks and discount rates, we seek the cost of long-term fixed rate loans raised in a particular year because we are attempting to obtain a rate which would make the company indifferent, at the time the grant was approved, between receiving a grant in a lump sum versus in equal installments over time. The interest rate obtained by the firm at the point the grant is received best achieves this result.

Since no company-specific discount rates are available, section 355.49(b)(2) of the Proposed Regulations directs us to use a national average interest rate. We have determined that the secondary market yields for industry bonds, as listed in the 1991 Austrian National Bank (ANB) Annual Report under the category "Industry and other Austrian issuers," is the most appropriate rate.

First, we confirmed at verification that large Austrian firms obtain financing through the bond market, not through commercial bank loans. Second, the bond rate provided to the Department in the response, and sourced from the ANB Annual Report, was dominated by GOA bonds. We prefer to use a rate which is reflective of commercial rather than government borrowing where possible.

Of the other bond rates listed in the ANB Annual Report, only three were reflective of non-government activities: the power supply industry; industry and other Austrian issuers; and banks. The rates for the power supply industry and banks may reflect special characteristics of those industries. Therefore, we have chosen the broader category, "Industry and other Austrian issuers," as the source for our discount rates.

The 1991 ANB Annual Report did not contain rates for the period prior to 1982. At verification, we collected the same table, as referenced above, from an earlier ANB publication. However, this table did not contain a column for "Industry and other Austrian issuers" but rather just "Other issuers." Because it appears that this column most closely corresponds to the "Industry and other Austrian issuers" column, we have used these bond rates as discount rates for the period 1977–81.

Finally, petitioners' objections to the use of bond rates are without merit. Based on our conversations with officials from the ANB and from a commercial bank, as reflected in the verifications reports, we are satisfied that these bond rates provide an accurate measure of what it would cost a large company to raise capital in a given year. Petitioners' assertion that VAAG was a creditor of considerable risk, to whom these rates do not apply, is an allegation of uncreditworthiness which should have been raised at a point earlier in this investigation, not in petitioners' briefs. In addition, because we consider the ANB information to be accurate and reliable, there is no need to resort to the petition for the discount rates.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Austria which were entered, or withdrawn from warehouse, for consumption on or after

December 7, 1992, the date of publication of our preliminary determination in the **Federal Register**. This final CVD determination was aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Cold-Rolled Carbon Steel Flat Products

Country-Wide *Ad Valorem* Rate............6.04%

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a CVD order, directing Customs officers to assess countervailing duties on entries of certain steel products from Austria.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Scope Appendix

Scope of the Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat-rolled products, of rectangular shape, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:

Carbon—1.21%–1.35%
Manganese—0.15%—0.35%
Phosphorus—0.025% maximum
Sulphur—0.010% maximum
Silicon—0.10%—0.25%
Aluminum—0.015% maximum
Chromium—0.10%–0.30%
Copper—0.15% maximum

Microstructure:

Must be fully sorbitic with carbide size # absolute maximum.

Width:

14 inches maximum

Thickness:

0.07 inch–0.125 inch

Certain Carbon Band Saw Steel

Chemical Composition:

Carbon—0.78%–0.83%
Manganese—0.35%–0.50%
Phosphorus—0.020% maximum
Sulphur—0.008% maximum
Silicon—0.10%–0.20%
Aluminum—0.020%–0.060%
Chromium—0.05%–0.15%
Copper—0.12% maximum

Non-Metallic Inclusion Rating:

(1) IPSI 10,000 maximum
(2) ASTM E45
A: 2 maximum
B and C: 1 maximum
D: 1 maximum
(3) DIN 50602
SS: maximum 3
OA: maximum 1
OS: maximum 1
OG: maximum 2

Banding:

ι1 maximum

Decarburization:

Complete=0.0005 inch maximum
Total=0.002 inch maximum

Width:

14 inches maximum

Thickness:

0.07 inch–0.125 inch

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0 5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Interested Party Comments

Comments received from interested parties regarding the scope of these investigations and the Department's positions on these comments are addressed in Appendix I to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina which is being published concurrently with this notice.

GENERAL ISSUES APPENDIX

Allocation

Issue

Interested parties to these investigations have challenged several aspects of our grant allocation methodology including: (1) The application of the three-part recurring/nonrecurring test in the Preamble to Countervailing Duties; Notice of Proposed Rulemaking and Request for

Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations); (2) the manner in which the Department has applied the 0.50 percent test; and, (3) the use of a fifteen-year period for the average useful life of assets in the steel industry. Our decision with respect to these issues is addressed below.

Discussion

A. *Allocating Benefits*. Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See section 355.49(a) of the Proposed Regulations and Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991) (Salmon from Norway).

1. The Recurring/Nonrecurring Test. The Preamble to the Proposed Regulations describes those types of benefits the Department has determined to be recurring and lists three factors the Department has considered when deciding whether a benefit is recurring:

> * * * recurring benefits (benefits which a firm receives, or is likely to receive, on an on-going basis from review period to review period) shall be expensed. Typical examples of such benefits are direct tax exemptions or deductions, excessive rebates of indirect taxes or import duties, preferential provision of goods and services. Factors the Department considers in determining whether a benefit is recurring are: (1) Whether the program providing the benefit is exceptional; (2) whether the program is longstanding; (3) whether there is any reason to believe that the program will not continue into the future.

See the Proposed Regulations. In the preliminary determinations of these investigations, we stated that we intended to reexamine the approach to distinguishing recurring from non-recurring benefits set forth in the three-part test found in the Preamble of the Proposed Regulations.

In four final determinations subsequent to the preliminary determinations in these investigations, we modified the test for deciding recurring/nonrecurring issues. For example, in the Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221 (January 27, 1993) (France Bismuth) we stated the following:

> We have considered the grants * * * described below to be non-recurring * * * because the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period and/or the provision of funds by the government must be approved every year.

See France Bismuth. We have adopted this revised test for these final determinations. We consider this test to be more appropriate than the one described in the Preamble of the Proposed Regulations for two reasons. First, this test makes it clear that the Department's focus should be on the nature of the benefit provided to the recipient. Secondly, this modified test omits the last two factors cited in the Preamble to the Proposed Regulations (i.e., is the program longstanding and will it continue in the future). These two factors have not proven helpful in evaluating the nature of the benefit to the recipient and have been difficult to interpret and apply in practice. While we do not consider that these two factors are necessarily irrelevant, their prominence in the three-part test of the Preamble to the Proposed Regulations was misplaced.

If any of the questions in the modified test are answered affirmatively, the benefit provided will generally be considered nonrecurring and we will allocate the benefit over time. In applying the modified test in these investigations, we have generally considered the following types of benefits to be nonrecurring: equity infusions, research and development grants, grants for loss coverage, grants for the purchase of fixed assets, debt forgiveness, and assumption of debt (including payments of principal and interest). In addition to the recurring benefits listed in the Preamble of the Proposed Regulations, we generally have considered the following types of benefits to be recurring: freight subsidies, export promotion assistance, early retirement payments, worker assistance, worker training, wage subsidies, price support payments, electricity discounts and upstream subsidies.

This list of the types of subsidies the Department has normally considered nonrecurring and recurring is provided for illustrative purposes only and should not be construed as a definitive rule. Of course, such a list is not exhaustive. The unique factual circumstances of a particular case may indicate that a program listed generally as recurring be found nonrecurring or vice versa. The list is proffered to offer general guidance to both the U.S. industry and foreign respondents.

Under the modified test, we are attempting to analyze the frequency and "automaticity" with which a benefit is provided. "Exceptional" benefits are those types of benefits which are not received on a regular and predictable basis; the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period. The element of "government approval" relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic. The receipt of a benefit after merely filling out the appropriate forms (e.g., tax benefits) or, after initial qualification for yearly benefits under a program (e.g., some types of price support programs), would meet the automaticity part of the test.

One particular recurring/nonrecurring issue which has arisen in several of these investigations involves the government provision of equity in numerous years. While receipt of government equity infusions may not require an application, it does require some type of special budgetary authorization or government approval prior to the provision of funds. Therefore, we consider equity infusions to constitute nonrecurring benefits because the government must approve or authorize each individual expenditure prior to the provision of funds.

In general, we have determined that the vast majority of grants examined in these investigations, unless otherwise noted, are nonrecurring under the modified test.

2. The 0.50 Percent Test. As noted above, our policy is to allocate nonrecurring grants over the useful life of assets in the industry being investigated unless the sum of grants provided under a particular program in a given year is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. We have decided to continue to apply this test on a program-by-program basis rather than applying the test against the aggregate amount of benefits received under all programs. We determine that this is consistent with our general practice of analyzing the nature of a benefit within the limits of a particular program rather than in the context of every program under investigation.

Several parties have argued that where the government has assumed or forgiven loans or exchanged them for equity, the Department should not allocate the benefit from these actions over 15 years.

Since the Department considers that assumption, forgiveness, or conversion to be a new countervailable event, we are maintaining our longstanding practice of allocating the grant benefit over the average useful life of the assets in the industry under investigation. This issue is discussed in more detail in the Department's Memorandum to the File regarding the Proper Allocation After Reclassification of a Subsidy.

B. Allocation Period. Since 1982, it has been the Department's practice to allocate benefits from nonrecurring subsidies, such as grants and equity, over the average useful life of renewable physical assets, as set out in the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System. During these investigations, the Department has received various comments on the appropriateness of this policy. After careful consideration of the comments made by the interested parties, and our own internal examination of this policy, we have concluded that the allocation period traditionally used by the Department is the most reasonable. Furthermore, our use of the IRS tax tables for the average useful life of renewable assets is consistent with the Guidelines Adopted By The GATT Committee On Subsidies And Countervailing Measures: Guidelines on Amortization and Depreciation (GATT Doc. No SCM/64 of July 11, 1985).

For a full discussion of alternative allocation periods considered by the Department, and the reasons why the Department retained its traditional policy, please see Comments 8 and 9 below, and the June 21, 1993 Memorandum from Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, regarding the Appropriate Period Over Which to Allocate the Benefits from Non-recurring Subsidies.

C. Allocation Methodology. The benefit from each of the nonrecurring grants countervailed in these investigations was calculated using the declining balance methodology described in the Department's Proposed Regulations (see section 355.49(b)(3)) and used in prior investigations (see e.g., Salmon from Norway). Our allocation period in these investigations is 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (see section 355.49(b)(3) of the Proposed Regulations and the discussion below regarding the appropriate allocation period). For the discount rate in these calculations, we used the appropriate interest rate as described in each of the individual country determinations. If a company was uncreditworthy in the year in which the grant was approved, we added a risk premium to the benchmark interest rate in accordance with section of 355.44(b)(6)(iv) of the Proposed Regulations.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these allocation issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Respondents maintain that when a grant is provided to a company for the reimbursement of an expense already incurred, the grant should be considered recurring in nature. They cite as examples grants such as those provided for freight expenses, employment stimulation, and worker training. Respondents would make an exception to their rule for grants provided for the acquisition of capital assets.

Petitioners disagree with respondents' argument that subsidies which serve to reimburse expenses already incurred should be expensed. Petitioners contend that respondents' argument should be rejected because it is based on the assumption that only benefits used to purchase capital assets may appropriately be amortized.

DOC Position: We do not believe that the factor proposed by respondents is useful in determining whether a grant should be allocated or expensed. The timing of the grant, either before or after the expense has been incurred by a company, bears little, if any, relationship to the nature of the benefit received. Therefore, we have not adopted respondents' proposed methodology.

Comment 2: Petitioners argue that the only benefits which should be expensed are those where the benefit, if expensed, would approximately equal the amortized benefit of the same subsidy. Petitioners contend that the Department's three part test adequately provides a means of determining when expensed benefits would approximate the amortized benefit of the subsidy.

DOC Position: For these final determinations, the Department has modified the test used to determine whether or not program benefits will be expensed or allocated. Although, we have dropped two of the factors of the "three-part test" described in the Preamble of the Proposed Regulations, the actual determination of whether a specific benefit will be expensed or allocated, in almost all instances, has not changed. That is, a benefit which was previously allocated by the Department under the test espoused in the Proposed Regulations, would still be allocated under the revised test now adopted by the Department. Therefore, petitioners' statement that the three-part test adequately provides a means of determining when expensed benefits would approximate the amortized benefit of the subsidy, applies equally to the methodology now adopted by the Department.

Comment 3: The United Kingdom respondent, British Steel plc (BS plc), contends that the equity infusions it received are recurring benefits under the Department's three-part test and, therefore, should be expensed in the year received. According to respondent, the program under which equity was received by its predecessor, the British Steel Corporation (BSC), was not exceptional because the application for and disbursement of the equity infusions was a regular, routine process. Secondly, respondent argues that the Department's determination that the payments to BSC were not automatic is not relevant. Under the Department's test, there is no requirement that the payments be automatic, just that the program providing the benefit not be "exceptional."

Petitioners state that the equity infusions should be allocated. Citing certain potential impediments to the equity infusions discussed in the verification report (e.g., EC approval, legislative restrictions), petitioners argue that the funding was "exceptional." Petitioners add that the sheer magnitude of each of the equity infusions made by the U.K. government between 1978 and 1986 ensures their exceptional character. Secondly, petitioners state that the equity infusions provided to BSC were made on an *ad hoc* basis.

DOC Position: As noted above, we have modified the three-part test as specified in the Preamble of the Proposed Regulations. The test adopted by the Department for these final determinations analyzes the frequency and automaticity of a benefit to determine whether or not it should be expensed or allocated. Under this test, the BSC equity infusions are allocated over time because BSC could not expect to receive infusions on an ongoing basis year after year and because each infusion was contingent upon specific government approval.

Comment 4: A Mexican respondent, AHMSA, argues that equity infusions provided by the Government of Mexico (GOM) should be considered recurring benefits, and should therefore be expensed in the year of receipt. AHMSA argues that the benefits were not exceptional, because they were regularly and routinely approved by the legislature. The respondent also argues that, because infusions were provided for nine consecutive years, the Department should consider that the benefits are consistently provided.

Petitioners disagree with respondent's argument, and contend that the Department should determine that equity infusions to AHMSA constitute nonrecurring benefits. Petitioners state that the benefits were subject to specific government authorization each year. Petitioners argue that the benefits were exceptional, and that infusions were made on a case-by-case basis depending on the financial need of the company. In addition, because the GOM has indicated that it will not continue to provide infusions, the company cannot reasonably expect to receive the benefits in the future.

DOC Position: In determining whether benefits are recurring or nonrecurring, the Department analyzes whether the benefits are exceptional, whether the recipient can expect to receive the benefits on an ongoing basis and whether the benefits must be approved by the government each year. Under this test, we determine that the GOM's equity infusions into AHMSA constitute nonrecurring benefits. The benefits are exceptional, the companies could not expect to receive benefits on an ongoing basis, and the benefits must be specifically approved or authorized by the GOM.

Comment 5: The French respondents argue that shareholder advances provided by the Government of France to Usinor and Sacilor during the period 1982 through 1986 were used only to finance the short-term needs of the companies. Therefore, they argue that these advances should be treated as recurring grants and expensed in the year of receipt. They also state that these advances were provided in relatively uniform amounts and were made on a regular, uninterrupted basis for five consecutive years.

Petitioners assert that respondents' argument that the benefits under this program are recurring is irrelevant. They maintain that the companies remained liable for these advances.

DOC Position: Although Usinor and Sacilor's shareholder advances may have been used to finance short-term needs, use of funds provided under a program is not relevant to a recurring/nonrecurring determination. We have determined that the shareholder advances to Usinor and Sacilor constituted nonrecurring benefits because each advance was contingent upon specific government approval.

Comment 6: Brazilian respondents argue that rebates of IPI taxes provided under Decree-Law 7554/86 are properly considered to be recurring grants.

Petitioners argue that the IPI rebate program constitutes a non-recurring benefit, and that the benefits from the program should be calculated according to the Department's non-recurring grant methodology. Petitioners state that the IPI rebate program is based on a one-time authorization of a capital expansion project, and as such, cannot be considered to be recurring. Petitioners argue that while respondents received multiple rebates, that fact relates only to the disbursement of benefits, not to the nature of the program itself.

DOC Position: We consider the benefits under the IPI rebate program to constitute a recurring benefit, consistent with our treatment of it in Final Negative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil, 57 FR 42968 (September 17, 1992) and Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil, 58 FR 6213 (January 27, 1993). This determination is also consistent with our modified test for deciding recurring/non-recurring issues. The benefits under this program are not exceptional and are received on an ongoing basis. After the initial qualification, no further application or specific government approval is required.

Comment 7: Petitioners object to the Department's determination to apply the 0.50 percent test on a program-by-program basis. Petitioners argue that the application of the present test could result in less subsidized respondents facing a greater countervailing duty (CVD) obligation than more heavily subsidized respondents. They also state that firms with equal total benefits could be treated differently. For example, if a firm received numerous small grants, each less than 0.5 percent, those grants would all be expensed, while a firm which received one grant equal to the sum of the first firm's grants, would have that grant allocated. Moreover, petitioners' argue that this anomaly would allow foreign governments to circumvent the law by providing multiple small subsidies rather than a single large subsidy.

Respondents assert that the Proposed Regulations are correct in expensing grants when the total amount received under a particular program is less than 0.50 percent of the company's sales. They argue that, in the past, respondents have had to capitalize grants as small as 0.01 percent.

DOC Position: In our investigations, we analyze benefits on a program-by-program basis. Each determination of countervailability and each benefit calculation by the Department, is made on a program-specific basis. Therefore, we have determined that it is appropriate to apply the 0.50 percent test on the same basis. In addition, we disagree with petitioners that the current 0.50 percent test has resulted in anomalies in the administration of the CVD law. Despite the extended period of time during which we have applied the 0.50 percent test on a program basis, petitioners have been unable to cite even one instance in which firms were treated differently, or in which foreign governments attempted to circumvent the CVD law through use of the Department's 0.50 percent test. In summary, nothing petitioners have argued leads us to conclude that we should alter the current 0.50 percent test.

Comment 8: Respondents argue that the grant equivalent of loans should also be expensed in the year the loans were received if such amounts are less than 0.50 percent of a company's sales.

Petitioners respond that the 0.50 percent test is applicable only to grants and equity infusions under the Department's Proposed Regulations. They assert that the Proposed Regulations also clearly state that a subsidy from a preferential loan provides benefits over the life of the loan.

DOC Position: Benefits from a preferential long-term loan accrue over the life of the loan because interest payments are made over the life of the loan. The grant equivalent of a loan is only calculated for determining the amount of subsidy conferred to the company in each of the years in which the loan is outstanding; it is not used to determine the duration of the benefit which is the life of the loan. As stated in section 355.48(a) of the Proposed Regulations, benefits are generally deemed to be received at the time there is a cash flow effect on the company receiving the benefit. For loans, this occurs at the time a company is due to make a payment on the loan. (See section 355.48(b)(3)).

Comment 9: Respondents argue that the Department should change the formula for amortizing benefits over time. They state that the current methodology does not take into account the fact that companies may not fully benefit from a grant received at the end of the period of investigation. Therefore, respondents argue that the Department should pro-rate grants depending upon the month or quarter in which the grant is received.

Petitioners argue that the Department's current amortization methodology based on "annuity due," favors respondents because it assumes amortized benefits take place at the beginning of the year. Petitioners suggest that the Department modify its grant amortization formula by changing the discount rate ("d") to "d/2". According to petitioners, this methodology would reflect that benefits occur throughout the year, rather than at the beginning of the year.

DOC Position: Both the respondents and petitioners are incorrect on this issue. Respondents have provided no evidence to show that the methodology which they propose is more accurate than the Department's current amortization methodology which has been in effect for over 11 years. In the Department's view, before a change is made in established policy there should be evidence to show that the change is warranted. In CVD cases, the Department has always examined a one-year snapshot period corresponding to the respondent companies' fiscal year, and we gather information for both the snapshot year and prior years to determine the benefit to subject merchandise in the snapshot POI. Thus, for a benefit received at the end of the snapshot POI, respondents argue that some of that benefit should be shifted forward. Following that logic, however, the Department would have to examine the timing of the receipt of amortized subsidies for each of the last 15 years and move a portion of any benefit received in the last part of a year forward, thus resulting in a larger countervailable benefit in the POI. Thus, applying respondents' proposal might not achieve significantly different results than the Department's current methodology, and would entail a greater burden on both respondents, to identify the specific date when benefits were received in each of the last 15 years, and on the Department to perform the calculations. Moreover, although respondents do not make this argument for recurring benefits, it would have to apply equally to those benefits, thus resulting in allocating such benefits over time. In sum, it is inappropriate for the Department to take into account the timing of the receipt of benefits in its allocation methodology for nonrecurring benefits.

We also find fault with petitioners' argument. Petitioners proposed change to the amortization formula results in "overcountervailing" in the sense that the net present value in the year of receipt of the amount countervailed exceeds the face value of the grant. For these reasons, the Department determines that our current methodology for amortization is correct.

Comment 10: Petitioners advocate maintaining the Department's current methodology of amortizing subsidy benefits over the average useful life of assets as listed in the IRS class life tables. They argue that this methodology is in keeping with Congress's statutory guideline that the period chosen be reasonable. The methodology is reasonable, not because all benefits are used to acquire capital assets, but because the best proxy for how long such benefits last is, on average, the useful life of assets in the industry under investigation. They claim that using such a methodology does not overstate the benefit period for subsidies applied to all uses, as respondents claim, because the use of subsidy funds is irrelevant to the determinations of the countervailability of those funds.

Petitioners further argue that the fifteen-year amortization period based on the IRS class lives is an accurate reflection of the average useful life of the U.S. steel industry's assets and is also consistent with the actual depreciation practices currently utilized for financial reporting purposes by major steel producers in the United States. Petitioners add that, in addition to being reasonable, the Department's IRS class life methodology represents a consistent and predictable approach to measuring benefits.

Respondents claim that the average useful life methodology bears no relationship to the duration of benefits provided by untied, nonrecurring domestic subsidies. They argue that corporate funds are used for many purposes other than the acquisition of renewable physical assets, the benefits from which do not generally last as long as fifteen years.

Respondents also argue that the average useful life methodology produces results that are demonstrably inconsistent from one industry to the next. Since varied lengths are used from industry to industry, similar grants provided to different industries will be allocated over different lengths, resulting in widely inconsistent benefits.

DOC Position: The Department has determined that the average useful life of assets in the industry under investigation is a reasonable allocation period for non-recurring subsidies, other than long-term loans. In addition to being reasonable, this determination provides a predictable standard for interested parties, and is consistent with the Department's practice since the early 1980s.

In *British Steel Corp.* v. *United States* (605 F. Supp. 286, 295 (CIT 1985) (*BSC I*), the Court of International Trade (CIT) rejected the proposition that the length of the benefit stream from a subsidy is necessarily related to how the subsidy is used. Likewise, the Department has consistently held that money is fungible: funds used for one purpose serve to free resources for other applications. Therefore, the length of the benefit stream is not determined by how the subsidy is used.

Respondents argue that, in *British Steel Corp.* v. *United States,* 632 F. Supp. 59 (CIT 1986) (*BSC II*), the CIT rejected the use of the average useful life of assets as a reasonable allocation period. Petitioners counter that the *BSC II* decision was based on the lack of an adequate explanation of why the average useful life of assets is a reasonable allocation period. In part, both are correct. The Court did overturn the Department's decision to allocate benefits over the average useful life of assets. However, in reaching that decision, the Court stated that the agency had failed to explain why the allocation period was reasonable, and the court could not discern a rationale from the legislative history or the facts of the case. In contrast, in the present case, we have addressed both the legal and factual basis for our selection of an allocation period.

In the legislative history of the Act, Congress discussed the "special problem" of allocating the benefits of nonrecurring subsidies. S.Rep. No. 249, 96th Cong., 1st Sess., at 85–86 (1979). However, the only guidance Congress provided for addressing this issue was that the agency must allocate benefits over a "reasonable period based on the commercial and competitive benefit to the recipient as a result of the subsidy." *Id.*

The Department believes that the average useful life of assets is a reasonable estimate of the commercial and competitive benefits to the recipient, regardless of whether the subsidy was invested in assets. The average useful life of renewable assets represents an average life cycle within an industry, i.e., if the assets are not renewed, operations would cease. Since the benefits from any subsidy can (in theory) continue indefinitely—regardless of use—it is reasonable to assume that benefits extend at least throughout one life cycle of the industry's assets. That assumption is reasonable because money itself is an asset. Therefore, allocating the benefits from an infusion of money over the average useful life of assets is essentially depreciating the monetary asset just like the physical assets.

The average useful life of assets has also been recognized by members of the General Agreement on Tariff and Trade (GATT) as a reasonable allocation period that is "generally practical and fair." GATT Committee on Subsidies and Countervailing Measures, Guidelines on Amortization and Depreciation, GATT Doc. No. SCM/64 (July 11, 1985).

In these investigations, the Department has determined that the average useful life of renewable assets in the steel industry is 15 years, as set out in the IRS tables. In *IPSCO, Inc.* v. *United States,* 701 F. Supp. 236 (CIT 1988) (*IPSCO II*), the CIT stated that the Department's use of the 15-year period set out in the IRS table must be supported by substantial evidence in record. Such evidence exists in the record of these investigations.

Petitioners and respondents agree that the IRS tax tables are an accurate representation of the experiences of U.S. steel producers. The tables are based on a study of the U.S. steel industry to determine the actual average useful life of assets. The information regarding average useful life of assets in the tax tables can also be used as a reasonable estimate of the useful life of steel industry assets throughout the world. The life of U.S. steel assets can be projected on a worldwide basis because we have no reason to believe, nor has any respondent claimed, that the general type of facilities and equipment used to produce steel in foreign countries is substantially different from that used in the United States, or that its useful life would be substantially different. Steel is a mature industry and though innovation does continue, we have no knowledge of the use of equipment in any foreign country that would have a significantly longer or shorter useful life than in the United States.

That conclusion is supported by information on the record in these investigations. Analysis of data on the depreciation of assets from the annual reports of several foreign companies currently under investigation demonstrates that 15 years is a reasonable estimate of the average useful life of assets in the steel industry worldwide. (See the Memorandum from Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, regarding the Appropriate Period Over Which to Allocate the Benefits from Non-recurring Subsidies, June 21, 1993.)

Therefore, based on our review of the legislative history and court decisions, and on the evidence in the record of these investigations, the Department has decided to allocate non-recurring grants over 15 years, which we determine is the average useful life of assets in the industry under investigation.

Comment 11: Respondents propose several alternative methodologies for amortizing benefits over time that they argue are administratively workable and would more consistently and accurately capture the competitive benefit associated with untied government grants, loans, and other provisions of capital to foreign manufacturers.

Respondents argue that the Department should make a distinction between benefits used for investment in assets and benefits used for other purposes, and allocate the benefits accordingly. Respondents argue that the Department's refusal to examine the uses of funds is contradicted by the Department's practice of tying funds to applications in certain other circumstances, such as domestic or foreign production. Respondents argue that analysis of the uses of funds is administratively simple and is the most appropriate measure of the benefit to the recipient.

A second alternative suggested by respondents is to tie the allocation of subsidy benefits to some measure of the term to maturity of corporate obligations of the U.S. integrated steel producers. They argue that this would be appropriate because the benefit of a government grant is that it relieves the recipient of the need to raise capital from other sources. The duration of the subsidy would be the duration of financing actually obtained by U.S. producers at the time foreign producers were receiving government grants. Basing the allocation on duration of obligations incurred by the U.S. industry would impose a burden of equivalent duration on the foreign producer, thereby creating a "level playing field." This method also provides a measure of consistency from industry to industry.

Respondents also propose allocating benefits over a standard 10-year allocation period, which would eliminate inconsistencies from industry to industry that respondents claim are the result of the Department's current methodology. Respondents argue that 10 years is a particularly appropriate period in this case, given that the U.S. steel industry negotiated for and received 10 years of extraordinary import relief in exchange for withdrawing CVD petitions addressing some of the very same programs at issue here. Respondents claim that, since pre-1982 matters have already been addressed by these VRAs, a 10-year period would avoid the problem of providing two forms of relief from pre-1982 subsidies.

Petitioners criticize respondents' proposed alternatives for several reasons. First, basing the allocation methodology on how the subsidy is used violates the Department's policy of not examining use—a policy which has been affirmed twice by the CIT. Also, it would be administratively impossible for the Department to monitor the precise usage of each subsidy it investigates.

Second, petitioners argue that the use of an amortization period based on borrowing periods is likely to produce unpredictable, inconsistent, and potentially meaningless results. This methodology is especially inappropriate in this case, because certain companies were uncreditworthy and would not have been able to obtain any source of alternative financing. Also, the average period of domestic borrowing may not be indicative of the borrowing period restraints faced by companies in other countries, even within the same industry.

Finally, petitioners argue that using a uniform ten-year amortization period for all subsidies is totally arbitrary because it treats all industries the same, regardless of the characteristics of a particular industry. Also, petitioners claim that the 10-year VRA in no way justifies amortization of all subsidies for the same length of time. The VRA did not constitute relief of pre-1982 subsidies because it did not replace the protection that a full offset of subsidies through the imposition of countervailing duties would have provided. Even if it did constitute relief, the domestic industry would still be entitled to relief of the unamortized portion of those subsidies that existed during the POI.

DOC Position: The Department has examined the three alternative amortization time periods proposed by respondents, and has found that the average useful life of assets is preferable to each of those alternatives.

As stated above in the Department's response to Comment 6, the Department does not consider the use of the funds in determining the benefit from a subsidy. In accordance with section § 355.47(a) of the Proposed Regulations, the Department will allocate benefits to a product or products where a benefit is specifically bestowed to promote the production of a product or sales to a particular destination. This provision does not undermine the Department's position, supported by the CIT as noted above, that the uses of funds will not be examined.

Second, respondents have suggested using the average term of long-term borrowing by U.S. steel producers. Using the average term of long-term borrowing essentially measures the length of the benefit in terms of avoided costs. We find several disadvantages to this option. This proposal would measure the benefit of the avoided costs in terms of only one of the two alternative sources of capital: Borrowing. The other alternative source of funds, the issuance of equity, is not addressed. In addition, the average term of long-term borrowing can change over time, thereby establishing different allocation periods—not just for different subsidies or different companies, but over time, even for the same type of subsidy, within the same company. There is also no evidence in the record establishing that the average term of long-term borrowing in the U.S. bears any relationship to the commercial and competitive reality in any of the countries under investigation. See *IPSCO II*. Finally, contrary to respondents' claims, U.S. data may not be readily available for all industries, particularly for small industries dominated by privately held companies.

The third alternative, the fixed ten-year period, is described in the Preamble to the Proposed Regulations as both consistent and predictable. However, this approach is totally arbitrary. There is no evidence in the record of these cases that a ten-year period in any way reflects the commercial and competitive benefit to the recipient. Therefore, using this methodology would be inconsistent with the Court's ruling in *IPSCO II*. We agree with petitioners regarding respondents' argument that the VRAs constituted relief from pre-1982 subsidies. The fact that VRAs were in place during certain years is irrelevant to the Department's analysis of the countervailability of subsidies. While the benefits from pre-1982 subsidies which were amortized during the VRA period cannot be countervailed, the unamortized portions of those subsidies allocated to the POI are subject to these investigations.

Denominator

A. Foreign Production

Issue

This subsection addresses the issue of the appropriate sales denominator to be used in subsidy calculations when a respondent's total sales include not only sales of domestically produced merchandise, but also sales of merchandise produced in one or more foreign countries. This issue arises in the Certain Steel Products investigations where the respondent is a parent company producing the subject merchandise in the country under investigation and in one or more other countries, typically through subsidiaries.

Discussion

We addressed this issue for the first time in France Bismuth. There, the Department determined the appropriate sales denominator by employing an analysis that largely followed traditional Departmental analysis when addressing a domestic subsidy allegedly "tied" to a particular product. The Department adopted this analysis in France Bismuth after concluding that neither the Department's past practice nor the Proposed Regulations squarely addressed the issue of whether a domestic subsidy could be considered tied to domestic production of the subject merchandise, where the respondent engaged in both domestic and foreign production.

In France Bismuth, in applying the "tied" analysis to the facts before it, the Department determined that the subsidies at issue were tied to domestic production. The Department accordingly allocated the benefits of those subsidies to sales of domestically produced merchandise.

In these investigations, we have considered various approaches advocated by the parties as well as the "tied" analysis used in France Bismuth. The approaches advocated by petitioners would result, in every case, in the use of only sales of domestically produced merchandise in the denominator. On the other hand, the approaches advocated by respondents automatically would result in the use of total worldwide sales in the denominator. (See Comments 3–7 below and Memorandum to Joseph A. Spetrini from Staff, dated June 21, 1993.)

We have decided to continue using a "tied" analysis to resolve this issue, although we have refined the analysis that we used in France Bismuth. The refinements are intended to reflect what the Department has generally observed over the years. On the basis of our past administrative experience, we believe that it is reasonable to presume that the government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people). Conversely, that same government would not normally be motivated to promote, at what would be considerable cost to its own taxpayers, manufacturing or production or higher employment in foreign countries.

Thus, under the Department's refined "tied" analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production. However, this presumption is not irrebuttable. A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production. Relevant evidence may include the nature of the program at issue, whether the subsidy was bestowed specifically to provide other than a domestic benefit, communications between the government and the respondent relating to the subsidy provided pursuant to the program at issue, the government's ownership interest, if any, in the respondent, and any other evidence addressing the likely beneficiaries of the subsidy. Such determinations would have to be made on a case-by-case basis, in light of the facts presented. Therefore, the above list of evidentiary criteria is not exhaustive, nor can any one or several of these factors necessarily give decisive guidance in all cases.

The Department will allocate the benefit of the subsidy in accordance with the determination that we make on tying. If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise. If we determine that the subsidy is not tied, we will allocate the benefit of the subsidy to total worldwide sales of the respondent, i.e., sales of both domestically produced merchandise and foreign-produced merchandise.

Through this "tied" analysis, the Department is attempting to allocate the benefits of domestic subsidies in a reasonable manner by recognizing that, although domestic subsidies are generally provided to benefit domestic production, subsidies provided to a respondent with multinational manufacturing or production may benefit, at least in part, foreign manufacturing or production. This mirrors what the Department has done in the past by taking account of evidence that a domestic subsidy is tied to a particular product, see Proposed Regulations, § 355.47(a), or that an export subsidy is tied to a particular market, see Proposed Regulations, § 355.47(b). This approach allows both petitioners and respondents to present evidence supporting either the presumption that a domestic subsidy is tied to domestic production or the possibility that the subsidy tied benefits foreign production. Conversely, this approach avoids the rigid, inflexible rules sought by petitioners and respondents, which would ignore the facts of any particular case.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these allocation issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Respondents have criticized the Department's "tied" analysis in France Bismuth on the ground that it improperly focuses on the government's intent in bestowing the subsidy rather than on the effect of the subsidy. According to respondents, the Department's traditional "tied" analysis—and the CVD law generally—is concerned only with the unfair competitive effect of a benefit, and the government's intent in bestowing the benefit is irrelevant.

DOC Position: We disagree with respondents. The Department's "tied" analysis in France Bismuth, as refined in these investigations, does not focus exclusively on the government's intent in bestowing the subsidy, but it looks for evidence of intent among other criteria as a potential indicator of the ultimate destination of subsidy benefits. Consequently, the Department properly will consider the government's intent, at least to the extent that it looks at the government's stated purposes in authorizing the program at issue. However, the Department also considers other evidence presented to it which could shed light on the likely beneficiaries of the subsidy.

Furthermore, although the Department in the past has acknowledged that its inquiry should focus on the likely beneficiaries of subsidies, the Department has not determined that it should focus exclusively on the likely beneficiaries. See Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review, 52 FR 833 (January 9, 1987) (Industrial Nitrocellulose) (discussed below). Rather, the Department clearly has found the government's intent to be relevant. Indeed, the Department's traditional position on the tying of benefits to a particular product is that a subsidy "is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium, 47 FR 39304 (September 7, 1982) (Steel from Belgium). See, also, Proposed Regulations at 23374 (defining tied benefits as "e.g., a benefit bestowed specifically to promote the production of a particular product").

In addition, in Industrial Nitrocellulose, when confronted with the same criticism now offered by respondents, the Department explained:

> [W]e did not concentrate exclusively on the intent of the alleged [subsidy] * * *. Rather, we considered the effect of such a practice and concluded that it would encourage the production and sale of * * * a product not under investigation* * *.

The Department further explained that "only in those limited circumstances where the effect of a program is not demonstrable might we consider the intent to subsidize to be a surrogate for the effect of a subsidy." *Id.* The Department added:

> To the extent that our conclusions regarding tied benefits rely in some measure on intent, our position in this case is consistent with administrative precedent. Whenever we allocate a benefit tied to a product under investigation only to that product, there is an implicit assumption that the benefit is intended to affect only that product.
> *Id.*

Comment 2: According to respondents, the relevant inquiry is not the intent or effect when a past subsidy was bestowed, but the effect during the period of investigation. In support of this proposition, respondents cite to Department precedent relating to various types of corporate restructurings that occur after a subsidy has been provided.

DOC Position: We disagree with respondents. In conducting its traditional "tied" analysis when a domestic subsidy allegedly is tied to a particular product, the Department will examine what the likely effect of the subsidy would be. The Department will not try to determine the actual effect of the subsidy, either in the period of investigation or at any other time after the subsidy's bestowal. See Industrial Nitrocellulose (discussed in Comment 1 above). The Department has maintained this same approach in the "tied" analysis that it is using in these investigations when determining whether a subsidy is tied to domestic production.

In situations where some type of corporate restructuring occurs after the bestowal of a subsidy, the Department may adjust its subsidy calculation. This issue is addressed in the Restructuring section of this Appendix.

Comment 3: Petitioners take the position that sales of foreign-produced products must be excluded from the sales denominator as a matter of law. According to petitioners, as long as the Department adheres to the "transnational subsidies" rule, the Department must exclude these sales in order to be consistent with the statute and the Department's allocation methodology.

Petitioners point out that the transnational subsidies rule is a proposed regulation. It provides that "a countervailable benefit does not exist to the extent the Secretary determines that funding for a benefit is provided by a government other than the government of the country in which the merchandise is produced * * *." Proposed Regulations, section 355.44(o)(1). Thus, using the simplest example, if the government of country A provides a subsidy to a company producing merchandise in country B, then this rule states that a countervailable benefit does not exist.

Petitioners characterize the transnational subsidies rule essentially as a procedural, or "structural," rule which "effectively immunizes from countervailing duties, in a particular investigation, subsidies which are not provided by the government under investigation." (Petitioners' General Issues Case Brief, Tab G at 5.) Petitioners suggest that the Department adopted this rule solely for "the practical purpose of administering the CVD law." (Petitioners' General Issues Rebuttal Brief, Tab G at 3.) Without this rule, petitioners explain, the Department would be faced with "an administrative nightmare." (*Id.*, Tab G at 3 n.6.) The Department would have to "countervail non-respondent government subsidies in every investigation involving a multinational company," and the Department therefore "would have to investigate the programs of each country which may have benefitted a respondent company or any of its subsidiaries." (*Id.*)

Nevertheless, petitioners continue, given that the Department has adopted this rule of administrative convenience, the Department's only option—unless the Department wants to abandon that rule—is to exclude sales of foreign-produced merchandise from the sales denominator. Petitioners assert that if those sales were included in the denominator, the Department would be violating section 701(a) of the statute.

In making this argument, petitioners first assume that the Department's existing allocation methodology would require the Department to allocate the benefit of the subsidy to both domestically produced merchandise and foreign-produced merchandise. Petitioners then argue that to capture the "net subsidy," as required by section 701(a), the Department would have to impose duties on sales of both domestic production and foreign production. Petitioners point out, however, that the transnational subsidies rule precludes the Department from imposing duties on sales of both domestic production and foreign production.

To remedy this perceived violation of section 701(a), petitioners suggest a solution which would not require the Department to abandon the transnational subsidies rule. Specifically, petitioners propose that the Department simply adjust its subsidy calculation by including only sales of domestically produced merchandise in the denominator. With that adjustment, petitioners assert, the Department would be able to capture the "net subsidy," in accordance with section 701(a).

Respondents argue that the Department legally may not "compensate" for the fact that the U.S. CVD law does not reach benefits from a third-country source by artificially concentrating the subsidy on one country's production. Respondents also argue that the transnational subsidies rule simply states that a benefit sourced from outside the country under investigation is not a benefit countervailable under U.S. CVD law, and that it does not relate to the allocation of subsidies. Thus, respondents conclude, nothing in the statute or the rule requires the Department to pretend that "subsidies do not cross borders."

Respondents maintain, further, that the statute does not authorize the Department to attempt to capture subsidies benefiting other merchandise by imputing those subsidies entirely or disproportionately to the merchandise under investigation. Respondents contend that this principle applies regardless of where a respondent manufactures or produces merchandise.

Respondents also contend that the country-based nature of the CVD law does not permit the Department to impute worldwide benefits to domestic production. The fact that the CVD order applies only to merchandise from the country under investigation is based on the statute and merely defines the scope of the order. According to respondents, it has no relevance to the amount of benefit received by the merchandise under investigation.

DOC Position: The underlying premise of petitioners' analysis is that the portion of a subsidy which benefits a respondent's foreign subsidiaries is, under the statute, countervailable. Indeed, according to petitioners, not only is it countervailable, it must be countervailed. However, as respondents point out, this premise conflicts with section 701(a) of the statute, 19 U.S.C. section 1671(a), which treats any subsidy provided by the country under investigation to a company in another country as a subsidy that is not countervailable.

Section 701(a) of the statute states the general rule as to when a subsidy is countervailable. This section was included in the statute in 1979 and is applicable where the country under investigation is a Subsidies Code signatory or the equivalent. It derives from section 303(a)(1) of the statute, 19 U.S.C. section 1303(a)(1), which since 1979 has only applied to non-Code signatory countries.

In interpreting section 701(a), it is instructive to look at the language of section 303(a)(1). The legislative history of section 701(a) states that Congress intended section 701(a) to have the same meaning and application as section 303(a)(1), with certain enumerated exceptions not relevant here. S. Rep. No. 96–249, 96th Cong., 1st Sess. at 429–31 (1979). Accord, 19 U.S.C. section 1677(5)(A) (the term "subsidy" in section 701 has the same meaning as the term "bounty or grant" in section 303).

Although the language of section 701(a) is not clear on this issue, section 303(a)(1) makes clear that a subsidy from the government of a particular country is countervailable only if it is given to a company manufacturing or producing the merchandise in, or exporting the merchandise from, that country. In this regard, section 303(a)(1) provides in pertinent part:

> Whenever any *country* * * * shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced *in such country*, * * * there shall be levied a duty equal to the net amount of such bounty or grant * * *.

19 U.S.C. section 1303(a)(1) (emphasis added). See S. Rep. No. 96–249, 96th Cong., 1st Sess. at 429. Conversely, under section 303 and, therefore, section 701, a subsidy is not countervailable if it is given by the government of one country to a company manufacturing or producing the merchandise in another country.

Thus, contrary to petitioners' argument, the transnational subsidies rule is not merely a rule of administrative convenience devised by the Department. Rather, that rule essentially re-states the statute, and its existence, therefore, cannot be "remedied" or otherwise compensated for in subsidy calculations, as petitioners urge the Department to do.

Comment 4: Petitioners briefly outline an alternative approach which would require the Department to abandon the transnational subsidies rule. Under this approach, in any investigation, the Department would countervail not only subsidies received by a company from the government of the country under investigation, but also subsidies received by that company from other countries' governments. This approach assumes that the information concerning the subsidies provided by the other countries' governments would be generated during concurrent investigations involving each of those other countries.

DOC Position: This approach, like petitioners' principal approach, treats the transnational subsidy rule as a rule of administrative convenience that can be discarded. This is an error. The rule essentially restates the statute and its dictates, it is a stricture which we cannot ignore.

Comment 5: Respondents insist that the Department's practice is defined by the plain language of section 355.47(c)(1) of the Proposed Regulations. That section provides that where, as here, "a countervailable benefit is not tied to the production or sale of a particular product or products, * * * the Secretary will allocate the benefit to all products produced by a firm, in the case of a domestic program * * *." Proposed Regulations, section

355.47(c)(1). In calculating the subsidy rate, section 355.47(c)(1) continues, "the Secretary will divide the benefit by a firm's *total sales* * * *." *Id.* (emphasis added). Respondents add that the term "total sales" must mean total worldwide sales in the context of the relevant Certain Steel Products investigations.

Respondents also find support for their interpretation of section 355.47(c)(1) in the specific context wherein the subsidies at issue are equity infusions. On this subject, as respondents point out, the Proposed Regulations state that "the Secretary will treat equity infusions as untied benefits." Proposed Regulations, section 355.47(c)(2). In addition, the Department previously has stated that "when a government buys equity in a company, it is providing funds for the corporation as a whole, not for particular divisions or projects." Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982).

According to petitioners, the Department precedent cited by respondents is inapposite. Petitioners point out that each of the cited cases concerns a respondent with only domestic—and not foreign—manufacturing or production activities.

DOC Position: There is no real dispute as to how the Department should interpret § 355.47(c)(1) when a respondent only sells domestically produced merchandise. For example, in a steel investigation, where there is an otherwise untied domestic subsidy to a company that produces domestically both steel and milk, the sales denominator clearly would include both steel sales and milk sales.

However, the proper interpretation of § 355.47(c)(1) is less clear where, as in the relevant Certain Steel Products investigations, the respondent's sales include not only sales of domestically produced merchandise, but also sales of foreign-produced merchandise. In some cases, as the Department acknowledged in France Bismuth, the Department may have used total worldwide sales in the denominator, but it did so without any discussion of this issue. On the other hand, in at least one case, the Department has excluded sales of foreign-produced merchandise from the denominator. See Final Affirmative Countervailing Duty Determination: Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987) (SSHP from Sweden).

The Department has squarely addressed this issue only on one prior occasion, namely, in France Bismuth. The Department concluded in France Bismuth that § 355.47(c)(1) simply did not contemplate a respondent with multinational production. We reaffirm that conclusion here.

Moreover, we reach a similar conclusion with respect to respondents' reliance on § 355.47(c)(2), which addresses equity infusions. Neither that section nor any other section of the Proposed Regulations contemplated the possibility that the subsidy would be bestowed upon a respondent with multinational production.

Comment 6: Respondents also argue for their interpretation of "total sales" as total worldwide sales by explaining that the Department's allocation methodology recognizes that money is fungible. Respondents maintain that in measuring subsidies, the Department routinely allocates the subsidies over all products benefiting from them, even if some of the products are not subject to the investigation and therefore will not be subject to any resulting order. Respondents cite Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil, 51 FR 21961 (June 17, 1986) (Iron Ore Pellets from Brazil), Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986) (Atlantic Groundfish from Canada), and Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992) (Softwood Lumber from Canada), in support of their argument that subsidies are allocated over all products benefiting from them.

Respondents go on to acknowledge that the Department has made two "narrow" exceptions to its fungibility of money approach, i.e., (1) where a domestic subsidy is tied to "a particular product or products," Proposed Regulations, section 355.47(a), and (2) where an export subsidy is tied to "a particular market," Proposed Regulations, section 355.47(b). Respondents nevertheless state that the subsidies at issue in the Certain Steel Products investigations do not fit within either of those exceptions and, therefore, the Department must allocate the benefits of those subsidies over total worldwide sales to be consistent with its fungibility of money approach.

Petitioners maintain that Iron Ore Pellets from Brazil, Atlantic Groundfish from Canada and Softwood Lumber from Canada, as cited by respondents, share a single, critical trait that this investigation does not, i.e., the benefits allocated to products not under investigation in those investigations were not allocated into a "black box" which placed them beyond the reach of the statute. Petitioners argue that it would plainly violate the law to allocate subsidies to products that are under investigation and then leave those subsidies uncountervailed.

DOC Position: Respondents' argument skips over the real issue before the Department. It would seem that the Department, in the first instance, must decide whether it is reasonable to create a third exception to the fungibility of money approach, which would recognize the possibility that a subsidy could be tied to domestic production. In France Bismuth, the Department expressly recognized such an exception. In these investigations, as is discussed above, the Department has refined the analysis that it used in France Bismuth, but nevertheless has continued to recognize that exception.

Comment 7: Respondents also have suggested an alternative approach. Under this approach, the Department would modify its existing practice—as respondents have characterized it—for calculating a subsidy rate for an untied subsidy. Very simply, the Department would make corresponding adjustments to the numerator and the denominator in the subsidy calculation. The Department would adjust the numerator so that it reflected an amount equal to only that portion of the subsidies which benefitted domestic production. In addition, the Department would adjust the denominator to include only sales of domestic production.

DOC Position: Respondents offer little rationale for this approach. They begin by insisting that their principal approach defines the appropriate measurement of the subsidies at issue. Then, they state simply that if the Department were to change the denominator to include only sales of domestic production as petitioners urge, it would only be fair if the Department correspondingly changed the numerator so that the appropriate result, i.e., the result under respondents' principal approach, could still be achieved. As is discussed above, however, the Department has concluded that the appropriate result is not defined by respondents' principal approach, which represents a rigid, inflexible rule that does not recognize that a subsidy is presumptively, but not irrebuttably, tied to domestic production.

Comment 8: Respondents argue that, as a procedural matter, the Department's deductions from total sales for the value of foreign manufacturing activities is an abrupt and unexplained change in policy which is inconsistent with general principles of administrative law as well as specific prior rulings by the CIT. According to respondents, it is axiomatic that an agency has an obligation to provide a reasoned explanation for changes in policies and procedures.

According to petitioners, respondents were not denied due process with respect to the Department's position on the sales denominator. For example, respondents were on notice of the Department's practice when the Department's original CVD questionnaire, requesting the sales volume and value of domestically produced merchandise, was issued.

DOC Position: We disagree with respondents. We have not altered our administrative practice with regard to the proper allocation of subsidies. Rather, as we stated in France Bismuth, we had no prior practice because we had not previously addressed the question of whether we should include in the sales denominator total worldwide sales, including sales attributable to foreign production, or only sales attributable to domestic production, in calculating subsidy rates for a respondent with multinational production. In some cases, we may have used total worldwide sales, but we did so without addressing this question. In contrast, in at least one other case, aside from France Bismuth, we have excluded sales attributable to foreign production from the sales denominator. See SSHP from Sweden. In addition, as we also stated in France Bismuth, the Department's Proposed Regulations do not squarely address this question.

Through the France Bismuth decision, we have begun a practice of applying a "tied" analysis in situations where the government of the country under investigation is providing subsidies to a respondent with multinational production. We are following that practice, with some refinements, in these investigations.

Comment 9 (France): Petitioners argue that Usinor Sacilor's figures showing intra-group transactions, company by company, were not adequately verified. In particular, petitioners argue that although the Department consulted the documentation provided for Sollac and requested printouts for three other French companies, the Department did not check intra-group sales figures reported for any "non-French company." In addition, petitioners contend that even in its attempt to verify the French companies' entries in the tables, which constituted only half the task at hand, the Department focused almost exclusively on Sollac rather than making a broader and more systematic attempt to verify respondent's claimed totals.

Moreover, petitioners maintain that having requested and failed to receive or verify the information necessary to calculate the proper sales denominator, i.e., the F.O.B. (port) value of Usinor Sacilor's 1991 sales of French merchandise, the Department should continue to utilize petitioners' estimated sales denominator as the best information available.

DOC Position: We disagree with petitioners. The intra-company sales figures used to derive the value of French-produced merchandise for Usinor Sacilor were adequately and accurately verified, as were the methodology used by, and the other sales data provided by, respondents.

It has long been the Department's practice to test the integrity of the information provided by respondents through the examination of original source documents, accounting records, financial statements, and any other pertinent documentation on a selective basis. The Department has consistently recognized that given the vast amount of information provided during the course of an investigation and the strict time constraints imposed on the investigation and, particularly, verification, it is simply not possible to examine each and every piece of information provided by respondents. The Department has taken the position that by testing the validity and integrity of a significant amount of relevant information, the small portion of the remaining information not examined is accurate and complete.

Therefore, petitioners' assertion that the Department focused solely on Sollac to the exclusion of non-French companies in its verification of intra-company transactions is inapposite. As discussed in detail in the Department's verification report, the Department's verification of these data focused on Sollac, the producer of the subject merchandise, and several other companies, selected at random, in order to test the validity of the values reported in Usinor Sacilor's responses. The Department simply chose not to pursue an examination of the values reported for a non-French company. Nevertheless, through our selective examinations, we were able to establish that respondent's data were accurate.

Accordingly, the Department has used the value of French-produced merchandise reported by respondent in the denominator of its subsidy calculations for these final determinations. We note, however, that we have not used the aggregate figure indicated by respondent in its case brief. Rather, we have excluded from that figure an amount equal to the value of sales made by Usinor Sacilor group companies outside France to Usinor Sacilor group companies within France. This sales value represents sales of foreign production and, therefore, must be excluded from the denominator.

Comment 10 (France): Respondents argue that the subsidies at issue in this investigation are plainly untied subsidies. Respondents maintain that the PACS, FIS instruments and shareholders' advances have been analyzed as equity infusions or grants and, according to Department practice, equity infusions and grants have traditionally been considered as fungible and untied subsidies. Respondents also argue that the record evidence of this case demonstrates that the capital within Usinor Sacilor flows to the group's foreign subsidiaries.

Respondents further maintain that the number of major acquisitions made by the Usinor Sacilor group outside France, the group's foreign financing, and the number of foreign employees of the group demonstrate this flow of capital outside France. Finally, respondents argue that if the Department focuses on the circumstances when the alleged subsidies were originally received, it would find that the subsidies were not to benefit only domestic production but were preconditioned upon Sacilor becoming the partial owner of a German steel producer.

Petitioners argue that the subsidies conferred by the Government of France (GOF) to Usinor Sacilor were not only designed to, but according to the record of this investigation did, in fact, result in increased or modernized steel production in France. The nature of these subsidies, and the proper segment of Usinor Sacilor's production to which they must be allocated, was defined at the time of the GOF's decision to subsidize. Petitioners point to various statements made by the French government and others regarding the objectives of the subsidies. Petitioners maintain that nothing Usinor Sacilor has done since these subsidies were provided can change the nature, or the proper allocation, of the benefits arising from them. In any case, petitioners argue that the funds apparently have been used by Usinor Sacilor to invest in its various French productive operations or to cover losses realized on those French operations as a whole. For all of these reasons, petitioners conclude that the domestic subsidies should be allocated by the Department to the Usinor Sacilor group's net sales of French-origin merchandise.

DOC Position: In determining whether the denominator should include Usinor Sacilor's total worldwide sales or be limited to sales of Usinor Sacilor's domestically produced merchandise, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had not been rebutted. Respondents relied principally on conclusory statements describing the subsidies at issue as untied. For the most part, the evidence to which respondents did cite—relating to foreign acquisitions, debts in foreign currencies and foreign employees—purportedly address the actual uses of the subsidies well after their bestowal, including during the period of investigation. As noted above, under a "tied" analysis, we do not attempt to trace the actual uses of a subsidy.

Further, respondents mischaracterize Sacilor's acquisition of a partial interest in the German steel producer in 1978. As one of several concessions made by one of Sacilor's shareholders at the behest of the GOF during the 1978 restructuring, that shareholder contributed its interest in the German steel producer to Sacilor. It is not clear how that development translates into evidence that subsidies provided by the GOF in 1978 or later were not tied to domestic production. Meanwhile, petitioners point to substantial evidence in the record that would support a finding that the subsidies were tied to domestic production, even in the absence of any presumption. (See Petitioners' Case Brief at 37–41.) We, therefore, determined that these subsidies were tied to domestic production and, accordingly, we allocated the benefits of those subsidies to sales of Usinor Sacilor's domestically produced merchandise and excluded sales of Usinor Sacilor's foreign-produced merchandise.

Comment 11 (United Kingdom): Respondents contend that, based on the record in this investigation, the Department cannot justify the view that U.K. government subsidies to BS plc or its predecessor, BSC, do not benefit BS plc's foreign operations. Citing Industrial Nitrocellulose, respondents state that it has been the Department's long-held view that untied equity infusions must be allocated to a company's total corporate output and not just to specific products or operations. According to respondents, this longstanding Departmental precedent applies to national and multinational corporations alike.

Petitioners argue that the Department correctly excluded the sales of BS plc's non-U.K. facilities from its sales denominator. Citing, for example, the U.K. Government's 1978 White Paper entitled "The Road to Viability," petitioners argue that the record in this investigation supports the Department's conclusion that domestic subsidies from the U.K. government benefitted only BS plc's activities in the U.K.

DOC Position: In determining whether the denominator should include sales of BS plc's non-U.K. facilities or be limited to sales of BS plc's domestic production, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had not been rebutted. Respondents did not present evidence to show that the subsidies were not tied. Moreover, petitioners point to evidence in the record, namely, the U.K. Government's 1978 White Paper, which supports a finding that the subsidies were tied to domestic production. We, therefore, determined that these subsidies were tied to domestic production, and accordingly, we allocated the benefits of those subsidies to sales of BS plc's domestic production and excluded sales of BS plc's non-U.K. facilities.

Comment 12 (Austria): Respondents point to the years 1983, 1984 and 1986 and argue that it is clearly inconsistent for the Department to include subsidies to U.S.-based Bayou Steel in the numerator while excluding sales of Bayou Steel from the denominator. Respondents explain that VAAG received grants and equity infusions from the Government of Austria (GOA) in those years, and VAAG used those funds to cover losses generated by its subsidiary, Bayou Steel, among other VAAG entities. Respondents conclude that because those funds went to Bayou Steel, the Department should exclude subsidies to Bayou Steel from the numerator.

Petitioners contend that because the subsidies were provided to VAAG, not to Bayou Steel, they were not subsidies provided solely to a foreign company. According to petitioners, the sales of Bayou Steel therefore should not be included in the denominator.

DOC Position: We have accounted for the subsidies at issue through a two-step process. First, we decided that the benefits of the subsidies at issue had to be allocated to VAAG's total worldwide sales, including Bayou Steel's sales, for the years in question. Then, we adjusted our subsidy calculation to reflect the subsidies lost through the 1986 sale of Bayou Steel.

In determining how to allocate the subsidies, i.e., whether to VAAG's total worldwide sales, which would include the sales of Bayou Steel's U.S. production, or only to sales of VAAG's domestic production, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had been rebutted. Specifically, the laws pursuant to which the GOA provided these subsidies expressly state that the funds were to be used, *inter alia*, to cover losses of VAAG and all companies under the umbrella of its parent, OAIG, at home or abroad. The record shows, moreover, that VAAG incurred relatively large losses in connection with its investment in Bayou Steel in each of the years at issue. Petitioners did not present any contrary evidence. We, therefore, determined that these subsidies were untied and, accordingly, we allocated the benefits of those subsidies to VAAG's total worldwide sales.

The subsequent adjustment that we made to our subsidy calculation to reflect the subsidies lost through the 1986 sale of Bayou Steel is explained in the Restructuring section of this appendix.

B.F.O.B. (port) Value

Issue

This subsection addresses the issue of whether the Department should continue to use an F.O.B. (port) sales value (i.e., a value which excludes shipping expenses such as ocean freight and marine insurance) in the denominator when calculating the *ad valorem* subsidy rate, or whether another sales value is more appropriate.

Discussion

The Department's practice has been to request respondents to report their sales on an F.O.B. (port) basis. It is this sales value that we have used as the denominator in the past when calculating the subsidy rate. Although the Department's practice of using an F.O.B. (port) value is not required by either the statute or the Department's regulations, and the Department has never articulated its rationale for using this approach, it appears that this practice developed in order that the Department and the U.S. Customs Service (Customs) would be consistent in the calculation and assessment of countervailing duties, respectively. The Department instructs Customs to collect cash deposits and countervailing duties on an F.O.B. invoice price. Customs is directed to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States, in accordance with section 402(2)(A) of the Act.

It has become evident, however, that certain respondents do not maintain accounting systems which allow them to easily extract information pertaining to shipments on an F.O.B. (port) basis. Because these companies may sell on terms other than F.O.B. (port) value and may record sales in one account and their transportation expenses for all customers to all markets in another account, it is not possible to precisely segregate expenses by market. In these instances, respondents can only estimate the F.O.B. (port) value of their sales.

The Department has determined that it is more appropriate to use respondents' sales value as recorded in their financial statement and accounts in the denominator when calculating the *ad valorem* subsidy rate. This figure normally would reflect sales made on various terms of sale such as F.O.B., C.I.F., C.&F., and ex-factory and, as a result, would provide a more accurate representation of respondents' selling practices. In addition, a total sales value is more appropriate because the use of an F.O.B. (port) value, which excludes all shipping expenses such as ocean freight and marine insurance, ignores the fact that part of the sales transaction could be subsidized, i.e., transportation costs.

However, to ensure that Customs collects the correct amount of subsidy based on an F.O.B. invoice price of the imported merchandise, it is necessary to adjust the calculated subsidy rate. Where a respondents' terms of sale for all sales are not F.O.B. or ex-factory, we first must calculate the ratio of the value of exports of the subject merchandise to the United States as recorded in the companies' books to the F.O.B. value of exports of the subject merchandise to the United States. This ratio is then multiplied by the subsidy rate, to calculate the *ad valorem* rate, that will be applied by Customs. It should be noted that if all of a respondent's sales of the subject merchandise to the United States are made on an ex-factory or F.O.B. basis, no adjustment to the calculated subsidy rate is necessary.

However, in the instant investigations, if the information necessary to calculate the *ad valorem* subsidy rate in this manner is not on the record, or if the *ad valorem* subsidy rate cannot be easily calculated as a result of this modification in the choice of denominator values, the Department has reverted to the use of the F.O.B. (port) sales values as originally reported and verified in the denominator of the calculation.

(This issue is discussed more fully in a Memorandum to Joseph A. Spetrini and Barbara R. Stafford from Staff, dated June 21, 1993.)

Comment 1: Petitioners argue that the Department should exclude from the denominator all "value-added" outside the country under investigation, including shipping, warehousing, repackaging, further processing, and production.

DOC Position: In the Foreign Production section above, the Department has determined that the sales value of foreign production, which would include foreign further processing, will be excluded from the denominator whenever the Department determines that a domestic subsidy is tied to domestic production. In this situation, however, shipping, warehousing, and repackaging would be included in or excluded from the denominator depending on how and by whom incurred.

Comment 2: Petitioners argue that the Department should use ex-factory prices for measuring the value of domestic shipments. As no port is involved in domestic shipments, an analogue for F.O.B. (port) value for domestic shipments must be utilized to ensure symmetry in the way subsidization is measured.

Petitioners argue that, in the alternative, the Department could measure the value of domestic shipments at a point analogous to the port for export shipments, somewhere between the factory gate and the customer's place of business. Petitioners further argue that if domestic shipments move through a service center or warehouse, the value of such shipments could be measured at the point where the service center or warehouse is reached.

DOC Position: We disagree. The Department has determined that the appropriate sales value to use in the denominator of the subsidy rate calculation is the value based on how each respondent makes and records its sales. This value captures every part of the sales transaction that could benefit from subsidies.

Comment 3 (France): Petitioners contend that the key step in respondents' methodology for adjusting the total French sales figure to an F.O.B. (port) value is an unsubstantiated estimate of the percentage of Sollac's land and sea transportation costs pertaining to transporting the goods from the factory to the French border. In addition, petitioners contend that respondents derive a percentage based on a geographic sales breakdown using total sales (inclusive of intra-company transactions), and then apply that percentage to a consolidated number.

Moreover, petitioners maintain that respondents' estimate focuses only on Sollac, with no explanation of why Sollac's costs should be considered representative, and does not deduct an amount from the sales denominator for insurance costs associated with transportation, outside France, of exported goods. Therefore, petitioners argue, the Department should continue to utilize petitioners' previously submitted estimate of the F.O.B. (port) value of Usinor Sacilor's sales of French merchandise.

According to respondents, the verification report makes clear that transportation costs were carefully calculated and explained to the Department. The transportation costs were based on Sollac's experience because Sollac is the major exporting company in the Usinor Sacilor group, and detailed land and sea transportation cost information by sector was available. Respondents add that, as the verification report demonstrates, actual shipping costs were presented for domestic sales, sales to other EC countries and sales to the rest of the world.

DOC Position: Usinor Sacilor has insisted throughout the course of these investigations that it does not maintain F.O.B. (port) value information, as requested in the Department's questionnaire, in the regular course of business at either an operating or holding company level. Therefore, in its responses, Usinor Sacilor provided two methodologies to estimate the aggregate amount of transportation costs that should be deducted from Usinor Sacilor's sales figure to arrive at a figure representing the F.O.B. (port) value of those sales. One methodology derived an aggregate amount for transportation costs to be deducted, i.e., those incurred after the French border, while the other methodology set the amount at a particular percentage of Usinor Sacilor's total sales. (See the report on the Verification of Usinor Sacilor in France Bismuth on file in room B–099 of the Main Commerce Building for the verification of the second methodology. This report has been incorporated into the record of this case.)

In order to demonstrate that these were acceptable methodologies for estimating the F.O.B. (port) value of Usinor Sacilor's total sales, Usinor Sacilor officials provided two additional methodologies at verification which produced similar results.

Respondents' have attempted to provide the Department with as accurate an estimate as possible of its sales value based on F.O.B. (port). As stated above, the methodologies presented by respondents at verification were to provide additional support to the estimates submitted previously in the responses. Given that the various approaches have derived similar results, we consider the two additional approaches to be reasonable estimates to support those provided in the responses.

Accordingly, we have used the particular percentage provided in the responses to derive the amount of transportation charges to be deducted from the sales value of French-produced merchandise. Because we do not have the information on the record that would allow us to use as the denominator Usinor Sacilor's total sales value as recorded in its accounts, we have, in this case, reverted to the use of F.O.B. (port) sales value as originally reported and verified.

C. Services

Issue

In several of these investigations the Department has found it necessary to determine how to properly treat various types of "services," e.g., computer data services and the sales of staff training courses. The issue is whether or not a company's total sales should include the value of services sold during the POI. This is important because we use a respondent's total sales as the denominator when we calculate benefits from subsidies that are not tied to any particular product.

Discussion

We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its service functions.

However, when a subsidy is tied to productive activities, the value of services sold should be subtracted from the company's total sales. Whether a subsidy is "tied" to productive activities is a determination that must be made separately in each case. Because subsidies tied to productive activities benefit only production of merchandise, they cannot benefit a company's service functions.

It should be noted that this analysis only applies to services performed within the country subject to investigation. To the extent a respondent, e.g., through a subsidiary, performs services in a country other than the country under investigation, that service would constitute foreign production, which is treated in section A, above.

Comment 1 (United Kingdom): Respondent argues that the Department's adjustment of the total sales denominator for the retail activities, which includes some cutting and slitting, performed by British Steel Distribution (BSD) is without foundation. According to respondent, the Department's past practice dictates that government subsidies benefit all aspects of a company's operations, including retailing. Respondent argues that if the Department elects to exclude that portion of the subsidies attributable to retailing from the denominator, it must make appropriate deductions from the numerator as well.

According to petitioners, there is no evidence on the record that BSD adds value to the goods it sells. To the extent that BSD does add value, however, petitioners argue that only the value added by domestic subsidiaries of BS plc should be included in the denominator.

DOC Position: We agree with the respondent that BSD's retailing activities should be included in the denominator because these retailing activities are part of the production process.

A more detailed explanation of the calculation of BS plc's total sales can be found in Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, which is published concurrently with this **Federal Register** notice.

Comment 2 (Belgium): Sidmar claims that because the subsidies it received were not tied to the production of any particular product, the appropriate sales denominator is the total value of the company's sales of all products and services, including the sales of blast furnace gas and tolling services. Sidmar argues that these sales are generated by the same productive assets as its sales of steel products and that the sales of services, therefore, should be included in the company's total sales value.

DOC Position: We have included sales of blast furnace gas and tolling services in Sidmar's total sales when calculating the *ad valorem* benefit of subsidies which are not tied to productive activities.

D. Treatment of Returned Merchandise and Second Quality Goods

Comment 1 (Belgium): Petitioners argue that the Department should exclude from the denominator amounts attributable to sales of merchandise later returned to the producer, unless these returns were later resold. In addition, petitioners state that both Sidmar and Clabecq have included sales of "seconds" (i.e., merchandise produced at less than first quality) in the sales denominator. According to petitioners, sales of "seconds" should be excluded to prevent the possibility of double counting where "seconds" were returned and subsequently resold.

Clabecq claims that sales of "seconds" should not be excluded from the denominator. Clabecq argues that the Proposed Regulations require the subsidy amount to be divided by a firm's total sales in calculating the CVD rate, unless the subsidy is tied to the production of a particular product, which is not the case here. "Seconds" are produced at less than first quality and differ from returns, according to Clabecq. As such, Clabecq argues, sales of "seconds" represent "bona fide" sales and should be included in the denominator.

Sidmar notes that returns need not be deducted from its total sales value because the total is already net of returns of both first and second quality merchandise. Sidmar also argues that sales of "seconds" should be included in the denominator because they are made by the same company, at the same time, using the same processes as first quality merchandise. Therefore, they benefit equally from any subsidies, according to Sidmar.

DOC Position: According to our longstanding practice, the value of returned merchandise, regardless of whether it is of first or second quality, is subtracted from the value of a company's total sales. The reason for this practice is that the return of a previously sold good indicates that the sale has been cancelled. Such sales should not be included in a company's total sales. However, if the returned merchandise is later resold during the POI, we add the value of that sale to the value of the total sales.

We have never squarely addressed the issue of "seconds" (here defined as merchandise not produced at first quality or not meeting customer specifications), in past CVD duty cases. However, we have determined that it is reasonable to include such sales in the denominator because such sales are produced with the benefit of the same subsidies with which first-quality merchandise is produced. In this context, we consider a sale of a second-quality good to be equivalent to a sale of a first-quality good. Because the sales of "seconds" contribute to the value of a company's total sales, we see no reason why such sales should be excluded from the total sales. Moreover, "seconds" are typically included in the scope of a proceeding (as they are in these investigations) and they are, therefore, covered by any potential CVD order.

Equity

A. Equity Methodology

Issue

The issue to be determined in this subsection is the appropriate methodology to be employed in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations (i.e., when the company receiving funds is determined to be unequityworthy). The methodologies discussed below are intended for use only when the company in question does not have a market benchmark by which to measure any countervailable benefit, i.e., a publicly-traded price or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Discussion

We considered several methodologies offered by interested parties and generated internally (For a complete discussion of those options, see Memorandum from Staff to Joseph A. Spetrini, dated June 21, 1993). We determined that the most appropriate methodology to use in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations is what we call the "Grant" approach.

The key aspect of this approach is the Department's interpretation of its equityworthiness determination. Using the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies and for grants to all companies, should not be adjusted based on subsequent events (e.g, dividends, profits).

Under this approach, the Department continues to distinguish between grants and equity investments because equity investments represent a claim on the company's earnings whereas grants do not. Even in a 100 percent government-owned company, where a purchase of equity does not result in any larger claim on the firm's assets or earnings, an investor's purchase of equity is normally based upon an expectation of a reasonable return. Such an expectation is not present with a grant, which is a simple gift to the firm. Under the grant approach, percentage of government ownership of the firm is irrelevant. This approach is based on the distinction between grants and equity and, in the latter instance only, upon the Department's analysis of equityworthiness.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these equity issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties will be identified when a comment is country-specific in nature.

Comment 1: Petitioners support the Department's preliminary decision to abandon the rate of return shortfall methodology (RORS) for measuring the countervailable benefit of a government equity infusion into an unequityworthy company.

Petitioners argue that the RORS method is an inappropriate cost-to-government, *ex post facto* approach that is unrelated to the benefit conferred by an equity infusion. According to the petitioners, the benefit-to-recipient standard, rather than any cost-to-government standard, is mandated by U.S. law, Department precedent, the policy of the U.S. government, and economic sense.

Furthermore, RORS focuses on individual years, rather than the life of the investment. Thus, even if an investor knew in advance that the company would be profitable in year X, there is no reason to think that the investor would have provided the equity infusion. And, if the company becomes enormously profitable after the year of receipt for unforeseen reasons, the company would continue to be on a higher competitive plane than it would have been without the government capital that private markets would not have provided.

Implicitly, the RORS method suggested that if a company shows a profit equal to the market average in the year of review, then capital previously provided on terms inconsistent with commercial considerations no longer constitutes a subsidy. There are two flaws in this reasoning. First, a single year of profitability does not make a company equityworthy. Second, even if a company would have access to private capital in the review year if it earned the average rate of return for the economy, this would not reduce the benefit of the prior equity infusion. The government-owned company would simply have the benefit of both the original equity infusion and the additional capital it could now raise from the private markets.

The overall purpose of the CVD law is to counteract the benefit that countervailable subsidies bestow upon merchandise imported into the United States. The methods the Department uses to calculate the countervailable benefit must therefore accurately reflect the true benefit bestowed upon the subject merchandise. The RORS method does not accomplish this determinative objective. Furthermore, the logical implication of the theory that the "ultimate success" of the investment is the standard for the equityworthiness determination, is that the Department should countervail infusions to equityworthy companies that prove to be unsuccessful; the absurdity of such an implication is reflective of the absurdity of its premise.

The petitioners assert the falsity of respondents' arguments to the effect that the RORS method is mandated by statute. The respondents mistakenly assume that equity has a cost to the company. They confuse the standard for determining the existence of a subsidy with the methodology for benefit measurement. They mistakenly argue that the Courts have held the RORS method to be the best method of subsidy measurement. They fail to recognize that the grant amortization methodology is both reasonable and the only methodology that is consistent with the Department's treatment of grants.

Petitioners argue that even if the subsequent investment performance of the equity infusion were relevant to measuring the benefit from prior equity, the RORS method does not measure the return on the subsidy investment. The company's rate of return on equity in a single year and the actual return on an investment are two different things.

Furthermore, according to the RORS method, the better the equity investment performs between the year of receipt and the year of review, the greater the countervailable benefit. Moreover, the RORS method yields absurd results when a company has near zero net worth. The source of this problem lies in the role that shareholders' equity plays in the RORS formula. The RORS method calculates the return on total shareholders' equity for the review year only. The goal, however, should be to determine the rate of return on the equity infusion over the life of the investment.

Petitioners argue that there are no sound defenses of RORS. To say that "only the review year matters" ignores certain fundamental considerations. First, the RORS method itself implicitly examines the intervening years by using the shareholders' equity in the review year. Second, to properly measure the return on an investment, one must determine the overall return on the investment. Finally, the profitability of the company in the review year does not reduce the company's use of the government capital it acquired from the original transaction.

Furthermore, in petitioners' view, it cannot be validly argued that RORS measures the "cost" of equity. To begin with, this would mean that more profitable companies have higher costs than less profitable companies, which is absurd. In economic terms, the only "cost of equity" to the company is the expected return that a company has to demonstrate to attract equity capital. Once that equity has been attracted, there is no further cost of that equity for the company.

The return that a company generates with the equity capital it receives is not part of the company's cost structure. Respondents attempt to bootstrap the fallacious notion that companies "pay" for their equity capital once received on the concept that the return to the investor is the investor's opportunity cost of capital. The manner in which companies attract equity capital is not to "pay" for equity but to generate a return from it. Any return generated legally belongs to the provider of the equity.

Petitioners also argue that there is a bias in the RORS method created by the Department's application of the so-called "grant cap" whenever the RORS method results in a countervailable benefit greater than the benefit that would be assessed under the grant methodology. The "backwards" results of the RORS method (lower earnings lead to a lower countervailable benefits) helps respondents because in those circumstances in which the equity infusion is clearly countervailable (poor performance), the RORS method often finds no subsidy.

Finally, petitioners point out that the RORS method implies that new subsidies can reduce the company's benefit from old subsidies. According to the RORS method, the more subsidies the company gets in the review year, the lower the benefit conferred by the original infusion. However, the countervailable benefit conferred by a subsidy should be independent of subsidies the company subsequently receives.

Respondents argue that the Department should retain the RORS methodology. The Department has failed to offer an adequately reasoned and meaningful justification for abandoning RORS in favor of the grant methodology, as is required by law (see, e.g., *Armco, Inc.* v. *United States*, 733 F. Supp. 1514, 1530 (CIT 1990); *Hall* v. *McLaughlin*, 864 F.2d 868, 872 (D.C. Cir. 1989)). Respondents assert that this is not an instance where the Department's new method is more accurate than the old method.

Respondents argue that petitioners' statement that RORS is not defensible under U.S. law is just plain wrong. The courts have carefully scrutinized the RORS methodology and have explicitly concluded that it represents the most accurate and acceptable measure of benefits from an equity infusion.

Respondents argue that the RORS methodology is the most appropriate methodology for calculating the benefit from equity infusions. The Department has used the RORS methodology uniformly in past cases, this methodology is specified in the Subsidies Appendix to Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina, 49 FR 18006 (April 26, 1984) (Subsidies Appendix), and RORS is specifically incorporated into the Department's Proposed Regulations. Moreover, respondents cite *Saudi Iron and Steel Co.* v. *United States*, 698 F. Supp. 912, 916 (CIT 1988), in which the CIT upheld the use of the RORS methodology by the Department.

While RORS is not perfect, respondents argue that it is preferable to the grant methodology. If the Department determined that it had to adjust for the effects of past subsidies, it could do so despite the fact that the effect of past subsidies on a company's rate of return is secondary and speculative.

Moreover, the Department considers an equity investment to be on terms inconsistent with commercial considerations when the expected rate of return at the time of investment is less than what a reasonable private investor would expect. In light of the difficulty in measuring the expected rate of return at the time of investment, the RORS methodology serves as a good proxy for measuring the benefit. The nexus between the expected rate of return and the company's subsequent performance cannot be ignored, yet the treatment of equity investments as grants does just that.

If the Department is willing to wait until the POI to ascertain the benchmark for a long-term, variable rate loan, because there is no reasonable alternative, then it should do the same for equity infusions.

The Department's change in methodology may also have adverse financial implications for innocent third parties which may have invested in companies under investigation with the expectation that the Department would continue its past practice.

DOC Position: We have rejected the use of RORS to measure the benefit from countervailable equity infusions. As petitioners point out, and respondents concede, RORS has many flaws. We find six of these especially notable.

First, when measuring the rate of return in the period of investigation (POI), the Department does not account for the effect of current subsidies on the company's return. These subsidies could affect the rate of return, thereby distorting the RORS analysis. It is not clear whether the Department would be able to neutralize the effect of this distortion. Second, the RORS method only measures the rate of return in the POI, thereby allowing poorly-performing companies which by chance experience a profitable year in the POI to escape countervailability. Conversely, a company with historically good results which experiences a subpar year can be found to have a large benefit in the POI from a past equity infusion. Third, RORS does not measure the rate of return on each of the government's equity infusions but rather the rate of return in the POI on the firm's total equity. If the equity is near zero, a very small profit will result in a negative countervailability finding.

Fourth, this methodology does not adequately account for the expectation held by a potential investor (at the time of the infusion) of the company's future rate of return on equity. Fifth, RORS is biased because it is only applied when the Department finds a company unequityworthy. Finally, and perhaps most importantly, RORS implies a "cost to government" standard rather than a "benefit to recipient" standard. These are not minor flaws which could be easily resolved. Rather, many of these flaws are fundamental to the RORS methodology (e.g., the cost to government standard) and cannot be rectified without abandoning the RORS methodology outright.

The grant methodology offers a more accurate means by which to measure the benefit from equity infusions. The faults of RORS, as enumerated above, are clear. The grant methodology, as stated more fully in DOC Position to Comment 2, below, treats equity infusions into unequityworthy companies as grants. This corresponds with the meaning of unequityworthiness, i.e., a reasonable private investor could not expect a reasonable rate of return at the time of the government's equity infusion.

Moreover, we disagree with respondents that the Department's methodology for measuring the benefit from equity infusions should serve as a yardstick by which to measure the accuracy of, and adjust where necessary, the Department's equityworthiness determination. Respondents imply that the Department cannot accurately determine the equityworthiness of the company in question. The Department's equityworthy determination is done at the time the equity infusion is made, using the information available at that time. Therefore, any consideration of information or indicia after the time the equity infusion was made would invoke a practice of "second-guessing," a practice unavailable to our benchmark, the reasonable private investor.

We disagree with respondents' arguments concerning variable rate long-term loans. Respondents mischaracterize the reasoning behind the determination of whether variable rate long-term loans are countervailable. In doing so, they confuse the determination of whether a loan or equity infusion is inconsistent with commercial considerations, on the one hand, with the methodology applied to measure the benefit from the subsidy, on the other hand. It must first be determined whether the variable rate long-term loans were made on terms inconsistent with commercial considerations. To make that determination, the variable rate in effect in the year the loan was provided is compared to a benchmark rate in the same year. If the variable rate on the loan is equal to or less than the benchmark rate, the loan is found to be consistent with commercial considerations and is not countervailable. If the benchmark rate from the year in which the loan was provided is higher than the loan rate in that year, then the loan is countervailable and we apply the variable rate loan methodology to measure the benefit during the POI.

Finally, regarding respondents' statement that a change in the Department's methodology would penalize an individual who, relying upon the Department's prior practice, chose to invest in a company under investigation, it should be noted that the Act does not permit the Department to consider the effects of its determinations on third parties.

Comment 2: Respondents argue that the application of the grant methodology to equity infusions is inconsistent with, and unsupported by, the Department's test to determine equityworthiness, fails to recognize the potential for return inherent in equity, and is incorrect as a matter of law.

Respondents further argue that the Department's equityworthiness determination is inconsistent with the application of the grant methodology in valuing equity infusions to unequityworthy companies. According to respondents, the Department's equityworthiness test does not determine that a government investor in an unequityworthy company will not realize any return on his/her investment or lose the entire value of the investment. The Department's test only makes a judgment as to whether or not the likelihood of a reasonable return on the investment is sufficiently high, based on past performance and current financial indicators, to attract investment from a private investor. This is not equivalent to a finding that an unequityworthy company could not attract capital at all.

By using the grant methodology, respondents argue, the Department has necessarily made three invalid assumptions about its equityworthiness methodology: (1) Unequityworthiness is equal across all companies, (2) all investors are equal and the Department can predict whether any category of investor would make the investment in the unequityworthy company, and (3) the Department can determine with certainty the performance of a company over a 15-year period, and therefore, that company's attractiveness to a private investor at the time of investment. Where the determination that a firm is unequityworthy is a "close call," the Department cannot apply the grant methodology because clearly there is some expectation of return.

According to respondents, unlike the RORS methodology which recognized this flaw and provided a means for correcting it, the grant methodology imparts a certainty to the equityworthiness determination. Therefore, in order for the Department to continue to adopt the grant methodology for equity infusions into unequityworthy companies, a much more accurate equityworthiness test must be devised.

Respondents contend that equity is not a grant. A company undertakes potential obligations with respect to equity (e.g., dividends) which it never does with grants. The Department recognized this distinction in France Bismuth, when it stated that "[e]quity investments, unlike grants, do represent a claim on the company and even in a wholly government-owned company, equity investments are normally based upon some expectation of return." Therefore, by applying the grant methodology to equity infusions, the Department necessarily overvalues the benefits to the recipient unless the government never recovers any of its investment and never earns any return on that investment. Respondents also point to Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 56 FR 47185 (September 18, 1991) (the 1987 review of Carbon Steel from Sweden), in which the Department rejected the proposition that equity should be treated as grants on the grounds that equity has an expectation of financial return whereas grants do not.

Respondents further argue that the abandonment of RORS in favor of the grant methodology is based on a faulty assumption: RORS does not measure the benefit to the firm because the issuance of new equity is supposedly costless to the firm. Respondents argue that there is a cost associated with raising new capital. They cite a CIT decision (*Saudi Iron and Steel Co.* v. *United States*, 698 F. Supp. 912, 915 (CIT 1988)), which states that the measure of what a firm "pays" for equity is its rate of return on equity. According to this decision, the rate of return on equity reflects the price the firm must offer to attract equity, any dividends paid, and changes in the company's retained earnings and net worth.

According to respondents, the Department has provided brief and unpersuasive arguments in favor of changing its methodology. Based on several court cases in which administrative agencies have been directed to adhere to existing policies or explain any deviation from past practice, respondents argue that the Department should not depart from its traditional RORS methodology in favor of the grant methodology.

Petitioners argue that there is no material difference between the provision of a grant or an equity infusion of the same amount to an unequityworthy company, and that the review year benefit is therefore identical. Petitioners further assert that although the grant methodology is a departure from past practice, an agency can diverge from past practice when it is necessary to reflect legislative intent or to achieve more accurate results. According to petitioners, the Department clearly explained the reasons for the change in its preliminary determination.

The benefit to the recipient cannot be less than the full value of the infusion when the recipient has been determined to be unequityworthy. This flows from the Department's definition of unequityworthy. The Department has defined unequityworthy to mean that the company could not have raised from private capital markets any portion of the funds it received from the government equity infusion (see Subsidies Appendix). Therefore, the entire amount of capital received by an unequityworthy company is a subsidy.

Petitioners contend that expected return, not potential return, is the basis for the determination of unequityworthiness. Companies from which private investors expect a market rate of return receive capital. Companies with the same level of risk that investors do not believe will attain a market rate of return receive zero capital, not a reduced portion of capital. An unequityworthy determination does not imply that the company will never produce a profit. It implies that a private investor cannot expect a market rate of return on the prospective investment.

DOC Position: We disagree with the notion that by finding a company to be unequityworthy, the Department is indicating that the company had no hope of ever making a profit. When a company is found to be unequityworthy, the Department has determined that a reasonable private investor would not have made the equity infusion in the company at the time the government did. Therefore, the infusion was provided when a reasonable investor would not have done so and application of the grant methodology is appropriate.

Our approach for equityworthiness determinations is delineated in the Equityworthiness subsection of this section. This basis is the same as that upon which a reasonable private investor would rely and provides a sufficient basis upon which to make the equityworthy determination.

We reject respondent's argument that the Department makes invalid assumptions about its equityworthiness methodology when applying the grant methodology. First, we evaluate each company's expected future financial performance, as reflected in its own past performance and forecasts, on an individual basis. Second, we examine whether a reasonable investor, not every investor, would make the equity investment at the time of the infusion. Third, we recognize that an element of uncertainty is present in this analysis. That is precisely the point. We are attempting to emulate the process by which a reasonable private investor evaluates the company in question at the time of the infusion. This process of calculating an expected return will, by definition, involve an element of uncertainty for the private investor which is also present in our analysis. The government made the same decision with the same uncertainty surrounding that decision and, therefore, it is unavoidable that our analysis of the decision of the reasonable private investor should also include uncertainty.

The respondents cite from France Bismuth is misleading. The Department was clarifying why we do not apply the equityworthiness methodology to grants into 100 percent government-owned companies. While we distinguish grants from equity on the basis that equity investments are normally based on an expectation of a reasonable return, our equityworthy analysis then determines whether the expected return at the time the equity infusion was made would cause a reasonable private investor to invest in the company in question.

Respondents' argument that firms incur a cost with the issuance of equity, in the form of rate of return on equity, is not applicable here. As stated above, we have determined that a *post hoc* analysis is not warranted under the Department's methodology.

Contrary to petitioners' beliefs, a determination of unequityworthiness does not imply that the reasonable private investor cannot expect a market rate of return at the time of the investment. That would imply a comparative analysis in which we do not engage (see the Equityworthiness subsection of this section). A determination of unequityworthiness does signify that the investor cannot expect a reasonable rate of return on the equity infusion. A reasonable rate of return does not require a comparative equityworthy analysis.

Comment 3: Petitioners argue that the RORS methodology was flawed in its treatment of 100 percent government-owned companies. Under the RORS methodology, the Department made a distinction between equity infusions, in which the government receives additional share certificates, and grants, in which the government does not receive any additional share certificates, even when the company under investigation was 100 percent government-owned.

Petitioners further point out that equity infusions into wholly state-owned companies are equivalent to grants to state-owned companies because they are nothing more than different names for the same material transaction and therefore promise identical returns on investment. The Department has always sought to base its decisions on the substance, not the form, of the transactions it evaluates. The difference between a grant and an equity infusion into a 100 percent government-owned company is solely a difference in form. Any review year benefit arising from a grant must therefore be identical to the benefit arising from an equity infusion.

Respondents argue that the Department itself recognized that "[e]quity investments, unlike grants, do represent a claim on the company and even in a wholly government-owned company, equity investments are normally based upon some expectation of return" (see France Bismuth).

Respondents further contend that petitioners' argument only applies to, if at all, an existing, 100 percent government-owned company which is both uncreditworthy and unequityworthy. Respondents argue that petitioners do not address the situation where the respondent company is less than 100 percent government-owned, newly formed, and found creditworthy but not equityworthy. Clearly, petitioners' arguments are not relevant with respect to a company in which the government has only, for example, a 50 percent ownership stake. A grant to that company would become an asset of all the shareholders whereas an equity infusion would provide shares, and the rights which come with those shares, only to the government. Additionally, if a company is creditworthy but unequityworthy, an equity infusion has a degree of safety which differentiates it from a grant and, in fact, makes equity resemble more a loan than a grant.

DOC Position: We agree with respondents. As stated above, there is a fundamental difference between equity infusions and grants, even in the case of 100 percent government-owned companies. Equity received in return for funds provided indicates that the holder of the equity expects a return on investment. Grants are funds given with nothing received in return and no expectation of a return on investment. Therefore, the basis for this methodology is the difference between equity and grants; thus making the level of government ownership inconsequential.

Finally, we disagree with respondents' assertion that a creditworthy company which is also found to be unequityworthy is somehow less unequityworthy than if the company was also found uncreditworthy. Uncreditworthy means just that, not worthy of credit. Unequityworthy means not worthy of equity. While the analyses use some of the same information, they are distinct, mutually exclusive analyses. Since loans must be paid before returns on equity are made, it is appropriate to have different standards for evaluating creditworthiness than equityworthiness, and an analysis of one has no dispositive effect on the outcome of an analysis of the other.

Comment 4: Respondents argue that, whatever methodology decided upon by the Department for calculating the benefit from equity infusions, dividends paid to the government should be deducted from the calculated benefit for the POI. The Department's proposed regulations and past practice require that any countervailable benefit calculated for the POI be reduced by the amount of dividends paid in the POI (see section 355.49(e)(1) of the Department's Proposed Regulations.

Moreover, dividends issued in the years shortly after an equity infusion would reduce the balance of the infusion on which any subsequent subsidy calculations should be based. If the dividends in a particular year exceed the allocated benefit from the equity infusion, the Department should treat the excess as extinguishing an equal amount of benefit in the following years. By their own admission, petitioners recognize that full repayment of the present value of the benefit of an earlier subsidy might extinguish that subsidy. Respondents contend that by extension, then, partial repayment extinguishes part of the subsidy.

Respondents also argue that dividends are not the only form of repayment to the government for equity infusions. These other forms of payments (e.g., the sale of subsidiaries to the government for a nominal value) should also be deducted from any calculated benefit.

Petitioners argue that respondents are incorrect in asserting that dividends are a "repayment" of the subsidy. Respondents' confusion in this argument is between the return on equity and the equity itself. A dividend is not a return of equity, it is a return on equity, which is generated by the equity. From the perspective of the investor, dividends are earnings, not repayment. From the perspective of the company, the equity is not being repaid: the company still has the equity but has simply taken some of the equity's earnings (which are not a component of cost) and provided them to their rightful claimants. Furthermore, respondents are once again relying on an inappropriate cost-to-government approach to measuring benefits. The fact that the government is getting dividends does not make it "incontrovertible" that the benefit to the recipient is being reduced. The benefit being countervailed is not "dividends not paid" but the equity itself, and the equity is not being paid back with the dividends.

Even if dividends were a repayment of prior equity infusions, the Department would need to establish which portion of a given dividend was attributable to which equity infusion; also, if such were the operative theory, dividends paid by private companies that received outright grants should also reduce benefits.

DOC Position: Dividends cannot be construed as a payback to the government for its equity investment. As petitioners state, they are a return on the investment, not a return of the investment. Any provision of funds to a company can contribute to a company's return, including loans, grants, and other types of subsidy payments. We do not and cannot permit a company's returns to reduce the level of the benefit to the company from such subsidies.

While we continue to maintain our long-held view that government equity infusions *per se* do not confer a subsidy, we now recognize that once the countervailable threshold has been crossed (i.e., we find the company to be unequityworthy), there is no justification for reducing the benefit by the amount of dividends paid to the government. Payment of dividends does not alter in any way the benefit received by the company from the infusions.

This is consistent with the Department's determination with respect to privatization (see Privatization section of this Appendix), where we have recognized that privatization constitutes at least a partial payback of all previously bestowed subsidies, such as grants and fixed rate long-term loans, not just equity infusions. The Department recognizes that all allocated subsidies contribute to a company's return, but the law does not permit us to reduce the benefits from those subsidies when a company generates a profit or return whether the company is government-owned or privately-held. A profit or return is not a payback of the subsidies. Classifying dividends as payback because a company is government-owned is illogical because dividends are not a payback of grants or loans provided to a privately-held company.

However, when a government-owned company is sold, the government is removing itself from the company and the price paid by the new owner constitutes a payback of at least some of the subsidies. It is getting back at least some of its investment; it is not getting a return on its investment.

Comment 5 (Sweden): The respondent notes that SSAB became profitable in the very year it was forecast to do so and that the company paid its first dividends to its shareholders in 1984. Therefore, the respondent argues, the equity infusions turned out to be successful equity investments and should, therefore, not be treated as grants.The respondent also asserts that equity infusions are not equivalent to grants even in wholly government-owned corporations.

According to petitioners, the respondent has not explained why the presence of minority shareholders should make a difference to the Department's determination. Petitioners note that in Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Sweden, 50 FR 33375 (August 19, 1985) (Carbon Steel from Sweden) and Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 57 FR 31714 (August 1, 1989) (the 1985 review of Carbon Steel from Sweden), the Department found that the presence of two private companies as investors in SSAB did not necessarily make the company a reasonable commercial investment. Petitioners contend that because no reasonable investor would have invested in SSAB, the Government of Sweden (GOS) could not have expected a reasonable rate of return on its investment. Equity infusions provided under these circumstances are, therefore, the same as grants.

DOC Position: The Department treats equity infusions as grants for companies which are determined to be unequityworthy. We have determined that the level of government ownership is not a factor to be considered in determining the appropriate calculation methodology for equity infusions. As stated above, the Department considers an unequityworthy determination to mean that a reasonable private investor would not invest in the company given the information available at the time of the infusion. The fact that SSAB experienced profits subsequent to the infusion is a *post hoc* analysis which we have rejected (see above).

C. Equityworthiness

Issue

The issue discussed herein focuses on the methodology used by the Department to determine whether a company is equityworthy.

Discussion

The Department analyzes a government's equity infusion from the perspective of a reasonable private investor at the time of the equity infusion. As we have consistently stated, for a company to be equityworthy, it must show the ability to generate a reasonable rate of return within a reasonable period of time (see Proposed Regulations).

In making this determination, we examine the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts.
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals.
3. Rates of return on equity in the three years prior to the government equity infusion; and
4. Equity investment in the firm by private investors.

The Department gives great weight to the company's recent rate of return on equity as an indication of financial health and prospects. However, in Final Affirmative Countervailing Duty Determination: Agricultural Tillage Tools from Brazil, 50 FR 34525 (August 26, 1985), the Department stated that a demonstration of profits or earnings alone is not sufficient for a company to be equityworthy. The rate of earnings per unit of equity, and not the absolute level of earnings, is a far more important determinant of a company's performance.

Beyond the company's past performance, the Department also analyzes the future prospects of a company. In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Saudi Arabia, 51 FR 4206 (February 3, 1986), (Wire Rod from Saudi Arabia) the Department explained that where the past experience of a company is of little utility in assessing future performance (such as in the start-up of a new company or in a major restructuring or expansion program), we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise.

Our analysis also takes into account the company's prospects, as reflected in market studies, and country and industry forecasts. In Carbon Steel from Sweden, the Department based its determination on the facts available to an investor at the time the equity investment was made concerning: (1) The anticipated rate of return on equity, (2) the extended length of time before the company was projected to become profitable, (3) the prospects of the world steel industry, (4) the expected demand in Sweden and export markets, (5) the amount of capital and loss coverage investment required, and (6) the cost structure of the company.

Comment 1: Petitioners argue that the Department should clarify its current position that prior subsidies will not be subtracted out for purposes of assessing a company's equityworthiness, but that the Department will consider the implications for the company's earnings prospects of a recent, nonrecurring gain as would a reasonable private investor. A private investor would focus on the trends of a company's underlying profitability rather than the level of a company's financial health if that level of health is the result of a recent, large, extraordinary gain such as a non-recurring subsidy.

DOC Position: When evaluating equityworthiness it is the Department's practice not to subtract subsidies received by a firm from the firm's financial data. To do otherwise would result in using a standard different from that used by a private investor, who will look to the financial position of the firm at the time of the investment. Additionally, any attempt to remove the effects of subsidies in adjudging a company's financial position would be a highly speculative exercise. The proposal put forward by petitioners, that we consider the implications of certain types of subsidies, would require even more speculation as we would have to look behind the subsidies to see if they have some long lasting effect then guess how much emphasis a private investor would place on these subsidies in deciding whether or not to invest.

Comment 2: Respondents argue that the focus of the Department's equityworthiness test should be on a company's current financial condition and future prospects at the time of the equity investment, not past financial indicators. Investors are interested in a company's future earnings potential, not its past profits or losses. The ability of a company to show profits in previous years is only one indicator of its future earnings potential. In fact, companies showing losses for several years are frequently able to raise capital from both shareholders and outside investors. Therefore, past performance should only be examined to the extent that it is useful as a predictor of future returns.

Respondents also argue that two factors: (1) The cyclical nature of the steel industry; and (2) the major restructurings undertaken by a number of companies during the past 10 years; have the greatest impact on a steel company's future earning potential. Investors would take these factors into account when making a decision to invest into a particular steel company. The Department must also examine these factors and weight them accordingly.

Petitioners refute respondents' statements that the Department does not consider the company's future prospects when determining whether the company is equityworthy, and that the Department relies too heavily on past financial indicators. Petitioners cite the France Bismuth investigation where, at the preliminary determination, the Department ruled that Usinor Sacilor was unequityworthy in 1991 based on recent financial indicators, yet the Department reversed its finding in the final determination based on a study of the company provided by the respondents.

DOC Position: The Department currently gives great weight to the company's recent rate of return on equity as an indication of financial health and prospects. The Department also analyzes the future prospects of a company. However, we tend to place greater reliance on past indicators as they are known with certainty and provide a clear track record of the company's performance, unlike studies of future expected performance which necessarily involve assumptions and speculation.

In the Wire Rod from Saudi Arabia, we explained that where the past experience of a company is of little utility in assessing future performance (such as in the start-up of a new company or in a major restructuring or expansion program), we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise. Our analysis also takes into account the company's prospects, as reflected in market studies, and country and industry forecasts.

Whenever the Department is presented with reliable "pure" studies and forecasts they are considered. In Carbon Steel Wire Rod from Trinidad and Tobago, 49 FR 480 (January 4, 1984), we considered the independent evaluations of the project's feasibility.

Comment 3 (Brazil): Respondents argue that the Department's equityworthiness determination in the preliminary determination failed to take account of a number of factors which support the conclusion that equity infusions in COSIPA and USIMINAS from 1987 through 1991 were consistent with commercial considerations. The Department must examine equityworthiness on a case-by-case basis. In particular, the Department must take into account the financial restructuring plan of COSIPA and USIMINAS and re-examine its determinations of unequityworthiness.

Petitioners argue that where a firm has been found unequityworthy for a series of years, more than one or two years of improved performance are required to warrant finding a change to equityworthiness. A review of the firms' financial results for the three years prior to each of the infusions reveals that no private investor would have expected to earn a reasonable rate of return within a reasonable period of time from any of these subsequent capital infusions.

DOC Position: We agree with petitioners. The projections contained in a consultant's evaluation of the plan, as supplied by respondent, do not support a determination of equityworthiness for any of the companies in the years under investigation. The goal of the restructuring plan was that at the end of the restructuring period, the companies would provide a satisfactory return on equity. However, according to the plan itself and the projections provided, that goal would not be achieved until the end of the plans' implementation period, after the years under investigation.

In addition, a private investor would have to reconcile an analysis of past performance with projections of future earnings based on the financial restructuring plans. The information in the response regarding the projections does not support a finding of equityworthiness. The projections do not provide a sufficient basis to overcome the historical records of poor performance by the companies under investigation. Therefore, we find no evidence that SIDERBRAS' 1987 restructuring plan should have any material effect on our determinations that COSIPA, CSN, and USIMINAS were unequityworthy at the time they received equity infusions.

Comment 4 (Mexico): Respondent contends that the projections relied upon by the GOM demonstrate that Altos Hornos de Mexico, S.A. de C.V. (AHMSA) was equityworthy when the government assumed its debt in 1986. They argue that the projections showed that AHMSA would generate substantial positive real returns on equity in the foreseeable future, regardless of whether the government assumed AHMSA's debt. However, the projections also showed that AHMSA's cash flow would be insufficient to meet all interest payments on its debt in the absence of the GOM assuming its debt. Therefore, the GOM assumed AHMSA debt because it expected AHMSA to generate substantial returns, and because without such a debt assumption, there was risk of the company defaulting on its credit obligations and forfeiting these obligations to its creditors.

Petitioners contend that the Department should not rely on the GOM's 1986 financial projections submitted in support of the equityworthiness claim. First, petitioners argue that, under the factors laid out in the Department's Proposed Regulations, future financial prospects are not determinative of equityworthiness. While future financial prospects are considered as one of the factors, petitioners contend that this factor should not outweigh the others because it is speculative in nature. Petitioners further argue that AHMSA has not provided adequate explanation of the economic assumptions underlying the 1986 projections. Therefore, it is impossible to determine whether or not the projections are reasonable. Finally, they contend that AHMSA's projected return-on-equity consistently fell far short of the Mexican national average return-on-equity.

DOC Position: We agree with petitioners that future financial prospects are but one of the factors considered by the Department in determining the equityworthiness of a company. The 1986 financial projections submitted by AHMSA were made by AHMSA in connection with negotiations with the GOM to have the GOM assume a large portion of AHMSA's debt. The projections were done to show that with the GOM's assumption of AHMSA's debt AHMSA could achieve a level of cash flow and profitability such that the company would not be in danger of being taken over by its creditors. The focus of the analysis was not to demonstrate to a reasonable investor that AHMSA was a good investment. It is also clear, based on our examination of the debt assumption agreement at verification, that AHMSA was not required to achieve the projected results.

We believe that the reasonable investor would weigh AHMSA's dismal financial performance during the 1980s far more than a financial projection done by the company itself in an attempt to garner more financial aid from the GOM.

Comment 5 (Mexico): Petitioners argue that a study prepared by an outside consultant and submitted to the Department as evidence of AHMSA's equityworthiness is flawed and should not be considered by the Department. Petitioners argue that the study is irrelevant to the Department's equityworthiness analysis because (a) a comparison between the financial condition of AHMSA and a similar company proves nothing with respect to AHMSA's equityworthiness, and (b) even if a comparison such as this were valid to the Department's equityworthiness determination, the study itself fails to establish that AHMSA, in the years in which the Department is examining AHMSA's equityworthiness, was a reasonable investment.

Respondent argues that AHMSA's situation was no worse than that of similarly situated companies, many of which received equity infusions from private investors during the same period. They argue that all highly leveraged, asset-intensive Mexican companies faced difficulties meeting cash flow requirements in the 1980s. As a result, private owners of the companies had to restructure the companies' finances, in many instances making new equity investments. Respondent contends that its outside consultant study demonstrates that AHMSA's performance was comparable to that of other similarly situated studies.

DOC Position: The Department determines a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. We agree with petitioners that the outside consultant's study submitted by AHMSA is largely irrelevant to demonstrating this with respect to AHMSA. In addition, the consultant's report submitted by AHMSA did not even exist at the time of the infusions during 1979–87. Therefore, the GOM could not have relied on it in making its investment decisions.

Comment 6 (Mexico): Petitioners argue that the Department was mistaken in its preliminary determination that AHMSA was equityworthy in 1977. Petitioners contend that the Department misread AHMSA's financial information in the three years prior to 1977 and did not adequately consider the company's financial performance in 1977. Petitioners argue that despite the fact that AHMSA's financial ratios were still largely positive in the years preceding 1977, the negative financial trend was clear.

DOC Position: Petitioners' arguments concerning the Department's preliminary determination that AHMSA was equityworthy in 1977 are unpersuasive. In general, for the three years prior to 1977 AHMSA's financial situation was strong. Since there has been no change to the data relied on in the preliminary determination, the analysis we performed at that time is still valid. Considering AHMSA's financial performance in 1977 when analyzing AHMSA equityworthiness for 1977, as suggested by petitioners, would amount to a post hoc analysis. Private investors considering investing in AHMSA during 1977 would not have had AHMSA's year-end 1977 financial results.

Comment 7 (Mexico): Petitioners contend that AHMSA's poor financial performance continued through 1990 and 1991, and that the Department should conclude, based on information on the record, that AHMSA was unequityworthy during these years. Petitioners argue that AHMSA's financial condition in 1989, 1990, and 1991 would lead any reasonable private investor to conclude that AHMSA was not a reasonable investment during this period.

Petitioners also argue that the Department should disregard as meaningless private investments made in AHMSA in 1988 and 1991. Specifically, they argue private investments made in these years were so small relative to the nominal value of AHMSA's stock outstanding that the Department should not consider these investments when analyzing AHMSA's equityworthiness. To support their argument, petitioners point to Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 57 FR 57999 (December 7, 1992) (Certain Steel from Spain). In that case, the Department found that private investments made in a company were too small to be a valid measure of equityworthiness.

Petitioners also argue that the information on the record regarding the 1988 and 1991 private investments is insufficient to establish whether or not the terms and conditions of these private investments were comparable to the terms and conditions of the GOM equity infusions.

Respondent asserts that private investments made in AHMSA in 1988 and 1991 demonstrate that AHMSA was equityworthy in 1990 and 1991. They assert that private investors paid the same share price as the government and that the investments were pursuant to the same board-of-directors resolutions as the government infusions. Respondent also contends that the private investments were sufficiently large to show that private investors were willing to make new investments in the company on the same terms as the government. They assert that petitioners' citation of Certain Steel from Spain is not on point; private investments in that case totalled only about $5,000, and investors made their investments only because they were told that the company would be dissolved if they did not.

DOC Position: The Department has determined that AHMSA was unequityworthy during 1990 and 1991. The specific analysis used to arrive at this determination is contained in the final equityworthiness/creditworthiness memorandum on file in the administrative record of this case. In making this determination, the Department relied primarily on financial data, such as rates of return on equity, in the three years prior to the government equity infusion. The Department can also consider equity investment by private investors. However, the fact that there was private investment is not, in and of itself, dispositive that the company in question is equityworthy. As stated in the final equityworthiness/creditworthiness memorandum, the dismal financial performance by AHMSA in the three years prior to each infusion in 1990 and 1991 are more indicative of AHMSA's equityworthiness than the extremely low level of private investment.

Comment 8 (Mexico): Respondent asserts that the 1990 and 1991 equity infusions should not be included in the investigation. They explain that these infusions were fully disclosed in AHMSA's October 5, 1992 questionnaire response but that petitioners did not request that the Department investigate the equityworthiness of AHMSA in 1990 and 1991 until December 18, 1992. The Department did not rule on this request until February 8, 1993, and respondent contends that it was not informed of the Department's decision until March 11, 1993. Respondent asserts that petitioners' failure to request this investigation in a timely manner seriously affected AHMSA's ability to respond to the issues raised by the infusions.

Petitioners state that the Department acted properly in including the 1990 and 1991 equity infusions in the investigation, and that respondent had ample opportunity to prepare and submit information about these infusions.

DOC Position: On February 8, 1993, subsequent to the preliminary determination, the Department expanded the equityworthiness investigation to include 1990 and 1991. This decision was made in accordance with the Department's regulations, which state that "[i]f during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review." See 19 CFR 355.39(a).

Respondents' arguments concerning notification of the inclusion of the 1990 and 1991 infusions in the investigation are without merit. They knew that these infusions were an issue since at least December 18, 1992, when petitioners requested that the Department include them in the current investigation. In addition, when the decision to include the 1990 and 1991 infusions in the investigation was made by the Department on February 8, 1993, the Department immediately informed the Government of Mexico of the decision and placed the accompanying decision memorandum in the official file of the case. It was the responsibility of the GOM to notify AHMSA.

Comment 9 (Mexico): Petitioners support the Department's methodology for calculating equityworthiness and urge the Department to reject respondent's alternative return-on-equity calculations. According to petitioners, respondent's calculations demonstrate only that Mexico suffered from extreme inflation during the period of investigation. The return-on-equity resulting from respondent's calculations is based not on AHMSA's operations, but rather on non-operational factors such as increases in capital stock, capital contributions, additions to legal reserves and inflation adjustments. Petitioners contend that these returns reflect accounting adjustments, not real profits or the productive value of AHMSA's assets.

Respondent argues that the Department's equityworthiness analysis does not account for the effects of hyperinflation. Accounting for this hyperinflation leads to the conclusion that AHMSA was actually a very good investment throughout the relevant period.

In support of its argument, respondent first asserts that AHMSA's real rate of return was well above the real rate of interest in Mexico during the relevant period. Second, respondent notes that in periods of hyperinflation, investors favor investments that will protect them against the effects of inflation. In other words, they tend to avoid investment in financial assets and prefer investment in companies with a high proportion of physical assets—assets that appreciate in value faster than inflation. Third, respondent argues that because the appreciation of assets is not reflected in income statements, the company's return-on-equity will appear as less than its full value. Finally, they argue that, because the value of assets generally increases with inflation but the value of liabilities does not, AHMSA's net worth grew faster than the value of alternative investments during the relevant period.

DOC Position: Respondents' arguments concerning hyperinflation are unpersuasive. While it is true that during hyperinflationary periods investors may seek investments that will protect them against inflation, these types of investments would more likely be liquid investments rather than an unprofitable steel company. Returns in a hyperinflationary economy must be high in order to attract investment and compensate for the effects of hyperinflation throughout the economy. The decision by a reasonable investor about whether to invest in a steel company such as AHMSA would certainly be based on numerous factors other than simply that company's level of physical assets.

Respondents argue that hyperinflation distorts the rate of return on equity (net earnings/shareholders' equity) since the appreciation of assets due to inflation is not reflected in the income statement. AHMSA further states that the Department's preliminary equityworthiness analysis was flawed because it failed to consider the effects of inflation on AHMSA. AHMSA seems to believe that the proper test for determining equityworthiness is to compare these "real" rate of return on equity figures with the "real" Mexican interest, which it claims is represented by the Costo Porcentual Promedio (CPP) minus the rate of inflation.

AHMSA has proposed a type of comparison that is methodologically unsound. The CPP rates represent the average cost of short term funds to banks in Mexico and is not reflective of rates being paid to investors in Mexico. In addition, because equity investors generally assume more risk than creditors, an external benchmark rate for the type of comparison suggested by AHMSA would have to be significantly higher that the CPP. The preliminary analysis examined AHMSA's financial performance as shown in its rate of return, profitability figures, etc. By AHMSA's own admission, these figures are reported "net-of-inflation" (AHMSA Case Brief dated May 6, 1993, at page 17). This is exactly the type of information a reasonable investor would be interested in when considering whether to invest in a company. Even if the return on equity figures are distorted in the manner suggested by AHMSA, which it has failed to quantify in any meaningful way, AHMSA's profitability in "real" terms was quite low or negative during the relevant years.

As an accounting matter, AHMSA's argument that because the value of assets generally increases with inflation but the value of liabilities does not, AHMSA's net worth grew faster than the value of alternative investments during the relevant period, is wrong on its face. Inflation favors borrowers over creditors. Therefore, in a highly inflationary environment creditors require some sort of premium to compensate for the effects of inflation. This will cause the "value of liabilities" to grow in line with inflation.

Comment 10 (Mexico): Respondent requests that the Department adjust the data used in analyzing AHMSA's equityworthiness to reflect three accounting charges that did not represent real expenses to AHMSA: (1) An extraordinary expense resulting from a change in the firm's method for valuing its assets; (2) severance costs for 1992 that were recorded as a 1991 expense; and (3) a loss due to a paper transaction after privatization.

DOC Position: What respondents are suggesting would amount to the Department simply deducting items in AHMSA's financial statements that negatively affect the final results and leaving in only items that have a positive effect. It should be noted that there were some years for which extraordinary income was a significant portion of AHMSA's overall net income.

Further, in determining the equityworthiness of a company, when the Department relies on financial statements for its analysis it uses financial statements prepared in accordance with Generally Accepted Accounting Principals (GAAP). Respondents are suggesting what would amount to a cash based accounting methodology, which is not considered GAAP.

Comment 11 (Belgium): Petitioners argue that at the time Cockerill and Clabecq received loans from (or at the direction of) government entities, they were not generating income sufficient to service the interest on outstanding debt and were uncreditworthy. With respect to Clabecq, petitioners note that the Department correctly determined that this company was uncreditworthy through 1989 (and should have found it uncreditworthy in 1990 and 1991 as well).

DOC Position: We found that petitioners' allegations were sufficiently well documented to justify an investigation of Cockerill's uncreditworthiness. Because Cockerill failed to respond to our CVD questionnaire, we are finding the company to be uncreditworthy from 1982 to 1989 based on the best information available, which is the documentation supplied in the petition. We note that, for purposes of these investigations, we have incorporated our finding in the 1982 investigations that Cockerill was uncreditworthy during the period 1978 to 1981.

We did not find Clabecq to be uncreditworthy in 1990 and 1991 because in the three-year periods preceding each of these years, Clabecq showed considerable improvement in its net profits and its ability to meet its costs and fixed financial obligations.

Comment 12 (Belgium): Several loans with both private and government bank participation were received by Clabecq prior to 1982 and were rescheduled in 1986 into two "pooled" loans. One of the pooled loans was subscribed by the government banks, the second, by the private banks. Petitioners claim that the pooled loan subscribed by the private banks and cited by Clabecq as evidence of its creditworthiness was not a private sector loan. As was made clear at verification, Clabecq did not receive a new loan in 1986, but only a rescheduling of earlier countervailable loans.

Under these circumstances petitioners argue that the rescheduling of these loans does not constitute evidence of Clabecq's creditworthiness. Moreover, when the original private bank loans were made to Clabecq they benefitted from State participation. The Department found in 1982 that private bank funds channeled through state banks benefitted from the state guarantee.

Clabecq argues that the Department incorrectly determined that Clabecq was uncreditworthy through 1989. Such a determination is inconsistent with the Department's Proposed Regulations and does not take into account all relevant financial and valuation information regarding Clabecq. The Proposed Regulations state that, normally, receipt by a firm of comparable long-term commercial loans, provided without a government guarantee, shall indicate creditworthiness. Further, Clabecq claims that it received a private sector loan. In 1986, several of Clabecq's loans were pooled into two. The terms and rescheduling of one of these loans were negotiated with private banks without the Government of Belgium (GOB) or a loan guarantee from the GOB. Thus, Clabecq received comparable long-term commercial bank financing in 1986. Under the Proposed Regulations, this is dispositive evidence that Clabecq was creditworthy at this time.

DOC Position: We agree with petitioners. At verification, we found that bank statements and company records continued to reflect payment of principal and interest on the original loans. The only change was effected by the 1986 rescheduling after an extension of the original repayment periods.

Moreover, the pooling of these loans appears to have been essentially an accounting exercise, which regrouped the outstanding loan funds into a government-bank pool and a private-bank pool. We found no evidence of substantive independent negotiating by the private banks that would lead us to consider the pooled loan as a new loan.

Therefore, we have concluded that Clabecq did not receive private, commercial financing as a result of this transaction. Thus, we do not consider the pooled loan relevant to our creditworthiness analysis.

Comment 13 (Belgium): Clabecq claims that an independent financial study of Clabecq forecast the company's return to profitability. This 1984/1985 study determined that after undertaking certain restructuring actions, Clabecq would return to profitability. The company did turn around, as was reflected in Clabecq's publicly traded share price which increased more than quintuple by 1989.

Petitioners claim that certain 1984/1985 studies which predicted that Clabecq had a healthy financial future cannot serve as an indication of the company's creditworthiness. These studies were premised on Clabecq's undertaking certain restructuring measures. However, potential creditors would have had no certainty that Clabecq would actually undertake the necessary restructuring. In fact, historically, such restructuring in Europe has been accomplished by new government subsidies. The possibility of new subsidies can not be said to make a firm creditworthy.

DOC Position: During the government verification, we received the last two pages of a lengthy independent study of Forge Clabecq, which predicted a healthy financial future for the company. During the Clabecq verification, we received the comments of Clabecq's outside auditor on the independent study. Translations were not provided for these documents. Nor has Clabecq provided the substance of these reports in its responses. Therefore, we are unable to rely on these reports in making a creditworthiness determination for Clabecq.

Instead, we have analyzed the company's creditworthiness as reflected in its annual reports over this period. This analysis shows that the company was not meeting costs and fixed financial obligations.

Comment 14 (Belgium): Petitioners argue that there is sufficient information on the record to justify findings of uncreditworthiness and unequityworthiness for Sidmar as well.

Sidmar contends that petitioners' allegations concerning Sidmar's creditworthiness and equityworthiness are incorrect. Sidmar notes that the Department determined at initiation that it was creditworthy and equityworthy. Further, any new allegation contained in a case brief is untimely. According to the Department's regulations at 19 CFR 355.31(c), the Secretary will not consider any subsidy allegation submitted later than 40 days prior to the scheduled date of the preliminary determination.

DOC Position: Evidence on the record shows that in the three years prior to 1984, when Sidmar's debt was converted to equity, the company realized improving rates of return on both equity and return on investment. Profits also improved during this period. Additionally, the company was also generating sufficient revenue to meet its costs and fixed financial obligations. In view of this performance, the Department determined not to initiate on petitioners' uncreditworthiness and unequityworthiness allegations. Information supplied in the case brief on these allegations was essentially the same as that supplied in the petition. A small portion of the information in the case brief was new information, which we regarded as untimely. Therefore, we must affirm our determination at initiation that the petition did not provide good cause to initiate an investigation of Sidmar's unequityworthiness or uncreditworthiness.

Comment 15 (Belgium): According to Clabecq, its performance indicates that the firm was creditworthy from at least 1985. Clabecq earned profits in five of the six years from 1985 through 1990. It also paid dividends in 1989 and 1990. Its times interest earned ratios in 1988, 1989, and 1990 were healthy and, with the exception of one year, working capital has exceeded Belgian Francs (BF) 1 billion since 1984. Cash flow has been positive since 1986, increasing from BF 125 million in 1986 to BF 1.34 billion in 1989 and BF 2.8 billion in 1990.

DOC Position: In accordance with section 355.44(b)(6) of the Proposed Regulations, the Department considers a company's performance in the three years prior to the year in which a loan agreement was reached in determining the company's creditworthiness. The loan was made in 1989.

Although Clabecq's performance improved in 1988, the improvement was not sufficient to offset its weak performance in 1986 and 1987. Therefore, we determined the company to be uncreditworthy through 1989, based on our analysis of prior years including the three-year period from 1986 through 1988. Improved performance cited by Clabecq in 1989 and 1990 was not considered in our determination because the Proposed Regulations specify that an analysis be done of the three-year period prior to the year of the loan agreement, not the year of the agreement or subsequent years.

Comment 16 (Belgium): Under the creditworthiness test used by the Department in 1982, Clabecq claims that it would be found creditworthy. In addition, Clabecq claims that its substantial real estate holding must be taken into consideration in evaluating creditworthiness.

DOC Position: The Department has modified the creditworthiness standards used in 1982 and currently applies the test outlined in § 355.44(b)(6) of the Proposed Regulations. Under the current standards, we found Clabecq to be uncreditworthy. Regarding Clabecq's real estate holdings, we note that these are included as assets in Clabecq's financial statements and we have taken them into account in our analysis of these statements. We note also that these assets cannot be considered a part of the company's cash flow, because they may not be readily convertible to cash.

Comment 17 (Belgium): Clabecq notes that the Department may have commenced the three year retrospective analysis called for in the Proposed Regulations on uncreditworthiness determinations in the wrong year.

DOC Position: We commenced our analysis in the three years preceding 1982 and concluded it in the three years preceding 1989. This approach is in accordance with § 355.44(b)(6) of the Proposed Regulations which require that we consider the three-year period immediately preceding the year in which the loan agreement was made.

D. Consideration of "Inside" Versus "Outside" Investor Standards Issue

The issue discussed in this subsection is whether special consideration should be given to a government's position as an existing shareholder (an "inside" investor, or owner-investor) when determining whether a government equity infusion into a firm has been provided on terms inconsistent with commercial considerations.

Discussion

As described in the subsection above, in determining whether a government equity infusion into a firm has been provided on terms inconsistent with commercial considerations, the Department must evaluate whether the firm is "equityworthy" in those situations where there is no appropriate market-determined share price to serve as a benchmark. According to the Department's Proposed Regulations, "[a] firm is equityworthy * * * if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time." See § 355.44(e)(2) of the Proposed Regulations.

In assessing what the "perspective of a reasonable private investor" would be, parties to these proceedings have disagreed over whether it is possible and appropriate for the Department to attempt to distinguish between the perspective of an investor who already has an ownership stake in the firm (an "inside" investor) and the perspective of an investor who does not (an "outside" investor). Respondents maintain that, in some situations, an inside investor's decision to invest may reasonably reflect a desire to reduce or forestall an expected loss rather than to increase income. For example, where the effect of the investment would be to reduce the losses by an amount greater than the amount of the investment, the inside investor would be acting to maximize the value of its existing stake in the company. Alternatively, if an additional investment by the inside investor would save the firm from insolvency, the reasonable rate of return on the additional investment would equate to the entire value of the company, i.e., the difference between zero and the company's current value. Moreover, in assessing the reasonableness of a government investment, respondents insist that the Department must consider how the returns on that investment will be shared. In those situations where the government is the sole or predominant owner of the firm, the return on any single investment would necessarily be greater than it would be for a new outside investor, which would have to share the return with other shareholders holding a claim on the firm's assets.

Beyond these behavioral and motivational considerations, respondents also contend that the inside investor is more advantageously situated than the outside investor because it is likely to have access to better information concerning the firm's investment plans, the firm's past problems and the measures taken to correct them, and the firm's prospects for future profitability. At the same time, respondents submit that for any given investment, an outside investor may demand a higher return than would an inside investor for the simple reason that the information known to the outside investor is less perfect and, consequently, the outside investor is apt to perceive the investment as being more of a risk than it really is.

Petitioners contend, in contrast, that the Department has consistently and correctly held that all commercially viable investment decisions are made at the margin, and relate solely to the marginal discounted net present value of the investment options being considered. (See Final Results of Countervailing Duty Administrative Review; Certain Carbon Steel Products from Brazil, 52 FR 829 (January 9, 1987) and Final Affirmative Countervailing Duty Determination: Steel Wheels from Brazil, 54 FR 15523 (April 18, 1989) (Steel Wheels from Brazil).) Regardless of whether the investor is or is not an inside investor, if the discounted net present value of the expected return from an investment is greater than that which would be earned from the alternative benchmark investment, the investment will be made. If, on the other hand, the discounted net present value of the investment's expected return is less than that which would be earned on the alternative benchmark investment, the investment will not be made. In light of this, petitioners assert that it is illogical to claim either that inside investors care less about making or losing money than do outside investors, or that any given investment will yield a different return depending upon whether it is made by an inside or an outside investor.

In past cases, when presented with analogous facts and arguments, the Department has expressed the view that the perspectives of inside and outside investors cannot legitimately be distinguished. (See, e.g., Final Results of Countervailing Duty Administrative Review; Stainless Steel Plate from the United Kingdom, 51 FR 44656 (December 11, 1986) (Stainless Plate). Most recently, in Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6237 (January 27, 1993) (U.K. Bismuth), the Department stated:

> We believe that, in general, both inside and outside investors make investment decisions at the margin. As we stated in Steel Wheels from Brazil, "a rational investor does not let the value of past investments affect present or future investment decisions. The decision to invest is only dependent on the marginal return expected from each additional equity infusion.

We continue to hold the view that it would be inappropriate, if not impossible, to fashion a unique inside investor standard as a variation of the Department's reasonable private investor standard. The Department employs the reasonable private investor standard merely as a tool for determining whether a given equity investment is or is not consistent with commercial considerations. Any exploration of alternative or supplemental motivations or interests on the part of the investor runs the risk of leading our analysis away from its intended objective—i.e., to determine if a particular investment reflected a rational assessment of whether a reasonable return on that investment would be generated in a reasonable period of time. From the perspective of the recipient firm, it is the viability of the investment itself which dictates whether or not a subsidy will be conveyed. The fact that an inside investor may be influenced by other considerations extending beyond the attractiveness of the particular investment in question cannot be permitted to determine whether or not a subsidy arises out of that new investment.

Consequently, the absence or presence of previous investments, and the status of those investments in terms of whether they have generated profits or losses, are extraneous considerations when looking at the equityworthiness of a potential additional investment in a firm. As petitioners point out, the irrelevance of past investments and "continuing obligations" to current investment decisions has been recognized by the CIT in (*BSC II*). In that case, the Court acknowledged that while it may make sense for an owner acting as a manager to want to continue to operate a loss-making operation so long as variable costs are covered, any investor acting according to economically rational considerations will only look to whether the expected returns from any new investment in such operations will exceed expected returns from the next best alternative investment. As the Department itself stated in Stainless Plate, "The tests that BSC proposes as a measure of equityworthiness may be useful tools for corporate management in deciding how long to operate a loss-incurring company, or in evaluating proposed projects, but they are not relevant to the 'reasonable investor' test."

Finally, with respect to whether the issue of access to "inside information" should cause the Department to assign some credence to inside investor arguments, it is essential to recognize that the Department must render its equityworthiness determinations on the basis of objective and verifiable evidence. The argument that an inside investor may have a greater appreciation of the workings of the firm does not provide the Department with a reliable means of distinguishing between those inside investor motivations that may be commercially based and those that are not. If there is substantial, verifiable evidence derived from an analysis of financial ratios, recent historical rates of return and/or any *bona fide* market studies or economic forecasts that an investment could not be expected to generate a reasonable rate of return in a reasonable time period, it is difficult to imagine how knowledge of allegedly "inside information" could be of sufficient weight to offset such contradictory evidence.

Comment 1: Respondents argue that creditors or holders of existing equity interests often have commercially reasonable bases for converting their "holdings" into equity even though a new investment by a purely outside investor may not be warranted. Respondents posit that changes in the financial leverage of a firm can affect its value and, considering the impact of corporate taxes and bankruptcy costs, there is an optimal debt/equity ratio that will maximize the value of a firm. Therefore, to properly evaluate the reasonableness of a conversion or reclassification of holdings (as opposed to a new equity investment), respondents submit that the Department must evaluate the effect of such a conversion on the value of the company as a whole.

In this regard, despite the Department's assertions that it makes no distinctions between the perspectives of inside and outside investors in judging equityworthiness, respondents contend that even the Department has acknowledged than an outside investor and an investor with an existing stake in the company may have good reason to behave differently. Thus, in Preliminary Affirmative Countervailing Duty Determination: Fresh Atlantic Groundfish from Canada, 51 FR 1010 (January 9, 1986), respondents state that the Department recognized that existing and new investors have different criteria for investing by refusing to accept the exchange of debt for equity by a private inside investor as a measure of the reasonableness of an initial equity infusion by the government into several major fish harvesters.

DOC Position: Although we agree that we have found that creditors may have special reasons for investing in firms which are indebted to them, this has no bearing on the Department's "reasonable investor" standard. Respondents' reliance on Groundfish is, therefore, misplaced. In that case, the Department found it inappropriate to use the motivations of a creditor exchanging debt for equity as a gauge for determining the reasonableness of an investor's infusion. In Groundfish, as well as in these steel investigations, the Department has based its equityworthiness determinations on the commercial soundness of the equity investment itself.

A determination of equityworthiness cannot be measured by, nor equated with, the decision of a creditor exchanging its debt for an equity position in a company in order to improve its chances for recouping money already loaned to that enterprise. Nor can it be based on whether an optimal debt to equity ratio can be achieved through the conversion of debt. These may both be important commercial considerations, but they are considerations that relate to interests distinct from the viability of any given investment. The Department is fundamentally concerned with whether it would have been reasonable for a private investor to invest money in the company in question. Such an examination must take place each time an investment occurs, whether it is an investment with "new" money or a conversion of previous debt to equity. However, in either circumstance, the proper focus of the Department's analysis is whether the individual investment, taken alone, made sound commercial sense.

Comment 2: Respondents submit that the Department ignores the commercial relevance of transaction costs when it claims that the perspectives of inside and outside investors are identical. If the transaction costs associated with selling or buying the company in question are significant, an inside investor faced with an equally attractive investment option (that is also available to an outside investor) will always choose to invest in the company in which it has an existing stake, whereas the outside investor would choose the alternative investment if the transaction costs related to that investment were lower.

DOC Position: While transaction costs may vary from investment to investment, no information exists on the record to indicate that these costs are of such a magnitude as to dissuade a reasonable investor from taking advantage of an otherwise attractive investment opportunity. Thus, it would be inappropriate to base a determination of equityworthiness on such speculative, if not marginal, differences in external costs.

D. Publicly Traded Shares

Issue

In section 355.44(e)(1)(i) of the Proposed Regulations, the Department states that the provision of equity by a government to a firm confers a countervailable benefit to the extent that:

> the market-determined price for equity purchased directly from the firm is less than the price paid by the foreign government for the same form of equity purchased directly from the firm.

Although the Proposed Regulations do not speak directly to the applicability of a share price determined in the secondary market as a benchmark, section 355.44(e)(1)(ii) does indicate that one is to proceed to an equityworthiness call only when "there is no market-determined price." In past cases, the Department has resorted to the use of secondary market share prices as a benchmark in instances where private investors did not purchase new shares from the firm at the same time they were issued to the government.

While acknowledging the intuitive appeal of comparing the government's investment to a secondary market price, petitioners argue that such an approach is flawed for several reasons. First, not every publicly traded company can raise new equity capital. Second, unlike a market price for new shares, which exclusively reflects a company's future prospects, the market price of existing shares reflects the overall worth of the firm. Finally, such an approach could lead to the anomalous situation in which government investments in companies with the same poor financial situation could be treated differently. In one case, the Department would forego an equityworthy analysis of the company and find the government's equity infusion not countervailable as long as the per share price paid by the government equals the share price traded on the stock market. In the other case, the Department would conduct an equityworthy analysis of the company and countervail the full amount of the government's equity infusion if the company was determined to be unequityworthy.

Therefore, petitioners argue, the Department should abandon its current practice and always apply an equityworthiness test in those situations where new shares are being purchased by a private buyer at the same time. If the company is unequityworthy, the Department should then countervail the full amount of the equity infusion as a grant.

Discussion

The Department is not persuaded that it should abandon its practice of comparing the price paid by the government to the market-determined share price in the secondary market when such publicly traded shares are the only market-determined benchmark available. Although section 355.44(e)(1)(i) of the Proposed Regulations does not specifically address the applicability of secondary market share prices, both the preamble to these regulations and the 1984 Subsidies Appendix lend support to the belief that the Department has always preferred using the share price in the secondary market over resorting to the equityworthy test. As stated in the Subsidies Appendix:

> If the government buys shares directly from the company (either a new issue or corporate treasury stock) and similar shares are traded in a market, a subsidy arises if the government pays more than the prevailing market price. We strongly prefer to measure the subsidy by reference to market price. This price, we believe, rightly incorporates private investors' perceptions of the company's future earning potential and worth.

The preamble to the Proposed Regulations states that Paragraph (e) is intended to codify existing practice (which the Department had previously outlined in the Subsidies Appendix). The preamble further states that the Department should determine the countervailability of a government equity infusion based on an equityworthiness determination "if there is no market-determined price for a firm's shares (e.g., the firm's shares are not publicly traded)." See Proposed Regulations. This indicates that, only in the absence of market-determined benchmarks, would the Department turn to the equityworthiness test.

Indeed, there are valid reasons underlying the Department's preference to measure the countervailability of government equity infusions by reference to the share price in the secondary market rather than an equityworthiness analysis. As a starting point, we can assume that an investor buys a share or interest in a business because of the returns he or she anticipates receiving. The price the investor is willing to pay for the share is the present value of the income stream discounted at some rate r. The rate of discount is logically the rate of return the investor could earn by investing in the shares of another company subject to the same risk as the shares under consideration. In other words, r is the opportunity cost of equity capital. The concepts of expected dollar returns and the rate at which they are discounted provide the means for arriving at a valuation of an interest in a business venture.

Thus, the secondary market not only provides a market-determined price for the outstanding shares in the company, it also provides a market reference point for the value of new shares. As long as the market price benchmark at the time of the infusion has not been shown to be deficient or tainted (e.g., if the volume of traded shares is too low to provide an accurate market price or prior knowledge of an impending infusion has affected the share price by the time of infusion), a government equity infusion must be determined to be made on an equityworthy basis whenever the government purchases shares at this price.

As to petitioners' final point, it cannot be denied that government equity infusions to two firms, ostensibly with the same financial situation, could be treated differently depending upon the existence of publicly traded shares at the time of the infusion. However, this argument is in no way compelling. The possibility of different treatment exists any time the facts at hand compel the Department to turn away from its preferred benchmark in one case and not in another. The Department cannot impose a less accurate benchmark in the latter case as a matter of "fairness" to the company in the former.

Comment 1: Petitioners argue that the Department's methodology for examining equity infusions into companies with publicly traded stock is not reasonable. First, they contend that not every publicly traded company can raise fresh capital, as the Department's current methodology implies. While there is always a market for outstanding shares, there may be no market for new shares. Petitioners assert that if it were not true that publicly traded shares connoted the availability of additional equity, then bankrupt companies with traded shares would not exist.

Second, petitioners contend that, under the current methodology, the Department is in essence stating that any company that has positive value (and, therefore, its shares have positive value) is equityworthy. They argue that the existence of publicly traded shares merely implies that those shares have value, which means nothing more than the company is not worthless. Thus, if the Department's treatment of equity into companies with publicly traded shares were correct, the Department's equityworthiness test would be simple—if a company's value is greater than zero, it would be equityworthy.

Therefore, petitioners assert that to decide whether a subsidy has been conferred, the Department should perform an equityworthiness test. This will determine if the company could have raised equity capital. If the company is found to be unequityworthy, then the capital provided has the same material effect as a grant.

Respondents contend that petitioners' arguments rest on the question of whether the investment would have occurred without government intervention. They assert, however, that government intervention is not the key to the "commercial considerations" standard. A publicly traded share price represents a minimum value for a company's shares. Where the government ácquires a company's stock at the price observed by private investors in the marketplace, respondents argue that it is, by definition, acting consistently with commercial considerations.

Further, respondents contend that the Department's Proposed Regulations support their findings. Section

355.44(e)(1)(ii), in discussing the treatment of equity infusions in companies that are not equityworthy, begins by reserving such treatment to situations where "there is no market-determined price * * *" Therefore, petitioners' suggested approach is contrary to law and Departmental practice.

DOC Position: As explained above, the Department considers the market-determined price in the secondary market at the time of the infusion to be an accurate and preferred benchmark for measuring the countervailable benefit of a government equity infusion when new shares are not being purchased by a private buyer at the same time. The equityworthiness test is only a substitute for this standard analysis in cases where no market price benchmark exists or where such a benchmark has been shown to be deficient, tainted or distorted.

Petitioners' contention that the use of the secondary share price as a benchmark essentially transforms our equityworthiness analysis into a mere determination of whether a company's value is greater than zero is incorrect. When comparing the share price paid by the government to the share price in the secondary market, we are determining whether the government bestowed a countervailable benefit to a company by paying more for the company's shares than their market-determined worth. In cases where this comparison cannot be done because no market-determined price exists, we look to the equityworthiness test as an alternative means of measurement. That the entire amount of the infusion is countervailable, once we have determined a firm to be unequityworthy, is based upon the absence of a market-determined share price benchmark and our finding that no reasonable investor would have invested in the company. As long as a company's shares are being traded in the secondary market, we obviously cannot reach such a conclusion. Reasonable investors are investing in the company, albeit only at a certain price.

Petitioners' comment regarding bankrupt companies is not on point. None of the companies under investigation were in receivership.

Comment 2: If the Department adheres to its current methodology, petitioners argue that, at the very least, the Department should attempt to account for the dilution effect of the additional government-purchased shares on the value of each outstanding share.

DOC Position: We disagree. The market price after the infusion is not an accurate reflection of the market price at the time of the infusion. The post-infusion price reflects the market's revised analysis of the company after the infusion, not the market value of the company at the time of the infusion.

However, as the Department recognized in both its preliminary and final determinations in Steel from Belgium, prior knowledge of an investor's impending action may affect the market price, potentially tainting it for use as an undistorted benchmark of the value at the time of infusion. (In the Belgium investigation, the Department found that the secondary market price at the time of the infusion was inflated by knowledge of future subsidies under the plan being investigated. The Department, therefore, selected as a benchmark, the secondary share price from a period prior to the public's knowledge of the impending subsidies. See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Steel Products from Belgium, 57 FR 57750 (December 7, 1992) and the final determinations published concurrently with this Federal Register notice. If prior knowledge of an impending action is considered distortive for benchmark purposes, then the action itself must be considered distortive as well.

Comment 3 (Belgium): Petitioners argue that the Department erred in its analysis in the preliminary determinations by comparing the price paid by the GOB for shares in Cockerill and Clabecq with the companies' publicly traded share prices. Petitioners state that had the Department done an equityworthiness analysis of these companies, the companies would have been found to be unequityworthy in every year there was an infusion. Petitioners note, moreover, that Clabecq was found to be uncreditworthy from 1978–1989. Therefore, since no reasonable investor would have invested in Cockerill or Clabecq, the entire amount of the GOB's infusions should be countervailed as a grant.

DOC Position: We disagree. See response to Comment 1 above.

Comment 4 (Belgium): Petitioners argue that the Department erred by using the secondary market price of Clabecq's pre-existing common shares as a benchmark for determining the premium paid by the SNSN for its 1985 purchase of Clabecq's common and preferred shares. The Proposed Regulations provide for the use of a market-determined benchmark price only when the same form of equity is purchased directly from the firm. The Department has articulated no rationale for using the secondary market price for Clabecq's ordinary shares as a benchmark for the preferred shares, other than it lacks another benchmark. Lacking an appropriate benchmark, the Department should conduct an equityworthiness analysis of Clabecq and countervail the full amount of the equity infusion as a nonrecurring grant if it finds the firm unequityworthy.

Clabecq claims that the use of the secondary market share price for ordinary shares as a benchmark for its preferred shares is appropriate. The preferred shares issued to the GOB in exchange for debt forgiveness included a preferential two percent dividend and preference over ordinary shares in the event of liquidation. Consequently, these shares were at least as valuable as the ordinary shares and their minimum value should be measured by the publicly traded price of the ordinary shares.

DOC Position: We agree with respondent that the secondary market share price of the ordinary shares can serve as an appropriate benchmark for Clabecq's preferred shares. There is no evidence on the record that would lead the Department to believe that the market value of the preferred shares would be lower than that of the ordinary shares given the terms of the preferred shares. Therefore, given the absence of a market-determined share price for preferred shares, we will continue to use the secondary market share price for Clabecq's ordinary shares as our benchmark and countervail the premium paid by the government when it purchased these shares.

Comment 5 (Belgium): Respondents and petitioners both argue that the Department should not use the secondary market share price for Clabecq's stock as a benchmark in 1985 because it was so thinly traded. Respondents argue that the value calculated in an independent study of the company, commissioned by the GOB, provides a more reliable benchmark than the secondary market share price.

Petitioners argue that Clabecq's suggested approach is completely erroneous. The fact that Clabecq's shares were so thinly traded, plus the fact that the company was, by any reasonable measure, unequityworthy, indicates that the value of the shares was far less than the secondary market price.

DOC Position: We disagree with both parties. Although the volume of trading was low in 1985, we are not persuaded by the evidence on the record that the volume of these traded shares was so low as to preclude their use as a market-determined price in this proceeding. Therefore, as discussed above, we are using the secondary market share price as our benchmark for determining the countervailable benefit of this infusion. See also our response to comment 10 below.

Comment 6 (Belgium): Petitioners claim that if the Department doesn't treat equity infusions in Clabecq as grants, then it should use the monthly average price of shares rather than the daily price as a benchmark because it is more likely that the daily average would reflect an artificial increase by reason of the impending government infusion.

Clabecq argues that the Department should base its calculations on the actual Clabecq share price on the date of conversion, rather than the average price for the month.

DOC Position: We agree with petitioners that the actual share price could reflect an artificial increase from knowledge of an impending government infusion and have adjusted for it when presented with evidence. See response to Comment 9 below. However, in this situation, we are not persuaded by evidence on the record that the actual secondary market share price on the date of conversion was inflated in any way.

Comment 7 (Belgium): Petitioners argue that the volume of Cockerill Sambre shares traded on the secondary market is too thin to provide an accurate benchmark. Therefore, the Department should conduct an equityworthiness analysis of Cockerill Sambre and countervail the full amount of the Conversion of Debt to Equity under the Gandois Plan as a grant if it determines that Cockerill was unequityworthy.

DOC Position: We disagree. We are not persuaded by the evidence on the record that the volume of these traded shares was so low as to preclude their use as a market-determined price in this proceeding. Therefore, as discussed above, we are using the secondary share price as our benchmark for determining the benefit of this infusion.

Comment 8 (Belgium): Petitioners argue that if the Department continues to use the secondary market price as a benchmark to measure the premium paid for the shares of Cockerill under the Gandois Plan, it must adjust the benchmark to account in full for public knowledge of the pending bail-out.

DOC Position: We agree. Evidence on the record indicates that the secondary market price at the time of the infusion may have been inflated by knowledge of future subsidies under the Gandois plan. Therefore, we are using as our benchmark the secondary share price from a period prior to the public's knowledge of the impending subsidies, adjusted for the representative increase in average stock prices over the two periods.

Comment 9 (Belgium): Petitioners argue that SOCOCLABECQ, a major shareholder of Clabecq, was directed by the GOB to purchase shares of Clabecq in exchange for its export commercialization rights as a pre-condition for further assistance to Clabecq. Petitioners claim that a subsidy to Clabecq results from this transaction, even if private funds were used, because the investment was required by government action. For example, in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6233 (January 27, 1993) (Germany Bismuth), the Department countervailed private bank loans to steel companies which had subsequently been forgiven by the bank at the direction of the federal/local governments as a condition for further government assistance.

Clabecq claims that SOCOCLABECQ's investment was a private transaction that did not involve government funds. In the past, the Department has determined that where government funds are not involved, no subsidy exists. In SSHP from Sweden, the Department found that investments by private shareholders typically do not confer benefits on the issuing company unless the government intervenes to provide government funds for such purposes.

DOC Position: We agree with petitioners. Under the statute, a subsidy is provided by a government, if it is provided directly or indirectly by that government, or if it is required by government action. In SOCOCLABECQ's report to its general shareholders, it stated that its purchase of additional Clabecq common shares was required by the GOB as a precondition to the government's further intervention on Clabecq's behalf. Therefore, we find that because the equity infusion made by SOCOCLABECQ was required by government action, it is, in effect, a subsidy provided by the government to Clabecq to the extent that the market-determined price for Clabecq shares is less than the price paid by SOCOCLABECQ.

Comment 10 (Belgium): Clabecq maintains that even if the Department were to conclude that government direction was the controlling factor in SOCOCLABECQ's investment, no subsidy existed because the investment was on terms consistent with commercial considerations. SOCOCLABECQ exchanged its export commercialization rights for the shares which it received in Clabecq. The value of these rights was established independently, based in part on past earnings and future projections of the value of the rights. The value of the shares was also established by an independent study.

DOC Position: We disagree. As discussed in comment 1 above, the Department considers the market-determined price in the secondary market at the time of the infusion to be an accurate and preferred benchmark for measuring the countervailable benefit of a government equity infusion when a market price for new shares does not exist. When such a price is available, there is no need to turn to studies to determine a value for the shares.

Comment 11 (Belgium): Petitioners claim that if the Department continues to use the secondary market price as a benchmark to measure the premium paid by SOCOCLABECQ, it should use the monthly average price rather than the daily price as a benchmark because it is more likely that the daily price would reflect an artificial increase by reason of the impending government infusion.

Clabecq argues that the Department should base its calculations on the actual Clabecq share price on the date of conversion, rather than the average price for the month.

DOC Position: We agree with petitioners that the actual share price could reflect an artificial increase from knowledge of an impending government infusion and have adjusted for it when presented with evidence. See response to Comment 9 above. However, in this situation, we are not persuaded by evidence on the record that the actual secondary market share price on the date of conversion was inflated in any way.

Comment 12 (New Zealand): Petitioners argue that the appropriate benchmark to use in measuring the benefit is the market price after the shares are issued to the Government of New Zealand (GONZ) in order to take into account the diluting effect of the shares.

Respondents argue that the pre-agreement market price for New Zealand Steel must be used as the benchmark for the shares issued to the GONZ. The Department evaluates government equity infusions by reference to the market price for publicly traded shares at the time the investment decision is made. For the Department to use a post-investment market price would be inconsistent with its current practice and its Proposed Regulations.

DOC Position: We agree with respondents. See response to Comment 2 above.

Comment 13 (Spain): Petitioners assert that since ENSIDESA was unequityworthy in 1979 and 1981, all equity infusions should be countervailed as grants regardless of the presence of outstanding shares.

DOC Position: We disagree. See response to Comment 1 above.

E. The Classification of Hybrid Financial Instruments Issue

The issues to be determined in this subsection are: (1) How the Department categorizes hybrid financial instruments (funds provided by the government for which the firm issues securities/instruments which appear to be neither debt nor equity (nor grants, since the funds are not given outright) and (2) once the Department categorizes these instruments, the appropriate methodology to be employed in measuring the benefit from them.

Discussion

We examined several options for addressing these issues (for a complete discussion of those options, *see* Memorandum from Staff to Joseph A. Spetrini, dated June 21, 1993), and have determined that the most appropriate methodology to categorize and calculate the benefit derived from hybrid instruments is the following: each hybrid instrument will be classified as either a grant, a loan or equity and a determination will be made if it is inconsistent with commercial considerations. Then the benefit calculated accordingly.

We have distinguished grants from both debt and equity by defining grants as funds provided without expectation of a: (1) Repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant (including interest or claims on profits of the firm (i.e., dividends) with the exception of offsets as defined in the Proposed Regulations § 355.46), or (3) claim on any funds in case of company liquidation.

To distinguish between debt and equity, we have determined that only one hierarchy is compatible with existing CVD methodology, and also with the Department's practice of measuring the subsidy as the benefit to the recipient. To classify a hybrid instrument as either debt or equity, we have applied the following hierarchy which in the Department's view establishes whether an instrument has the qualities of debt or equity: (1) Expiration/ Maturity Date/Repayment Obligation, (2) Guaranteed Interest or Dividends, (3) Ownership Rights, and (4) Seniority. For each hybrid instrument, we considered the four sets of criteria in order. Once a characteristic is clearly indicative of debt or equity, we will stop our analysis and categorize the hybrid as debt or equity.

Loans typically have a specified date on which the last remaining payments will be made and the obligation of the company to the creditor is fulfilled. Even if the instrument has no pre-set repayment date, but a repayment obligation exists when the instrument is provided, the instrument has characteristics more in line with loans than equity. Equity, on the other hand, has no expiration date. The rights to ownership theoretically extend to infinity.

If after applying the first set of criteria, we are unable to establish whether the hybrid instrument is debt or equity, we will turn to the second set of criteria. Debt instruments guarantee the creditor a certain payment (i.e., the firm is obligated to pay). The rate may be fixed or variable but the requirement for, or schedule of, payments is pre-determined. Any interruption in payment results in a default on the loan by the company. Equity on the other hand, has no guaranteed return. Companies are not required to issue a dividend to their stockholders. There is no counterpart to default for failure to pay a dividend on equity by the company.

The next set of criteria in the hierarchy is ownership rights. Equity, unlike debt, confers ownership rights. (See Principles of Corporate Finance, by Richard A. Brealey and Stewart C. Meyers (McGraw-Hill, Inc., 1988, page 305) which states that stockholders have ultimate control, through voting rights, on the company's affairs). Stockholders also have a claim on the profits of the firm, manifested in the form of dividends or capital appreciation.

Finally, the last set of criteria in the hierarchy, seniority, refers to the order of reimbursement in case a company liquidates. The order of payment of funds from liquidated assets are as follows: taxes and administrative expenses, wages, creditors (secured, priority, and unsecured), and, lastly, shareholders. Id. at 743.

Following the hierarchy outlined above, if an instrument has an expiration/maturity date or a clear repayment obligation, it will be treated as a loan.

The remaining three characteristics of criteria in the hierarchy should be used to classify the instrument if the first set of criteria fails to provide a clear indication of the proper classification. A guaranteed payment, whether interest or dividend, is more characteristic of debt than equity and can be an important element in calculating the subsidy. Ownership rights are considered more important than seniority in this hierarchy because they are definite characteristics of equity whereas seniority exists in a continuum. In this continuum, creditors come before owners but there is no definite line of distinction as to where one begins and the other ends. In addition, unlike ownership rights where potential profit sharing could affect subsidy calculations, seniority plays no quantitative role in determining countervailable benefits. Seniority matters only when the company is liquidated, whereas ownership rights are significant throughout the life of the company. Seniority does, however, play a qualitative role in discerning debt from equity which is why it is included in the hierarchy.

Comment 1 (Belgium): Petitioners argue that Sidmar's OCPCs (Convertible Profit-Sharing Bonds) constitute debt, and they point to various characteristics of OCPCs to support that conclusion. Sidmar, a respondent in this investigation, does not contest petitioners' argument. However, Sidmar contends that the conditional issuance of OCPCs in return for interest assumption was treated as a grant in the Department's 1982 determination. Therefore, Sidmar argues that the subsequent conversions of OCPCs should not alter the Department's methodology.

DOC Position: The Department has re-examined Sidmar's OCPCs using the hierarchical criteria discussed above. After applying the hierarchy outlined above, the Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments contain an expected maturity date, but that date is contingent upon Sidmar becoming profitable. With respect to the second set of criteria, these instruments have guaranteed interest payments.

We acknowledge respondent's concerns regarding the treatment of OCPCs in our 1982 determination. However, the 1982 steel cases were the first large set of cases where the Department had to examine these types of programs and determine how their benefits should be allocated and measured over time. The methodologies used by the Department have been refined since the 1982 cases, and while the Department has not squarely addressed how to treat hybrid instruments before, we found it necessary in these cases to develop an approach for classifying these instruments in order to ensure consistent, reasonable decisions on how hybrid instruments will be treated.

Comment 2 (Belgium): Petitioners argue that Sidmar's, Clabecq's and Cockerill's partes beneficiaries (PBs) constitute grants, and they point to various characteristics of PBs to support that conclusion. However, if the Department determines that PBs are equity, the Department should still countervail PBs using its grant methodology. Petitioners further argue that Clabecq and Cockerill were unequityworthy in 1985 and 1986 and thus would have no access to additional capital in the private market. They state that even though Sidmar may be equityworthy in 1985, Sidmar received a benefit in the amount of the converted OCPCs to PBs because the conversion was on terms inconsistent with commercial considerations.

Sidmar reiterates that the conditional issuance of OCPCs in return for interest assumption was treated as a grant in the Department's 1982 determination. Therefore, Sidmar argues that the subsequent conversions of OCPCs to PBs should not alter the Department's methodology. Sidmar also argues that PBs constitute equity, and it points to various characteristics of PBs to support that conclusion.

Clabecq argues that PBs constitute equity. They further argue that if the Department continues to treat debt cancellation in exchange for PBs as a grant, that the Department should take into account the value of PBs shares when calculating the benefit of the grant.

DOC Position: The Department disagrees with petitioners' argument that PBs represent grants to companies. We have concluded that PBs constitute equity. However the reasons for our determination are based on business proprietary information and therefore are addressed separately in a memorandum to the file.

We acknowledge Sidmar's concerns regarding the conversion of OCPC's to PBs. However, as previously addressed in Comment 1 we are classifying Sidmar's OCPCs as debt.

Because we have determined that OCPCs are debt instruments and PBs are equity instruments, the conversion of OCPCs to PBs is a debt to equity conversion.

Comment 3 (Belgium): Petitioners argue that Sidmar's preference shares constitute debt. In support of their argument, petitioners point to various characteristics of the preference shares, and to the amendment to the terms of the shares in June, 1987 which obligated Sidmar to repay the SNSN for its preference shares. Respondents, on the other hand, argue that the characteristics of preference shares constitute equity.

DOC Position: The Department has analyzed Sidmar's preference shares using the hierarchical set of criteria discussed above. After applying these criteria in order, the Department concludes that these instruments constitute equity. However the reasons for our determination are based on business proprietary information and therefore are addressed separately in a memorandum to the file.

Comment 4 (France): Petitioners argue that PACS (loans with special characteristics) constitute debt, and they point to various characteristics of PACS to support that conclusion. Respondents, on the other hand, argue that the characteristics of PACS constitute equity.

DOC Position: The Department has analyzed PACS using the hierarchical set of criteria discussed above. The Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments carry an obligation for repayment, even though there is no predetermined maturity date. With respect to the second set of criteria, these instruments have guaranteed interest payments.

Comment 5 (France): Petitioners argue that Fonds d'Intervention Siderurgique (FIS) bonds constitute debt, and they point to various characteristics of FIS bonds to support that conclusion. Respondents, on the other hand, argue that the characteristics of FIS bonds constitute equity.

DOC Position: The Department has analyzed FIS bonds using the set of hierarchical criteria discussed above. The Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments have fixed amortization schedules. The fact that the GOF met the amortization schedules on these bonds for Usinor and Sacilor is irrelevant when analyzing whether the instrument constitutes debt or equity.

Comment 6 (New Zealand): Petitioners argue that the GONZ's purchase of preference shares in NZS constitutes debt, and they point to various characteristics of NZS's preference shares to support that conclusion. Respondents, on the other hand, argue that the characteristics of NZS's preference shares constitute equity, and since the company is equityworthy, the preferential shares are not countervailable.

DOC Position: The Department has analyzed NZS's preference shares using the hierarchical criteria discussed above. The Department concludes that these instruments constitute debt on the basis of the first set of criteria, i.e., they have a specified term for repayment of the face value of the instrument.

In the event that the NZS preference shares are subsequently redeemed for NZS ordinary shares instead of a cash repayment as prescribed in the terms of preference shares, then the Department would have to examine whether this constituted a conversion of debt to equity.

Prepension Programs

Issue

The issue discussed in this section is the treatment of prepension programs.

Discussion

The Department has previously stated its position that in order for worker assistance programs to be countervailable, the company must be relieved of an obligation it would otherwise have incurred (Proposed Regulations, Steel from Belgium and Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Belgium, 47 FR 42403 (September, 27 1982) (Wire Rod from Belgium)).

The Department has identified two types of benefits conferred by the prepension/worker assistance programs being investigated in the current cases. The first type of benefit arises when companies are given the opportunity to reduce their labor force in a manner otherwise unavailable to them. The second type of benefit arises when the government helps companies meet their financial obligations to severed employees.

In these investigations, we found two programs conferring the first type of benefit. In Italy, steel companies are given the opportunity to reduce their labor force by retiring employees who would not otherwise be eligible for retirement benefits. Thus, these companies avoid the cost of keeping their employees on the payroll until they are eligible to retire. In Belgium, the companies are exempted from a general requirement to replace prepensioned workers. Thus, the Belgian companies are relieved of the cost of hiring and paying new workers to replace the prepensioned workers. These types of programs are countervailable to the extent that the companies were under an obligation to retain or replace the workers who were retired early.

There are two instances in which we have determined a company to be under an obligation to retain or replace workers who were retired early. The first instance is when there are legal requirements that workers must be replaced or cannot be laid-off. The second arises where social or political conditions are such that, although no legal or contractual obligation exists, as a practical matter workers cannot simply be fired.

The second type of benefit that was identified in these investigations was government assumption of part or all of the companies' obligations to severed employees (i.e., severance fees, pension payments, etc.). In order for this type of program to be found countervailable, the Department must determine, on a case by case basis, exactly what the companies' obligations to severed employees are. In situations where there is legislation pertaining to a company's obligations to its severed employees, a program which relieves a company of these legal obligations is clearly countervailable.

However, in situations where the government imposes further legal requirements on a specific industry and proceeds to relieve the companies in that industry of this additional requirement, the Department has determined that no countervailable benefit exists (see Wire Rod from Belgium). In such an instance the only beneficiaries of the government program are the workers who, absent the additional legal requirements, would only receive only the level of benefits available to workers in other industries. The company, therefore, acts merely as a conduit for government benefits provided to the workers.

In many instances, companies' obligations to their terminated employees are not outlined under the law, but under contracts negotiated with the workers. When these contracts are already in place and the government subsequently steps in to assume a portion of the amount the company is obliged to provide, we have determined that government assistance is countervailable. Thus, we are treating certain contractual obligations as legal obligations.

However, when the government's willingness to provide assistance is known at the time the contract is being negotiated, a different situation exists. This is because the government's contribution is likely to have an effect on the outcome of the negotiations. For example, assume the workers' goal in the negotiations is to obtain a retirement salary of $500 per week and the company's goal is to pay $400 per week. Absent any government contribution, the parties would negotiate and likely arrive at a number somewhere between $400 and $500. Where the number would end up would depend on the relative negotiating strength of the two sides.

Now assume that both sides know that the government will contribute $100 per week to the worker's retirement salary. In this instance, both sides in the negotiations can achieve their goals—the company will pay $400 and the worker will receive $500.

The issue faced by the Department in these instances is to decide what obligation the company would have faced if the government contribution were not known to the parties. What would the result of the negotiations have been? If the company had prevailed and its obligation would only have been to pay $400 per week, then the government contribution benefits only the workers. No obligation on the company has been relieved. On the other hand, if the workers had prevailed, the company would have been obligated to pay $500 per week. Thus, the government's contribution would offset the company's extra cost and would relieve the company of its obligation.

We have determined that in the above example there is a countervailable amount up to $100 per week. The question is what portion of the $100 should be countervailed. We have determined that for cash deposit purposes only, we will adopt the following simple method. We assume that the difference would have been split by the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would otherwise exist. We stress that this simple methodology is being adopted for cash deposit purposes. In any possible administrative reviews which may be requested for this proceeding, we will invite comments from the parties regarding possible improved methodologies for determining the amount to be assessed. Such a request will focus on the methodology only.

While we recognize that this is speculative, any other outcome is both as speculative and prejudicial. If we were to assume that the entire government contribution relieved an obligation that would otherwise have existed for the company, we are effectively assuming that the workers would have prevailed in the negotiations. Conversely, if we were to assume that the benefits of the government contribution went entirely to the workers, we would effectively be assuming that the company would have prevailed. We believe that these latter assumptions are less credible than the assumption we have made.

Therefore, where there is a reasonable basis to believe that the government will be contributing to worker retirement payments at the time the company's obligations are being negotiated, we will find countervailable, for cash deposit purposes, one half of the government's contribution until an improved methodology is developed in the context of a possible administrative review.

It should be noted that our discussion regarding the countervailability of prepension and retirement assistance does not in any way affect programs that are determined to be non-specific. For example, if a government program contributes equally to retirement payments for all workers, then we would find the contributions non-specific and, therefore, non-countervailable.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding prepension issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: The EC asserts that Redeployment Aid provided under ECSC Article 56(2)(b) should not be considered countervailable as it does not benefit the manufacture, production or export of steel. Rather, redeployment aid benefits the individuals who are hurt by the contraction of coal and steel production. The EC further contends that the program did not relieve steel companies of obligations they normally would have incurred (Final Negative Countervailing Duty Determination: Certain Fresh Cut Flowers from Mexico, 49 FR 15007 (April 16, 1989) (Flowers from Mexico)). The EC asserts that this fact was confirmed during the German and French verifications.

Petitioners assert that the EC's reliance on Flowers from Mexico is misguided. This case does not address the issue of whether legal or contractual obligations between a steel firm and its employees existed and were relieved by the redeployment program.

Petitioners contend that the EC's assertions regarding the relief of legal obligations under the redeployment program are purely speculative. Petitioners argue that the EC has not provided support/evidence for this claim. They cite the verification reports for two German companies, Dillinger and Thyssen, which indicate that contractual obligations are relieved by redeployment aid.

DOC Position: Retired workers in France and Germany receive benefits under ECSC Article 56(2)(b). Under this program, the ECSC and the national governments contribute equal amounts to fund the payments. We have determined that the ECSC portion of these benefits is not countervailable because it is funded exclusively through company contributions. However, the government portion of the benefits is countervailable to the extent the government assumed obligations that exist or otherwise would exist for the steel companies.

In Germany, companies have no minimum legal obligation to severed employees. Rather, a company's obligations are determined through negotiations with the labor union. According to the record developed in these investigations, the German companies and their workers were aware of the ECSC and government funds at the time they negotiated their contracts. Therefore, in accordance with the discussion above, we have countervailed one-half of the national government contributions under this program.

In France, under collective bargaining agreements, retired workers in most industries receive as pension 65 percent of their salary for 12 months. Payment of this pension is divided between the government and the employer, with the government paying 35 percent, and the company paying 65 percent of the benefit. Retired workers in the steel industry, however, receive 70 percent of their salary for 24 months. Payment of this benefit is split three ways: The government pays 35 percent, the company 30 percent, and the ECSC the remaining 35 percent.

Because the French government routinely covers 22.75 percent of the workers' salaries when they retire (35 percent of 65 percent), we determine that payments in this amount for steel workers' pensions do not constitute a subsidy. However, government contributions to steel workers' pensions amount to 24.5 percent of the workers' salaries. Therefore, we determine that the difference between these two amounts, 1.75 percent, is countervailable to the extent that the government relieves the companies of obligations they would otherwise have.

Based on the record of the French investigations, we cannot say that the French companies and their workers had knowledge of the extra government contribution prior to negotiating their collective bargaining agreements. Therefore, we must assume that the government stepped in and relieved the companies of these obligations. Consequently, we have determined that the extra contribution to workers' pensions by the GOF is countervailable.

Comment 2 (Italy): Falck argues that the Department should determine that the early retirement program is not countervailable because it does not relieve Falck of any obligation it otherwise would have had to its employees. The company has no legal obligation to use the early retirement system. Instead, it could fire the workers, in which case its obligation would be to pay severance benefits. In fact, given the changes that occurred in 1991, Falck incurs significant costs for this program (30 percent of retirees' pension until retirement age is reached).

Falck cites Steel from Belgium, SSHP from Sweden, and the 1985 review of Carbon Steel from Sweden in which the Department determined early retirement programs were not countervailable as they did not relieve companies of costs they would otherwise be required to assume. Since Falck is not relieved of any obligations and, in fact, is required to spend more for its early retirees, the Department should determine the program to be not countervailable.

Falck further asserts that petitioners' calculation of the amount of early retirement benefits falsely assumes that the employees would have been retained and that they would have been non-productive and earn no offsetting revenue for the company. Falck contends that no evidence exists on the record to indicate that it would have incurred the costs of paying non-productive employees, absent the early retirement programs.

Falck further claims that any benefits under the program are recurring. Moreover, any calculation of a subsidy should reflect that the program changed in 1992, increasing the employer's obligation to 50 percent of each retirees' pension.

Petitioners assert that the early retirement program relieved the company of obligations it otherwise would have incurred. The programs provided a means for Falck to reduce its excess labor harmoniously. Petitioners claim that political pressure and the power of trade unions made it a practical impossibility for Falck to fire employees. Petitioners argue that even if Flack were able to fire excess labor, Flack would have been responsible for certain termination costs, including severance payments, paid notice and unemployment benefits.

Petitioners argue that the early retirement program provides non-recurring benefits because different laws were enacted for short periods of time to provide "exceptional" aid to an ailing industry. They note that in 1991, Flack may have incurred certain costs by participating in this program, but prior to 1991 there were no costs to the company associated with early retirement programs. Therefore, while the amount of the benefit in 1991 may have been lessened by these costs, Flack was still enjoying the benefits of earlier years.

DOC Position: Based on information obtained at verification, we agree with petitioners that political pressure and the power of trade unions made it a practical impossibility for Falck simply to fire employees. As a Falck representative stated, "legally, Falck was under no obligation to use early retirement, but labor unions could put pressure on the company, making early retirement more feasible than layoffs." For this reason, we believe that Falck would have been obligated to retain these workers. Therefore, because Falck was able to use the early retirement system and because the early retirement system for steelworkers allowed these employees to retire earlier than employees in other industries, we find that Falck was relieved of an obligation it otherwise would have assumed.

We have determined that benefits under early retirement programs are recurring. (See the Allocation section of this Appendix). Because of this, the benefit to Falck was calculated to reflect the costs the company would have incurred by keeping the employees on the payroll only during the POI, not for all the years until they reached retirement age. However, we did not take into consideration whether or not the employees who were retired early would have generated offsetting revenue for the company had they remained on the payroll, because there is no way to quantify their productivity, and because the fact that the company was retiring them indicates that the revenue they generated was less than their cost.

The Department acknowledges that Falck was required to incur substantial costs under the early retirement program in 1991 and we have taken those costs into account in our calculations. However, we have not taken into account the changes which occurred in 1992 because this occurred after our POI and our preliminary determinations. Thus, the increase in

Falck's costs in 1992 does not qualify as a "program-wide" change to be addressed in these investigations. (See section 355.50 of the Proposed Regulations.)

Comment 3 (Germany): The German respondents argue that payments by the Government of Germany under ECSC Article 56(2)(b) are not countervailable because the program did not relieve companies of obligations under their negotiated social plans. In support of their claims, respondents point out that Ilsenburg did not have a social plan during the POI, yet its employees still received benefits under Article 56(2)(b).

DOC Position: The countervailability of Article 56(2)(b) benefits for other German respondents is addressed in the Interested Party Comments from the EC.

Because we have determined that, since Ilsenburg had no social plan it had no obligations to its workers, we have determined the government's contributions to those workers under this program to be not countervailable.

Comment 4 (Belgium): Petitioners argue that the companies were obligated to make early retirement payments to certain laid-off workers under labor conventions and Belgian Law. The GOB assumed part of these payments for steel companies thereby relieving the companies of obligations they would otherwise have had. This results in a countervailable subsidy.

Petitioners argue that while the Department found early retirement assistance to the steel companies not countervailable in the 1982 steel determination, the present investigation is different. In the 1982 case, steel workers received higher prepension payments than workers in other industries. However, in the present investigations, the responses contain no evidence that steel workers received higher payments than other workers. They also argue that even if steel workers do receive higher prepension payments, full or partial assistance in making the payments confers a benefit. If otherwise, governments could avoid countervailing duties simply by imposing concurrent obligations on subsidy recipients.

The GOB argues that the early retirement system is general and applicable to workers holding an employment or labor contract and that the system for steel actually represents an additional burden for the steel industry. The government further argues that the steel companies have not received benefits through the system, because they had contractual obligations to pay their prepensioned personnel until normal retirement age.

Clabecq states that in the preliminary determination, the Department found that the GOB assumed a part of the prepension expenses which normally would have been paid by the companies. However, in 1982 Steel, the Department found that, since the prepension program required steel companies to pay extraordinary severance benefits, the GOB simply offset the excess that steel companies had to pay when compared to other Belgian industries.

Sidmar finds petitioners' statement that governments could avoid countervailing duties "simply by imposing concurrent obligations on subsidy recipients" nonsensical because if a company incurs additional expenses in order to receive assistance, it is only benefitted by the difference between the expenses incurred and the assistance received.

DOC Position: The country-wide Collective Labor Convention 17 of 1974 (CLC 17) instituted an early retirement plan for all Belgian workers, and established certain legal obligations for companies with respect to workers who take early retirement. First, in addition to regular unemployment benefits paid by the state, early-retired workers receive an additional allowance, paid by the company, of one-half of the difference between the workers' former salary and the unemployment benefits. Second, companies are required to replace workers who take early retirement.

Under CLC 17, companies in a "national" sector, i.e., the steel industry, could negotiate their own CLC with the government and the labor unions and, thus, modify their obligations. The steel industry negotiated its own CLC (the steel CLC) in 1978, which was confirmed by the Claes Plan later that year. This steel CLC altered CLC 17 in the following ways: (1) The company's obligation to pay the additional allowance under CLC 17 (one-half the difference between the workers' former salary and unemployment benefits) was reduced or eliminated by means of grants, loan guarantees, and assumption of interest costs; (2) the prepensioned steel workers would receive an additional 2,500 BF per week, to be paid by the company and reimbursed by the government; and (3) steel companies were exempted, until 1990, from the requirement that they replace workers who take early retirement.

The first alteration of CLC 17 confers a potentially countervailable benefit because it relieves the steel companies of their obligation to pay the additional allowance, an obligation they otherwise would have incurred. The means by which this obligation was relieved (grants, loan guarantees, etc.) are all specific to the steel industry; the extent to which each of these means provides a countervailable benefit is discussed in the comments and sections of the Belgian Notice.

The second alteration of CLC 17 under the steel CLC, i.e. the additional 2,500 BF paid to workers by the company and reimbursed by the government, does not provide a countervailable benefit. No benefit is conferred where a government creates and forgives an obligation of a company at the same time and under the same program. In such a situation, the company is not relieved of a cost it would otherwise have had to assume. See Steel from Belgium.

The third alteration of the country-wide CLC 17, relieved steel companies of the obligation to hire replacement workers from 1978 through 1990. This alteration is specific to the steel industry and provides a countervailable benefit. Without the steel CLC, the company would have had to incur the costs of hiring and paying the salaries of workers required to be hired as replacements for the employees given early retirement during this period. Thus, the company is relieved of an obligation it would otherwise have incurred.

Comment 5 (Belgium): Clabecq argues that the loans it received to cover prepension obligations were provided under the 1959 Law, which was previously found by the Department to be non-countervailable. Such financing was available to all sectors which met the specified criteria. In addition, as many as 1114 prepension labor conventions were in effect from 1984-1991. Prepensions were, thus, generally available. Therefore, Clabecq argues, its prepension loans should not be countervailed.

DOC Position: As discussed more fully in the Belgian notice, the loans in question were subsequently converted by Clabecq to OCPC's and, later, to PB's. The conversions were limited to the steel industry, and are, therefore, countervailable to the extent that conversions of debt to equity were on terms inconsistent with commercial considerations. (See the Equity section of this Appendix). While prepension labor conventions are widely available, we have determined that government relief of the costs associated with prepension is limited to the steel industry.

Privatization

Issue

Does the privatization of some or all of a government-owned company extinguish prior subsidies to that company? This question is important, not only because of its impact on these investigations, but because its resolution depends in large part upon defining the fundamental purpose of the CVD law.

Discussion

Petitioners argue, on the basis of legal and economic principles, that the privatization of government-owned companies does not relieve the Department of its statutory obligation to countervail prior non-recurring subsidies to such companies. Thus, goods produced by privatized companies remain countervailable during the period over which such prior subsidies are amortized under the Department's methodology.

Petitioners maintain that the CVD law is intended to offset the unfair competitive advantage that subsidies provide the subject merchandise. *See G.S Nicholas & Co.* v. *United States*, 249 U.S. 34 (1916), *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978). They contend that, although the courts have held that subsidization provides a competitive benefit to the subject merchandise, the courts have consistently held that the Department is not required to measure the effect of subsidies. See *BSC I*.

Petitioners assert that, from a legal and accounting standpoint, a corporation is an entity that is separate and distinct from its owners. Accordingly, the CVD law is concerned with whether the company (and thus the subject merchandise) is being subsidized, not with whether the owners of the corporation benefit from the subsidy. Because of this separation, if a government-owned company is subsidized, and subsequently privatized, the subsidy remains embedded in the company, continuing to benefit the goods it produces. Petitioners point out that each privatization at issue in these investigations involves an exchange of money for shares/ownership. Petitioners argue that a transaction of this sort has no impact on the company's cost structure. The new owners are paying the government for the future income stream they anticipate the company will generate; but while the wealth position of the owners of the company changes, this change has no impact on either the financial condition or the productive assets of the company itself.

Petitioners argue that the Department has previously determined that, if the government buys pre-existing shares directly from shareholders, rather than new shares from the company, there is no subsidy to the company regardless of the price paid for the shares. See Subsidies Appendix. In order to be consistent, the Department must apply this reasoning conversely with respect to privatization. Thus, if the government sells all or part of its shareholdings to private investors (or if a private investor sells its shares to the government), a transfer of corporate ownership takes place wholly apart from any countervailable benefits received by that company.

In addition, petitioners point out that if the Department were to determine that the sale of a government-owned company's shares at a fair market price extinguishes previous subsidies, then the sale of any publicly traded company's shares at a fair market price must also extinguish any previous subsidies. In order to administer the CVD law under this approach, petitioners argue that the Department would be required to track the trading of public shares of companies under investigation to determine the point at which company ownership changes hands. Any transfer of ownership would extinguish previous subsidies. Petitioners contend that this approach is contrary to the intent of the CVD law, administratively impossible, and an invitation to circumvention.

Petitioners also argue that subsidization distorts the allocation of resources in the market, which misallocation is not corrected through privatization. According to petitioners, in determining whether or not privatization affects the countervailability of existing subsidies, the Department must assess whether privatization eliminates or reduces the competitive benefit previously bestowed on the subject merchandise, and whether privatization eliminates the distortion in the allocation of resources caused by the original subsidy. Petitioners argue that, in order to reverse the overallocation of resources to a subsidy recipient, a subsidy must be repaid by the recipient to the government on terms inconsistent with commercial considerations.

Based on the reasons outlined above, petitioners conclude that there is no basis in law or economics for the Department to determine that subsidies received prior to privatization are extinguished as a result of privatization.

Respondents argue that, before deciding what effect privatization should have on prior subsidies to privatized companies, the Department must consider the purpose of the CVD law—to eliminate the competitive advantage that subsidized merchandise enjoys in the U.S. market. Because privatization eliminates this competitive advantage, prior subsidies must be viewed as having been extinguished.

Respondents argue that the privatization of a company is much more dynamic and complex than the ordinary trading of pre-existing shares. It is nothing less than a reconstitution of the entire company in which the purchase price equals the discounted value of the company's future income stream. According to respondents, this fair market value necessarily includes the residual value of any remaining countervailable benefits the company may have received. Because the new owners of the privatized company have paid for any continuing competitive benefits from prior subsidies, they thereafter compete on exactly the same terms as any other company in the market. This eliminates any competitive advantage from prior subsidies and, therefore, extinguishes those subsidies.

Respondents also point out that encouraging privatization is an important policy goal of the U.S. Government—it removes foreign governments from the commercial sector, reduces excess capacity, and ends government subsidization of production.

Respondents submit that Congress has directed the Department to consider circumstances which can change the benefit that past subsidies provide to subject merchandise. See 19 U.S.C. 1675(b) and 19 C.F.R. 355.22(h). Respondents contend that privatization constitutes an intervening event significant enough to warrant revaluation of prior subsidies by the Department. While the CVD law and the Department's regulations do not define the mechanism to evaluate the effect of privatization on past subsidies, past case precedent supports the position that privatization eliminates past subsidies. See Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review: Lime from Mexico, 54 FR 1753 (January 17, 1989) (Lime from Mexico) and Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada, 51 FR 15037 (April 22, 1986) (OCTG from Canada). Given this precedent, respondents argue that the Department's preliminary decision with respect to this issue is inconsistent with its past determinations.

Respondents further argue that the Department's approach in the preliminary determinations is contrary to the Subsidies Code of the General Agreement on Tariffs and Trade (GATT); the CVD law; and the decisions of the Court of International Trade. For example, respondents point to the preamble of the Subsidies Code of the GATT which states that the effect and use of subsidies should be the focus of attention.

Respondents contend that the CVD law and its legislative history indicate that it was the intent of Congress that the actual benefit received be the countervailable benefit. See 19 U.S.C. 1677(5). Respondents also assert that the CIT has stated that the value of a subsidy and its measurement must be linked to the benefit that the recipient receives (see *BSC I*) and that any method used to value the subsidy must maintain the fundamental correspondence between the subsidy and the benefit (see *Michelin Tire Corp.* v. *United States*, 6 CIT 320 (1983), *vacated as moot* 9 CIT 38 (1985)). Moreover, in *Armco* v. *United States*, 733 F. Supp. 1514 (CIT 1990), the court determined that the commercial and competitive benefit of the subsidy to the recipient is the measure of the subsidy's value. Accordingly, respondents argue that in order for the Department to impose countervailing duties on the privatized firm, it must affirmatively establish how subsidies continue to benefit the subject merchandise sold in the POI after privatization at fair market value.

Respondents argue that according to the Department's own past practice, a financial benefit does not accrue to the production of an independent company that purchases assets or productive units from a subsidized, government-owned company. Instead of receiving funding from the government, the new owner pays funds to the government. A privatization at fair market value is analogous and, therefore, is not a mechanism which allows the pass-through of past subsidy benefits to the new company.

Respondents submit that examining the two possible continuing financial benefits of prior subsidies demonstrates that benefits are not passed-through to the new owner after privatization. First, a subsidy could provide a continuing benefit to the recipient if a portion of the original benefit is still outstanding under the Department's allocation methodology in the POI. However, if a company is purchased at its fair market value, any outstanding benefits are, by definition, included in the sales price. The company is no longer supported by the government because the commercial sector has assumed all costs and obligations. In other words, all funding is on terms consistent with commercial considerations. Second, the obligation to provide a reasonable return on an investment, if absent, could be considered a continuing subsidy benefit. This type of benefit, however, also ceases when the subsidized funding is replaced with funds provided by private investors.

Respondents assert that the Department should defer to the market in valuing the remaining benefit of subsidies received prior to privatization. Respondents argue that no reasonable approach to this issue can lead to a conclusion that the remaining value of pre-privatization subsidies is more than the market value of the company itself. Finally, should the Department decide to ignore the fair market valuation accomplished through privatization, respondents assert that, at the very least, the price paid for the company at privatization should be considered a partial repayment of the remaining subsidies.

Respondents argue that for all of these reasons the Department cannot impose a duty that (1) exceeds the original benefit or (2) is not based on an established benefit that the respondent company derived from past subsidies. The application of countervailing duties on the subject merchandise of a company that was privatized at fair market value violates both these points and is a position that the Department should reject.

A. The Nature of Countervailable Benefits

Section 771(5) of the Tariff Act of 1930, 19 U.S.C. section 1677(5), states that a subsidy "has the same meaning as the term 'bounty' or 'grant.'" The Supreme Court in *Nicholas & Co.* v. *United States*, 249 U.S. 34, 39 (1919) stated in respect to these statutory terms that:

> If the word "bounty" has a limited sense the word "grant" does not. A word of broader significance than "grant" could not have been used. Like its synonyms "give" and "bestow," it expresses a concession, the conferring of something by one person upon another.

Within this broad definition, Congress specifically included government action which results in the provision of capital and loans on "terms inconsistent with commercial considerations," the provision of goods or services at "preferential rates," the grant of funds or forgiveness of debt, and the like, to a specific group of beneficiaries. See 19 U.S.C. section 1677(5)(A)(ii). These types of subsidies, which are distortions in the market process for allocating an economy's resources by directing those resources to producers of merchandise exported to the United States, are the focus of the Department's analysis. See Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Czechoslovakia, 49 FR 19370 (May 7, 1984), and Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Poland, 49 FR 19374 (May 7, 1984), affirmed by the Federal Circuit in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) (sustaining the conceptual approach developed in the two reviews: vacating CIT decision on other grounds); and the Department's Proposed Regulations and Softwood Lumber from Canada.

Nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. See 19 U.S.C. section 1677(6). Nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.

The legislative history of the Act confirms that Congress did not intend that such effects be taken into account. See statement of Senator Heinz during the congressional debate on the subsidy offset provision of the 1979 Act. 125 Cong. Rec. S20167–S20168 (July 23, 1979) (discussing allowable offsets and emphasizing intent to limit allowable offsets to those specifically listed in the statute). See, also, S. Rep. No. 96–249, 96th Cong., 1st Sess. 85–86 (1979); H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 74–75 (1979). Accordingly, whether subsidies confer a demonstrable competitive benefit upon their recipients, in the year of receipt or any subsequent year, is irrelevant—the statute embodies the irrebuttable presumption that subsidies confer a countervailable benefit upon goods produced by their recipients.

Judicial opinions also are in accord. For example, the CIT has noted: "One cardinal principle of the CVD law is that the subsidy is the money received, rather than whatever is purchased with that money." (See BSC II (citation omitted).) In addition, the court has stated that:

> whether the reduction in cost is occasioned by direct cash payments, or by an act of government reducing labor cost, capital cost, or the cost of any other factor of production is of no consequence. For if a benefit or advantage is *received* in connection with the production of the merchandise, that benefit or advantage is a bounty or grant on production[] * * * [and] comes squarely within our countervailing duty law * * *.

(*BSC I*, quoting *ASG Industries, Inc.* v. *United States*, 467 F. Supp. 1200, 1213 (Cust. Ct. 1979) (emphasis added).) Accordingly, the Department's practice is to countervail the value of subsidies at the time they are provided to a company (i.e., the cost savings to the company from receiving the subsidies), without regard to their actual use by that same company or their effect on its subsequent performance. See Softwood Lumber from Canada and *Michelin Tire Corp.* v. *United States*, 6 CIT 320, 328 (1983).

The Department allocates non-recurring subsidies over time in recognition of the fact that the statutory goal of providing a remedy against subsidies would be defeated by allocating the subsidies to a single moment or year. The statutory presumption that subsidies benefit goods produced by their recipients must, in order to have the intended effect, be applied over a reasonable period of time, the reasonable time being the useful life of assets in the relevant industry. See Proposed Regulations and Subsidies Appendix. See, also, S. Rep. 96–249, 96th Cong., 1st Sess. 85–86 (1979). But this does not imply that the Department evaluates the performance of that company over that period of time or examines other subsequent events to determine whether, or to what extent, the subject merchandise continues to benefit from the subsidy. As explained above, such an ex post facto analysis is not relevant under the statute.

Because the statute, legislative history, judicial opinions, and the Department's regulations do not permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis. In practice this means, for example, if a government were to provide a specific producer with a smokestack scrubber in order to reduce air pollution, the Department would countervail the amount that the company would have had to pay for the scrubber on the market, notwithstanding that the scrubber may actually reduce the company's output or raise its cost of production.

Similarly, the Department does not take account of subsequent developments that may reduce any initial cost savings or increase in output from a subsidy. For instance, if a government provides a piece of capital equipment to a company, the Department continues to countervail the value of that equipment as received, regardless of whether it subsequently becomes obsolete or is taken out of production. See *BSC I*.

The Department's practice in this regard is consistent with the ruling of the appellate court in *ASG Industries* v. *United States*, 610 F.2d 770 (C.C.P.A. 1979). That decision specifically rejected Treasury's efforts to consider the competitive benefit realized by the recipient from a subsidy, before deciding whether to countervail it.

> Despite the clear expression of Congressional intent that an injury test not be employed, the Secretary impliedly injected one into this case, finding that "the level of exports to the United States is a small percentage of the amount exported, and the amount of assistance * * * is less than 2 percent of the value of float glass produced * * *.
>
> Accordingly, we conclude that it was error to employ an injury (to United States trade) test in determining whether a bounty or grant was paid upon the manufacture or production of the involved merchandise.

Id. at 777. In this same vein, the CIT in another case involving ASG, (*ASG Industries* v. *United States*, 467 F. Supp. 1200, 1222–1224 (Cust. Ct. 1979)), also dismissed Treasury's interpretation that the CVD law was "intended to reach *only* those actions which have the effect of distorting international trade." (emphasis in original). *Accord Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982). The foregoing cases arose in the context of investigations in which no injury test was required. Here, of course, an injury test applies. But that injury test determines whether the U.S. industry is injured by reason of imports of subsidized merchandise. There is no requirement that injury be traced to demonstrated effects of particular subsidies. In any event, the injury test is the province of the International Trade Commission, not the Department of Commerce.

That the CVD law is not concerned with the subsequent use or effect (i.e., competitive benefit) of a subsidy is in no way undermined by the Department's arguments and the appellate court's reasoning in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986). In *Georgetown Steel*, the court simply concluded as a matter of law that the CVD statute is not applicable to nonmarket economies because the concept that the receipt of a subsidy constitutes a distortion in the normal allocation of resources has no meaning in such an economy. This is because resources in nonmarket economies are allocated by government fiat, rather than by market forces. Thus, *Georgetown Steel* cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production. Rather, *Georgetown Steel* stands simply for the proposition that, in a nonmarket economy, it is impossible to say that a producer has received a subsidy in the first place.

B. *The Effect of Privatization*

Accepting that the CVD law does not require a subsidy bestowed on a steel producer to confer a demonstrable "competitive benefit" on that producer in order to be countervailable, there is still disagreement about the effects of privatization. The issue is whether privatization can involve the repayment of subsidies. The disagreement must be understood in light of the fact that all parties agree that subsidies can be extinguished by being repaid to the government.

Respondents contend, first and foremost, that privatization at fair market value necessarily constitutes repayment of the residual value of any remaining subsidies. A number of respondents have also argued that, if the Department were to determine that privatization at fair market value does not, by definition, eliminate the countervailability of subsidies bestowed previous to privatization, the Department should still determine that some portion of the remaining value of those subsidies would be offset by the purchase price paid by the new owners.

Petitioners argue that privatization *per se* does not entail repayment of prior subsidies, because the new owners, not the privatized company, pay the purchase price. Petitioners maintain that the purchase of the company cannot extinguish the benefit of prior subsidies because the company's financial condition has not changed as a result. Therefore, according to petitioners, payment by the new owners to the government (even if it included the full unamortized amount of the subsidies) is irrelevant because such a payment only affects the financial position of the owners and in no way impacts the cost structure of the newly privatized firm. This argument rests entirely on the proposition that there is a complete and absolute distinction between a company and its owners.

Petitioners assert that previous subsidies can only be repaid by the privatized company itself. Petitioners contend that in order to repay the government, the company would have to remit to the government the residual value of all remaining subsidies on terms inconsistent with commercial considerations. In other words, the company would have to reverse the flow of excess capital that it received from the government. Because no one engaged in profit maximization would ever purposefully act to reduce their competitiveness, petitioners describe a genuine subsidy repayment as an "anti-benefit."

Although plainly there is some distinction between a company and its owners, it is a distinction without a difference in the context of privatization. Merely because a company has been incorporated to protect its owners from the company's legal liabilities or for beneficial tax and accounting purposes (or both), it does not follow that the financial condition of the owners is irrelevant to the financial position of the firm. The form in which new owners purchase the government company creates no appreciable difference in how that company will be operated overall. The fact that the owners are shareholders and raise capital to purchase the government-owned company through new share issuings, rather than the company itself taking on debt, does not mean that the owners can be indifferent to the profit margin the company generates, as petitioners assert.

Rather, in the real-world marketplace, the owner-shareholders' expectations of a return on their investment cannot be separated from the profitability of the newly privatized company. Privatized companies (and their assets) are now owned and controlled by private parties who are profit-maximizers. Unlike the former company, which did not need to earn a return on capital when owned and controlled by the government (i.e., when the government is 100 percent owner there is no necessity of paying dividends to itself), the privatized firm now faces the same capital market as its competitors. In antidumping (AD) cases, for example, the Department recognizes that equity requires a reasonable rate of return as reflected in the 8 percent profit margin mandated by Congress to calculate constructed value. 19 U.S.C. 1677b(e)(1)(B)(ii); 19 CFR 353.50(a)(2). As such, regardless of whether the owners raise capital to purchase the government-owned company by issuing new equity, they do need to earn a return on that capital sufficient to attract investors. See Copeland, "Long-Term Sources Of Funds And The Cost of Capital," in Altman, Handbook of Corporate Finance at 12–7 (1986) ("The cost of capital is the rate of return that could have been earned by investors in alternative investments of equal risk.") See, also, *Michelin Tire Corp.* v. *U.S.*, 6 CIT 320, 326 (1983) vacated (on other grounds) 9 CIT 38 (1985), where the court recognized that a company has two options for raising capital, both of which carry obligations: (1) Issuing shares, obligating profit sharing; and (2) incurring debt, obligating repayment with interest.

Put another way, the privatized company now has an obligation to provide to its private owners a market return on the company's full value. The owners will seek to extract a rate of return from their company at least equal to that of alternative investments of similar risk. There is, then, no appreciable difference, as reflected in the marketplace, between the profit-making ability of the company and the owners' realization of a profitable return on their investment in that firm.

To adopt the petitioners' rationale that only a full repayment by the new company can extinguish past subsidies would create a test that would elevate form over substance and produce incentives for foreign governments merely to alter the form of the privatization to satisfy this artificial distinction. If the Department were to ratify such a test, owners could simply lend the company the money to repay at least some portion of the past subsidies, taking the capital out as loan payments, rather than dividends.

The distinction between the financial position of owners and their companies is one that the Department routinely refuses to recognize in administering both CVD and AD laws. In applying the CVD law, the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy. Thus, the Department has found that a subsidy provided to one corporate entity can bestow a countervailable benefit upon another entity within the corporate enterprise. See Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (January 12, 1987) and SSHP from Sweden. In *Armco, Inc.* v. *U.S.*, 733 F. Supp. 1514 (CIT 1990), the court endorsed countervailing the parent company for subsidies received by the subsidiary because both were part of the same business enterprise, and the parent exercised control over its subsidiary. Id. at 1523–1524. See Final Affirmative Countervailing Determination: Carbon Steel Wire Rod from Malaysia, 53 FR 13303 (April 18, 1988). We also generally allocate subsidies received by parents over sales of their entire group of companies. See France Bismuth. (Department allocated subsidies to all French subsidiaries of the parent company, a French holding company, which was the recipient of the subsidies.)

In administering the AD law, the Department has recognized that under generally accepted accounting principles (GAAP), financial burdens incurred by either the parent or the subsidiary are treated equally as obligations of the consolidated corporation where the parent has control over the subsidiary. See Final Determination of Sales at Less Than Fair Value: Carbon Steel Butt-Weld Pipe Fittings from Thailand, 57 FR 21065 (May 18, 1992), Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992) (Minivans from Japan), and Final Results of Administrative Review; Brass Sheet and Strip from the Netherlands, 57 FR 9534 (March 19, 1992).

In short, GAAP would require (so long as the parent has control over the subsidiary) that the purchaser and the privatized company be treated as a single business enterprise. Therefore, any financial costs incurred by the owner, including those of purchase, would be considered costs of the acquired entity as well. Additionally, in AD matters we use group financial records to calculate the cost of capital and the like. In Minivans from Japan, the Department stated that,

> We followed our well-established practice of deriving net financing costs based on the borrowing experience of the consolidated group of companies * * *. Our practice is based on the fact that the group's parent, primary operating company, or other controlling entity, because of its influential ownership interest, has the power to determine the capital structure of each member company within the group.

If the Department adopted the position of petitioners, separating the financial position of companies and owners with respect to privatization, we would jeopardize well-established practices in both CVD and AD cases and leave open the potential for circumvention of the laws. For example, a government could channel subsidies to a subsidiary company by providing the monies to a parent holding company. Under petitioners' reasoning, since the owner/parent company is separate and apart from its subsidiary, the Department would be precluded from ascribing the subsidies to the subsidiary.

For all of these reasons, we cannot accept petitioners' argument that only the privatized company, and not its new owners, can repay prior subsidies to that company. Therefore, a private party purchasing all or part of a government-owned company (e.g., a productive unit) can repay prior subsidies on behalf of the company as part or all of the sales price. Therefore, to the extent that a portion of the price paid for a privatized company can reasonably be attributed to prior subsidies, that portion of those subsidies will be extinguished.

There is no guidance in the statute, legislative history, or case law as to what proportion of the purchase price of a privatized company should be attributed to prior subsidies. Nor have the parties to the investigation had an opportunity to submit comments on this particular issue. Given this situation, we have decided that in attempting to estimate that portion of the purchase price attributable to prior subsidies, the most reasonable approach is to look at the following proportion—the privatized company's subsidies to the company's net worth—during the period from 1977 (the earliest point at which subsidies with benefits remaining countervailable in this investigation could have been bestowed) until the date of the privatization. We computed this by taking the simple average of the ratio of allocable subsidies received by the company in each year over the company's net worth in that year. The simple average of the ratios of subsidies to net worth serves as a reasonable historic surrogate for the percent that subsidies constitute of the overall value, i.e., net worth of the company. We then multiplied the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

To illustrate, consider a company with $60 in remaining subsidies that is sold for $72. Assume that, between 1977 and the date of privatization, subsidies averaged ¾ of the company's net worth. In that case, ¾ of the purchase price ($54) would be attributed to repaying those subsidies, reducing them from $60 to $6. If the average subsidies to a company during the period from 1977 to the date of privatization exceeded the average net worth of the company, then the entire purchase price would be treated as a repayment of those subsidies. For example, a company with $200 in residual subsidies and an average-subsidies-to-net-worth ratio of 2/1 that was sold for $70 would have the entire $70 purchase price applied to repay the prior subsidies, reducing them from $200 to $130.

The estimate so obtained of the proportion of prior subsidies repaid through privatization is the most reasonable that we have been able to devise. Although the "all-or-nothing" alternatives proposed by respondents and petitioners avoid difficult allocation problems inherent in the Department's approach, they are dependent on assumptions which we believe are incorrect.

Respondents' argument, that privatization automatically extinguishes prior subsidies, rests on the assumption that subsidies must confer a demonstrated benefit on production in order to be countervailable. They proffer that since the fair market price must include any remaining economic benefit from the subsidies, privatization extinguishes all remaining unamortized subsidies. As noted above, this is contrary to the CVD law, in which is embedded the irrebuttable presumption that nonrecurring subsidies benefit merchandise produced by the recipient over time.

In sum, the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy. The privatization of a government-owned company, *per se*, does not and cannot eliminate this countervailability. As explained above, the statute does not permit the amount of the subsidy, including the allocated subsidy stream, to be reevaluated based upon subsequent events in the marketplace.

Regarding respondents' contention that ending government subsidization of production through privatization is a major policy goal of the United States, we do not disagree. However, that policy is separate and apart from the statutory provisions of the CVD law and the Department's application thereof. As such, the Government's policy to encourage privatization cannot impinge upon the statutory requirements of the CVD law which is designed to provide remedial relief to domestic industries materially injured by reason of subsidized imports.

In respect to respondents' reference to Lime from Mexico, we note that it was only a preliminary determination and, therefore, does not represent the Department's final thinking on the matter. Further, OCTG from Canada involved a situation where a company had become defunct and non-operational. Its assets were disposed of through a bankruptcy proceeding. This is a unique situation not involving the sale of an ongoing operating company exporting subsidized merchandise to the United States. That is not the case in any of the current steel investigations. Also, in neither of these cases was the issue of "privatization" specifically before the Department.

In the current steel cases, however, the issue of "privatization" is squarely before the Department. In addition, the Department has now had the benefit of numerous and lengthy comments from interested parties specifically addressing this issue. Moreover, the Department is not precluded from ever reconsidering its position in light of changing circumstances. See *Rust* v. *Sullivan*, 111 S. Ct. 1759, 1769 (1991). Given the significance of this issue, the Department has reviewed all of the comments submitted in the course of these investigations and has reconsidered its previous decisions involving privatization-type situations. The Department's new thinking regarding privatization is set out in detail above. To the extent that the approach adopted here arguably is inconsistent with prior decisions, such decisions are superseded by our conclusions here.

Finally, because the Department is countervailing no more than the allocated amount of the original subsidy, and, indeed, may even countervail less as a result of privatization, its approach to the issue of privatization is fully in accord with Art. VI (3) of the GATT and Art. 4 (2) of the GATT Subsidies Code which require that no countervailing duty be levied on an imported product in excess of the subsidy found to exist.

Petitioners' argument—that privatization does not affect prior subsidies—is incorrect because it does not account for the fact that the company's new owners are virtually certain to repay at least a portion of the subsidy as part of the purchase price. Petitioners answer this objection by saying that the company, rather than the owners, must repay the subsidy, but this is not persuasive. As discussed above, we believe the distinction between owners and companies, although valid, is by no means so absolute that the financial position of owners and companies are independent.

Petitioners' failure to attribute any of the purchase price paid for a government-owned firm to the repayment of prior subsidies would result in excessive repayment of subsidies. For example, assume that the government buys a company for $100 and, in that same year, gives that company a $60 subsidy. One year later, when the remaining countervailable amount of the subsidy has declined to $50, the government sells the company for $140, which also is the company's net worth in that year. Under petitioners' theory, the remaining amount of the subsidy, i.e., $50, is not affected by the privatization and must be repaid by the company in full in order to be extinguished. But this would leave the government with $190. The extra $40 could only be described as profit to the government.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding privatization issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Petitioners have argued that subsidies cannot be expunged through privatization because the distortion created by past subsidization still continues (lives on) in the productive capacity of the company. They define market distortion as what happens "when resources that would otherwise have gone to different uses in the economy, * * * (are) instead * * * employed to create assets." In their view such assets would not have existed except for the bestowal of subsidies. Therefore, privatization, because it cannot now re-allocate to their most efficient use the resources used in the past which created the capacity at issue, can have no effect on prior subsidies. The distortion continues even though a purchaser pays a market price, precisely because the excess capacity continues to exist in the company the day after privatization exactly as it did the day before.

Petitioners argue that the CVD law, which was designed to protect our domestic industries from the unfairly enhanced competitiveness that subsidies bestow, requires that in a circumstance such as privatization, subsidies can only be terminated when the initial market distortion which created excess productive capacity is corrected, and that this correction can only occur if and when the company (and not the owners) repays the remaining subsidy amount to the government by taking on debt as opposed to equity. In petitioners' view, the resulting debt obligation will serve to offset or correct the distortion because it will necessitate an additional cost/burden to actual production.

DOC Position: We disagree with petitioners' position. While the CVD law contains an irrebuttable presumption that subsidies bestow a competitive benefit upon the production of a company, it does not follow that the statute requires us to somehow "correct" market distortions which may have occurred due to the provision of subsidies, beyond countervailing the benefits received. The CVD law is designed to provide remedial relief as a result of subsidies; it is not intended to recreate the *ex ante* conditions that existed prior to the bestowal of such subsidies. Indeed, the remedy provided by law, additional duties, does nothing to eliminate excess capacity caused by the subsidization. Thus, there is no reason to require the recipient of the subsidies to correct the distortion in order to avoid or lift the duties. Accordingly, as explained above, the CVD law is concerned with the identification, measurement, and allocation of subsidies at the time of receipt. As part of our administration of the law, we have determined that there must be an allowance for the repayment of prior subsidies. See, e.g., Final Affirmative Countervailing Duty Determination: Pure and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992). In the context of privatization, we have concluded that a payback to the government by the new company or its owners (which we regard essentially as one and the same in these circumstances), regardless of how it is patterned, can indeed repay at least some amount of the subsidies remaining, as calculated according to the Department's methodology. The fact that the productive capacity may have been created or continues to exist is an irrelevant inquiry and beyond the scope of the law.

Comment 2: Petitioners argue that if the Department were to determine that the sale of a government-owned company's shares at a fair market price extinguishes previous subsidies, then the sale of publicly traded shares at a fair market price must also extinguish any previous subsidies. Petitioners argue that the Department would be required to track the trading of public shares of companies under investigation to determine the point at which company ownership changes hands. Petitioners contend that this approach is contrary to the intent of the CVD law, and an invitation to circumvention, as well as administratively impossible.

DOC Position: Petitioners' concern is unfounded. The issue addressed is whether the benefit from prior subsidies is extinguished as the result of privatization. The trading of stock normally involves private parties. Under these circumstances, the issue is not the repayment of subsidies, but rather their allocation.

Comment 3 (Mexico): Petitioners argue that if AHMSA's privatization were to be evaluated on the basis of the respondents' primary theory in support of the elimination of subsidies at privatization, i.e., the sale of a company at fair market value, it would fail. Petitioners assert that the price paid to the GOM for AHMSA was not the fair market value of AHMSA because the highest bid did not win the auction. Petitioners argue that by considering promises of post-privatization investment, the GOM considered factors other than the fair market value of AHMSA. In addition, petitioners urge that the Department reject respondent's claim that because the price paid was within the range of values specified in the independent appraisals commissioned by the GOM, fair market value was paid for AHMSA. Petitioners argue that the range of values mentioned by respondents is unclear and the price accepted by the GOM does not reflect the fair market value of AHMSA. Petitioners argue that even had the bid chosen been within the range of values determined by the appraisals, this does not alter the fact that the bid selected was not the highest cash bid.

Respondent contends that the price paid for AHMSA reflected AHMSA's fair market value. Respondent asserts that the bidding process was fair and open, and that all parties had equal access to AHMSA's confidential data. Respondent cites the Preliminary Results of Changed Circumstances Administrative Review: Lime from Mexico, 54 FR 1755 (January 17, 1989), where the Department found that the Mexican privatization program was an "open, competitive bidding process." Respondent argues that the price paid by GAN was within the range established by independent appraisal firms contracted to determine AHMSA's worth. Therefore, fair market value was paid by AHMSA's purchaser.

DOC Position: As outlined above, we determine that some portion of the remaining subsidies received prior to privatization will be repaid through privatization (as long as the company is not given away). The methodology described above has been applied to all total and partial privatizations at issue in these investigations. Given the Department's methodology, petitioners' and respondents' concerns regarding whether or not the sale of AHMSA was at a fair market price are irrelevant. To the extent that the purchase price may have been lower than the offer made by a different bidder, correspondingly less of any pre-existing subsidies were repaid.

Comment 4 (Mexico): Respondent argues that even if GAN had paid some amount less than fair market value for AHMSA, some amount of previously bestowed subsidies should be extinguished due to the sale. Respondent submits that the difference between the price paid for AHMSA and AHMSA's fair market value would establish the value of any remaining subsidies. Respondents argue that the sale of AHMSA represents nothing more than the sale of goods by the GOM. Respondent suggests that this approach is consistent with the Department's established practice with respect to the government's sale of a good or service.

DOC Position: As outlined above, we determine that some portion of the remaining subsidies received prior to privatization will be repaid through privatization. The methodology described above has been applied to all total and partial privatizations at issue in these investigations. We determine, then, that a portion of AHMSA's sale price does, in effect, repay a portion of the subsidies bestowed on AHMSA previous to privatization.

Comment 5 (Brazil): Respondent contends that equity is a liability, not an asset, and in the case of a liability the countervailable benefit is not the fact that the company has acquired an asset for less than market value, but that the company has been granted access to funds on non-market terms. Because the company does not own the capital, respondent argues that a repayment to the government would not entail the company paying back the monies. Rather the Department should focus on whether and when a transfer of ownership of the company itself alters the terms of the company's access to funds. If, after privatization, the company relies on capital obtained on terms consistent with the market, respondent argues that subsidies granted prior to privatization will be extinguished.

DOC Position: As noted in the privatization discussion above, we countervail the value of subsidies at the time they are provided on terms inconsistent with commercial considerations, without regard to their use or effect on the subsidized company. The provision of equity is, in virtually all cases, a non-recurring subsidy under the Department's calculation methodology. Therefore, countervailable equity infusions are allocated over the useful life of assets in the relevant industry; in this case 15 years. Although the nature of equity may be different than the nature of other countervailable actions, in the interests of consistency, we see no reason to treat the provision of equity differently than other subsidies with respect to privatization. Whether or not the company "owns" the capital, it certainly has it, as it has money from grants and loans. In addition, whether or not at some time after the countervailable provision of equity, a company gains access to capital on commercial terms, is not relevant to the countervailability of equity previously provided on terms inconsistent with commercial considerations.

Comment 6 (Brazil): Respondent argues that the combination of a valuation process conducted by two independent consulting entities and the sale of equity in an auction process ensures that the privatization of USIMINAS was at market value.

DOC Position: Respondent's concerns regarding whether or not the sale of USIMINAS was made at a fair market price is not relevant under the Department's methodology.

Comment 7 (Brazil): Respondent argues that even if the Department decides that repayment of the full amount of equity received by the company prior to privatization is necessary for subsidies to be extinguished, the sale of USIMINAS exceeded the total amount of subsidies received by USIMINAS. Respondent argues that the use of a number of currencies in the privatization process does not alter the fact that the government recovered the full amount of its equity investment through privatization. In fact, through privatization, the government not only received its full investment, it received a reasonable return on its investment.

DOC Position: As outlined above, we determine that some portion of the remaining amount of subsidies received prior to privatization will be repaid through privatization. The methodology described above has been applied to all total and partial privatizations at issue in these investigations. Given the Department's methodology, petitioners' and respondents' concerns about the amount of equity received by the company prior to privatization is not relevant to the Department's privatization analysis.

Comment 8 (Brazil): Respondent argues that the distinction the Department draws in its privatization memorandum between repayment of subsidies to the government and recovery of the subsidy amount through privatization is meaningless. Respondent argues further that the financial structure of USIMINAS would be the same whether it repaid the government investment prior to privatization or the government recovered its investment through the sale of its equity through privatization.

DOC Position: We agree with respondent and our decision with regard to privatization's impact on the countervailability of pre-privatization subsidies reflects this agreement. The Department's privatization methodology provides that subsidies bestowed previous to privatization will be repaid, at least in part, through privatization. However, if a company were to document its repayment of the residual value of subsidies, separate and apart from privatization, the Department would have to consider such a repayment event on its own merits.

Comment 9 (New Zealand): Respondent argues that in its preliminary determination, the Department neglected to take into account the money the GONZ received when it sold its entire interest in New Zealand Steel, Ltd. (NZS) to Equiticorp. If the Department erroneously determines that previously bestowed subsidies are not extinguished by NZS's privatization, the Department should offset any remaining subsidy amount by the amount that the GONZ received for its ordinary shares as well as for its preference shares.

DOC Position: We disagree with respondent. The respondent's approach would require the Department to allocate the entire purchase price for NZS to the repayment of subsidies. This assumes, which we do not, that NZS, at the time of privatization, consisted of nothing but subsidies. However, as outlined above, we determine that some portion of the remaining amount of subsidies received prior to privatization will be repaid through privatization. The methodology previously described has been applied to all total and partial privatizations in these investigations.

Restructuring

Issues

Over the past fifteen years, steel companies in at least eight countries in these investigations (Austria, Belgium, Germany, Italy, New Zealand, Spain, Sweden, and the United Kingdom) have undertaken some form of corporate restructuring. The restructuring activities pursued in these countries have taken many forms including internal corporate restructurings, mergers, acquisitions, the spin off of assets to joint ventures and unrelated private parties, and the closure of production facilities.

In determining the impact of different corporate restructuring activities on the treatment and calculation of subsidy benefits, the Department identified the following issues as requiring attention:

(1) What types of restructuring "transactions" warrant an allocation of previously received subsidies?

(2) When previously received subsidies are allocated, what should the

basis of the allocation be, relative sales or relative book value?

(3) What portion of a sales price is allocable to the prior owner's subsidies?

(4) What denominator should be used to calculate the net subsidy?

(5) What effect, if any, does a plant closure have on the continued countervailability of previously received subsidies?

(6) Are payments received for the closure of production facilities countervailable?

Discussion

1. Types of Restructuring "Transactions" and the Allocation of Previously Received Subsidies

A. Internal Corporate Restructuring. One type of restructuring activity is the corporate reorganization in which, most typically, assets are shifted amongst and between various related corporate entities. New corporate structures and relationships are established through the liquidation of corporate entities, the creation of new corporate entities, and the "sale" or transfer of assets between such related entities. No truly "outside" parties enter the corporate organization; rather, a new "web" of corporate relationships is created between old and new corporate entities. However, regardless of what changes occur in the corporate structure, the ultimate shareholder remains unchanged. In these investigations, both state-owned companies and privately-held companies have undertaken such internal corporate restructurings. This type of restructuring occurred with state-owned companies in Austria, Italy, and Spain. It occurred with privately-owned companies in Belgium and Italy.

In Austria, for example, the state-owned steel company, VAAG, has always been owned by the state-owned company (OIAG) which has holdings in many different Austrian industries. Until 1987, VAAG was both a holding company for other companies and a productive enterprise with three separate divisions. It then became solely a holding company by spinning off its divisions, incorporating them, and directly holding each of its productive enterprises. Subsequently, it indirectly controlled its productive enterprises through another holding company it created. More recently, another holding company was created, IBVG, which later became Austrian Industries, which supplanted VAAG. As of 1990, VAAG had no significant holdings of its own, but its sole shareholder remained the state-owned holding company OIAG. OIAG still exercised control through Austrian Industries over the same entities which it had controlled through VAAG.

In Italy, Instituto per la Riscostruzione Industriale (IRI), a public agency of the Italian Government, exercised control of the state-owned steel producing enterprises through the state-owned holding company for the steel sector, Finsider. Throughout the 1980's, Finsider liquidated and created various corporate entities. Italsider previously was the corporate entity which produced merchandise subject to these investigations. It was placed into liquidation and succeeded by Nuova Italsider which was owned by Finsider and Italsider. Italsider eventually "sold" its shares in Nuova Italsider to Finsider. Nuova Italsider was eventually liquidated and Italsider reemerged.

Further changes were made to the corporate structure but one fact remained constant. All companies were held by IRI, a state-owned holding company, through its subsidiary Finsider, a holding company for state-owned steel companies. In 1989, Finsider was liquidated and succeeded by Ilva.

In Spain, a government-owned entity (AHM) sold a subsidiary which produced cold-rolled steel to another government-owned steel-producing entity (ENSIDESA). Each of these entities was owned by INI, a state-owned holding company.

In Belgium, the companies involved in the internal corporate restructuring were privately-held. In 1989, Phenix Works, a producer of coated metal products and a wholly-owned subsidiary of Cockerill Sambre, was merged with Cockerill Sambre. Before the merger, Cockerill Sambre produced hot-rolled and cold-rolled flat products.

In Italy, a similar restructuring occurred with AFL Falck, a privately-held company. Until 1990, AFL Falck was concurrently a manufacturing company, with divisions producing steel strip, steel plate, and steel tubes and a holding company for various subsidiaries, one of which produced a steel product. In 1990, AFL Falck became strictly a holding company by spinning off and incorporating its former divisions as subsidiaries. As part of Falck's restructuring, Ilva purchased a very small share of the company.

In New Zealand, the government entered into a joint-venture agreement with New Zealand Steel (NZS) as a 60 percent shareholder (NZS had 40 percent). Although NZS was a private company, the government was represented on the NZS board of directors.

The purpose of the joint venture, named NZS Development, was to assist NZS to construct additional production facilities that would make NZS a fully integrated producer. The legal structure of the project, a separate corporate entity in which NZS had minority ownership, in no way implies that the joint-venture was expected to operate as a separate company nor to generate sales independently of NZS. The development was legally structured as a corporation solely to shield NZS stockholders from the impact of the large amount of debt that would have been incurred in the start-up period of the project.

Subsequently, while the assets were still incomplete, the two partners agreed to (1) dissolve the joint venture, (2) transfer the assets and a fraction of the outstanding liabilities to NZS, (3) have the government take responsibility for repayment of the bulk of the outstanding debt, and (4) issue to the government shares in NZS that would give the government 81.2 percent ownership share in the consolidated company, NZS. See the New Zealand-specific comments below for a discussion of the Department's determination with respect to this restructuring.

In regard to the type of restructuring described above, the Department has received very few comments from interested parties suggesting that the "sale" or transfer of assets among related entities constitutes a true sale and that previously received subsidies have been paid back or extinguished. An exception is in Italy. During the course of the Italian investigation, the state-owned respondent, Ilva, made the argument that it "purchased" certain assets of Finsider's at a court-determined market price. It claimed that any countervailable benefit was extinguished by this transaction.

In the instant investigations, the Department has not considered internal corporate restructurings that transfer or shuffle assets among related parties to constitute a "sale" for purposes of evaluating the extent to which subsidies pass through from one party to another. Legitimate "sales," for purposes of evaluating the pass-through of subsidies, must involve unrelated parties, one of which must be privately-owned. A sale is necessary to our pass through analysis, because, as explained in the Privatization section of this Appendix, a sale can give rise to repayment of subsidies. In the restructurings described in this section, the purchaser and owner of the entity are ultimately the same and there can be no repayment of subsidies.

In the case of New Zealand, we determine that a reallocation of previously received subsidies should not occur for two reasons. First, because the transaction under consideration was not a sale between unrelated parties, but rather a settlement between two related parties (in the joint venture). Second, because the government has a significant majority interest in both entities involved in the transaction: It had 60 percent interest in the development company prior to the transaction; it owns 82 percent of the consolidated company after the transaction. Therefore, all subsidies bestowed on NZS Development are passed through to NZS.

An important issue with respect to these types of restructurings is the relationship between restructuring and the Department's rules for tying subsidies. See 19 CFR 355.47.

When a company receives a general subsidy, the Department does not attempt to "trace" or establish how the subsidy was used. The countervailable benefit is not tied to the production or sale of a particular product or products. Nor is it tied to the sale of products to a particular market. Instead, the benefit is allocated to all products produced by the firm. See 19 CFR 355.47(c)(1).

However, there are instances in which the Department may determine that a countervailable benefit is tied to the production or sale of a particular product or products. For example, in Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Austria, 50 FR 33369 (August 19, 1985), VAAG was required to transfer a portion of the equity infusions it received to an affiliated company. The Department found these benefits to be tied to the affiliate's production.

Moreover, because the affiliated company did not produce or export the subject merchandise, the Department did not consider equity infusions to the affiliated company to benefit the subject merchandise. Thus, if the benefit is tied to a product other than the merchandise under investigation, the Department will not find a countervailable subsidy on the subject merchandise. See 19 CFR 355.47(a).

In many of the internal corporate restructurings at issue in these investigations, the subsidies provided by the government were not tied to a specific product or to a particular market. As a result, the net benefit will be calculated using a denominator which reflects the total sales of the company, excluding foreign production. See the Denominator section of this Appendix. In other internal corporate restructurings, the Department considers the benefits received by the company under certain programs to be tied to a specific product or products. If the product which benefitted from the subsidy is under investigation, the net benefit will be calculated using a denominator which reflects total sales of the benefitted merchandise.

Using the Austrian example from above, VAAG was provided capital by the Government of Austria and directed to make equity infusions into a subsidiary which did not, at the time, produce the subject merchandise. This subsidiary eventually spun off its production to two of its subsidiaries and subsequently became the holding company for the producer of the subject merchandise. In this instance, the Department has determined that the countervailable benefit from the equity infusions continue to be tied to the non-subject merchandise.

Another restructuring issue which the Department has addressed in Austria is how to allocate the subsidies VAAG received prior to 1987 to the divisions that became subsidiaries in 1987. The division that produced the subject merchandise became the wholly-owned subsidiary, VA Linz. In this instance, the Department has measured the amount of the subsidies which are attributable to VA Linz by calculating the percentage which VA Linz's assets as of January 1, 1987 represented of the value of VAAG's unconsolidated total assets on December 31, 1986 (i.e., pre-restructuring). See the Allocation of Subsidies Based on Asset Value section below for further discussion of the Department's allocation of previously-received subsidies. We applied this percentage to VAAG's subsidy amount to calculate the portion of the subsidy allocable to VA Linz. We then applied the methodology described in the Allocation and Equity sections of this Appendix to calculate the benefit to VA Linz from the subsidies. The benefit to VA Linz was divided by the total sales of VA Linz products during the POI.

The Department applied a similar methodology in order to calculate that portion of losses which VAAG assumed at the time of its restructuring in 1987 which was properly allocable to VA Linz. VA Linz's share of VAAG's losses was calculated by the Department based on the ratio of its asset value to total VAAG assets. Using the methodology outlined in the Allocation and Equity sections of this Appendix, the benefit for the POI was divided by VA Linz's total sales.

In Belgium, the Department has used BIA for Cockerill Sambre. Therefore, it has not evaluated the corporate restructurings of Cockerill Sambre and Phenix Works, including the Government of Belgium's assumption of costs related to the closing of the Cockerill's Valfil plant, and any possible effect such restructurings may have upon the methodological assumptions underlying the petition or preliminary determination. See the Best Information Available section of the **Federal Register** notice entitled Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, which is published concurrently with this **Federal Register** notice.

In Italy, the Department considers Falck's pre-restructuring subsidies to be tied to Falck's production of certain steel products. For each of these subsidy programs, Falck received benefits because it was a steel producer, not because of its other activities. For example, Falck received interest contributions under Law 193/1984 from the Government of Italy. These contributions were limited only to steel producing enterprises. Therefore, the denominator to be used in calculating the net benefit from this pre-restructuring subsidy is Falck's sales of those steel products which it produced prior to becoming strictly a holding company. An exception, however, is the closure payment which Falck received for its tube facility. As explained below, this payment is considered to benefit Falck's remaining production activities. Thus, it has been allocated over Falck's total consolidated sales.

With respect to Ilva and its corporate predecessors, Italsider and Nuova Italsider, the Department has used BIA. Therefore, we have not evaluated the corporate restructurings of these companies or any possible effect such restructurings may have upon the methodological assumptions underlying the petition or preliminary determination. See the Best Information Available section of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy, which is published concurrently with this **Federal Register** notice.

In New Zealand, the government's participation in the development project benefitted NZS because as a result of the project NZS became a fully integrated steel producer. The expansion of the production facilities resulting from the project changed the nature and the scale of the preexisting firm: NZS increased fourfold its iron and steel making facilities and expanded the range of its products. We have, therefore, determined that the subsidy bestowed by the government upon NZS Development through its capital infusions directly benefitted NZS from the very inception of the project. We find that the subsidy was not tied to specific types of merchandise produced by NZS. Therefore, we allocated the benefit calculated for the POI over total sales by NZS for the same period.

In Spain, the Department has determined that the equity infusions made by the Government of Spain into AHM were not tied to specific uses or types of merchandise. Hence, the infusions benefitted all merchandise produced by AHM. However, AHM closed its hot rolling mill. For the reasons explained below, we have attributed AHM's subsidies to its cold rolling operations. When AHM spun-off its cold-rolled operations, the Department considered the benefit to have passed through to the "purchaser," ENSIDESA. The benefit to ENSIDESA was divided by its total sales of all products.

B. Mergers, Spin-Offs, and Acquisitions. Corporate restructurings may also be accomplished through mergers, spin-offs, and acquisitions. These transactions have occurred between a state-owned enterprise and a privately-owned enterprise, and between privately-owned enterprises. This type of restructuring activity may involve a "sale" of an operation to another party or a party can spin off, or contribute, a portion of its operation to a joint venture. These types of restructuring occurred in Austria, Sweden, and the United Kingdom.

Two issues arise in these types of restructurings: (1) What is a "productive unit"? and (2) On what basis should the Department allocate subsidies to the productive unit?

Subsidy Allocation to Productive Units Which Are Sold. In U.K. Bismuth, the Department determined that subsidies were not extinguished when a productive unit was sold. Instead, some portion of prior subsidies received by the seller "travel (with the productive unit) to its new home:"

"* * * the Department determines that a company's sale of a 'business' or 'productive unit' does not alter the effect of previously bestowed subsidies. The Department does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit."

In U.K. Bismuth, the Department had to consider at what level it would apply a pass-through analysis. In other words, would subsidies pass-through whenever any asset was sold or would the Department require that the sale involve something more than physical assets?

Citing the administrative infeasibility of allocating subsidies to each individual asset sold by a company, the Department established a minimum threshold, the productive unit. Although the Department did not define what constituted a productive unit, the Department allocated subsidies to the steel works and re-rolling mills that BrSC transferred to United Engineering Steels Ltd.

In these determinations, the Department continues to use the concept of productive unit as the minimum threshold to be met before it will reallocate prior subsidies received by the seller. At the same time, we have attempted to define the term.

Petitioners suggest that the threshold for defining a business or productive unit is whether the operation in question is capable of sustaining sales independently of the parent company. Petitioners also suggest that a business or productive unit involves the bundling of productive assets with other indicia of an operating company such as employees, customers, revenues, and liabilities. Another indicator of whether a business or productive unit exists, in petitioner's view, is if the assets are treated as a profit center because profit centers incur costs and generate revenues.

The Department considers this definition of a productive unit as too restrictive. It would limit the allocation of subsidies to only the largest asset sales, thereby overlooking a number of asset configurations which clearly benefit from the subsidies under investigation. Moreover, it could result in different treatment where identical assets were sold depending on whether a company had set up that part of its operations as a profit center or not.

In these investigations, the Department has adopted the following threshold for defining those situations in which prior subsidies are potentially allocable to the operation being spun off. In order to be considered a productive unit, the spun-off operation must be capable of (1) generating sales and (2) operating independently.

The allocation of subsidies when productive units, as defined above, are sold is consistent with the statute and is administratively feasible. By allocating subsidies to the sale of these assets, we are fulfilling the intent of the statute to capture subsidies benefitting the manufacture, production or exportation of merchandise. 19 U.S.C. section 1671(a)(1).

In adopting this definition, the Department is excluding what are commonly referred to as "bare assets." Among the totality of assets owned by a company, there will be many that are not related to the production, manufacture, or exportation of merchandise. The Department will not consider allocating subsidies to these assets, when sold, because the allocation of subsidies to these types of assets is not contemplated by the statute.

Subsidy Allocation on the Basis of Sales Value or Book Value of Assets Having clarified our definition of productive unit, we must next identify the basis upon which any subsidy pass-through is calculated. In U.K. Bismuth, the Department stated that pass-through benefits should be measured on the basis of sales values, i.e., when a productive unit was sold the portion of prior subsidies allocable to the productive unit was determined by the ratio of the sales attributable to the productive unit compared to the seller's total sales. However, because we lacked the appropriate sales information to perform this calculation, the Department resorted to asset values, i.e., the book value of assets in the productive unit divided by the total book value of the seller.

In these investigations, the Department has determined that asset values are the more appropriate basis upon which to measure the portion of the subsidy which potentially passes through. The amount of the potential pass-through subsidy is calculated by applying the ratio of the book value of the productive unit sold to the book value of the assets of the entire company at the time the productive unit is spun-off to the net present value of the remaining subsidies received by the company selling the productive unit. For further discussion of the Department's pass-through calculation, see the "The Calculation of the Portion of the Sale Price Allocable to Previously Received Subsidies" section below.

The Department's preference for using asset value derives from the refinements we have made in identifying a productive unit. Given our definition, the value of a productive unit's sales may not be identifiable. Unless the productive unit is also a profit center, it would be necessary to make various assumptions to allocate sales to a given productive unit. This "constructed" sales value would be artificial and administratively cumbersome. Use of book value eliminates this problem because a company will normally maintain records of book values.

The Calculation of the Portion of the Sale Price Allocable to Previously Received Subsidies. The Department has defined productive units and identified how we will calculate the potential amount of prior subsidies that can pass through when a productive unit is sold.

Additionally, in these investigations, the Department affirms its determination in U.K. Bismuth that subsidies "travel to their new home" when a productive unit is sold. However, unlike the U.K. Bismuth case, we no longer assume that the entire amount of subsidies allocated to the productive unit follows the productive unit. Instead, consistent with the Department's position regarding privatization, the Department will analyze the spin-off and acquisition of productive units to assess what portion of the sale price of the productive unit repays prior subsidies given to the seller of the productive unit.

To perform the calculation, we first determine the amount of seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divided the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then applied this ratio to the net present value of the seller's remaining subsidies.

We next estimated the portion of the purchase price going towards repayment of prior subsidies by dividing the face value of the allocable subsidies received by the selling company for each year from 1977 through the year prior to the spin-off by that company's net worth in the same year. A simple average of these amounts was then applied to the purchase price of the productive unit.

Finally, to determine the value of subsidies remaining with the selling company, we subtracted the portion of the purchase price going towards repayment of prior subsidies from the amount of subsidies the productive unit could potentially take with it. We next divided this result by the total value of the seller's subsidies in the year of the spin-off. The future subsidy benefit streams of the seller were reduced by this ratio.

Country Specific Mergers, Acquisitions, and Spin-Offs and Subsidy Allocations. As stated above, these types of restructurings occurred in Austria, Sweden, and the United Kingdom.

In Austria, one of VAAG's subsidiaries was Bayou Steel, a U.S. steel company. Bayou Steel was sold by VAAG in 1986. As stated in the Denominator section of this Appendix, we have determined that funds VAAG received from the GOA benefitted Bayou Steel. Therefore, the sale of this subsidiary requires that we allocate a portion of VAAG's previously received subsidies to Bayou Steel and reduce the amount of VAAG's subsidy, accordingly.

The Department, however, has not made this adjustment. At verification, the Department attempted to collect data from the respondents regarding the sale price of Bayou Steel. Respondent did not provide this information. Lacking this information, the Department cannot allocate a portion of the sale price to repayment of subsidies and cannot reduce the amount of subsidies remaining with VAAG.

In Sweden, the respondent, SSAB, received subsidies which were tied to specific products. The productive units producing these products were sold by the company prior to the period of investigation. For example, SSAB received a grant for an engineering workshop which it no longer owns. It also received specific subsidies for various projects at certain mines which it no longer owns.

The Department has concluded that, although a grant SSAB received was tied to the engineering workshop it no longer owns, the activities of the workshop may have benefitted the subject merchandise. Therefore, the grant has been included in calculating SSAB's subsidy. Consequently, when the workshop was sold, we allocated a portion of SSAB's subsidies to the engineering workshop according to the methodology described above. The future subsidy benefit streams of SSAB have been adjusted to reflect the sale of this productive unit.

The Department also considers the subsidies SSAB received for mines, which it no longer owns, to be tied to the mines. However, because these mines produced an input product for SSAB's production of the subject merchandise, the subject merchandise benefitted from these subsidies. Therefore, these grants have been included in SSAB's subsidy. However, we have not allocated subsidies to the mines that were sold. Because they were "sold" to the Government of Sweden, we do not consider this a legitimate "sale" for purposes of allocating subsidies. Therefore, we have not reduced SSAB's subsidies to reflect a payback of subsidies through the sale of its mines. For identical reasons, we have not adjusted SSAB's subsidies for the sale of the TGOJ railway.

Between 1979 and 1991, SSAB also sold to unrelated parties, or contributed to various joint ventures, a number of productive units. Pursuant to the methodology described above, we have allocated a portion of SSAB's subsidies to these productive units. Accordingly, we reduced the future subsidy benefit streams of SSAB.

In the U.K. case, respondent's predecessor, BSC, spun off a large number of productive units. For each transaction in which a productive unit was sold or contributed to a joint venture, we allocated a portion of BSC's subsidies to these productive units. Accordingly, we reduced the future subsidy benefit streams of BS plc.

C. Corporate Restructuring Through the Closure of Plants. The closure of plants or productive facilities is another type of corporate restructuring. It is distinguishable from the merger, acquisition or spin-off analysis because there is no sale or transfer of a productive unit. In this case, the productive unit is simply shut down.

There are two issues relevant to the closure of plants or other productive facilities. The first relates to the allocation of previously bestowed general subsidies provided to a company prior to the closing of certain productive facilities. The second relates to payments made to a company by the government for the express purpose of closing certain productive facilities.

The Allocation of Previously Received Subsidies to Plants. The Department maintains its position that subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company. The rationale underlying this position is that once inefficient facilities are closed, the company can dedicate its resources to production at its remaining facilities. Thus, subsidies do not diminish or disappear upon the closure of certain facilities but rather are spread throughout, and benefit, the remainder of the company's operations.

This situation is present in the current investigation of certain products from Spain. In these final determinations, the Department found that all previously bestowed subsidies to AHM (which included one hot-rolled facility and one cold-rolled facility) flowed to the cold-rolled facility when the hot-rolled facility was closed down.

The Department's position on plant closure is supported by the CIT's finding in (*BSC I*) that "the competitive benefit of funds used to acquire assets does not cease upon the assets' premature retirement, but rather such benefit continues to contribute to the firm's manufacture, production or exportation of products accomplished by the firm's remaining assets." (*BSC I* at 295–296)

Payments for Plant Closure. The Department has determined in the past that subsidies which are used to shut down redundant facilities are countervailable because they relieve the company of a financial burden. This was confirmed by the CIT in *BSC I*. In that decision, the Court stated that "The apparent purpose of "restructuring" *viz.*, closing obsolete facilities, eliminating excess capacity and laying off unnecessary workers, is to reduce costs and enhance the competitiveness of the remaining enterprise." (*BSC I*, at 293).

Therefore, the Court determined that the closing of plants resulted in the increased efficiency of the company as a whole. In turn, the increased efficiency makes the company more competitive. It necessarily follows that closure subsidies benefit a company's remaining production beyond the year of receipt. The basis for finding funds for government-directed plant closure countervailable is that these funds relieve the company of the costs it would have incurred in closing down the plant. Therefore, because the company has been relieved of a cost, the funds benefit the company as a whole, and the appropriate denominator for calculating the benefit of such funds would be total sales of all products.

In the current steel investigations, the issue of the countervailability of closure payments for plants which do not produce subject merchandise has been raised in the case of Italy. It has been argued that because plant closure results in the reduction of capacity, subsidies that promote such reduction cannot fall into the category of benefitting the manufacture, production or export of subject merchandise. However, as stated above, the Department's determination reflects the fact that once inefficient facilities are closed, the company can dedicate its resources to the efficient production of the remaining facilities. Therefore, closure payments for plants producing subject and non-subject merchandise alike are countervailable.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding restructuring issues which have not been previously addressed in this notice or in other notices are addressed below.

Comment 1: Petitioners claim that in U.K. Bismuth, the Department properly focused on subsidy benefits to merchandise, and not on any alleged benefits to the owner of the productive units generating the merchandise. As in privatization, therefore, petitioners suggest that given (1) the language of the statute describing the countervailing of "subsidies" to merchandise, and (2) the definition of a subsidy followed by the Department, a change in ownership of a productive unit does not justify a reallocation of the subsidies to other merchandise.

Petitioners claim that because a change in ownership does not cause a reallocation of resources within the national economy and eliminate the distortion caused by the original subsidy, the subsidy continues to exist and benefit the same merchandise it benefitted prior to the sale. They contend that, even if the sale occurs at a fair market price, the sale does not result in a reallocation of resources. The distortion to the market for the merchandise continues because the productive units would not have existed without the subsidy.

Petitioners contend that *BSC II* does not support respondents' proposition that the CVD law is concerned with off-setting benefits to producers, as opposed to merchandise. Petitioners also contend that respondents' argument that the Department is required to "provide any analysis of how the past subsidies are benefitting the current producer of the subject merchandise" misstates the law and shows a basic misunderstanding of the statute. The Department is neither required nor permitted to determine in each year over which a benefit is amortized whether the competitive benefit continues to have an effect.

Respondents argue that past subsidies do not continue to benefit a productive unit once it is sold at a market price to an independent company. Respondents disagree with petitioner that subsidies benefit productive units or the merchandise produced by productive units. Respondents instead argue that subsidies only benefit the producer of the merchandise that actually received the subsidies.

Respondents submit that once a productive unit is no longer a part of the subsidized company, the productive unit no longer enjoys the lower costs that were a result of the subsidized company's lower capital costs. Accordingly, any future merchandise from this productive unit should not be subject to countervailing duties (unless the productive unit was not purchased at a market price).

DOC Position: The basic arguments raised here regarding the distortion caused by subsidies and whether subsidies benefit "products" or "producers" are identical to the arguments filed on privatization. We have addressed them in that context. See the Privatization section of this Appendix.

Comment 2 (Austria): Petitioners argue that, following the 1987 restructuring of the Austrian steel industry, the benefits from subsidies previously given to VAAG passed through to VA Linz. The subsidies benefitted not the companies, but rather the manufacture, production, and export of the subject merchandise by VAAG (pre-1987) and VA Linz (post-1987). The Department should, therefore, follow the precedent established in U.K. Bismuth and consider the benefits to have followed the productive unit (i.e., VA Linz).

Moreover, in calculating the benefit passed through by VAAG to VA Linz, petitioners argue that the amount of the benefit need not be adjusted for the disposal of any assets, as was done in U.K. Bismuth, since VAAG made no significant dispositions.

To determine the amount of subsidy benefits passed through to VA Linz, petitioners assert that the Department should use the ratio of the 1986 sales attributable to VA Linz (when it was a division of VAAG) to VAAG's unconsolidated 1986 sales. Petitioners argue that VAAG's unconsolidated sales should be used because its subsidiaries would not have benefitted from subsidies provided to VAAG.

Petitioners assert that Austrian Industries (AI) is not the corporate successor to VAAG and its sales should not be used as denominator for calculating the net subsidy. AI and VAAG are very different companies and cannot be equated. Petitioners also argue that the use of assets, instead of sales, to apportion past subsidy benefits has not been adequately justified by respondents.

Respondents contend that the VAAG annual reports do, in fact, identify significant asset dispositions prior to restructuring. This information was not provided in the response because the Department did not ask for it. However, since the issue of asset dispositions became relevant only after the final determination in U.K. Bismuth, the Department should request this information.

Respondents further argue that if the Department decides not to treat AI as the successor to VAAG, it should allocate subsidies received by VAAG to VA Linz using assets, not sales. However, if the Department chooses to allocate according to sales, it should use VAAG's consolidated sales as the denominator since VAAG's subsidiaries did benefit from subsidies to VAAG. In fact, respondents assert, it is because some of these subsidiaries suffered very large losses that the GOA provided funds to VAAG.

DOC Position: See sections I. A. and B. of the Restructuring discussion above. If the Department had been provided adequate information regarding the sale of productive units prior to restructuring, the Department would have allocated a portion of previously received subsidies to those productive units. Respondents have made the general statement that there were sales of assets prior to restructuring. With the exception of Bayou Steel, however, respondents have provided no information regarding the assets which were sold. With respect to Bayou Steel, respondents failed to provide its sales price, despite the Department's request at verification. Therefore, the Department has not allocated any portion of VAAG's subsidies to assets it sold.

We agree with petitioners that AI is not a successor to VAAG as AI owns more and different businesses than VAAG. Instead, to calculate the benefit for the subject merchandise, we apportioned the benefit received by VAAG on the basis of the ratio of VA Linz's assets to VAAG's unconsolidated assets. We used VAAG's unconsolidated assets because we attribute the benefit from subsidies received by VAAG to the productive operations contained within VAAG, not to the production of any of its subsidiaries. VA Linz's sales for the POI were used to calculate the net subsidy.

Comment 3 (Austria): Respondents argue that since Bayou Steel was sold by VAAG in 1986, the Department cannot consider the subsidies given to Bayou Steel as currently benefitting VA Linz. In U.K. Bismuth, the Department determined that components of previously subsidized companies which are subsequently disposed of take a portion of the benefits with them. Respondents assert that to continue to attribute subsidy benefits to VA Linz which were provided to Bayou Steel would be entirely inconsistent with the Department's above-mentioned methodology.

Respondents request that the Department reject petitioners' arguments that subsidies do not follow productive units that are closed down or sold outside of the country that provided the original subsidy because these arguments are economically and legally illogical.

Petitioners assert that the precedent from U.K. Bismuth does not apply with respect to Bayou Steel. Bayou Steel was not an operating unit of VAAG, but merely a project of VAAG's engineering division which VAAG was forced to operate when the prospective buyers defaulted. Petitioners argue that because funds may have been used to support the Bayou project, they necessarily benefitted VAAG's engineering division and, thus, VAAG as a whole. In addition, petitioners assert that since Bayou Steel was spun off during the restructuring, not before, there is no need to adjust for subsidies previously passed-through.

DOC Position: See the Denominator section of this Appendix for a discussion of whether subsidies may be attributed to foreign subsidiaries.

For the years 1983, 1984, and 1986, the Department has determined that the subsidies which VAAG received benefitted its worldwide operations. Therefore, it would be appropriate to allocate a portion of VAAG's subsidies in these years to the productive units sold by VAAG, regardless of their location. However, as stated in the DOC Position to Comment 1, and in section I.B. of the Restructuring discussion, we have not made this adjustment.

Additionally, whether the sale of Bayou Steel occurred prior to or during VAAG's restructuring, it would not have affected that Department's decision to allocate subsidies to it or the portion of VAAG's subsidies which it potentially could have taken with it.

Comment 4 (Austria): Petitioners argue even if the Department finds that the 1981–82 equity infusions were, in fact, given to VEW, these infusions benefitted VAS when it was formed out of the "bare shell" of VEW. Despite the fact that the productive operations of VEW (Böhler and Scholler Bleckmann) were sold off, the subsidies given in 1981–82 were passed through to VAS through the assets remaining with VEW.

DOC Position: As stated above in section I.A., the Department has determined that the benefit from these infusions is tied to the merchandise produced by VEW's subsidiaries. The intent of the statute is to countervail those subsidies benefitting the manufacture, production or exportation of merchandise. See U.S.C. § 1671(a)(1). Because VEW spun off its productive units to its subsidiaries and became a "bare shell," no subsidies resided in VEW when it became VAS. Rather, all previously received subsidies remained with its former subsidiaries, Böhler and Scholler Bleckmann.

Comment 5 (Italy): Falck claims that closure payments do not fit the Department's definition of a subsidy because they are provided for the reduction of productive capacity, rather than for the manufacture, production or export of the subject merchandise. Respondent argues that where the Department previously determined that closure payments were countervailable, it was based on a finding that the capacity reductions increased the recipient company's efficiency and eliminated unprofitable or unproductive facilities.

In this instance, respondent states that no evidence exists on the record that the payments it received reduced its inefficiency, improved its efficiency, kept it from incurring closing costs it would have otherwise incurred, or provided a benefit which it would not have realized if its plants had stayed open. In fact, respondent asserts that it was operating efficiently, and cites as evidence of this the Department's preliminary determination that it was creditworthy for certain years.

Citing Final Affirmative Countervailing Duty Determinations: Stainless Steel Sheet, Strip and Plate from the United Kingdom, 48 FR 19048 (April 27, 1983), respondent adds that if the Department determines that closure payments are countervailable, the closure payments should be allocated over Falck's total sales of all products.

Petitioners argue that Falck's remaining facilities, not the closed facilities, benefitted from the closure payments. They claim that Falck's overall efficiency was increased by the closure. Petitioners further argue that the Department's preliminary determination of Falck's creditworthiness during those years is irrelevant. A more significant indicator is the fact that Falck lost money in each of the years that the company received the closure payments, thereby indicating that not all of its facilities were making money and operating near capacity. Petitioners maintain that absent the closure payments, the company would have had to bear either the costs of closing these facilities or the cost of maintaining inefficient operations.

DOC Position: See section I.C. of the Restructuring discussion above. Moreover, Falck is effectively asking the Department to trace the use and effect of subsidies received for plant closure. See the Privatization section of this Appendix for an elaboration as to why the Department rejects this argument.

Comment 6 (Germany): Respondent argues that the Department should have allocated the benefit of the debt forgiveness over the sales of Saarstahl AG rather than the total sales of Dillinger Hütte Saarstahl AG (DHS) because the forgiven debt was incurred with respect to Saarstahl's sales, which are not subject to this investigation. Furthermore, respondent argues that the Department should not consider any benefits bestowed upon Saarstahl's predecessor companies to have passed through to the new entity DHS because Saarstahl SVK was privatized in an arm's length transaction which involved a change of majority ownership and control.

Petitioners argue that the creation of the holding company DHS, which placed both Saarstahl AG and Dillinger under the same ownership, should not extinguish the subsidies provided to the predecessor of DHS, i.e., Saarstahl SVK. Petitioners state that this transaction was a mere restructuring of Saarstahl SVK's assets. Accordingly, the Department should continue to find Saarstahl SVK's debt forgiveness by the Government of Germany and the Government of Saarland countervailable. Petitioners state that this would be consistent with the Department's Germany Bismuth.

Petitioners maintain that the subject merchandise produced by Dillinger received a benefit through the debt forgiveness because DHS is the holding company, and the true beneficiaries of the forgiveness were its production subsidiaries. Furthermore, without the forgiveness, DHS would have been liable for this debt. Therefore, petitioners argue that the Department should conclude in its final determinations that Dillinger received a countervailable benefit resulting from the debt forgiveness.

DOC Position: The Department determined in Germany Bismuth that this debt forgiveness was allocable to DHS because the restructuring would not have occurred but for the government's intervention. However, the Department's decisions in these final determinations regarding privatization and restructuring have caused us to revisit our earlier analysis of the creation of DHS. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany, which is published concurrently with this **Federal Register** notice, for a complete description of the restructuring.

The Department has determined that the April 1989 agreement between the Government of Saarland and Usinor Sacilor constitutes a sale of Saarstahl by the Government of Saarland to DHS. In this transaction, the Government of Saarland sold one hundred percent of Saarstahl SVK in return for a 27.5 percent interest in DHS.

Therefore, the Department applied the calculation methodology described in the Privatization section of this Appendix. Because the portion of the sales price allocable to previously received subsidies was less than the maximum amount of the potential subsidy passed through, the Department attributed the remaining amount of the subsidies to DHS.

Comment 7 (New Zealand): The respondents allege that the GONZ's actions during the Reconstruction and Reconstruction Consolidation were specifically tied to the production of non-subject merchandise. All of the debt at issue was incurred to establish the NZS Development semifinished and hot- and cold-rolling production lines. Likewise, the NZS debt assumed by the GONZ in exchange for preference shares had been obtained specifically to finance continued work on the new hot- and cold-rolling facilities. As a result, the Department must follow its long-standing practice of allocating any subsidy that may exist entirely to hot- and cold-rolled steel, as only those facilities could have received any conceivable countervailable benefits from the GONZ's actions.

Petitioners contend that from its inception, NZS Development was set up to construct hot- and cold-rolling mills that would bridge the gap between producing semi-finished and galvanized products, and establish NZS as a fully integrated steel company. Therefore, they argue that the benefit bestowed by the GONZ when it assumed NZS Development's liabilities in 1985 benefitted the manufacture, production, or exportation of the subject merchandise.

DOC Position: We disagree with respondents. The GONZ participated in a construction project, NZS Development, aimed primarily at the overall expansion of the production facilities of the existing company, NZS. As a result of the project, NZS was to increase its iron and steel making facilities and expand the range of its products in the semi-finished, intermediate, and finished product areas. We have, therefore, determined that the subsidy bestowed by the GONZ upon NZS Development and NZS through its equity infusion and subsequent debt relief benefitted NZS directly because NZS became an integrated producer as a result of the project. We find that the subsidy was not tied to a specific type of merchandise.

As a general rule, subsidies will be allocated across all sales of the company receiving the subsidy (Proposed Regulations at 355.47(c)). Only if the agency determines that benefits were tied to the production or sale of a particular product or products will it allocate those benefits to the sale of those products only (Proposed Regulations at 355.47(a)). In the instant case, we have determined that the subsidies in question consist of debt relief and equity infusions to NZS and NZS's wholly-owned subsidiary NZS Development. These subsidies, by definition, benefit the company as a whole and are allocated over total sales.

Comment 8 (New Zealand): The respondents argue that the petitioners' failure to allege or demonstrate the existence of an upstream subsidy does not allow the Department to investigate whether any upstream subsidies are passed through to the galvanizing line as a result of the GONZ's prior involvement in NZS Development's hot- and cold-rolling facilities.

DOC Position: We disagree with respondents. As discussed in the previous comment, the Department has determined that the subsidies in question are untied and should be allocated to NZS's total sales. The Department has repeatedly held that equity infusions benefit all aspects of a firm's activities (see Industrial Nitrocellulose from France). Therefore, NZS's invocation of the upstream subsidies provisions of 19 U.S.C. section 1677–1 is misplaced.

Comment 9 (New Zealand): The respondents maintain that since the petitioners have not demonstrated that the subsequent completion and commissioning of the NZS Development's assets has encouraged or otherwise affected either the production or exportation of NZS's corrosion-resistant steel, it would be unreasonable to allocate any such benefits over NZS's galvanized steel products. NZS's capacity to produce corrosion-resistant steel has remained essentially constant since the original equipment was constructed in 1968. Therefore, there is no benefit to the subject merchandise.

DOC Position: We disagree with respondents that because the galvanizing capacity of New Zealand Steel may not have changed as a resu of the project, no benefit was bestowed on the manufacture or exportation of subject merchandise. The development project transformed NZS into a fully integrated steel producer. Furthermore, the expanded manufacturing facilities directly affected the substrate of the galvanized product in several very important respects: cost, quality, and delivery time. Therefore, we stand by our determination that the government's participation in the development project and its subsequent relief of the outstanding debt related to that project directly benefitted NZS total production, included the subject merchandise.

Comment 10 (Spain): Respondents assert that, if the Department allocates subsidies received by AHM only to ENSIDESA's sales of cold-rolled steel, it should include in the denominator the electro-zinc plated products that are also produced by SIDMED at the cold-rolling mill in the denominator. Also, as of July 1991, 32.5 percent of SIDMED was sold to SOLLAC. Therefore, any subsidies should be diluted by this percentage.

Petitioners contend that AHM's subsidies should not be diluted by SIDMED's production of electro-zinc plated steel products because there is no verified information on the record to support its contention. Nor should SIDMED's subsidies be apportioned between ENSIDESA and SOLLAC (the French company that acquired a 32.5 percent interest in SIDMED in 1991) because the purchase of equity is irrelevant to the benefit provided.

DOC Position: As discussed above, we have determined that benefits received by AHM passed-through to ENSIDESA when ENSIDESA acquired SIDMED. Since we divided the benefits to AHM by total ENSIDESA sales, respondents' first comment is moot.

We agree in principle with respondent that SOLLAC's purchase of a minority stake of SIDMED from ENSIDESA, may require the allocation between SOLLAC and ENSIDESA of previously received subsidies. However, we do not have adequate information to analyze this transaction and, if appropriate, allocate the prior subsidies.

Comment 11 (United Kingdom): Petitioners argue that respondent failed to provide sales data for those disposals or joint ventures which may actually involve a business or productive unit, despite its likely possession of such information. Petitioners claim that much of the information is easily available to respondent in its own annual reports. Considering respondent's failure to provide adequate information in response to the Department's inquiry, as the best information available, the Department should consider only those dispositions for which sales figures are available as being eligible for subsidy pass-through.

Respondent argues that it informed the Department that it was unable to provide desegregated financial data on individual assets and productive units because (1) it was not given the definition of "productive unit" and (2) to provide data on individual asset transactions, some of which were nearly 12 years old, would have been impossible before the due date. Furthermore, respondent argues that the information cited by petitioners in the annual reports concerning the sales data for joint ventures and disposals is ten or more years old and is not audited. Moreover, preparation for verification of this information was not possible within the time given. According to respondent, the asset book values verified by the Department are the best information available.

DOC Position: Because the Department has decided to use asset value rather than sales value in its allocation of subsidies to productive units, x2petitioners argument that BS plc failed to provide sales information for some of the assets that BSC sold is not relevant. See section I.B. of the Restructuring discussion above.

We have allocated a portion of BSC's subsidies to those productive units which it reported as sold. We used the book value of assets sold to unrelated parties or transferred to joint ventures in which BSC held an interest of fifty percent or less or over which BSC had relinquished managerial control. These amounts were reported in BSC's audited financial statements.

Comment 12 (United Kingdom): According to petitioners, where a parent company disposes of a majority-owned affiliate of which it owns less than 100 percent, only that portion of the subsidies attributable to the parent company's interest in a productive unit should be passed through—the remainder must remain with the parent. Therefore, according to petitioners, in calculating the pass-through of subsidies where BSC disposed of partially-owned subsidiaries, the Department must be certain to adjust the sales of the subsidiary, and thus the allocation of subsidies, to reflect BSC's less than 100 percent ownership.

DOC Position: However, it is reasonable to assume that when BSC reported the value of the assets sold, it was reporting only that share of the affiliate which it owned. This is because BSC cannot sell someone else's assets. Therefore, we believe the adjustment sought by petitioners is implicit in our methodology because we calculated the potential amount of subsidies passed through to the spinoffs using the ratio of book value of BSC's assets spun off to total book value of BSC.

Comment 13 (United Kingdom): The ownership position of BSC/BS plc in various of its joint ventures changed between the time of their formation and the review year. Petitioners stress that the Department should not consider an additional pass-through of subsidies for each new sale of an interest in these joint ventures. According to petitioners, the Department should not set a precedent for allocating additional subsidies each time a new portion of ownership of a related company is sold. Petitioners argue that this would be administratively inconvenient and that share ownership is irrelevant—the unit continues to benefit from the full amount of the subsidy properly allocable to it before the transfer.

DOC Position: The Department determines that a change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a *bona fide* spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position.

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[C-423-806]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Vince Kane, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2239 or 482-2815, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Belgium of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the notice of preliminary determinations in the **Federal Register** (57 FR 57750; December 7, 1992), the following events have occurred.

On December 9, 1993, we issued an additional supplemental questionnaire to all respondents. We issued one more clarification questionnaire to Fabrique de Fer de Charleroi ("Fabfer") on January 6, 1993. Responses to both questionnaires were timely received.

From January 25 to February 11, 1993, we verified responses of the Government of Belgium (GOB) and companies—Sidmar N.V. ("Sidmar") and its related service center; Fabfer; and Forges de Clabecq ("Clabecq").

On February 26, 1993, the Department returned to the GOB its February 11, 1993, submission in accordance with the Department's policy that "new" information presented during verification must be filed at Department headquarters in Washington, DC, within two days after its presentation at verification.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935). On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see, Suspension of Liquidation section, below).

On April 12 and 16, 1993, we received case and rebuttal briefs from both petitioners and respondents. On April 15, 1993, we returned to the GOB exhibits from its case brief as untimely submitted new factual information. Case-specific and general issues hearings were held on April 19, and May 5–6, 1993, respectively.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following three separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate as defined in the Scope Appendix to the Federal Register notice for the companion Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria.

Injury Test

Because Belgium is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Belgium materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Belgium of the subject merchandise (57 FR 38064; August 21, 1992).

Respondents

The GOB is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of respondent companies for each class or kind of merchandise:

Certain Hot-Rolled Carbon Steel Flat Products:
Sidmar, Cockerill Sambre ("Cockerill"), and Clabecq
Certain Cold-Rolled Carbon Steel Flat Products:
Sidmar and Cockerill
Certain Cut-To-Length Carbon Steel Plate:
Clabecq, Fabfer and Cockerill

Best Information Available ("BIA")

Section 776(c) of the Act requires the Department to use best information available (BIA) "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation. * * *"

One of the steel companies included in these investigations, Cockerill, did not respond to our countervailing duty questionnaire. On October 19, 1992, the GOB filed a partial response on the company's behalf. In cases where the government responds on behalf of a non-responding company, we have determined that we will use the government's response to the extent that it serves to establish non-use of certain programs by the company and/or to the extent that it serves to establish that certain programs used by the company are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries.

While we were able to verify Cockerill's non-use of certain programs, we have no verified information relating to Cockerill's use of the remaining programs. For those programs which Cockerill has used and which are specific, we have used BIA in determining to what extent Cockerill benefitted from the program. In light of Cockerill's refusal to participate in these investigations, we have applied BIA using the most adverse assumptions, i.e., using the highest rate among petitioners' rates or previous investigation and review rates on a program by program basis.

We are using petitioners' rates as they are calculated in their submissions to the extent that these rates are methodologically sound. We have reviewed petitioners' calculations and determined that the majority are methodologically reasonable. In those cases where petitioners' calculations are based on an unreasonable methodology, we have adjusted them accordingly or used the higher of the other companies' calculated rates, and rates from previous investigations or reviews.

For those programs for which we were able to verify Cockerill did not use the program or that the program was non-specific, we have adjusted the calculations accordingly. Additionally, in cases where we have verified non-company-specific information (e.g., program interest rates, interest rebate percentage, benchmark interest rates, etc.) we have used this information to adjust the petitioners' calculations.

Where the Department has changed its methodology, as discussed in the General Issues Appendix published concurrently with these determinations, we have not adjusted the petitioners' calculations. Notwithstanding our view that the methodological changes described in the General Issues Appendix represent the most accurate and appropriate methods for identifying and measuring the types of subsidies at issue in these investigations, we do not believe it is necessary to reconfigure the methodological assumptions underlying the petition for purposes of applying BIA. The petitioners' allegations were calculated on the basis of methodologies which were in effect at the time the allegations were made. Since BIA need not represent the most accurate information, but rather is merely a choice of information available on the record of the investigation, we have determined that modification of BIA rates to reflect new methodological thinking is unwarranted.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues;
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these determinations, the period for which we are measuring subsidies (the period of investigation (POI)) for Sidmar is calendar year 1991, which corresponds to its fiscal year. For

Clabecq and Fabfer, the POI is July 1990 through June 1991, which corresponds to their respective fiscal years. For Cockerill, we are using calendar year 1991.

Calculation of Country-Wide Rate

In determining benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. The rates for programs were summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, for each class or kind of merchandise, we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for Cockerill was significantly different from the country-wide rate for all three classes or kinds of merchandise. With respect to cut-to-length plate, Fabfer's rate was also significantly different from the country-wide rate. Therefore, these firms received individual company rates. For the remaining firms, we recalculated the country-wide rate, based only on benefits received by these firms. We then assigned recalculated overall country-wide rates to remaining firms and all other manufacturers, producers, and exporters.

Equityworthiness

Petitioners have alleged that Sidmar was unequityworthy in 1984, Clabecq from 1980 to 1988, and Cockerill from 1980 to 1989; therefore, equity infusions received during those years were inconsistent with commercial considerations. We did not initiate an investigation on petitioners' allegation that Sidmar was unequityworthy because the petition did not contain sufficient evidence to support the allegation. Because Clabecq's and Cockerill's shares are publicly traded, the market price serves as a benchmark price for the value of the shares. Therefore, we have not made an equityworthiness determination for these companies.

Creditworthiness

Petitioners have alleged that Sidmar was uncreditworthy in 1984, Clabecq from 1980 to 1988, and Cockerill from 1980 to 1989. We did not initiate an investigation on petitioners' allegation that Sidmar was uncreditworthy because the petition did not contain sufficient evidence to support the allegation.

Both Cockerill and Clabecq were determined to be uncreditworthy from 1978 to 1981 in Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium 47 FR 39304, (September 7, 1982) (Belgian Steel). Because we have no new information that would lead us to reconsider these determinations, we are again considering the companies to be uncreditworthy during these years. We find Cockerill to be uncreditworthy from 1982 through 1989 based on information contained in the petition, as best information available.

We find Clabecq to be uncreditworthy from 1982 through 1989. From 1979 through 1986, the period three years prior to those years being investigated, Clabecq barely covered, or was unable to cover, interest expenses. In the same years, Clabecq's current assets barely covered current liabilities. For a more detailed explanation of the Department's methodology, please see the Department's memorandum concerning the equityworthiness and creditworthiness of the Belgian steel companies, on file in Room B–099 of the Main Commerce Building.

Related Company

On November 19, 1992, at the Department's request, Sidmar filed a response to our countervailing duty questionnaire on behalf of six related companies. One of these companies, a 99.99 percent-owned steel service center, received benefits from the following programs during the POI:

- Cash Grants/Interest Subsidies under the 1970 Law
- Accelerated Depreciation
- Real Estate Tax Exemption

In calculating Sidmar's subsidy rate, we have included the full amount of benefits received by the service center it acquired. If the appropriate information were available, the Department would have analyzed this acquisition in accordance with the methodology outlined in the Corporate Restructuring section of the General Issues Appendix to determine the portion of the subsidy which passed through to Sidmar. With respect to Sidmar's denominator, we have included the service center's sales for purposes of calculating the subsidy rate.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Belgium of certain steel products under the following programs:

1. *Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970.* The Economic Expansion Law of December 30, 1970 (the 1970 law), offers incentives to promote the establishment of new enterprises or the expansion of existing ones which contribute directly to the creation of new activities and new employment within designated development zones. Although funding for programs under the 1970 Law is from the GOB, the provisions of the 1970 Law are implemented and administered by regional authorities of the Belgian government. Effective January 1, 1986, steel companies in Belgium were precluded by Decree number 3984/85 of the Commission of the European Communities from receiving benefits under the 1970 Law, with the exception of certain explicitly authorized benefits.

Parties have argued the appropriateness of "linking" the 1970 Law with the 1959 Economic Expansion Law (the 1959 Law), under the Department's integral linkage test, to determine the amount of benefits conferred by the 1970 Law. The 1959 Law was found to be non-specific in Belgian Steel and, thus, not countervailable. As stated in the DOC Position to the comment addressing this issue below, we have determined that the integral linkage test applies only to those cases where the issue of specificity is in question. However, with respect to benefits granted under the 1970 Law, the question of specificity is not an issue. This law provides benefits specifically to firms in certain regions of the country. Therefore, we determine benefits provided under this law are provided to a specific enterprise or industry or group of enterprises or industries.

Having found the 1970 Law specific, it is necessary to determine the extent of the benefit provided by the 1970 Law. We have concluded that, absent the 1970 Law, most of the benefits provided under this law would be available under the 1959 Law. The only difference would be the level of benefit received. Therefore, we have determined it appropriate to countervail benefits provided under the 1970 Law only to the extent that they exceed benefits available under the 1959 Law. This approach is consistent with our treatment of tiered levels of benefits, see, for example, Final Negative Countervailing Duty Determination: Certain Granite Products from Italy, ("Granite") 53 FR 27197 (July 19, 1988).

Fabfer, Cockerill, and Sidmar received cash grants for capital equipment under this program to be used in basic steel production. Based on the methodology outlined in the Allocation section of the General Issues Appendix, we found these benefits to be nonrecurring. Furthermore, where benefits to the companies were below 0.5 percent of sales in that year, we expensed the grants in year of receipt. Thus, Sidmar received no benefit during the POI.

For Fabfer and Cockerill, we allocated the benefit over the average useful life of the renewable physical assets in the steel industry, i.e., 15 years (see, the Allocation section of the General Issues Appendix). As our discount rate, we used where possible, company-specific rates, or in the alternative, the long-term fixed rates of Kredietbank, a Belgian private bank. For a further discussion on the topic of the benchmark and discount rates used for purposes of these final determinations, see, DOC Position to the comment addressing this issue below.

Finally, we divided the benefit allocated to 1991 by total 1991 steel sales made by the respective companies, since these benefits are tied to steel assets. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 0.11 percent *ad valorem* for Cockerill and 0.46 percent *ad valorem* for Fabfer for each class or kind produced by each company.

Sidmar also received interest rebates on several loans received and repaid prior to the POI. Because Sidmar knew at the time the loans were received that its interest costs over the life of the loan would be reduced by interest subsidies provided under the 1970 Law, we are treating these interest subsidies as we would treat a reduced rate loan. Consequently, since these loans were not outstanding during the POI, we determine that Sidmar received no benefit from the program. We are assuming that Cockerill used this program based on BIA. We note that petitioners' BIA rate for this program was included in their BIA rate for Cash Grants under the 1970 Law. Therefore, we are not assigning an additional BIA rate for this sub-part of the program.

2. *Government Funding of Early Retirement Pensions*. The early retirement system was established as a result of the lengthy economic recession triggered by the first oil crisis. To alleviate the social hardships stemming from the recession, Collective Labor Convention ("CLC") Number 17 of the National Labor Council provided for additional allowances over and above unemployment benefits for certain laid-off workers over 60 years of age for all industries. Subsequently, the minimum age for requirement was changed to age 55. The amount of the allowance provided for by the Convention was at least one half of the difference between the worker's reference salary and the unemployment benefit. The allowance is to be paid by the last employer, which assumes a contractual obligation for up to 15 years.

Because of the large numbers of steel workers and the massive restructuring of the steel industry, a CLC was negotiated in 1978 specifically for steel companies. This steel CLC exempted steel companies from replacing prepensioned workers until 1990. Also under this steel CLC, steel company workers and employees retiring early receive a special additional allowance of BF2,500 per month.

We have determined that the steel companies have received two types of benefits under these programs. First, under the country-wide CLC 17, companies are clearly obligated to replace their pre-pensioned employees. One aspect of the steel CLC, however, is to allow steel companies to retire workers without replacing them. Therefore, the company is relieved of the obligation and costs associated with hiring and paying new workers until 1990 and is receiving a countervailable benefit from this portion of the program.

We have determined this first type of benefit to be recurring based on the criteria outlined in the Allocation section of the General Issues Appendix. However, we do not have sufficient information on the record to calculate the subsidy. Furthermore, this benefit has not been investigated in prior cases. As a result, we have found a countervailable subsidy, but we have no method by which to calculate the benefit. Given these circumstances, we have determined, absent any other information on the record, it is appropriate to apply a rate that is above *de minimis*. Therefore, we have assigned a rate of 0.50 percent *ad valorem* for this portion of the program.

Secondly, CLC 17 states what all companies in Belgium must pay to prepensioned employees. In the steel CLC, the GOB agreed to help steel companies meet these payments. Since only steel companies are receiving this government assistance to pay the early retirement costs required of all companies, we determine there is a countervailable benefit.

However, the assumption of the BF2500 per week must be differentiated from the assumption of the normal early retirement costs that all companies are required to pay. This additional payment to the workers arose as a result of the steel CLC. The government participated in the negotiation of this CLC and agreed to cover the cost of these payments. As such, the payment was never the obligation of the company. This decision is consistent with the Department's determination in Final Determination of Carbon Steel Wire Rod from Belgium, 47 FR 42403 (September 27, 1982). In that case, the Department investigated the government reimbursements for the additional BF2500. They were not countervailed because the additional payment was not a cost that the company would ordinarily incur.

However, because of the way the information was presented in this case, we are not able to break-out Government payments that served to reimburse the steel companies for the additional BF2500 per week. This is because the government not only reimbursed the companies for this amount, but it also covered a portion of the payments for which the companies were legally obligated and only the total amount of government payments was reported. Therefore, we have countervailed the entire amount of the government assistance under these other programs.

3. *Ecological Incentives*. Under the Royal Decree of April 9, 1975, firms unable to meet the requirements of the Clean Water Act of 1971 could apply for grants from the GOB to cover a portion of the investment needed to meet the requirements. To qualify for incentives, companies had to show that installations conformed with applicable regulations, that the investment would be completed by a specified date, and that building and operating costs were reasonably estimated. The program was established in 1975 and terminated due to budget shortfalls in 1981.

Although grants under this program are not *de jure* limited to a specific enterprise or industry or group of enterprises or industries, we verified that only eight industries (steel, food processing, paper, chemicals and fertilizer, mining, electromechanical, firearms, and cement and ceramics) received benefits under the program. We consider eight industries to be "too few" users and, therefore, constitute evidence of *de facto* specificity per section 355.43(b)(2)(ii) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations). Furthermore, we verified that 45.9 percent of the benefits over the period 1975–1981 were granted to the steel industry. Therefore, we determine that this program is countervailable. Fabfer, Clabecq and Cockerill received benefits under this program. Based on the methodology outlined in the Allocation section of the General Issues Appendix, we have found these benefits to be non-recurring. Where benefits to the companies were below 0.5 percent of sales in that year, we expensed the grants in year of receipt. Based on this, no benefit was realized during the POI by any responding company under this program. For Cockerill, as BIA we have applied the highest calculated rate for any responding company which was 0.00 percent *ad valorem* for each class or kind of merchandise.

4. *Assumption of Debt.*

a. Assumption of Debt Related to Closing of Valfil Plant-Cockerill Sambre. According to information contained in the petition, in 1984, pursuant to the Gandois Plan the Societe Nationale de Credite a l'Industrie (SNCI) provided BF1,616 million in credits to Cockerill to finance the closing of the company's Valfil plant. The SNCI is a public credit institution, which, through medium- and long-term financing, encourages the development and growth of industrial and commercial enterprises in Belgium, including the national industries. SNCI is organized as a limited liability company and is 50-percent owned by the Belgian government.

The Fund pour la Restructuration des Secteurs Nationaux en Region Walloon (FSNW) also advanced capital in the amount of BF236 million to assist in the plant closing. The FSNW was a regional subsidiary of the Societe Nationale pour des Reconstruction des Secteurs Nationaux (SNSN), created in 1983 to assist the SNCI in carrying out the restructuring of the five targeted national sectors (i.e., steel, shipbuilding, coal, textiles, and glass) in Walloon.

In 1984, the GOB directly assumed both debts, relieving the company of its debt obligations. Although related to a plant closing, these debt assumptions clearly benefitted the company. In our Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet, Strip and Plate from the United Kingdom (48 FR 19048, March 16, 1983), we determined that "subsidies used to close redundant facilities * * * clearly constitute countervailable benefits," because they relieve the recipient of significant financial burdens. This determination was upheld in *British Steel Corp.* v. *United States, et al.*, 605 F. Supp. 206 (CIT 1985).

We further note that the Gandois Plan was a plan commissioned and adopted by the GOB in 1983 specifically to assist the Belgian steel industry. In addition, respondents have provided no evidence that any company other than Cockerill benefitted from the particular assistance described under this program.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 0.28 percent *ad valorem* for Cockerill and 0.00 percent *ad valorem* for Fabfer for each class or kind produced by each company.

b. Assumption of Financing Costs—Conversion to OCPC's. On November 23, 1978, and February 2, 1979, the Belgian Council of Ministers decided that the GOB would assume the interest costs of certain steel companies on all medium- and long-term loans agreed to before January 1, 1979. Pursuant to the decision of the Council of Ministers and agreements with the steel companies, the GOB agreed to assume the interest costs in exchange for the companies' promises of conditional future issuances to it of convertible debentures (OCPCs). On this basis, the GOB assumed the interest costs of Sidmar, Cockerill and Clabecq for the five-year period from 1979 through 1983. In 1985, the companies agreed (or in the case of Sidmar, conditionally agreed) to substitute parts beneficiaires for the OCPCs.

As discussed in the Equity Section of the General Issues Appendix, we have determined that the conversion of OCPCs into parts beneficiaires amounts to the conversion of debt to equity. In addition, the GOB's assumption of interest costs in return for parts beneficiaires is limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that the GOB's conversion of debt to parts beneficiaires is countervailable.

As stated previously, we did not initiate an equityworthiness investigation with respect to Sidmar. Therefore, we have determined that the GOB's conversion of its debt to equity does not provide a countervailable benefit to that company.

Because Clabecq's and Cockerill's shares were publicly traded on Belgian markets, we looked to the price in the market to determine whether the GOB paid a premium for the shares. In fact, the GOB paid considerably more for its shares than the market price at that time. Therefore, the GOB's acquisition was on terms inconsistent with commercial considerations.

To measure the benefit from the debt conversion into equity, we calculated the premium paid by the government as the difference between the price paid by the government for the PBs and the market price of the common shares. Consistent with the Allocation section of the General Issues Appendix, we find the resulting benefits to be non-recurring.

Using our declining balance grant methodology and the appropriate discount rate, we allocated the benefit to 1991. We then divided the amount allocated to the POI by the total value of 1991 sales.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.04 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent for certain cold-rolled carbon steel flat products and 2.34 percent for certain carbon steel cut-to-length plate, except for Cockerill and Fabfer, which have significantly different aggregate benefits. The estimated net subsidy for Cockerill is 16.78 percent *ad valorem* for all classes or kinds of merchandise. The estimated net subsidy for Fabfer is 0.00 percent *ad valorem* for cut-to-length plate.

c. Forgiveness of SNCI Loans to Cockerill Sambre. According to petitioners, loans granted by the SNCI in the amount of BF14,947 million were contributed to Cockerill's capital in 1981. Because shares were apparently not issued to SNCI or any government entity for its contribution, this transaction represents debt forgiveness.

Petitioners state that this contribution benefitted Cockerill solely and was undertaken pursuant to the 20–Point Plan developed in 1981 by the GOB in connection with the restructuring of the steel industry. Because this debt forgiveness was on terms inconsistent with commercial considerations and limited to a specific enterprise or industry, or group of enterprises or industries, we have determined it to be countervailable.

For the reasons stated in the Allocation section of the General Issues Appendix, we treated the amount of debt forgiven as a non-recurring grant and, using the appropriate discount rate, allocated the grant over 15 years. Dividing the portion allocated to the POI by total sales, we calculated a benefit for this program. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 2.19 percent *ad valorem* for Cockerill and 0.00 percent *ad valorem* for Fabfer for each class or kind produced by each company.

5. *Debt Conversions.*

a. 1984 Conversion of Sidmar Debt to Preference Shares and Redemption of Preferred Stock. In 1984, the GOB made two share subscriptions in Sidmar pursuant to Royal Decree No. 245 of December 31, 1983. This Royal Decree allowed the GOB to make preference share subscriptions in the steel industry as long as the subscriptions did not go over one-half of the social capital of the company. The SNSN, the government agency purchasing the shares, paid cash for the first subscription, which consisted of ordinary shares in the company. The second subscription, also by SNSN, consisted of preference shares issued in return for the cancellation of certain debt claims held by SNSN against Sidmar.

As stated previously, we did not initiate an equityworthiness investigation with respect to Sidmar. Therefore, we are not investigating SNSN's purchases of ordinary shares.

However, because of the circumstances surrounding the redemption of the preference shares, we have included this debt conversion in our investigations. In 1987, the GOB requested that Sidmar redeem the preference shares early for budgetary reasons. Therefore, in 1989, Sidmar and the GOB agreed to fix the amount due in the year 2004. However, in order to receive some money back immediately, the GOB asked Sidmar to pay the net present value in 1991 for the total due in 2004.

We have determined that the redemption of the preferred shares in 1991 did not give rise to a countervailable benefit. In selling the preferred shares back to Sidmar, we analyzed whether Sidmar paid the net present value in 1991 of the amount due in 2004. Using Sidmar's benchmark interest rate for 1991, we determined that the total amount of money received by the GOB was more than what Sidmar should have paid for the preferred shares. Therefore, we find that this redemption does not provide a countervailable benefit to Sidmar.

b. Conversion of Clabecq Debt into Ordinary and Non-Voting Shares. Pursuant to the approval of the Belgian Council of Ministers on December 30, 1983, the SNSN and Clabecq agreed to convert Clabecq debt held by SNSN to ordinary and non-voting preference shares. On May 23, 1985, Clabecq converted BF211,835,100 in debt owed to SNSN into ordinary shares. Because Clabecq's ordinary shares were publicly traded on Belgian markets, we looked to the price in the market to determine whether SNSN paid a premium for the shares. In fact, SNSN paid considerably more for its shares than the market price at that time. Therefore, the SNSN acquisition was on terms inconsistent with commercial considerations. In addition, this debt conversion was carried out under the Claes Plan which was limited only to the steel industry.

Clabecq also converted BF1.288 billion in debt to non-voting preference shares. The non-voting shares have a right to a dividend of two percent of their nominal value, if the company makes a profit and there is a balance after transfers to reserves. The shares will entitle the holders to a vote after 20 years. The company has to offer to repurchase the preference shares before it can offer to repurchase the ordinary shares. In the event of liquidation, the shares rank after debts and charges but before ordinary shares. Consistent with the methodology outlined in the Equity Section of our General Issues Appendix, we are also treating the non-voting preference shares as equity.

The non-voting preference shares were not publicly traded. Lacking a benchmark for those shares, we have assumed that the government paid a premium for the preference shares equal to the premium paid for the ordinary shares. As mentioned above, the GOB paid considerably more for the ordinary shares than the market price. Therefore, we determine that the GOB's acquisition of these preference shares was also on terms inconsistent with commercial considerations.

To measure the benefit from the two debt conversions into equity, we calculated the premium paid by the government in purchasing the ordinary and the non-voting shares based on the difference between the price paid by the government for these shares and the market price of the common shares. Consistent with the Allocation Section of our General Issues Appendix, we then treated the premiums paid for both the common and the non-voting shares as non-recurring grant and, using our declining balance grant methodology and the appropriate discount rate, allocated them over 15 years. We then divided the amount allocated to the POI by the total value of sales during the POI. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.02 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 1.23 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

c. Conversion of Clabecq's Debt into Parts Beneficiaries. Pursuant to a Belgian Council of Ministers Decision on May 31, 1985, Clabecq converted BF1,499 million of government-held debt directly into 7,300 parts beneficiaries, at a price of approximately BF205,300 per share at the time. Pursuant to the same Council of Ministers Decision, Clabecq converted BF2,049 million of government-held debt into 10,000 parts beneficiaries, at a price of approximately BF204,900 per share. On August 13, 1987, BF104 million in debt owed to the FSNW was converted into 500 parts beneficiaries at a price of BF208,000 per share.

For reasons discussed in the Equity Section of our General Issues Appendix, we are treating these conversions of debt to parts beneficiaries as debt to equity conversions which are limited to a specific enterprise or industry or group of enterprises or industries. Since Clabecq's shares are publicly-traded, we have compared the per share price for the PBs to the price of Clabecq's ordinary shares to find the premium paid by the GOB for the PBs.

We treated the premium as a grant and consistent with the Allocation section of our General Issues Appendix, we allocated the grants over 15 years, using the appropriate discount rate, and divided the amount allocated to the POI by the total value of sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.03 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 1.74 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

d. Conversion of Cockerill Sambre Debt to Equity Under the Claes Plan. Petitioners state that in June 1979, pursuant to the Claes Plan, the GOB converted BF2.051 billion in outstanding SNCI claims against Cockerill into 1,578,150 shares, for approximately BF1,300 per share. The market price for Cockerill's shares at that time was approximately BF491. Also in 1979, the GOB converted debts owed to the SNCI by Hainaut-Sambre and Thy-Marcinelle-Monceau into capital. These companies were later merged with Cockerill.

In Belgian Steel, we found that Cockerill was not a sound commercial investment (i.e., unequityworthy) at the time the GOB acquired these equity positions in it and that the debt conversions made to acquire the equity were on terms inconsistent with commercial considerations and were countervailable. In this investigation, based on petitioners recommendation, we are using the Belgian Steel finding that the equity was acquired on terms inconsistent with commercial considerations as best information available.

Because Cockerill's stock was publicly traded at the time of the government's equity infusions, we have looked to the market to determine the value of the benefit. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. We found the value paid by the GOB to be greater than the market value. Therefore, consistent with the Allocation section of our General Issues Appendix we treated the difference as a non-recurring grant and allocated it over 15 years using the appropriate discount rate, and divided the portion allocated to the POI by the company's total sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.14 percent and 0.00 percent *ad valorem*, respectively.

e. Conversion of Cockerill Sambre Debt Held by FSNW into Equity. According to petitioners, the FSNW was authorized under the Gandois Plan to loan up to BF26.8 billion to Cockerill through the end of 1985, BF5 billion of which was for interest payments. By reference to the company's financial reports, petitioners show that this debt was converted to equity in each of the years from 1985 through 1989. For each conversion, petitioners have also provided the market price for the stock and the price paid by GOB. In each year from 1985 through 1987, the GOB paid a premium for the shares it acquired. Petitioners allege that because the Gandois Plan was limited to the steel industry, the benefits of these debt-to-equity conversions are limited to a specific enterprise or industry. They also allege that Cockerill was unequityworthy and that the conversions were on terms inconsistent with commercial considerations.

Based on information contained in the petition, we have determined this program to be countervailable. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. The value paid by the GOB was greater than the market value in certain instances. Therefore, consistent with the Allocation section of the General Issues Appendix, we treated the difference as a non-recurring grant and allocated it over 15 years using the appropriate discount rate. We then divided the benefit allocated to the POI by the company's total 1991 sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.33 percent and 0.00 percent *ad valorem*, respectively.

With respect to the debt conversions in 1988 and 1989, however, we found that the GOB did not pay a premium for the shares it acquired. Therefore, we find these conversions to be on terms consistent with commercial considerations and not countervailable.

f. Conversion of Cockerill Debt to Equity under the Gandois Plan. According to petitioners, in 1983 the GOB forgave BF15.785 billion of SNCI debt in exchange for common shares in the company priced at BF160 per share, the average market price of Cockerill's shares traded between July and November 1983. Petitioners maintain that the "market-determined" prices were inflated in expectation of future subsidies under the Gandois plan and, hence, do not provide an adequate benchmark for determining whether the Belgian government paid a premium for its shares. Cockerill's average market price from July through November 1983 showed a 66 percent increase over the average price from January through May 1983, whereas the average market price of other steel companies increased only 17 percent over the same period.

Based on this information, we have concluded that the average market price from July through November 1983, which served as the benchmark price for the GOB investment, was inflated by knowledge of future subsidies and should not be used as a benchmark price for the shares. Instead, we have used the average market price for the period January through May 1983 and increased this price by 17 percent to reflect a representative increase in average stock prices over the two periods. On this basis, we found that the GOB paid a premium for these shares.

We treated the premium as a non-recurring grant and consistent with the Allocation section of our General Issues Appendix allocated the amount over 15 years using the appropriate discount rate. We then divided the benefit allocated to the POI by the total value of 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.77 percent and 0.00 percent *ad valorem*, respectively.

6. *Equity Infusions.*

a. Equity Infusions for Hainaut-Sambre. Under the Claes Plan, the GOB purchased equity in Hainaut-Sambre for BF888 million in cash. Hainaut-Sambre has merged entirely with Cockerill. In Belgian Steel, this equity infusion was determined to be countervailable because the GOB paid more per share than the market price of the stock at that time and, hence, its investment was inconsistent with commercial considerations. We have received no information in this investigation indicating that this equity purchase was consistent with commercial considerations.

Lacking any information on the nature of the merger between Hainaut-Sambre and Cockerill, we presume that the benefits to Hainaut-Sambre are now conferred on Cockerill as well. To calculate the benefit, we treated the premium paid by the GOB as a non-recurring grant and, consistent with the Allocation section of the General Issues Appendix, allocated the grant over 15 years using the appropriate discount rate. We divided the portion allocated to the POI by Cockerill's total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.16 percent and 0.00 percent *ad valorem*, respectively.

b. SNSN Capital for Cockerill Sambre's Liege Cold-Rolling Mill. Petitioners note that, pursuant to the Gandois Plan, SNSN purchased 26,666,666 common shares of Cockerill's stock in 1985 for BF6 billion in order to finance an investment in Cockerill's cold-rolling facilities at Liege. SNSN purchased Cockerill's common shares at a price of BF225 per share. The market price of the stock at that time was BF197 per share.

SNSN's provision of capital is restricted to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine it to be countervailable. Because the GOB paid a premium for the shares it purchased, we find the GOB's purchase to be on terms inconsistent with commercial considerations.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.13 percent and 0.00 percent *ad valorem*, respectively.

c. 1981 Equity Infusion into Cockerill Sambre. Petitioners claim that in 1981, the GOB decided to increase the capital of Cockerill by infusing BF11 billion in cash in exchange for equity. The infusion occurred in three stages: BF2.75 billion in cash in 1981, BF5.204 billion in cash in November 1982, and BF3.046 billion in cash in December 1982.

Because Cockerill's stock was publicly traded at the time of the government's equity infusions, we looked to the market to determine the value of the benefit. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. Since the value paid by the GOB was greater than the market value, we treated the difference as a non-recurring grant and consistent with the Allocation Section of the General Issues Appendix allocated it over 15 years using the appropriate discount rate and divided the portion allocated to the POI by the company's total 1991 sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 1.72 percent and 0.00 percent *ad valorem*, respectively.

d. Clabecq Infusion from SOCOCLABECQ. In 1985, Clabecq issued ordinary shares to SOCOCLABECQ (a private shareholder of Clabecq) in return for SOCOCLABECQ's export commercialization rights, at a price of BF3,300 per share. The per share price for this transaction was determined by an independent outside study commissioned to evaluate the worth of the company.

Under the statute, a subsidy can be provided directly or indirectly by that government, or it can be required by government action. In SOCOCLABECQ's report to its general shareholders, it stated that its purchase of additional Clabecq common shares was required by the GOB as a precondition to the government's further intervention on Clabecq's behalf and was, therefore, necessary to preserve the value of SOCOCLABECQ's ownership interest in Clabecq. Therefore, we have concluded that the equity infusion made by SOCOCLABECQ was required by government action and was, in effect, provided by a government. Because this transaction was limited to a specific enterprise, we have determined it be countervailable. In addition, the price paid by SOCOCLABECQ was considerably above the market price of Clabecq's publicly traded shares at the time. Therefore, SOCOCLABECQ's acquisition was on terms inconsistent with commercial considerations.

To measure the benefit to Clabecq, we calculated the premium paid by SOCOCLABECQ over the market-traded price for the shares. We treated this premium as a non-recurring grant and consistent with the Allocation section of the General Issues Appendix allocated it over 15 years using the appropriate discount rate. We divided the amount allocated to the POI by the total value of 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.01 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.31 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

7. *SNCI Loans*. The SNCI is a public credit institution, which, through medium- and long-term financing, encourages the development and growth of industrial and commercial enterprises in Belgium, including the national industries. SNCI is organized as a limited liability company and is 50-percent owned by the Belgian government. We verified that in 1979, SNCI's board of directors agreed to provide the GOB with the funds needed to assist the steel industry under the 1978 restructuring plan (the Claes Plan) and to grant loans to steel companies within the framework of the plan and under the economic expansion laws of 1959 and 1970. Fabfer, Clabecq, Cockerill, and Sidmar received SNCI loans which were outstanding during the POI.

We have determined that all SNCI loans given to the steel companies expressly under one of the steel restructuring plans or as a result of steel being one of the five national sector industries in Belgium are *de jure* specific. Since we did not find the other SNCI loans to be *de jure* specific, we examined whether these SNCI loans are *de facto* limited.

In prior investigations, the Department has considered whether respondent companies received disproportionate benefits under a program in order to determine *de facto* specificity. See, e.g., Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil (Iron Ore); 51 FR 21961 (June 17, 1986); and Final Affirmative Countervailing Duty Determination: Pure and Alloy Magnesium from Canada (Magnesium); 57 FR 30946 (July 13, 1992). In those investigations, we analyzed whether respondents received a disproportionate share of benefits by comparing their share of benefits to the share of benefits provided to all other users and recipients of the program in question.

We have employed the same type of analysis in these investigations. Although the SNCI lends to many sectors of the Belgian economy, we have determined that the steel industry has received a disproportionately large share of non-plan, "investment loans" between 1975 and 1986. For each of the years for which we have data during this period, the steel industry was the largest single recipient of SNCI investment lending. The steel industry's share (as approximated by the share accounted for by the "Production and preliminary processing of metals industry") expressed as a percentage of all SNCI investment loans outstanding was as follows: In 1975, 17.2 percent; in 1980, 29.2 percent; in 1984, 20.9 percent; in 1985, 17.7 percent; in 1986, 16.9 percent; in 1987, 15.6 percent; and in 1988, 13.5 percent. We do not find disproportionality in 1987 and 1988 as the steel industry's share of benefits dropped significantly.

We recognize that the data may not accurately represent only the percentage of non-plan, non-national sector SNCI loans to the steel industry as it does not appear to distinguish these loans completely from those we have already found *de jure* specific. However, information on the record does not permit us to segregate non-plan, non-national sector loans from SNCI's more general lending activities. Lacking this information, we cannot presume that elimination of this distortion would change our finding of disproportionality.

Therefore, we determine SNCI loans to be *de facto* limited to a specific enterprise or industry, or group of enterprises or industries prior to 1987, based on the information above, and from 1989 onward, lacking any information for those periods. To the extent that these loans are provided on terms inconsistent with commercial considerations, we find them to be countervailable.

As our benchmark interest rate, except in certain instances, we used the long-term benchmark obtained from the Belgium Kredietbank. In the case of Clabecq and Cockerill, we added 12 percent of the prime to the benchmark, because these two companies were found to be uncreditworthy. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, (54 FR 31991, August 3, 1989) and section 355.44(b)(6)(iv) of the Department's Proposed Rules. Because Belgium does not have a prime rate, we used the SNCI rate less one half percentage point as an approximation of the prime rate.

To calculate the benefit on these loans we used our long-term loan methodology and measured the cost savings conferred by the SNCI loans in each year the loans were outstanding. We then took the present value of each of these amounts as of the time the loan was received. Finally, using the benchmark as a discount rate, we reallocated the present value of the yearly benefits over the life of the loan. We then divided the amount allocated to the POI by the company's total sales during the POI.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.01 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.37 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.37 percent and 0.00 percent *ad valorem*, respectively.

8. *Belgian Industrial Finance Company (Belfin) Loans.* Belfin was established by Royal Decree on June 29, 1981, as a mixed corporation with 50 percent GOB participation and 50 percent private industry participation. We verified that Belfin's objective is to finance investments needed for the restructuring and development of various sectors of industry, commerce, and state services. Belfin borrows money in Belgium and on international markets, with the benefit of government guarantees, in order to obtain the funds needed to make loans to Belgian companies. The government's guarantee makes it possible for Belfin to borrow at favorable interest rates and to pass the savings along when it lends the funds to Belgian companies. Belfin loans to Belgian companies are not guaranteed by the GOB. However, these loans carry a one percent commission which is used to maintain a guarantee fund to support the GOB guarantee of Belfin's borrowings.

Although the objective of Belfin loans is to assist the restructuring and development of various sectors, we verified that Belfin loans were made to the steel companies under the Claes Plan because the loans were instruments for restructuring. Therefore, we determine that the Belfin loans to the steel industry are *de jure* specific with respect to an enterprise or industry or group of enterprises or industries.

Cockerill and Clabecq received Belfin loans which were outstanding during the POI. Because the interest rates on these Belfin loans are below the benchmark interest rate, we find that the loans were made on terms inconsistent with commercial considerations and determine the loans to be countervailable.

To calculate the benefit on these loans, we have used our long-term loan methodology and measured the cost savings conferred by the Belfin loans in each year that they were outstanding. We then divided the cost saving attributable to the POI by total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

9. *The "Invests".* Pursuant to the Belgian government's 20-point plan adopted in 1981 to restructure the steel industry, the GOB created holding companies ("INVESTS") that were financed jointly by Societe Nationale d'Investissement (SNI) and private companies. The right to establish Invests is limited to the five national sectors: Steel, coal, shipbuilding, glass, and textiles. We view these five sectors as constituting a specific group of industries. These holding companies were given drawing rights on SNI to finance specific projects. The drawing rights took the form of conditional refundable advances (CRAs), which were interest free but repayable to SNI based on a company's profitability.

The original goal of the Invests for the steel industry was to develop state-of-the-art steel companies. However, on July 7, 1983, the Ministerial Council revised the statutory purpose to include the start up or the expansion of all industrial or commercial companies that contribute to economic development. Participating companies were encouraged to diversify by pursuing ventures unrelated to their core business.

a. SidInvest. On August 31, 1982, SidInvest N.V. was incorporated as a holding company jointly capitalized by SNI and Sidarfin, a subsidiary of Sidmar. Although its original purpose was to invest in steelmaking activities, that purpose changed in 1983, as described above. We confirmed at verification that, in fact, few of SidInvest's investments have been steel-related.

SidInvest made periodic repayments of the CRAs it had drawn from SNI. However, the GOB decided it wanted to accelerate their repayment. The government agency SNSN and SidInvest discussed two options including (1) paying back the CRAs at a rate of three percent per year and (2) repaying immediately the discounted value calculated as if the full amount were due 32 years later. SidInvest actually made one payment to the SNSN using the first option.

However, the first option repayment method was not in effect after July 29, 1988, when the SNSN became a shareholder in SidInvest by contributing the CRAs owed to it by SidInvest at that time plus an additional contribution by SNSN. In exchange, the SNSN received 292,224 new shares of SidInvest's stock. According to Sidmar, by these acts SidInvest's obligations under the CRAs were extinguished.

In a second July 29, 1988 agreement, SNSN sold half of the 292,224 shares it had just received to SNI (another government agency) and the other half to Sidfin (a company in the Sidmar Group). The money received in these two transactions plus one additional payment by SidInvest equalled the total amount foreseen in option 2 discussed above.

Finally, by a third agreement, also dated July 29, 1988, the SNI agreed to sell, over the course of eight years, certain of its shares to Sidfin (also a member of the Sidmar Group). Subsequent transactions ensued so that currently, Sidarfin holds 230,852 shares and the SNI holds the remaining 61,372 shares.

Petitioners and Sidmar have submitted extensive comments on the issue of whether any potential benefits arising from GOB contributions to SidInvest can be attributed to Sidmar's steelmaking activities. As discussed further in the comment section of this notice, we have concluded that any subsidies provided to SidInvest are not tied to SidInvest or to the specific activities in which it invested. Instead, any benefits flow to the Sidmar Group as a whole.

The next issue is whether and to what extent the Sidmar Group received a subsidy through its receipt of CRAs and the subsequent transactions involving them. Based on the information provided, we have determined that the CRAs were zero percent interest loans. More importantly, they had no fixed maturity date—because their repayment was contingent upon SidInvest's net income, the CRAs might have been outstanding for years.

The various agreements on July 29, 1988, changed that aspect of the CRAs. On that date, the GOB swapped its uncertain repayment schedule for a fixed schedule, consistent with the earlier discussions between the SNSN and SidInvest. The face value of the outstanding CRAs would be repaid in 32 years. In the meantime, no interest would be paid. Thus, the first benefit arising to Sidmar through the July 29, 1988, transaction was the creation of a 32-year interest free loan.

However, the GOB was seeking immediate repayment of at least some portion of the money owed to it. Therefore, it effectively sold this loan back to SidInvest for 292,224 new shares in SidInvest and some cash. These new shares were then sold for cash.

We have determined that this second transaction, i.e., the exchange of the loan for shares in SidInvest and SidInvest's cash payment, also gave rise to a benefit. In purchasing this loan back from the SNSN, SidInvest should have been willing to pay the net present value in 1988 of the amount due in 32 years. However, using Sidmar's benchmark interest rate for 1988, we determine that the total amount of money received by SNSN at the conclusion of the transactions on July 29 was less than what SidInvest should have paid to repurchase its loan. Therefore, we are treating the difference between what SidInvest should have been willing to pay and what the SNSN received as a subsidy.

The two subsidies described above, the issuance of a 32-year interest free loan to SidInvest and the sale of that loan on terms inconsistent with commercial considerations, were both calculated using Sidmar's company-specific benchmark for 1988. The benefits from the zero interest rate loan portion were allocated over the life of the loan. The benefits from the sale of the loan were allocated over 15 years. We divided these amounts by the total 1991 sales of the Sidmar Group.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.97 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.99 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.00 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

b. BoelInvest. In June 1983, BoelInvest was established as a holding company jointly owned by SNSN, Fabfer, and Boel. Since we verified that Fabfer owned only 14 percent of BoelInvest, we do not consider the two companies sufficiently related per the clarification letter sent by the Department to all parties in these investigations on October 30, 1992. Therefore, we will not consider any potential subsidies to BoelInvest in these investigations.

c. Clabecqlease. On March 5, 1987, Clabecqlease was incorporated as a joint holding company owned by Clabecq and SNSN. Clabecqlease was awarded drawing rights in a stipulated amount in the form of CRAs. Clabecq offered a guarantee to SNSN that it would repay the CRAs based on Clabecqlease's profits. We verified that Clabecq received a loan from Forge Finance S.A., a 99.99-percent owned subsidiary of Clabecqlease.

As noted above, the right to establish Invests is limited to the five national sectors: steel, coal, shipbuilding, glass, and textiles. We view these five sectors as constituting a specific group of industries. Therefore, benefits conferred via the Invests are limited to a specific enterprise or industry, or group of enterprises or industries.

To determine whether the loan to Clabecq from Clabecqlease was made on terms inconsistent with commercial considerations, we compared the interest rate on the loan to our benchmark rate and found that the Forge Finance loan carried a lower rate. For these reasons, we determine that the loan to Clabecq from Clabecqlease is countervailable.

To calculate the benefits from this loan, we calculated the cost savings conferred by the loan to Clabecq in each year it was outstanding. We then calculated the present value of each of these amounts as of the time the loan was received. Finally, using our benchmark rate as a discount rate, we reallocated the sum of these present values over the life of the loan. We then divided the amount allocated to the POI by total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.03 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

10. *SNSN Loans*. We confirmed at verification that this program should more accurately be defined as "SNSN Advances." These advances were provided to companies, beginning in 1981, as temporary measures in anticipation of later, more comprehensive aid. We found that, upon receipt of the later aid, the SNSN advances were "rolled" into that aid. We also confirmed that the SNSN granted these advances to companies in the five national sectors.

We verified that Sidmar and Fabfer did not receive benefits under this program. We also confirmed that Clabecq received an SNSN Advance in early 1985. However, we found that this amount is already captured in the Clabecq Debt to OCPC Conversion program discussed above.

According to petitioners, Cockerill had BF6.408 billion in SNSN loans outstanding at the end of 1986. In 1987, the company received an additional loan in the amount of BF1.257 billion. We have found that SNSN's provision of loans to Cockerill was selective because SNSN was created to benefit only national-sector companies.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.03 percent and 0.00 percent *ad valorem*, respectively.

11. *FSNW Loans*. In 1989, according to petitioners, after the conversion of large amounts of FSNW loans to equity, FSNW made a new loan to Cockerill in the amount of BF158 million to finance investments in accordance with the Gandois Plan. Therefore, petitioners maintain that any countervailable benefits derived from this loan are selective not only because FSNW is a regional governmental entity created to assist the restructuring of selected industries, but also because the Gandois Plan was adopted solely to aid the steel industry.

We are using information from petitioners as best information available for Cockerill's FSNW loans. Petitioners cite the benefit found in Belgian Steel for FSNW loans to Cockerill as best information available. Therefore, we have used the countervailing duty rate on FSNW loans to Cockerill from Belgian Steel to measure the benefit to Cockerill. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.03 percent and 0.00 percent *ad valorem*, respectively.

12. *Government-Guaranteed Loans*. Government loan guarantees issued pursuant to the Economic Expansion Laws of either 1959 and 1970 were received by Fabfer, Clabecq, and Sidmar on SNCI loans and, in the case of Clabecq, also on Belfin loans which were outstanding during the POI. We confirmed at verification that the lending institution, not the company, inquires about the guarantee. Furthermore, state guarantees are given for lending under the Economic Expansion Laws.

At verification, we learned that loan guarantees are not normally used in Belgium. Therefore, we were unable to obtain information on typical commercial guarantee fees. As section 355.44(c)1) of the Proposed Regulations indicates, lacking information on commercial loan guarantees, the Department compares the cost of the government guaranteed loan to the cost of the benchmark loan. Therefore, we have taken this approach and included the guarantee fee in the cost of the government loan.

13. *Exemption of Corporate Income Tax for Grants Received under the 1970 Law*. Under the 1970 Law, companies located in development zones are exempt from income tax on cash grants in the year in which the grant is received. Because this program is limited to specific zones, we have found the exemption to be countervailable. We find Cockerill to have received the income tax exemption based on BIA. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

14. *Accelerated Depreciation*. Under Article 15 of the 1970 Law, companies located in development zones may take twice the normal straight-line depreciation on assets acquired in part by grants received under this law. Because this benefit is limited to companies located in development zones, we have determined it to be countervailable.

Based on BIA, we find that Cockerill used accelerated depreciation on its income tax return filed in the POI. Sidmar's related service center had an accelerated depreciation allowance that it could have used on its 1990 income tax return. At verification, however, our examination of its 1990 tax return showed that the deduction for dividends and for losses carried forward were used to reduce taxable income to zero. Therefore, we found that Sidmar's related service center did not use accelerated depreciation on the tax return filed during the review period.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*. The BIA rate for Cockerill was based on the highest rate for a tax program applied to Cockerill in Belgian Steel.

15. *Exemption from Real Estate Taxes*. Assets acquired through investments financed in part under the 1970 Law may be exempted from real estate tax for up to five years, depending on the extent to which objectives of the 1970 Law are achieved. The exemption is provided for under Article 16 of the 1970 Law and is restricted to firms located in development zones.

Fabfer received benefits under this program but not during its POI. Sidmar, its related service center, and Cockerill did receive benefits during the POI.

For Sidmar and its related service center, consistent with the Allocation section of the General Issues Appendix, we treated their tax savings as recurring benefits and divided the combined tax savings by combined total sales during the POI. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

16. *Exemption from the Capital Registration Tax*. A capital registration tax is assessed at the time capital is formally registered with a company. Under the 1970 Law, companies located in development zones may be exempted from the one percent capital registration tax. (In 1986, the capital registration tax was reduced to 0.50 percent.) None of the responding companies reported using this program.

However, with respect to Cockerill, we found the exemption to be countervailable in Belgian Steel and that Cockerill's benefit from the registration tax exemption amounted to 0.40 percent. Therefore, as best information available in this investigation, we are using the 0.40 percent rate from Belgian Steel, which is the rate proposed by petitioners.

In Belgian Steel, we treated the tax savings as a grant and expensed it in the year of receipt. The entire amount of the savings was allocated over the total sales of all products. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.40 percent and 0.00 percent *ad valorem*, respectively.

17. *ECSC Article 54 Loans and Loan Guarantees*. Article 54 industrial investment loans are provided for the purpose of purchasing new equipment or financing modernization. We confirmed that Article 54 loans are direct loans from the Commission and that the funds are loaned at a slightly higher rate than that at which the Commission obtained them in order to cover its costs. We verified that the Commission uses this program to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain these loans.

These loans are only available to the steel and coal industries and are, therefore, limited. Thus, these loans are countervailable to the extent that they are provided on terms inconsistent with commercial considerations.

We verified that Sidmar, Clabecq, and Fabfer did not benefit from this program during the POI. However, the EC indicated that Cockerill had Article 54 loans outstanding in 1991. Regarding the benefit to Cockerill, as BIA we are using the countervailing duty rate from Belgian Steel for this program. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.04 percent and 0.00 percent *ad valorem*, respectively.

18. *ECSC Redeployment Aid*. Under Article 56 (2)(b) of the ECSC Treaty, individuals employed in the coal and steel industry who lose their jobs may receive assistance for social adjustment. This assistance is provided for workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. Payments were made to steel workers under Article 56(2)(b). Funds for the ECSC portion of these payments are from the ECSC Operational Budget, made up entirely of levies on ECSC companies.

Since the ECSC portion of payments under this program comes from its Operational Budget (which it derived from payments from steel firms), we determine that the portion of payments provided by the ECSC, i.e., 50 percent, to be not countervailable. However, to the extent that their payments relieve companies of obligations they would otherwise incur, we determine that matching contributions by member governments are countervailable. Moreover, we determine that matching contributions by Member State governments should be treated as recurring grants in accordance with the methodology outlined in the Allocation section of the General Issues Appendix.

We verified that Sidmar, Fabfer, and Clabecq received no redeployment aid during the POI. For Cockerill, petitioners provided information in the petition regarding Cockerill's benefits under this program. On this basis, we have determined that Cockerill has received countervailable benefits. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.01 percent and 0.00 percent *ad valorem*, respectively.

19. *European Social Fund*. The ESF program is funded from the EC General Budget, the revenues for which are derived from customs duties, agricultural levies, Member State contributions, etc. The ESF is one part of the EC's Structural Funds. It is primarily responsible for two out of the five objectives of the Structural Funds. These two objectives relate to combating long-term unemployment and facilitating the occupational integration of young people.

The ESF also has a secondary role in implementing projects that fall under other objectives. These latter objectives relate to promoting the development of regions whose development is lagging behind, assisting regions affected by industrial decline, and promoting the development of rural areas. The ESF does not provide on-going support; each beneficiary may receive vocational training actions and subsidies for recruitment only once. According to the EC response, specific projects under this program benefit individuals, not companies.

ESF grants are paid to the Member State governments, which proceed to allocate and implement the funds under the Member States' provisions, be it on a regional or local level. As such, the EC delegates to the Member State the task of managing the grant.

We confirmed at verification that Sidmar, Clabecq and Fabfer did not receive benefits under this program. However, at verification we found that Cockerill did receive benefits under this program. Therefore, we have determined that Cockerill has received countervailable benefits. Since petitioners did not calculate a rate for this program, we have used the rate calculated from public information for Cockerill in Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy 57 FR 57739 (December 7, 1992). Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.18 percent and 0.00 percent *ad valorem*, respectively.

20. *Other Loans—Clabecq*. In the interest of completeness, Clabecq reported four additional loans in responding to our questionnaire regarding "other loans." Two of these were received from the Belgian Office of External Commerce, one in 1980 and the second in 1983, for the purpose of defraying expenses incurred as a result of the U.S. antidumping proceeding in 1982. Clabecq paid no interest on these loans nor was the company required to repay the principal.

Because these loans appear to have been limited to a specific enterprise, or industry or group of enterprises or industries, and were forgiven, we determine them to be countervailable non-recurring grants. For the reasons stated in the Allocation section of the General Issues Appendix, we expensed the grants to Clabecq in the year of receipt. Thus, no benefit was realized during the POI.

The third loan reported by Clabecq was for investment necessary to enable the company to comply with the provisions of the Clean Water Act. This loan is treated in the section of this notice entitled "Ecological Incentives." The fourth loan was for employee vacations and was not a loan received from the GOB or at the direction of the GOB. Therefore, we have not countervailed this loan.

21. *Water Purification Subsidies*. At the Sidmar verification, we came across an item for "water purification subsidies" in the company's grant account detail. Upon further inquiry, we did not receive any information regarding the source of benefits under this program.

Since Sidmar did not provide information regarding the authority under which the company received these benefits, as BIA we have treated these water purification subsidies as if they were provided under the Ecological Incentives program noted above. Therefore, we determine that this program is countervailable. Consistent with the methodology detailed in the Allocation section of the General Issues Appendix, we have found the benefits to be non-recurring. However, all but one grant were expensed in the year of receipt because the amount received was less than 0.50 percent of total sales in that year. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.04 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.04 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.00 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

B. Programs Determined To Be Not Countervailable

1. *Reimbursement of Worker Training Costs.* Under Article 76 of the Royal Decree of December 20, 1963, the Belgian National Employment Office ("OneM") can reimburse firms for various in-plant and outside professional training costs. Before 1980, the GOB funded and administered this program for the entire country. However, the Special Law of August 8, 1980, gradually decentralized authority with respect to this, and other programs. Separate administrative structures were gradually set up within OneM for both the Walloon and Flanders regions. By 1988, the Walloon, Flanders and Brussels regions completely assumed the administration of this program at the regional level. However, the program is still funded by the national government.

In 1987 and 1988, for budgetary reasons, the reimbursement was reduced by 50 percent in the Flanders region except for companies located in development zones. The amount was not similarly reduced in the Walloon or Brussels regions.

Sidmar, Clabecq and Cockerill received reimbursements of training costs during 1977–1991. Fabfer also received reimbursements, but after its POI.

We verified that this program is not *de jure* limited to any region or enterprise or industry or group of enterprises or industries. With respect to *de facto* limitations, we verified that training reimbursements have been provided to firms in many economic sectors throughout the Walloon, Flanders, and Brussels regions. Moreover, for the period 1987–1990, the Flemish steel industry received 7.3 percent by value of benefits disbursed under the program in Flanders. At least fifteen industrial sectors received benefits over this time period in Flanders. During the period 1988–1991, the Walloonian metals sector (which includes the steel industry) received 17.3 percent by value of the benefits disbursed under the program. At least 20 sectors received benefits over this time period in Walloon. Following the same disproportionality analysis described in the SNCI program section above, we do not consider the distribution of benefits noted above to constitute disproportionate benefits to the steel industry. Therefore, we have determined this program to be not countervailable.

2. *ECSC Research and Development Assistance Under Article 55.* According to Article 55 of the ECSC Treaty, assistance is available to promote technical and economic research relating to the production and increased use of coal and steel, and to occupational safety in the coal and steel industries. Since the end of 1986, this program has been funded solely through levies on steel producing companies.

Because the results of the research conducted under Article 55 are made publicly available, we find this program to be not countervailable. Moreover, we note that to the extent that Article 55 assistance is funded solely by levies on steel companies, we would find no benefit.

3. *European Investment Bank ("EIB") Loans and Loan Guarantees.* The EIB funds projects in various countries and different types of industries. It obtains most of its resources on international capital markets through issuance of bonds. The remainder of the resources come from the EIB's own funds, which are comprised of contributions from its member states. We found at verification that the EIB provides loans to numerous sectors in all parts of the various EC countries. Furthermore, between 1987–1991, the steel sector received only 0.5 percent of total loans provided by the EIB. We have no evidence of *de jure* or *de facto* specificity, and have determined that this program is not countervailable.

4. *Interest Rate Subsidies to Clabecq under the Gandois Plan and Interest Rate Subsidies to Clabecq, Boel and Fabfer.* At verification, we found that an interest subsidy to Clabecq in the amount of BF102 million was given under the 1959 Law, a program that the Department found non-countervailable in Belgian Steel. Petitioners had alleged that this amount was given under the Gandois Plan, a restructuring plan solely benefitting the steel industry.

We found no evidence of interest rate subsidies to Clabecq, Boel or Fabfer other than those already addressed in this notice.

C. Programs Determined to be Not Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Belgium of certain steel products under the following programs:

1. *Interest Rate Subsidies Provided by Copromex.*

2. *Employment Premiums.*

3. *Short-term Export Credit.*

4. *New Community Instrument Loans.*

5. *European Regional Development Fund Aid.*

6. *ECSC Interest Rebates under Article 54.*

7. *ECSC Conversion Loans under Article 56.*

8. *ECSC Interest Rebates under Article 56.*

9. *Cancellation of Equity.* In 1983, 1985, and 1987, Cockerill extinguished BF60.26 billion in equity. The 1983 reduction of BF36 billion brought the company's capital to the minimum legal requirement. The equity cancellations in 1985 and 1987 effected reductions in capital infused in 1983 and later years. In fiscal year 1988, Clabecq reduced its Paid-In-Capital account by BF770 million which corresponded to a partial amortization of Clabecq's reported loss.

Consistent with the Equity Section of our General Issues Appendix, we have determined that a subsequent write-off of equity does not constitute a subsidy.

D. Programs Determined Not to Exist

We determine that the following programs do not exist:

1. *Other Loans to Clabecq on Terms Inconsistent with Commercial Considerations.* By fiscal year end June 30, 1982, Clabecq's long-term debt had increased by BF398 million over the preceding year. Petitioners alleged that these loans were most probably on terms inconsistent with commercial considerations because a government-imposed debt moratorium had been in effect during that year. We verified that the increase cited by petitioners was due to SNCI loans received by Clabecq. All of these loans were reported by the company and are treated in the notice section entitled "SNCI Loans."

2. *Tax Advantages for Clabecq, Boel and Fabfer.* Petitioners alleged that Clabecq, Boel, and Fabfer benefitted from tax advantages which were investigated in 1982 by the European Commission. We verified that these tax advantages are already covered in the sections of this notice dealing with the various types of tax exemptions. See the sections of this notice entitled "Exemption from Income Tax on Grants," "Accelerated Depreciation," "Real Estate Tax," and "Capital Registration Tax."

Interest Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Petitioners argue that a country-wide rate should be applied to all companies because there is potential for Belgian companies to evade the order. There is reason to believe that Belgian companies have shifted orders in the past to circumvent the U.S.–EC Voluntary Restraint Agreement, and Belgian steel producers are bound together by cooperation arrangements, joint ventures and overlapping ownership/management that make order shifting a natural response to trade sanctions. At least, Cockerill and Sidmar should be treated as a single company. The record suggests that the two act as one in marketing their products in the United States.

According to Sidmar, a 1990 agreement between Cockerill and Arbed merely codified a 1984 agreement concerning cooperative undertakings. However, there is no evidence that these undertakings have been finalized or authorized by the EC, as required. Plus, the failure of the proposed merger between Arbed and Cockerill is well documented. Finally, despite petitioners' attempts to show that order-shifting will occur, all of their "evidence" pertains to Arbed (which is not being investigated) and long products (which is also not being investigated).

With respect to Cockerill's and Sidmar's joint marketing in the United States, Sidmar states that Cockerill's decision to use TradeARBED New York as its U.S. importer is not evidence of new cooperation because (1) many U.S. importers import from more than one foreign producer and (2) petitioners' own exhibit states that Cockerill's sales in the United States were not sufficient to support a full-fledged office here. Regarding the two joint production-related undertakings between the companies, neither suggests the need for a country-wide rate. Finally, there is no overlapping ownership between Sidmar and any other respondent company.

Respondents conclude that the Department has never applied a country-wide rate simply because of company relationships. Fabfer's relationships with other companies are not unusual, and should not compel the Department to depart from its practice. Finally, petitioners have provided no evidence that Fabfer will attempt to evade any orders.

DOC Position: We disagree with petitioners. Although the company-specific countervailing duty rates calculated in these investigations are quite divergent, we are not convinced from evidence on the record that firms with relatively higher rates would have the incentive or the ability to evade countervailing duties by shifting orders on sales for export to the United States. Petitioners refer to the possibility that Belgian companies have shifted orders to circumvent the U.S.-EC Voluntary Restraint Agreement. We note that petitioners appear to be referring to Carlam and Sollac, two firms not explicitly investigated in these investigations.

Furthermore, at verification we found that most of the cooperative arrangements cited by petitioners as a basis for suspecting order shifting were either not implemented or not implemented fully. For instance, petitioners cite the "Hanzinelle Accords" as evidence of the steel companies' agreement to divide markets by means of production cartels. However, this agreement appears not to have been a legally binding contract. In fact, with the merger of companies that became Cockerill in 1981, this agreement became obsolete.

Petitioners also point to the 1984 and 1990 "cooperation arrangements" between Cockerill and Sidmar as evidence of a favorable climate for cooperation. We note that, however, that such arrangements were subject to the approval of the European Community. Evidence on the record suggests that the EC has yet to approve the particulars of the arrangements. Furthermore, although Cockerill and Sidmar underwent extensive merger discussions, we confirmed that these talks ended without agreement.

Moreover, at verification we found that the overlapping ownership cited by petitioners is not extensive or unusual. Nor do we find the existence of joint ventures a reason to suspect that the companies concerned would likely resort to order shifting.

With respect to the marketing activities of Cockerill and Sidmar in the United States, we agree with Sidmar that it is not uncommon for an importer or a trading house to import from several different exporters. We further confirmed that TradeARBED simply responds to customer requests with respect to the type of steel it sells in the United States. It does not have the authority to switch sales between producers or to set prices.

Comment 2: Petitioners note that Section 607(a) of the Trade and Tariff Act of 1984 establishes a presumption in favor of country-wide rates with the possibility of company specific rates if the Department determines that a significant differential between companies exists (see, Final Administrative Review of Certain Iron-Metal Castings from India, (56 FR 1976, 1979; 1991) and Final Administrative Review of Carbon Black from Mexico, (55 FR 51745, 51747; 1990). The statute discourages company-specific rates, although the Department has discretion to set them in certain instances.

Petitioners also note that the statute's legislative history gives only one rationale for a presumption in favor of a country-wide rate (i.e., to lessen the administrative burden on the Department). However, the Department has stated that "equal weight should be given to the consideration that the basic purpose of the countervailing duty law is better served by the use of country-wide rates" (see, Carbon Black at 51748).

Sidmar and Fabfer argue that in order to apply a country-wide rate, the Department would have to ignore its own regulations and precedent. Further, potential order shifting among producers is an issue for the U.S. Customs Service. Regardless, Sidmar notes that petitioners' request for a high BIA rate for Cockerill (therefore, for Sidmar by extension) is sufficient evidence for separate rates. Sidmar has cooperated and should not be penalized because a competitor has not responded.

Fabfer states that these investigations are unlike the Final Determination of Certain Softwood Lumber Products from Canada; 57 FR 22570 (May 28, 1992) where it was found not practicable to investigate whether companies had significantly different rates. The Department has already investigated company rates and found that Fabfer has a significantly different one.

DOC Position: Section 355.20(d) of the Proposed Regulations provide for company-specific rates when the rates for particular companies are significantly different from the country-wide rate. It is the Department's established practice to apply company-specific rates in such instances, unless it has reason to believe that the application of company-specific rates would result in attempts to evade the countervailing duty orders. As explained in the Department's position to Comment 1 above, we are not convinced that attempts to evade the orders would occur in this case. Therefore, we are following our normal practice of applying company-specific rates when these rates are significantly different from the country-wide rate.

We disagree with respondents' claim that the possibility of order shifting is primarily the concern of the U.S. Customs Service. While the Customs Service in the normal course of assessing duties may in fact uncover attempts to shift orders, the Commerce Department has the primary responsibility for determining the likelihood of order evasion at the investigative stage.

Comment 3: Petitioners argue that Sidmar's wholly-owned service center should be investigated because (1) it meets the Department's minimum threshold for related parties of being at least 20 percent owned, (2) it produces/sells subject merchandise, and (3) subsidies conferred on a related party are allocated to a respondent, particularly in the context of a parent and subsidiary (see, Final Determination of Brass Sheet and Strip from France (52 FR 1212, 1222; 1987)). Also there is no evidence that the GOB tied subsidies to the service center to non-U.S. or non-subject merchandise sales. Failing to include the service center would encourage Sidmar to use it for U.S. shipments. Further, the Department can consider "all foreign producers and exporters that are related * * * as a single entity" (Preamble to 19 CFR 355.20(d) of the Proposed Regulations).

Sidmar argues that the Department attributed tied subsidies for a downstream entity (that neither manufactured nor exported the merchandise to the United States) to an upstream producer. Section 701 of the Tariff Act of 1930, as amended, and the GATT Subsidies Code Article 4.2 provide that a countervailing duty may be imposed only to offset benefits on the manufacture, production, or export of products to the United States. Further, the Department's regulations at §355.15(a) suggest that a countervailing duty may not be imposed to offset benefits conferred on products other than merchandise under investigation (i.e., imports of Belgian steel into the United States during the POI).

Congress stated when a subsidy is tied to the production of a particular product, the benefit is allocated entirely to that product (*see*, Report of the House of Representatives concerning the Trade Agreements Act of 1979; H. Rep. No. 317, 96th Cong. 1st Sess., 74–75 (1979). Furthermore, when the benefit is tied to sales to a particular market, and that market is not the United States, "the Secretary will not find a countervailable subsidy on the merchandise" (section 355.47(b) of the Department's Proposed Regulations). Moreover, in Final Determination of Porcelain-on-steel Cooking Ware from Mexico; 51 FR 36447, 36449 (1986) where a domestic subsidy was found to apply to other than U.S. sales, the Department did not attribute the subsidy to U.S. imports.

Sidmar notes that the Department has also determined that the bestowal of a subsidy on one company does not necessarily benefit another merely because they are related (see, *Armco, Inc.* v. *United States*, 733 F. Supp. 1514, 1521–22 (Ct. Int'l Trade 1990). When the Department attributes subsidies bestowed on one company to a related company, there are financial transactions not present here.

Only after the Department determines in administrative reviews that the service center has manufactured for export, or exported, the subject merchandise to the United States, may its benefits be included. Sidmar states it is illogical to assume that not including the service center would encourage Sidmar to ship to the United States through the related service center.

DOC Position: We have included the related service center in these investigations. Sidmar owns 99.99 percent of the company, an ownership amount significantly above the 20 percent minimum test outlined in our October 30, 1992 letter to parties in these investigations. Therefore, we have treated the two companies as if they were one. Plus, even though the related service center may be downstream, its production falls in the scope of these investigations. Furthermore, it is not the Department's domain to ascertain what likelihood there is that any company will export in the future. Regardless, we found no evidence at verification to suggest that the company is prohibited from exporting.

Moreover, we found no evidence at verification that the GOB tied subsidies to the service center to non-United States sales or non-subject merchandise. The company appears free to sell its merchandise both domestically and for export. Even though the service center received benefits under programs we traditionally define as domestic, rather than export, there is no evidence on the record that benefits are tied to Belgian sales only (unlike the factual situation in Porcelain-on-steel Cooking Ware from Mexico).

Sidmar appears to be arguing that the related service center must be treated separately since the related service center did not export the subject merchandise to the United States during the POI. We note that Sidmar is taking a fairly narrow view of the concept of merchandise under investigation. Should countervailing duty orders be published in these investigations, the orders will provide for the assessment of duties on imports into the U.S. under Section 701 of the Act. Including subsidies to the related service center in the calculation of such duties is not in violation of the Act.

With respect to *Armco*, we recognize that the facts in *Armco* are slightly different in that the subsidiary had already exported subject merchandise. However, the *Armco* decision does not prohibit the Department from including a potential exporter in its investigations. More importantly, *Armco* supports the proposition that corporate forms should not dictate whether countervailing duties are imposed. In *Armco*, the court said:

> It should be a fundamental consideration in the present and all countervailing cases; the attention in such cases should be focused upon the question of whether exports to the United States have been unfairly subsidized, as envisioned by Congress when it enacted the countervailing duty legislation. This legislation should not be circumvented by corporate formalities or maneuvering.

Comment 4: Sidmar claims that for any benefit to accrue to it by virtue of subsidies to its related service center, potential investors or lenders would had to have access to consolidated statements in 1991. However, the Sidmar Group did not consolidate its financials until FY 1991. In fact, the consolidated financial statement for 1991 was not available prior to 1992. In 1991, investors/lenders could not have made financing decisions using consolidated information. Thus, the Sidmar Group received no consolidation benefit in 1991 or previous years.

DOC Position: In countervailing subsidies to Sidmar's related service center, we are not concerned with any benefit these subsidies may or may not have conferred on the Sidmar Group. Rather, we are concerned with the benefit to the steel produced by Sidmar. Regardless of when the financials were consolidated, the related service center was, and remains to be, a wholly-owned subsidiary of Sidmar. Therefore, its production is properly treated as Sidmar's production.

Comment 5: Sidmar argues that if the Department does attribute benefits to the service center to the Sidmar Group, it must attribute them to total Sidmar Group sales. Furthermore, following petitioners' argument, the Department may not include in Sidmar's rate those benefits that the service center received prior to Sidmar's ownership of the service center.

Petitioner notes that if the Department includes sales of the Sidmar Group in the denominator, it must investigate and include all subsidies to all members of the Group in the numerator. Since the Department has not investigated these programs, it cannot include total Group sales in the denominator.

DOC Position: We have determined not to include sales of the Sidmar Group in the denominator. Therefore, the need to consider subsidies to the entire group is obviated. Because Sidmar owns the service center and because both produce the subject merchandise, we are considering these companies separate from other companies in the Sidmar group for purposes of these investigations. Therefore, we are attributing subsidies to the related service center to both of these related companies. For further discussion of our treatment of the related service center, see "Related Party" section above.

Comment 6: Petitioners argue that neither company-specific, private, long-term lending rates nor SNCI rates, should be used as benchmarks or discount rates. Rather, the Department should use the IMF rates.

Petitioners note that SNCI loans are countervailable. Therefore, under the Department's Proposed Regulations, they cannot be used. Further, the GOB did not definitively state that SNCI lending rates were national average lending rates. It simply provided them in response to the Department's request for national long-term fixed and variable interest rates, without confirming that they were national average rates. Petitioners add that respondents' claim that SNCI rates are representative of long-term private bank rates suggests at most a correlation between SNCI and private long-term interest rates. Respondents provide no evidence of such a correlation. Also, neither Sidmar nor SNCI documented their assertions that SNCI rates exceed private-bank, long-term lending rates. At verification, SNCI officials indicated that SNCI rates served as a ceiling but only for loans with an interest rate subsidy or a state guarantee.

Petitioners also argue that company-specific lending rates reported in the responses cannot be used. Sidmar's loans were issued by the ECSC and the SNCI and have been found to be countervailable. Clabecq's data on the cost of long-term debt outstanding from 1983–1988 may not be used because it represents average interest rates on total debt outstanding, including subsidized loans. Moreover, the data excludes interest payments made by the GOB, indicating that it includes subsidized loans.

Petitioners also claim that the Sidmar verification report does not provide appropriate lending rates, either. Generale Bank officials stated that the Reuters rate is the national average long-term interest rate without documentation. Sidmar also provides no evidence that "prime" rates on medium-term loans for the period 1990 to 1993 are valid national average long-term interest rates. Clearly, because they are medium-term, they do not fit the Department's preference for long-term rates. Moreover, the Department has not verified their accuracy, and the rates are reported in Flemish so petitioners are unable to ascertain whether the rates are generally available national averages.

Petitioners also note that the Bank Brussels Lambert (BBL) industrial credit rates include SNCI loans, which the Department has determined to be countervailable. Further, both the BBL and Kredietbank (KB) average long-term interest rates involve a spread of up to 30 basis points in the case of KB loans, which is not included in the average interest rates reported.

Therefore, IMF lending rates provide the best alternative source of information on the record. These rates, because they are short-term, are a conservative estimate of the national average long-term rate in Belgium. Short-term rates are normally lower than long-term rates because of the element of uncertainty that characterizes a long period. Thus, their use does not prejudice respondents, especially in light of their failure to provide information.

Respondents argue that the Department justified use of the IMF rates by stating that the responses contained no information on private-bank, long-term lending rates. However, prior to the preliminary determinations, Fabfer submitted Credit General lending rates from 1976 to 1991 and Sidmar provided private-bank lending rates for its private-bank loans taken out in 1988. Additionally, Clabecq supplied information on its long-term debt cost for the period 1983 through 1988. Moreover, respondents assert that since the preliminary determinations in these investigations, Department officials have spoken with representatives of three large commercial banks and have obtained additional benchmark information.

Sidmar further notes that selection of the appropriate discount rate has never been contingent on the availability of "private-bank" lending rates. Rather, the Department's standard has been whether the rates are commercially available per Final Determination of Certain Fresh Atlantic Groundfish from Canada; 51 FR 10041, 10063 (1986). SNCI rates are commercial rates, in that private banks used them as reference rates in the early 1980s. Since that time, private bank rates have been below SNCI rates.

In the 1982 proceedings, the Department found that the SNCI was a lending institution that set the long-term interest rates generally adhered to by private banks in Belgium. In this investigation, no information has been placed on the record to alter such a view. Furthermore, the Department recognized the prevailing nature of the SNCI rates in its preliminary determinations when it used SNCI-based rates as the prime rate.

Additionally, Sidmar points out that the GOB has stated that SNCI rates are considered to be national lending rates. The fact that the SNCI rate on a particular loan is revised every five years is in accord with standard commercial practice in Belgium.

Sidmar claims that the fact that the SNCI is 50 percent government-owned does not negate the applicability of its rates as benchmarks. In the Final Determination of Certain Granite Products from Spain, 53 FR 24340, (1988), the Department stated that government ownership does not necessarily mean that the bank operates in other than a commercial fashion. In previous Belgian cases, SNCI rates were used as benchmark and discount rates (e.g., Certain Steel Products from Belgium, 47 FR 39304, 1982), et. al. The SNCI lends to all sectors of the Belgian economy.

Respondents also argue that Department's use of IMF rates as discount rates was inconsistent with its past practice. The IMF rate does not fit into any of the categories in the hierarchy outlined in the Department's Proposed Regulations. It is a short-term maximum rate to prime borrowers. Although the Department's hierarchy does indicate that a short-term rate may be used for calculating the benefit from long-term variable rate loans, the SNCI rates fit a category higher in the Department's hierarchy, and are more appropriate. Sidmar also notes that in Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 1993, the Department used the IMF rate as the benchmark rate for uncreditworthy customers, and the OECD rate for a creditworthy company. Sidmar, however, is creditworthy. Thus, the IMF rate is inappropriate.

DOC Position: We agree with respondents that IMF rates should not be used for benchmark and discount purposes in our final determinations since they reflect rates on short- to medium-term loans. Following the hierarchy outlined in our Proposed Regulations, we have used Sidmar's company-specific rates, not including loans found to be countervailable. We have not used Clabecq's cost of long-term debt outstanding for the period 1983–1988 because it reflects average interest rates on debt outstanding, not specific rates on loans taken out by the company in particular years. Further, we have not used the Credit General rates supplied by Fabfer because there is no evidence that Fabfer actually received loans at those rates.

Since the company-specific information is limited, it is necessary to go to the next step in our hierarchy (i.e., a national, average long-term rate). To this end, we have used Kredietbank rates. BBL rates were not used because they do not include the spread normally included by banks. With respect to the Kredietbank rates, we verified that the margin can be anywhere from 0 to 30 basis points. Consequently, we have used 15 basis points in our calculations as an average estimate of this spread for creditworthy companies and 30 basis points for uncreditworthy companies.

With respect to SNCI rates, while we would use these rates for purposes of the benchmark in years where SNCI lending was found non-countervailable, we were unable to break-out lending under countervailable programs from the non-countervailable lending. Therefore, we were not able to utilize these rates in our benchmark calculations.

Comment 7: Petitioners and respondents provide substantial argumentation with respect to the issue whether the non-countervailable 1959 Law and the 1970 Law under investigation are integrally linked. Fabfer and Sidmar also argue that the Department should treat the overall program represented by the 1970 and July 17, 1959 Law as a "tiered" program and countervail 1970 Law cash grants only by the difference between what was received and what Fabfer and Sidmar could have received under the 1959 Law.

DOC Position: The discussion of integral linkage in section 355.43(b)(6) of the Proposed Regulations makes it clear that the test for integral linkage applies only when we are attempting to make a specificity determination for programs, which when considered on their own might be specific, but, when taken together, might be found non-specific. Before considering programs jointly for purposes of our specificity test, we must determine them to be integrally linked.

We have found the 1970 Law to be specific because benefits under the law are restricted to firms located in certain regions. Linking the 1970 Law with another law or program for purposes of determining its specificity is inappropriate because the law will always remain regionally specific. Therefore, the question of linkage does not apply here.

Instead, we had to determine how to treat countervailable benefits under the 1970 Law in view of the existence of the 1959 economic expansion law. This law (1959) is generally available and was found to be not countervailable in the 1982 case. Based on all of the relevant evidence on the record concerning these two laws, we have concluded that firms qualifying for benefits under the 1970 Law would also qualify for benefits under the 1959 Law. The only difference would be a somewhat lower benefit level under the 1959 Law. Therefore, we have determined to countervail benefits under the 1970 Law only to the extent that they exceed benefits available under the 1959 Law. This approach is in accordance with our treatment of programs with tiered levels of benefits in Granite from Italy.

Comment 8: Fabfer argues that the amount of cash grants it received under the 1970 Law should be reduced by the amount of taxes Fabfer paid on them. Fabfer argues that it has always been taxed on grants received over the life of the investment, proportionally to the amortization of the investment.

Petitioners argue that the Department may not offset benefits received under the 1970 Law by secondary tax effects. The Department's Proposed Regulations, Department practice, and the statute clearly provide that the Department will not subtract from a benefit the secondary tax consequence of its receipt.

DOC Position: We acknowledge that assets purchased in part with cash grants under the 1970 Law must be depreciated for tax purposes based on the asset value less the cash grant amount. As a result, the cash grants have the effect of reducing deductions for depreciation and, hence, higher taxes. Nevertheless, the Department's longstanding practice is to disregard the secondary tax effects on subsidies. Therefore, we did not make the requested adjustment.

Comment 9: Petitioners argue that where Fabfer has not specified the years in which they received portions of capital grants and interest rebates under the 1970 Law, the Department should assume that the benefits were received in the most recent year indicated.

Fabfer argues that at verification it established the dates it received of most grants. Also, Fabfer showed that the particular grants raised by petitioners were to be disbursed in three equal annual installments. However, Fabfer is not required to retain ledger and bank receipt details for more than ten years. Thus, even though Fabfer was fully cooperative in the verification, it was unable to show the actual dates on which it received certain payments. However, since the contracts specified three equal annual payments, there is no basis to assume that Fabfer received a single payment in the most recent year.

DOC Position: We disagree with petitioners. We found at verification from both government and company sources that cash grants were typically awarded in equal annual installments over a three-year period. For grants received within the past ten years, Fabfer was able to document that its grants had been received in such a manner. For these reasons, it is reasonable to assume the older grants were also received in three equal annual installments.

Comment 10: Petitioners claim that interest subsidies (e.g., those provided to Clabecq under the Gandois Plan) and loans granted under the 1959 Law, which is otherwise generally available, are countervailable when granted to steel companies under government plans to restructure the steel industry, such as the Claes and Gandois Plans. These plans are selectively targeted to steel. That the GOB may have availed itself of its authority under the allegedly generally available 1959 Law to implement selective programs should not negate a finding of countervailability.

Clabecq claims that just because the Claes Plan was also in effect it should not change the legal character of the 1959 Law or its general availability. Plus, the Department must have known at the time of its 1982 determination that the Claes Plan was in effect.

DOC Position: Although the 1959 Law was found to be generally available in the 1982 investigations, it was considered on its own merits and not in connection with other programs or plans. In these investigations, however, we have expressly considered the specific nature of the benefits provided under these restructuring plans and we have concluded that where 1959 Law benefits were selectively targeted using one of the specific restructuring plans, those benefits are countervailable. However, we also note that we found no evidence that Interest Rate Subsidies under the 1959 Law were given subject to the Gandois Plan as alleged by Petitioners.

Comment 11: Petitioners assert that the Department should countervail benefits provided under the program for reimbursement of training costs. First, firms in some regions receive higher levels of benefits than firms in other regions. Moreover, certain regions receive a disproportionately large share of benefits. In petitioners' view, this renders the program a regional program.

Sidmar claims that if a program is received in all regions, it is not specific, regardless of disproportionality among regions. The Department standard for a program not to be regionally specific is simply that benefits be available at least at a minimal level in all of the regions under consideration. Workers in all regions of Belgium have received training reimbursements. Therefore, the program is not regionally specific.

DOC Position: Benefits provided under the program for reimbursement of worker training costs are provided in all regions of Belgium. However, the level of benefits differs among the regions. Therefore, we have countervailed the difference between the non-specific level of benefits and the level of benefits received by the respondent companies.

Comment 12: Petitioners argue that the Department correctly determined the steel industry to be the dominant user of the Ecological Incentives program, receiving nearly 40 percent of the benefits. They note that the Belgium steel industry's use of this program was disproportionate to its share of Belgium's gross domestic product.

DOC Position: We agree that the Ecological Incentives Program is countervailable. The Department's basis for the decision, however, is different than that of petitioners. We verified that only eight industries received benefits under this program. We have determined eight users to be too few and, therefore, constitute *de facto* specificity.

Comment 13: Petitioners note that the SNCI loans received by Fabfer in 1982 and 1983 remain outstanding. These loans are on terms inconsistent with commercial considerations. Thus, Fabfer continues to benefit in the POI from the below-market interest rate on these loans even though the GOB is no longer paying a portion of the interest costs. Petitioners suggest that the Department should calculate a rate for this benefit.

DOC Position: We agree. Because SNCI loans were found to be specific during these years, we have countervailed them to the extent they were inconsistent with commercial considerations.

Comment 14: Sidmar contends that SNCI's annual reports indicate that SNCI provides loans to a wide variety of industries and enterprises and groups of industries and enterprises. The 1988 Annual Report shows that the secondary sector, which is composed of at least eight separate industries and an unknown number of companies within each industry, received from 83.2 to 55.1 percent of total SNCI lending between the years 1975 and 1988. The services sector, also composed of untold numbers of companies, received from 16.8 to 44.9 percent during the same period.

DOC Position: We agree that SNCI loans have been made to many industries in the Belgian economy. We found, however, that the steel industry's shares of these loans was disproportionate in years prior to 1987.

Comment 15: Sidmar argues that the distribution of SNCI loans does not represent a situation any more disproportionate than that set forth before the Court of Appeals for the Federal Circuit in *PPG Industries* v. *United States* 978 F.2d 1232 (Fed. Cir. 1992) (*PPG Industries* v. *United States*). In that case, 23 companies received 60 percent of the FICORCA benefits granted by the Government of Mexico. The highest percentage of SNCI lending to companies engaged in the production and preliminary procession of metals occurred in 1980, at 29.2 percent.

DOC Position: In *PPG* v. *U.S.*, the court stated that "high concentration of beneficiaries in a given industry must be considered." The court then went on to decide that 60 percent of the benefits being received by 23 companies "*in varying industries*" (emphasis added) did not constitute a high concentration in any one industry. In contrast, as described above, we have found, in certain years a high concentration (approximately 13 to 29 percent) of benefits being provided to one industry (i.e., the steel industry). Therefore, we do not consider the facts in *PPG* v. *U.S.* to be analogous.

Comment 16: With respect to SNCI loans, Sidmar and Clabecq claim that the Department should not rely on the portion given to production and preliminary processing of metals sector in determining whether these loans have been given disproportionately to the steel sector. This is because the category includes, in addition to the steel industry, the zinc, copper and lead industries which are important mineral resources in Belgium.

In addition, Clabecq argues that the Department omitted statistics for a large number of years and it did not consider the percentage of new loans opened, by industrial sector, in each year to evaluate alleged disproportionate benefits.

DOC Position: Because the GOB did not provide a breakdown of SNCI loans by industry, we had to base our specificity determination on the sectoral breakdown provided. Similarly, the GOB did not provide data which would allow us to look at year-by-year shares or new loans issued as opposed to amounts outstanding.

Comment 17: Petitioners argue that the Belgian steel industry's use of the SNCI program was disproportionate when compared to the steel industry's share of Belgium's gross domestic product. For example, in 1988 the steel industry accounted for only 4.04 percent of gross domestic product, yet the steel industry received 22.6 percent of the new SNCI loans provided in that year.

Clabecq argues that the loan percentages to the steel industry are consistent with the size of the Belgian steel industry *vis-a-vis* the Belgian economy.

DOC Position: We based our specificity determination on the fact that the steel industry received a disproportionate share of SNCI loans compared to other users of the program. Therefore, we did not need to address the question of whether the steel industry's share of SNCI loans was excessive with respect to its share of GNP.

Comment 18: Clabecq and Sidmar contend that it is well-established that the GOB ownership of 50 percent of the stock in SNCI does not make SNCI loans countervailable (see, Granite Products from Italy 53 FR 27197, 27205 (1988)). Clabecq argues that SNCI loans are generally available and should not be countervailed. They argue that according to its Proposed Regulations, the Department cannot limit its consideration to only one of the four factors. They also note that according Certain Softwood Lumber Products from Canada ("Softwood Lumber"), 57 FR 22570, 22582–3 (1992), the Department considers no one factor dispositive.

DOC Position: We agree that government ownership in SNCI does not, in and of itself, render SNCI loans countervailable. Regarding Clabecq's comment concerning the specificity test, the Department's interpretation of the Proposed Regulations is that it will consider all relevant factors before concluding that a program is non-specific. However, in Softwood Lumber and other cases, the Department has noted clearly that a finding of specificity may be based upon the presence of a single factor.

Comment 19: Clabecq argues that, as previously found by the Department, SNCI loans are made on terms consistent with commercial considerations. For instance, Clabecq notes that in Industrial Phosphoric Acid from Belgium, 52 FR 25443, 25444 (1987), the Department refused to countervail SNCI credits because they were not on terms inconsistent with commercial considerations. Additionally, the current case is unlike the 1982 steel investigations in that the interest rates charged to steel companies are not lower than rates charged to other customers.

DOC Position: As discussed in our program write-up, we have found that SNCI loans are provided on terms inconsistent with commercial considerations.

Comment 20: Clabecq and Sidmar argue that the Department should recognize that in order to receive SNCI loans, these companies were required to pay substantial loan and guarantee fees. They state that U.S. countervailing duty law provides an offset for moneys paid in order to qualify for receipt of a benefit. The Department verified that Sidmar paid guarantee fees on its SNCI loans and a reservation provision on one of those loans.

DOC Position: For the specific loans where we have information on loan and guarantee fees, we have compared the cost of the guaranteed loan, including the cost of guarantee fee, with the cost of the benchmark loan, not including a guarantee fee. This is because commercial loans are not normally guaranteed. Therefore, where these fees have been included in calculations, they have not been treated as an offset *per se*.

Comment 21: Clabecq contends that if the Department determines that SNCI loans should be countervailed, the Department needs to revise its calculations to reflect all interest paid by Clabecq.

DOC Position: We have treated each of the loans in question as variable rate loans and we have accounted fully for the interest paid by Clabecq on these loans.

Comment 22: With regard to its "S–6" loan, Clabecq states that use of a 1980–1982 benchmark does not accurately measure the benefit in 1990/1991, given that the company only started drawing down the loan in 1983 and interest rate revisions occurred substantially later. Because of this, the Department should use a later benchmark reflective of these developments. Sidmar makes a similar claim.

DOC Position: Because the S–6 loan was a variable-rate loan, we used our variable-rate loan methodology for this loan. Lacking a variable rate benchmark, we used a long-term fixed-rate benchmark as of the last renegotiation date under the variable-rate loan agreement. In choosing a long-term benchmark, we assume that if the company had not received a variable rate loan, it would have received a fixed-rate loan.

Comment 23: With respect to the SNCI loan program, Sidmar contends that even if the loans were specific and inconsistent with commercial considerations, the Department's calculation of the countervailable benefit is flawed, because the Department did not account for the variable-rate nature of Sidmar's loans.

In past cases where the Department did not have a long-term variable rate benchmark against which to measure any subsidy, the Department has treated variable-rate loans as a series of short-term loans, and applied a short-term benchmark from the POI (see, Final Determination of Certain Fresh Atlantic Groundfish from Canada; 51 FR 10041 (1986) and Final Determination of Oil Country Tubular Goods from Spain; 49 FR 47060, 47062 (1984)). Alternatively, Sidmar argues that because it renegotiates the rates on these loans periodically, the Department should take its benchmark from the year of the renegotiation (see, Final Administrative Review of Certain Carbon Steel Products from Sweden; 57 FR 1452, 1454 (1992).

DOC Position: According to the hierarchy in our Proposed Regulations for variable rate loans, when we do not have variable-rate benchmarks we go to fixed-rate benchmarks. For purposes of these calculations, we used a long-term fixed-rate benchmark as of the last renegotiation date under the variable-rate loan agreement.

Comment 24: Petitioners note that Belfin was created pursuant to the Claes Plan specifically for the purpose of raising money in the international market to aid in the restructuring of the steel industry. Thus, the loans were *de jure* specific. In addition, the steel industry was the dominant user of Belfin loans. Also, the loans were at favorable rates, because Belfin borrowed on international markets with the GOB's guarantee, and then passed on the favorable rates to steel companies. Finally, Belfin loans were made to Cockerill and Clabecq during years when the firms were uncreditworthy. Thus, the Department should countervail the Belfin loans in question as loans to uncreditworthy companies.

Clabecq argues that Belfin loans should not be countervailed. Clabecq argues that the Department did not analyze each of the specificity factors for this program. Clabecq claims that the GOB did not (i) limit the availability of Belfin loans, (ii) the Department made no specific finding of dominant use or disproportionality, and (iii) Belfin funds are not government funds but are funds raised on international money markets.

DOC Position: Because Belfin loans were granted to steel companies under the Claes Plan, we have found them to be *de jure* specific and have countervailed them to the extent that they were provided on terms inconsistent with commercial considerations. Because we have found them to be *de jure* specific we do not need to address *de facto* specificity considerations.

Comment 25: If the Department decides to countervail Belfin loans, it must recognize the full amount of interest paid by Clabecq. In the preliminary, such amounts were substantially understated. Finally, Clabecq should be credited for loan guarantee fees it paid to receive Belfin loans. These fees must be paid annually in order to qualify for receipt of Belfin loans.

DOC Position: In our calculations, we have included the loan guarantee fees since they must be paid annually to qualify for loan receipt. In addition, we have included the verified interest payments in our calculations.

Comment 26: Petitioners allege that a subsidy arose when the GOB agencies, SNSN and SNI, sold their shares in SidInvest to Sidarfin, a wholly-owned subsidiary of Sidmar, at a deflated price. Sidarfin, in turn, passed these benefits to Sidmar, through the payment of extraordinary dividends from 1988 through 1991. The portion of the dividends considered extraordinary, i.e., the excess over the historical average level of dividends, should be treated as non-recurring grants to Sidmar.

Sidmar contends that any potential subsidy to SidInvest cannot be attributed to the production of steel. SidInvest did not invest in Sidmar and SidInvest had no direct financial transactions with Sidmar during the POI. Moreover, any improvement in the Group's financial position potentially caused by cancellation of outstanding CRAs in 1988 would not be apparent to an investor because the Group's results were not consolidated until 1991.

Sidmar also objects to petitioners' claim that benefits were passed through to Sidmar via extraordinary dividends. First, dividends are paid from income and there is no evidence that Sidarfin's income was affected by its purchase or sale of SidInvest shares. Second, the alleged extraordinary dividends were for fiscal years prior to 1988, although paid after that time. Finally, Sidarfin's dividends arise from many sources and there is no evidence to support petitioners' claim that the extraordinary amounts came from Sidarfin's holdings in SidInvest.

Finally, Sidmar claims there was no subsidy to pass through to Sidmar. The CRAs conferred a benefit as a zero interest rate loan, but that loan was not outstanding during the POI. Also, there was no subsidy arising from the sale of SNSN's and SNI's shares to Sidarfin, as the price represented the present value of the outstanding CRAs at the time of the transaction.

DOC Position: We disagree with Sidmar that potential benefits arising from the CRAs and the subsequent transactions involving them cannot be attributed to steel production. SidInvest was set up as an "investment" joint venture, i.e., it would not itself engage in production of any products. Instead, it would use the funds it received to invest in unspecified projects. The returns from these projects would go to paying off the CRAs and to the joint venture partners.

In situations such as this, where the government provides assistance to a non-producing joint venture (or subsidiary) and where there are no specific conditions on how or where the funds should be invested, it is reasonable to conclude that the subsidy benefits the participants in the joint venture rather than specific investments funded by the joint venture. In our view, subsidies to an investment joint venture, with no conditions on the use of the funds, are analogous to the receipt of "untied" subsidies. The Department's practice in such instances is to allocate the benefit over the total sales of the recipient company.

Because we are treating these subsidies as untied benefits to the Sidmar Group, we do not need to address the comments raised by petitioners and respondents regarding the specific transmittal mechanism raised in the briefs, extraordinary dividends. With respect to the issues of whether there is a subsidy to SidInvest and the amount of that subsidy, we disagree with Sidmar that the benefit from the interest free CRAs no longer exists during the POI. As discussed in the SidInvest section of the notice, we found that the July 29, 1988, agreements essentially turned the CRAs into a 32 year interest free loan. The fact that the loan was repurchased by SidInvest does not extinguish the benefit from that loan.

The other arguments put forward deal with the price paid by Sidarfin for the GOB-owned shares in SidInvest. In our analysis, we have not focused on that transaction directly. Instead, we have implicitly assumed that the price paid for the SidInvest shares by Sidarfin and the SNI was correct. However, as a consequence of this, SidInvest received a subsidy because the cash the GOB received on July 29, 1988, was less than the amount SidInvest should have paid in repurchasing its 32 year interest free loan. Thus, the subsidy was assigned to SidInvest, rather than Sidarfin. Given our decision to allocate these benefits over the entire Sidmar Group, the assignment of benefits to SidInvest or Sidarfin should not matter.

Comment 27: Petitioners argue that loans from ClabecqLease are *de jure* specific, because ClabecqLease was established to provide funds expressly to Clabecq. Although the loan may have been at commercial rates, it was on terms inconsistent with commercial considerations because Clabecq was uncreditworthy and had little access to the private lending market. Therefore, the Department should countervail this loan.

Clabecq argues that in the preliminary determinations, the Department found that the ClabecqLease loan made by Forge Finance S.A. to Clabecq was countervailable. However, in calculating the benefit from this loan, the Department used the grant equivalent for 1992 rather than for 1991. The erroneous use of 1992 considerably overstated the benefit. The Department should use the grant equivalent for 1991, the POI for this investigation. Finally, Clabecq argues that it should be credited with all interest paid on this loan.

DOC Position: For the reasons cited in petitioners' comment, we have found the ClabecqLease loan to Clabecq to be *de jure* specific and we have countervailed the loan to the extent that its terms were more favorable than the terms on benchmark financing, adjusted to take into account Clabecq's uncreditworthiness at the time the loan was negotiated.

We agree with Clabecq that we erroneously used the 1992 grant equivalent in calculating the subsidy amount for this loan in the preliminary determinations. For our final determinations, we have used the 1991 grant equivalent. Finally, as Clabecq has requested, we included all verified interest payments in our calculations.

Comment 28: Petitioners argue that the income tax exemption on capital grants received under the 1970 Law should be treated as a nonrecurring grant because it is a one-time benefit and applies only to the tax year in which the grant was received. Also, in view of the EC State Aids Code, companies could not expect the program to continue after 1985.

DOC Position: We disagree that we should treat this exemption as nonrecurring. The Department's longstanding practice is to treat income tax reductions or exemptions as benefits occurring entirely within the relevant tax year. Because income tax returns and payments are filed on a yearly basis, we have typically recognized income tax savings to be realized on a yearly basis as well.

Comment 29: Petitioners note that under the 1970 Law, companies located in development zones may depreciate plant and equipment at twice the normal linear rate for a maximum of three successive fiscal periods. This benefit is limited to specific regions and is countervailable. In addition, the benefit is nonrecurring because it is limited to three successive tax years following the purchase of the asset. Further, the companies could not have expected the program to remain in effect after 1985 because the EC State Aids Code prohibited capital grants after this year. Thus, the Department should countervail the benefit as a nonrecurring grant.

DOC Position: For the reasons explained above, tax benefits are allocated to the year in which the tax return is filed.

Comment 30: Petitioners claim that the Department must countervail the benefit from accelerated depreciation in the first year that the benefit is claimed. It would be administratively burdensome to trace carryforward deductions to the year of ultimate use. Furthermore, the Department should not allow respondents to select which specific deductions to allocate to what year; otherwise respondents will pick and choose the year in which to be countervailed.

DOC Position: Because Sidmar's related service center's income tax return had separate line items which clearly showed the amount of dividend deduction and the deduction for losses carried forward, we knew precisely which deductions the company had used. Therefore, it was clear that accelerated depreciation was not used.

Comment 31: Sidmar claims that the real estate tax exemption is also available under the July 17, 1959 Law. Therefore, this exemption should not be found to be specific.

DOC Position: We disagree. At verification, we confirmed that accelerated depreciation is available only under the 1970 Law.

Comment 32: Petitioners claim that neither Cockerill nor Fabfer responded to the Department's questionnaire with respect to EC programs. Therefore, the Department should apply BIA to these companies for these programs.

Fabfer contends that petitioners' claim with respect to Fabfer is incorrect. In its deficiency questionnaire response, Fabfer stated that it had never received benefits under the EC programs. Further, the EC verification report states that none of the companies under investigation had Article 56 conversion loans or loan guarantees, European Investment Bank loans or guarantees, or New Community Instrument Loans, outstanding during the POI. Finally, the Department found no evidence of assistance under the ECSC Redeployment Aid or ERDF programs in Fabfer's worksheet of annual reports.

DOC Position: We agree with Fabfer. Fabfer responded and we verified that it did not receive benefits under any of the programs under investigation.

Therefore, we have not applied a BIA rate to Fabfer. However, as noted above in this notice, because Cockerill did not respond to our questionnaire, we are applying BIA to this company.

Comment 33: Petitioners argue that 19 USC 1671(a), dealing with subsidies discovered in the course of the investigation, requires the Department to countervail the "water purification subsidies" received by Sidmar based on BIA. Moreover, using the Department's traditional analysis, the benefit is non-recurring.

Sidmar contends that the Department cannot find that the grants Sidmar received for water treatment provided countervailable subsidies. According to Article 2 of the GATT Subsidies Code, "Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with provisions of the Article." Sidmar argues that the Department has not initiated investigations on these grants and it did not request any information from Sidmar concerning these grants.

Sidmar claims that it complied fully with the Department's requests for information on investigated programs. However, the record indicates that the Department was not investigating these types of grants. These grants existed prior to the 1982 investigations and were expressly found not countervailable at that time. Moreover, the Department has no new evidence indicating that the 1982 determination was incorrect and, therefore, has no basis to overturn its prior determination (see, Initiation of Certain Softwood Lumber Products from Canada; 51 FR 21204, 21205 (1986)).

Sidmar further contends there is substantial evidence on the record that these water purification grants were not part of the same "Ecological Incentives" program which provided benefits to Fabfer and Clabecq. Sidmar received grants; Fabfer and Clabecq received loans which were later assumed by the GOB. Second, the GOB response indicates that, of the companies under investigation, only Fabfer and Clabecq received benefits. Third, the Department verified that the investigated Ecological Incentives program was terminated in 1981. However, Sidmar received water purification grants through 1983.

To find these grants to provide a countervailable subsidy to Sidmar this late in these investigations would deny Sidmar its right to present its views fully and to demonstrate that there is no countervailable subsidy. Sidmar was not given notice of the discovery of this subsidy practice during the investigation, as required under 19 CFR 355.39(c). As a result, Sidmar has not been given the opportunity to address this issue.

DOC Position: We have treated the water purification subsidies as countervailable. We agree with petitioners that the Department is required to countervail subsidies discovered during the course of an investigation. Further, section 355.39 of the Department's regulations allows for consideration of subsidy practices not necessarily initiated upon. Finally, in this case we have verified the exact benefits received under the program.

Sidmar contends that according to Article 2 of the Subsidies Code, "Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with provisions of the Article." It is true that we did not include Sidmar when we initiated our investigation into the Ecological Incentives Program. Therefore, no questions were asked of Sidmar. However at verification we discovered Sidmar had received water purification subsidies. At that point, the Department requested further information concerning these subsidies. We consider the request made for information at verification to have provided Sidmar with the appropriate notification as required by our regulations. Further, Sidmar was provided ample opportunity to address this issue in its case briefs.

As discussed previously, under the Ecological Incentives program, the GOB assumed the debt for companies with respect to water treatment projects. Although Sidmar regarded its water purification subsidies as grants, it is not unlikely that a company like Sidmar would treat receipt of benefits under the Ecological Incentives program as a grant given the nature of the program. Second, even though the GOB response indicates that, of the companies under investigation, only Fabfer and Clabecq received benefits, the GOB did not schedule a meeting with Flemish officials regarding this program. Third, even though the Ecological Incentives program was terminated in 1981, we verified that many companies including Fabfer had outstanding commitments which were incurred after 1981. We also note that Sidmar began receiving water purification subsidies before 1981. Finally, the program found not countervailable in the 1982 investigations was referred to as "Environmental Incentives". While it appears to be the same as the Ecological Incentives program investigated presently, there is no mention of a water purification program in the 1982 notice.

Sidmar's argument that to find these grants to provide a countervailable subsidy this late in these investigations would deny Sidmar its right to present its views fully and to fully demonstrate that there is no countervailable subsidy is inaccurate. We did give Sidmar adequate "notice" of the discovery of this subsidy practice during the verification, as required under 19 CFR 355.39(c). At verification, we asked numerous questions about the nature of these subsidies and their relationship to the already-investigated Ecological Incentives program. Further, our discovery of these "subsidies" was detailed in the Sidmar verification report. Finally, Sidmar was given adequate opportunity in their case briefs to argue this issue.

Comment 34: The Government of Belgium argues that the Department's decision to return the corrected share of industrial output and other statistical information contained in the Government's February 11, 1993 submission is a somewhat narrow interpretation of Section 355.31(a)(i) of the Department's regulations. They note that the original statistical information was provided to the Department before the verification of the Government of Belgium's responses. The returned February 11, 1993 submission is simply a correction to that original submission.

The Government of Belgium argues that it was never notified in writing, of the existence of a deadline to file "new" information presented during the Department's verification. The Government states that it was first aware of the written memorandum outlining this deadline on February 11, 1993, when petitioners' counsel attached it to a submission to the Department. Further, the Government argues that absence of written notification in this case most likely constitutes an administrative breach because in other cases, such as the concurrent countervailing duty investigation regarding New Zealand, written notification was made. The Government of Belgium also argues that given the schedule and release of other information in these investigations it is unfair to determine that because the information was filed with the Department six business days after the end of the Government of Belgium verification it has to be rejected. The GOB notes that if it had received written notification, it would have filed a request for a reasonable extension.

The Government of Belgium argues that according to 19 CFR 355.38(c)(2) of the Department's regulations, "the case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination of final results * * *." The Government maintains that the four points contained in their case brief submitted on April 12, 1993, are arguments that continue in the Government of Belgium's view to be relevant to the Department's final determinations and therefore should not be rejected. Returning the information included in the case brief means that the Department has no intention of taking into account arguments that continue to be relevant for the final determinations.

Further, the Government points out that the Department's decision to return the information is inconsistent with the opinion given by the U.S. Court of International Trade in the case of *Ornatube Enterprise Co., Ltd.* v. *United States and Hannibal Industries, Inc.* (1993) concerning the treatment of new information contained in a case brief.

DOC Position: With respect to the return of the corrected industrial share information, our regulations at 19 CFR 355.31(a)(i) are clear regarding time limits for submission of factual information. Factual information shall be submitted not later than the day before the date on which the verification is to commence. We originally asked for this information in a December 9, 1992 letter to the GOB. The GOB filed this information for the first time (on a timely basis) on January 13, 1993. We began verification in Belgium on January 25, 1993. Therefore, the last date in which the GOB could have submitted "updated" information was Friday, January 22, 1993. However, the information was received on February 11, 1993. We also note that the GOB did not even bring up these corrections to the Department when the verification team was verifying this information on the first day of verification—January 25, 1993.

The GOB is arguing that it has never been notified, in writing of the existence of a deadline to file "new" information presented during the Department's verification. However, the Department's verification team verbally made it clear to GOB officials on January 26, 1993 (and reminded them on later dates) of the two day deadline to file new information presented during the verification. Written notification in the verification outline would not have been possible. Unlike the case in New Zealand, when notification was contained in the verification outline, the Belgium verification had begun before the internal verification guidance memorandum from the Acting Assistant Secretary was sent to analysts.

Regarding the GOB's point that it is unfair to return the submission, we note that a rationale underlying the two day deadline is to give all parties to the proceeding as much time as possible to consider information previously not on the record. In that spirit and given that we did verbally inform GOB officials at verification of the deadline, and that the policy was followed in the other concurrent steel investigations, it would be unfair to make an exception to the rule for the GOB.

We further note that in our April 15, 1993 letter in which we returned this information, the Department explained that the exhibits included in the case brief and all references thereto will not be considered. The Department did not tell the GOB that it would be unable to set forth arguments with respect to the issues related to the untimely exhibits. Returning the information included in the case brief does not mean that the Department intends to ignore arguments that continue to be relevant for the final determination.

Finally, the GOB's reference to the United States Court of International Trade decision in the case of *Ornatube Enterprise Co., Ltd.* v. *United States and Hannibal Industries, Inc.* (1993) concerning the treatment of new information contained in a case brief actually supports the Department's actions in this case. In *Ornatube*, the Court ordered the Department to sever new information from a case brief, expunge it from the record, and retain the information that did comply with Commerce's instructions. In this case, we explained to the GOB in the April 15, 1993 letter that the exhibits and all references thereto will not be considered. However, the rest of the brief still remains on the record of these investigations.

European Community ("EC") Programs Interested Party Comments

Counsel for the EC and petitioners submitted the following comments on EC programs under investigation. Our responses to the following comments also apply to the concurrent countervailing duty investigations from France, Germany, Italy, Spain and the United Kingdom.

Comment 1: Petitioners argue that programs financed by the ECSC Operating Budget are countervailable. As the Department found in the 1982 steel investigations, budget-funded programs are countervailable to the extent that member state funds are included in the budget. In this case, the Department found that member state contributions made up a large portion of the ECSC Operating Budget. After 1985, even though a significant portion of the ECSC operating budget was funded through levies, it also appears to consist of residual member contributions. To the extent that the operating budget after 1985 contained funds from the extraordinary receipts, or contained net surplus from preceding years made up of member state contributions, ECSC programs financed with these funds are countervailable.

DOC Position: We verified that member state contributions were made during the period 1978–1984. Consistent with our finding in 1982, we are treating only that portion attributable to member state contributions as countervailable.

The only benefits prior to 1985 which continue to be countervailable are Article 54 interest rebates. In order to account for the effect of member state contributions in the calculation of Article 54 benefits, we calculated the ratio between the contribution from member states and the ECSC's total available funds for the year, and then multiplied this ratio by the rebate amount to calculate the subsidy.

Petitioners suggest that the member state contributions from 1978–1984 have affected post-1984 ECSC budgets. However, we found no evidence that "residual" benefits have affected later budgets. Therefore, we have not taken this further adjustment into account in our calculations.

Comment 2: The EC argues that the Department should find the ESF grant program to be not countervailable because the record demonstrates that aid under the program was distributed throughout the community. There is no evidence on the record showing that ESF funds are limited to a region in Italy, the only country where this issue is pertinent. Instead, the evidence on the record shows that ESF funds were provided in northern, central and southern Italy.

More generally, the EC argues that any aid provided under any government's assistance programs is likely in practice to be used within some geographic area constituting less than the complete land mass of a country. To be countervailable, the availability of aid must be limited, either *de jure* or *de facto*, only to specific regions. If aid which is generally available is not actually used in every part of a country, this does not mean that it is *de facto* specific. The criterion should be the availability and not *ex post facto* microscopic evaluation of the distribution of the aid within the country.

Petitioners argue that the EC's specificity analysis relating to ESF Aid fundamentally distorts the *de facto* specificity standard provided by Congress. The EC's statement that "[t]he criterion should be the availability and not *ex post facto* microscopic evaluation of the distribution of the aid within the country," is clearly at odds with the countervailing duty statute. Petitioners state that the EC would write this law off the books by inviting the Department to look only at the nominal availability of the funds. The statute, however, calls for both a *de jure* and if necessary a *de facto* analysis of a program's specificity. Properly implemented, this test entails looking at actual disbursement of benefits under the program and not the availability of those benefits.

DOC Position: We found at verification that the ESF is primarily responsible for combating long-term unemployment and facilitating employment opportunities for younger workers. Its secondary role is to promote the development of regions that are (1) lagging behind, (2) affected by industrial decline, and (3) located in rural areas. We note that EC officials confirmed at verification that the program typically channels resources to these less-developed regions.

In Italy, we verified that in fact ESF funds were channeled to certain areas. Therefore, because under its primary and secondary objectives, the ESF has channeled resources to only certain regions, we view this program to be limited and, therefore, countervailable.

Comment 3: Petitioners note that an additional flow of member state funds into the ECSC budget has taken the form of aid designated for "Social Measures." This aid, in many cases, operates to relieve steel firms of legal or contractual obligations to redundant workers. Thus, to the extent that the Social Measures make funds available to steel producers on terms inconsistent with commercial considerations, and are financed through the extraordinary receipts made up of member state contributions, they are countervailable. In addition, when provided to steel workers or former steel workers in a manner that relieves steel companies of their legal obligations, aid disbursed under the rubric of this program is countervailable.

DOC Position: During the EC and member state verifications, we found no evidence that funds under the heading "Social Measures" were being received by any investigated company. Thus, we determine that no additional analysis on the nature of this line item from the EC budget is required for purposes of these investigations.

Verification: In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B-099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Belgium which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Hot-Rolled Carbon Steel Flat Products
Country-Wide Rate—1.12 percent
Cockerill—24.17 percent
Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide Rate—1.03 percent
Cockerill—24.17 percent
Certain Cut-To-Length Carbon Steel Plate
Country-Wide Rate—6.52 percent
Cockerill—24.17 percent
Fabfer—0.96 percent

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on entries of certain steel products from Belgium.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[C-351-818]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Laurel Lynn, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3961 or 482-1168, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act),