Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–029. *Applicant:* University of Colorado, Boulder, CO 80309. *Instrument:* Color Center Laser. *Manufacturer:* GWU Lasertechnik, Germany. Intended Use: *See* notice at 62 FR 17783, April 11, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: *The foreign instrument provides:* (1) a tuning range of 1450 to 1750 nm, (2) minimum power output of 50 mW and (3) a maximum linewidth of 10 GHz. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–15602 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 6, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1994 through December 31, 1994 (61 FR 64669). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 C.F.R. 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

Calcutta Ferrous	Kajaria Iron Castings Pvt. Ltd	RSI Limited.
Carnation Enterprise Pvt. Ltd.	Kejriwal Iron & Steel Works	Seramapore Industries Pvt. Ltd.
Commex Corporation	Nandikeshwari Iron Foundry Pvt. Ltd	Shree Rama Enterprise.
Crescent Foundry Co. Pvt. Ltd.	Orissa Metal Industries	Shree Uma Foundries.
Delta Enterprises	R.B. Agarwalla & Company Pvt. Ltd	Siko Exports.
Dinesh Brothers	R.B. Agarwalla & Co	Super Iron Foundry.
Uma Iron & Steel	Victory Castings Ltd	

Delta Enterprises, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries and Uma Iron & Steel did not export the subject merchandise during the period of review (''POR''). Therefore, these companies have not been assigned an individual company rate for this administrative review. This review covers the period January 1, 1994 through December 31, 1994, and nineteen programs.

Since the publication of the preliminary results on December 6, 1996, we invited interested parties to comment on the preliminary results. On January 6, 1997, case briefs were submitted by the Engineering Export Promotion Council of India (EEPC) and the exporters of certain iron-metal castings to the United States (respondents) during the review period and the Municipal Castings Fair Trade Council and its members (petitioners). On January 13, 1997, rebuttal briefs were submitted by the EEPC, respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). The Department is conducting this administrative review in accordance with § 751(a) of the Act.

Scope of the Review

Imports covered by the administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (''HTS'') item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in § 782(i) of the Act, we verified information submitted by the Government of India and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined 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).

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Pre-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	0.12
Carnation Enterprise Pvt. Ltd.	0.24
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd.	0.04
Dinesh Brothers	0.57
Kajaria Iron Castings Pvt. Ltd.	0.40
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd.	0.24
R.B. Agarwalla & Company	0.03
RSI Limited	0.59
Seramapore Industries Pvt. Ltd.	0.04
Shree Rama Enterprise	0.00
Siko Exports	0.00
Super Iron Foundry	0.25
Victory Castings Ltd.	0.25

2. Pre-Shipment Export Credit in Foreign Currency (''PCFC'')

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.45 percent for Calcutta Ferrous and 0.00 percent for all other producers/exporters of the subject merchandise.

3. Post-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.03 percent for Dinesh Brothers Pvt. Ltd., 0.02 percent for Super Iron Foundry and 0.00 percent for all other producers/exporters of the subject merchandise.

4. Post-Shipment Export Credit in Foreign Currency (''PSCFC'')

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	1.91
Carnation Enterprise Pvt. Ltd.	0.14
Commex Corporation	0.91
Crescent Foundry Co. Pvt. Ltd.	0.59
Dinesh Brothers	1.45
Kajaria Iron Castings Pvt. Ltd.	3.54
Kejriwal Iron & Steel Works	0.10
Nandikeshwari Iron Foundry Pvt. Ltd.	2.74
R.B. Agarwalla & Company	0.67
RSI Limited	2.21
Seramapore Industries Pvt. Ltd.	2.15
Shree Rama Enterprise	0.00
Siko Exports	2.23
Super Iron Foundry	0.00
Victory Castings Ltd.1.91%	1.77

5. Income Tax Deductions Under Section 80 HHC

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise under section 771(5A)(B) (Note: The preliminary results mistakenly indicated the section as 772(5A)(B)). Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	3.19
Carnation Enterprise Pvt. Ltd	2.15
Commex Corporation	0.45
Crescent Foundry Co. Pvt. Ltd	7.52
Dinesh Brothers	0.00
Kajaria Iron Castings Pvt. Ltd	11.64
Kejriwal Iron & Steel Works	15.04
Nandikeshwari Iron Foundry Pvt. Ltd	0.28
R.B. Agarwalla & Company	3.86
RSI Limited	4.89
Seramapore Industries Pvt. Ltd	7.02
Shree Rama Enterprise	13.09
Siko Exports	2.28
Super Iron Foundry	0.05
Victory Castings Ltd	0.00

6. Import Mechanisms (Sale of Licenses)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.24 percent for Kajaria Iron Castings Pvt. Ltd, 0.06 percent for Kejriwal Iron & Steel Works, 0.15 percent for Seramapore Industries Pvt. Ltd, and 0.00 percent for all other producers/exporters of the subject merchandise.

7. Exemption of Export Credit From Interest Taxes

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	0.09
Carnation Enterprise Pvt. Ltd	0.03
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd	0.02
Dinesh Brothers	0.16
Kajaria Iron Castings Pvt. Ltd	0.24
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd	0.15
R.B. Agarwalla & Company	0.02
RSI Limited	0.12
Seramapore Industries Pvt. Ltd	0.06
Shree Rama Enterprise	0.00
Siko Exports	0.13
Super Iron Foundry	0.07
Victory Castings Ltd	0.08

B. Other Program Determined to Confer Subsidies

In the preliminary results we found that the following new program conferred countervailable benefits on the subject merchandise:

Payment of Premium Against Advance License

Our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program are 3.65 percent *ad valorem* for Dinesh Brothers Pvt. Ltd. and 0.00 percent for all other

producers/exporters of the subject merchandise.

II. Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Programs Operated by the Small Industries Development Bank of India (SIDBI)
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
7. Export Promotion Capital Goods Scheme
8. Benefits for Export Oriented Units and Export Processing Zones
9. Special Imprest Licenses
10. Special Benefits
11. Duty Drawback on Excise Taxes

We did not receive any comments on these programs from the interested parties, and our review of the record have not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1

Respondents contest the Department's use of a rupee-loan interest rate, adjusted for exchange rate changes, as the benchmark to calculate the benefit on PSCFC loans. According to respondents, this is inconsistent with item (k) of the ''Illustrative List of Export Subsidies,'' annexed to the Agreement on Subsidies and Countervailing Measures. Item (k) provides that an ''export credit'' is a subsidy only if those credits are granted by governments at interest rates below the cost of funds to the government. Because the Indian commercial banks providing PSCFC loans could themselves borrow at LIBOR-linked rates, the appropriate benchmark, respondents claim, is a LIBOR-linked interest rate. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates above the appropriate benchmark, *i.e.*, the rate at which Indian commercial banks could borrow U.S. dollars.

According to petitioners, the Department has consistently rejected the ''cost-to-government'' methodology of item (k), because that approach does not adequately capture the benefits provided under short-term financing programs. In support of their argument, petitioners cite the Department's determinations in *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 60 FR 17515, 17517 (April 6, 1995) and *Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review,* 56 FR 12175, 12177 (March 22, 1991). Petitioners also cite the 1989 final results of *Certain Textile Mill Products from Mexico,* in which the Department stated:

> When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we must [sic] use a commercial benchmark to calculate the benefit from a subsidy, consistent with the full definition of ''subsidy'' in the statute.

54 FR 36841, 36843 (1989). According to petitioners, the Department's repudiation of the ''cost-to-government'' standard contemplated in item (k) was upheld and restated in the *Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures,* H. Doc. No. 316, 103d Cong., 2d Sess. 927–928 (1994). For these reasons, the Department should reject respondents' argument and adopt as a benchmark a non-preferential interest rate based on the ''predominant'' form of short-term financing in India.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as an appropriate benchmark for the PSCFC program. In examining whether a short-term export loan confers countervailable benefits, the Department must determine whether ''there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' *See* § 771(5)(E)(ii) of the Act. *See also* S. Rep. No. 412, 103d Cong., 2d Sess. 91 (1994).

In this case, we have determined that commercial financing comparable to PSCFC is the ''cash credit'' interest rate. As we explained in *Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review,* 61 FR 64669, 64671 (December 6, 1996) (*1994 Castings Prelim*), the ''cash credit'' interest rate is for domestic working capital finance, comparable to pre- and post-shipment export working capital finance. We also found that PSCFC loans are limited only to exporters, and only exporters have access to LIBOR-linked interest. Therefore, in accordance with § 771(5)(E)(ii) of the Act, because the interest rate on PSCFC loans is less that what a company would have to pay on a comparable ''cash credit'' short-term loan, we determined that PSCFC loans confer countervailable benefits. Because we found that PSCFC loans are limited to exporters and that non-exporters do not have access to these low-cost financing rates, loans with interest rates linked to LIBOR clearly do not represent the ''comparable commercial loan that the recipient could actually obtain on the market.'' The fact that commercial banks may borrow at LIBOR-linked rates is, therefore, irrelevant to our finding.

Petitioners correctly note that the Department has consistently rejected the ''cost-to-government'' standard of item (k) of the Illustrative List, which respondents cite in support of their argument that the appropriate benchmark for PSCFC loans should be a LIBOR linked interest rate. The cost-to-government standard contemplated in item (k) does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits on goods exported from India. *See, e.g., Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review,* 57 FR 562 (January 7, 1992). Therefore, in accordance with the U.S. countervailing duty law and the Department's past practice, we will continue to use as a benchmark the ''comparable'' cash credit commercial loan rate that Indian exporters would actually obtain on the market to determine whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States.

Comment 2

According to respondents, for purposes of the § 80 HHC tax program, earnings from the sale of licenses are considered export income which may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because revenue from the sale of licenses are also part of the deductions under § 80 HHC, to countervail this revenue and the deduction results in double counting the subsidy from the sale of licenses. Respondents also contend that the Department is double counting the subsidy from the export financing programs. The financing programs reduce the companies' expenses in

financing exports, which in turn increases profits on export sales. Because the § 80 HHC deduction increases as export profits increase, the financing programs increase the § 80 HHC deduction. Therefore, respondents argue, countervailing the financing programs and the § 80 HHC deduction means the benefit to the exporter is countervailed twice.

According to respondents, the Department rejected similar arguments in the 1990 administrative review of this case, stating that an adjustment to the § 80 HHC benefit to account for other subsidies is contrary to our practice of disregarding secondary tax effects of subsidies. *See Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44849, 44854 (August 29, 1995). However, the 1990 final results were appealed to the Court of International Trade (CIT), and on December 26, 1996, the CIT ruled in that appeal. *See Crescent Foundry Co., et al. v. United States,* 951 F.Supp. 252 (CIT 1996) (*Crescent*). In that ruling, the CIT addressed the issue of double-counting, stating:

> Commerce cited this policy of disregarding secondary tax consequences as the reason for refusing to eliminate countervailed CCS payments from its calculation of the § 80 HHC subsidy. [citation omitted] However, the logic of that policy would seem to dictate the opposite result: that when companies pay lower taxes as a result of receiving a subsidy, Commerce should not add the additional tax benefit to the amount of the subsidy when calculating the benefit conferred. That is, it should not countervail the tax exemption for that subsidy. * * *

Id. at 261. The issue was then remanded by the CIT for ''a reexamination of whether countervailing the portion of the § 80 HHC subsidy attributable to CCS over-rebates double-counts the CCS subsidy.'' *Id.*

Respondents argue that the Department should reexamine its preliminary results in this review in light of the CIT's ruling in *Crescent,* and find that the subsidy from export financing and import license sales was double counted when the unpaid tax on those subsidies was also countervailed under § 80 HHC.

Petitioners contend that the Department's prior findings on this issue should be upheld in this administrative review on the basis of (1) the facts on the record; (2) because the subsidies being countervailed are separate and distinct; (3) because the Department has a consistent policy of not examining the tax consequences of tax exemptions related to loans and grants; and (4) there is no reasonable way for the Department to isolate the alleged effects on respondents' export tax liability. For these reasons, the Department should reject respondents' double-counting allegations.

Petitioners indicate that the Department's policy of not examining secondary tax effects of subsidies has been upheld in the courts. In support of this, petitioners cite *Geneva Steel v. United States,* 914 F. Supp. 563, 609–610 (CIT 1996) (*Geneva Steel*); *Ipsco, Inc. v. United States,* 687 F. Supp. 614, 621–22 (Ct. Int'l Trade 1988); and *Michelin Tire v. United States,* 6 CIT 320, 328 (1983), *vacated on other grounds,* 9 CIT 38 (1985). According to petitioners, the legislative history of the URAA also makes clear that in determining whether a countervailable subsidy exists, the Department is not required to consider the effect of the subsidy. *SAA,* H.R. Doc. No. 103–316 at 926 (1994). When applied to the alleged double-counting issue, this means that the Department does not have to consider whether subsidies in the form of grants or loans have any effect on the § 80 HHC tax program when determining whether subsidies under § 80 HHC are countervailable. Petitioners assert that this is the only reasonable policy given the difficulties in calculating such secondary effects. Furthermore, petitioners argue that even if the Department could consider the secondary effect of a subsidy program in determining its countervailability, the Department's ability to correct for unfair subsidization would be impaired, as governments would structure subsidy programs to appear to have overlapping effects.

Petitioners state that the Department has applied this policy in all cases involving grant and loan programs as well as income tax programs. Only in two previous cases did the Department make different findings. *See Carbon Steel Wire From Argentina; Suspension of Investigation,* 47 FR 42393 (September 17, 1982), and *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Steel Pipe and Tube Products From Argentina,* 53 FR 37619 (September 27, 1988). In the Argentine cases, the Department found that excessive rebates of indirect taxes were countervailable. The petitioners at the time claimed that there was an additional subsidy due to the fact that the rebates were not subject to income taxes. The Department determined in those cases that it had captured the full benefit by countervailing the overrebate.

Petitioners point out, however, that factual circumstances in these cases were different from those in the Indian castings reviews. In the Argentine cases, the Department did not examine whether there was a benefit as a result of the tax exemption because the overrebates were provided through a non-income tax program. Indian castings exporters, in contrast, were found to have benefitted from both non-income tax programs (grants and loans), in addition to the § 80 HHC income tax program. According to petitioners, in such cases, it is the Department's policy to countervail both types of programs as separate and distinct subsidies.

Petitioners claim that the recent CIT ruling in *Crescent* does not upset the Department's policy with respect to this issue, or the prior CIT cases upholding that policy. Rather, the CIT has merely requested that the Department on remand (1) reexamine whether countervailing the portion of the § 80 HHC subsidy attributable of the CCS overrebate results in a double-counting of the CCS subsidy and (2) explain whether the Department's determination in *Argentine Wire Rod* continues to reflect current agency policy.

Petitioners indicate that respondents do not provide any comment on how the Department should correct for alleged double-counting under § 80 HHC. According to petitioners, even if the Department had the necessary data in this review to isolate all of the revenues and expenses, doing so would be too difficult and burdensome for the agency to accomplish. Accordingly, the Department should conclude that any attempt to trace the tax consequences of other subsidies would be overly complicated and administratively burdensome.

Department's Position

Respondents' argument that the subsidy under the export financing and import licensing programs has been countervailed twice, by also countervailing the full amount of the § 80 HHC deduction, is incorrect. With respect to the CIT's ruling in *Crescent,* the Department responded to the court's instructions on February 24, 1997, in the *Final Results of Redetermination on Remand Pursuant to Crescent Foundry Co. Pvt. Ltd., et al. v. United States* (*Crescent Remand*).

As we explained in the *Crescent Remand,* adjusting the § 80 HHC subsidy to take into account the CCS grants (in this review revenue from the export financing programs and earnings from the sale of licences) would be in conflict with the countervailing duty law, Department regulations, and longstanding Department policy. This type of adjustment is inappropriate because, if made, it would: (1) require

the Department to examine the secondary effects and uses of a subsidy; (2) expand the statutory definition of a permissible offset to a subsidy; and (3) require the Department to no longer countervail the full amount of the benefit provided by a government subsidy program.

The Department explained fully its reasoning with respect to this issue in the 1991 final results of this case, and in the recently completed 1992 and 1993 final results. *See Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44843, 44848 (August 29, 1995) (*1991 Castings Final*), *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 61 FR 64687, 64692 (December 6, 1996) (*1992 Castings Final*), and *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 61 FR 64676, 64685 (December 6, 1996) (*1993 Castings Final*). It has been and continues to be our policy to ignore *any* secondary effect of a direct subsidy on a company's financial performance. This policy has been upheld by the court. *See, e.g., Saarstahl AG v. United States,* 78 F.3d 1539, 1543 (Fed. Cir. 1996).

With respect to the *Argentine Wire Rod* case, we stated in the *Crescent Remand* that there was not sufficient information to determine whether or not the Department should have investigated the allegation of an income tax benefit. However, we also stated that under our current approach, and under the approach adopted in the overwhelming majority of cases, we would not take into account the secondary effect of an income tax deduction on the calculation of the benefit conferred under the rebate of indirect taxes (reembolso) program in Argentina. Likewise, the Department would not take into account the secondary effects of that rebate program on the calculation of the benefit conferred by an income tax deduction program. If *Argentine Wire Rod* is interpreted as suggesting that the Department would not investigate and calculate separate benefits for a rebate program and a tax deduction program, then *Argentine Wire Rod* must be considered an anomaly and not reflective of current Department policy or of Department policy in other case precedents. *Crescent Remand* at 4.

In all of the cases where we have actually examined both grant and tax programs, this principle has been applied, even though it has not always been expressly discussed. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta From Turkey,* 61 FR 30366 (June 14, 1996) *(Pasta from Turkey); Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 30288 (June 14, 1996) *(Pasta From Italy); Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia,* 57 FR 38472 (Aug. 25, 1992) *(Malaysian Rubber Thread); Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium,* 58 FR 37273 (July 29, 1993) *(Belgian Steel);* and *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada,* 51 FR 10041 (March 24, 1986) *(Groundfish from Canada).* For example, in *Belgian Steel* the Department found cash grants and interest subsidies under the Economic Expansion Law of 1970 to constitute countervailable subsidies. At the same time, the Belgian government exempted from corporate income tax, grants received under the same 1970 Law. The Department found the exemption of those grants from income tax liability to be a separate countervailable subsidy. We determined that a benefit had been provided under the grant program and an additional benefit was provided by the tax exemption. In calculating the benefit from the grant program, the Department did not take into account the secondary effects of income taxation on those grants. Likewise, the Department did not adjust the benefit from the tax exemption to take into account the secondary effects of non-tax programs on the tax exemption program. The pertinent fact here is that the Department, in examining whether a subsidy was conferred under the tax exemption provided by the Belgian Government, did not take into account the secondary effect of other government subsidy programs in deciding whether a countervailable benefit was conferred under the tax exemption program. We did not factor in the grant in determining whether a benefit was received from the tax exemption, and our decision would have been the same regardless of the fact that the subsidy from the tax exemption for the period of review in question was 0.00 percent.

It is our view that the export financing and import license subsidies are not being double-counted and that the § 80 HHC income tax exemption is a separate and distinct subsidy from those subsidies. For example, pre-and post-shipment export financing permits exporters to obtain short-term loans at preferential interest rates. The countervailable benefit from that program is the difference between the amount of interest respondents actually pay and the amount of interest they would have to pay at comparable interest rates on the market. In an analogous manner, the revenue from the sale of licenses is considered to be a grant to the company, and that grant constitutes the benefit. On the other hand, the countervailable portion of the § 80 HHC program is the amount of taxes on all export income (both of subject and non-subject merchandise) that is exempted and that otherwise would have been paid absent the tax deduction. Just as the Department does not consider the income tax effect on the amount of a grant to be countervailed (*i.e.,* by deducting from the grant the amount of taxes that may have been due on the grant), it does not consider the secondary effect of other direct subsidy programs on the amount of the tax deduction because both programs provide separate and distinct countervailable benefits. If companies knew we would reduce their tax liability by the amount of other subsidies received, the Department would be, in essence, encouraging companies that receive countervailable income tax exemptions to use as many non-tax subsidy programs as possible because these companies would end up with the same countervailing duty rate as those companies that had no countervailable income tax deductions.

Finally, we also have not followed the Court's decision in *Crescent,* because that case does not represent a final and conclusive decision and may yet be appealed. For these reasons, our determination and calculation of the countervailable benefit conferred on the castings exporters from the § 80 HHC program is in accordance with record evidence, Department policy, and is otherwise in accordance with law.

Comment 3

According to respondents, each type of payment received under the IPRS, CCS, the sales of licenses, and duty drawback program, is considered export income and is, therefore, deducted from taxable income under § 80 HHC. Accordingly, because revenues from the CCS, IPRS, duty drawback, and sales of certain licenses are not related to, and were not earned on exports of subject castings to the United States, they should not be included in the calculation of § 80 HHC benefits. Respondents claim they are not suggesting that the Department offset the § 80 HHC subsidy, which would be impermissible under § 771(6) of the Act; nor are they asking the Department to

disregard secondary tax effects. Rather, respondents maintain that because the income does not relate to subject castings at all, the unpaid tax on this income cannot be a subsidy benefiting the subject merchandise.

Respondents further note that they had raised this issue in the 1990 administrative review, and that the Department rejected the argument. According to respondents, the CIT has ruled on their appeal on this issue, stating:

> When Commerce specifically finds that a rebate program did not benefit merchandise subject to the countervailing duty order under review, Commerce cannot then countervail any of the benefit received through that program.

Crescent, 951 F. Supp. at 262. The CIT then remanded the issue to the Department, requiring ''recalculation of the benefit received through § 80 HHC after subtracting the value of IPRS payments received from each company's taxable income.'' *Id.* Accordingly, respondents argue that the Department should recalculate the § 80 HHC benefit in accordance with the court's ruling in the final results of this administrative review.

Petitioners assert that the Department should sustain its practice of allocating the benefit from the § 80 HHC program over total exports, because the program provides a subsidy associated with the export of all goods and merchandise. According to petitioners, this practice is consistent with § 355.47(c)(1) of the *1989 Proposed Rule.* Furthermore, contrary to respondents' claim that this policy elevates substance over form, it recognizes that a subsidy that is not tied to the export of particular products is different from a subsidy that is tied directly to one or more specific products.

Petitioners argue that if the Department were to adopt respondents' approach, it would trace specific revenues to determine the tax consequences of those revenues. While petitioners recognize that the Department must conform to the Court's order in *Crescent* for the 1990 review period, they also state that the Court's determination is subject to appeal. Accordingly, no final determination of this issue has yet been reached. Absent any binding judicial precedent that affects Department policy on this issue, petitioners urge the Department to continue to apply its consistent practice for purposes of the final results.

Department's Position

We disagree with respondents. It is our view that the Department's rationale set forth above in Comment 2 for not adjusting the § 80 HHC subsidy calculations for revenue earned on the sale of export licenses and savings from pre- and post-shipment export financing applies equally to not adjusting the § 80 HHC subsidy calculations for revenues from the CCS, IPRS, duty drawback, and sales of certain licenses not related to exports of subject castings to the United States. Further, the Department's approach is consistent with longstanding and judicially upheld allocation principles that underlie our countervailing duty methodology.

Under the Department's past practice, where we determined that a subsidy is ''tied'' *only* to non-subject merchandise, that subsidy, of course, will not be attributed to the merchandise under investigation. To do so would violate the countervailing duty law which authorizes the Department to countervail only those subsidies that benefit subject merchandise.

In this case, however, the benefit is not ''tied'' to either subject or non-subject merchandise, but applies across the board to all of the firm's export revenue, *i.e.,* it is applicable to exports of both subject and non-subject merchandise. Under this type of situation, it is the Department's longstanding practice to allocate the benefit to the merchandise to which the benefit applies in order to produce an ''apples-to-apples'' comparison. If a benefit is ''tied'' to subject merchandise, then the subsidy is determined by allocating the total benefit over the sales of subject merchandise only. However, if a benefit is firm-wide and not ''tied'' to specific merchandise, then the benefit is allocated over the firm's total sales, if it is a domestic subsidy, or over total exports, if it is an export subsidy. Either method provides for fair and accurate results.

Under this longstanding practice, it is imperative that both the numerator (the benefit) and denominator (the universe of sales to which the benefit applies) used in our calculation of a subsidy reflect the same universe of goods. Otherwise the rate calculated will either over- or understate the subsidy attributable to the subject merchandise. If the numerator reflects a benefit ''tied'' to one particular product, then the denominator must reflect total sales or exports of only that product. Likewise, if the numerator reflects a benefit that is ''untied'' and applies to all products, then the denominator must consist of total sales (if a domestic subsidy) or total exports (if an export subsidy) of all products.

This is precisely the situation concerning the § 80 HHC program, where a company can claim a tax deduction against taxable income (*i.e.,* the company's profit prior to deductions) equal in amount to the profit it earned on *all* exports, both of subject and of non-subject merchandise. Indeed, this is a classic type of ''untied'' subsidy program—where the benefit is broad-based and not ''tied'' to a specific product or market. When calculating the benefit from an export subsidy such as the § 80 HHC program, the Department does not deduct from the subsidy amount (the numerator) any benefits attributable to non-subject merchandise because the benefit is not ''tied'' to a specific product or market. Indeed, such an endeavor would be impossible. Rather, in order to determine the correct benefit for this type of export subsidy program, the Department divides the ''untied'' benefit by the company's total exports, which include both subject and non-subject merchandise. This calculation, dividing the ''untied'' § 80 HHC tax deduction claimed on all exports by each firm's total exports, is consistent with longstanding Department practice. *See, e.g., Malaysian Rubber Thread; Pasta From Turkey; Lamb Meat from New Zealand; Final Affirmative Countervailing Duty Determination; Standard Carnations From Chile,* 52 FR 3313 (February 3, 1987); *Final Affirmative Countervailing Duty Determination: Miniature Carnations From Colombia,* 52 FR 32033 (August 25, 1987); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico,* 58 FR 37352 (July 9, 1993); and the *Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware From the Republic of Korea,* 51 FR 42867 (November 26, 1986). By allocating this ''untied'' benefit over both the company's subject and non-subject exports, we made an ''apples-to-apples'' comparison which accurately reflected the net subsidy attributable to exports of subject merchandise.

As petitioners noted, the Court's ruling in *Crescent* was not a final and conclusive court decision and is still subject to appeal. Accordingly, absent such a binding judicial precedent that affects the Department policy on this issue, we do not intend to not change our methodology for calculating the benefit conferred to castings exporters from the § 80 HHC program. Also, for the reasons outlined above, it is our view that our current approach is in accordance with record evidence and Department policy, and is otherwise in accordance with law.

Comment 4

According to respondents, certain castings exporters segregated profits relating to subject merchandise sales from profits relating to sales of non-subject merchandise. For these companies, respondents claim, the Department should calculate the § 80 HHC subsidy based on profits relating to the subject merchandise only. For example, a calculation submitted by Kajaria Iron Castings shows the percentage of the company's total sales during the POR that were related to sales of the subject merchandise. Kajaria then applied that percentage to the company's total profits to derive the profit relating to sales of the subject merchandise. With respect to this company, respondents argue that the Department should have calculated the § 80 HHC benefit based only on profits relating to subject merchandise sales.

Petitioners first urge the Department to reject Kajaria's calculation, because they claim it is factual information submitted after the Department's deadline. Petitioners further contend that the company's calculation does not demonstrate how Kajaria derived the profit on sales of the subject merchandise. Rather, the company merely determined what percentage of its total sales were comprised of subject castings and applied that percentage to its profit. According to petitioners, the Department did not verify Kajaria's calculation, and, in any case, it would not allow the Department to determine accurately what portion of Kajaria's export profit was attributable to subject exports.

Petitioners argue that Kajaria's calculation does not provide a reasonable basis to disaggregate the benefit attributable to various exported products under the § 80 HHC program. The calculation presumes that in all cases there is a one-to-one correspondence between sales revenue, cost of production and profits. Petitioners assert, however, that the profit attributable to sales of different items will vary according to several factors, including time period, destination, customer, etc. In any case, petitioners state, it would be difficult to perform a consistent analysis across different companies, because each company may calculate end-of-year profit differently, depending on accounting decisions made in any given year. Therefore, any attempt to conduct such an analysis would be complicated and too administratively burdensome for the Department.

Petitioners further argue that even if the profit attributable to the subject merchandise could be traced, the results could be anomalous, depending on the amount of the profit that is attributable to subject castings. For example, if the profit margin on subject castings in a given year is less than usual, the company's countervailable benefit would be relatively less for sales of that product. Conversely, if during a given period subject castings contributed more than usual to profits, the company would receive a larger countervailable benefit. Petitioners point out, however, that respondents are not suggesting that the countervailing duty margins should be increased because the operations of subject castings have become more profitable. For these reasons, petitioners argue that the Department should reject respondents proposal.

Department's Position

At the outset, we must note that petitioners incorrectly claim that Kajaria's calculation, resubmitted by respondents in their January 6, 1997, case brief, is factual information submitted after the Department's deadline. This calculation was originally provided by the company in its March 13, 1996, original questionnaire response, at Annexure B.

With respect to respondents' argument that the Department should have calculated the § 80 HHC subsidy based on profits relating to subject castings only, we disagree. Where a benefit is not tied to a particular product, the Department's consistent and longstanding practice is to attribute the benefit to all products exported by a firm where the benefit is received pursuant to an export subsidy program. *See, e.g., Pasta From Turkey,* 61 FR at 30370; and the *1993 Castings Final,* 61 FR at 64683.

As explained above in the Department's position on Comment 3, the benefit under § 80 HHC applies, in this case, to exports of both subject and non-subject merchandise. The benefit, therefore, is not tied to any specific products manufactured or exported by a firm. If a benefit is firm-wide and not ''tied'' to specific merchandise, then that benefit is allocated over the firm's total exports, in the case of an export subsidy. By allocating the ''untied'' benefit under § 80 HHC over a company's total exports, we are making an ''apples-to-apples'' comparison. This methodology accurately produces the net subsidy attributable to exports of the subject merchandise and provides for fair and accurate results.

We also note that respondents have not, under their methodology, requested that the Department adjust the denominator in calculating the § 80 HHC benefit. Accordingly, the net benefit to the company under this approach would be grossly understated because the ''apples-to-apples'' comparison would be lost. In fact, the numerator (the benefit adjusted according to respondents' methodology) would reflect a benefit tied to the subject merchandise, while the denominator would still cover total exports. This result is not only inconsistent with Department practice, but is contrary to countervailing duty law. For these reasons, our calculation of the subsidy under § 80 HHC remains unchanged from the preliminary results.

Comment 5

In prior administrative reviews of this case, the Department used the small-scale industry (SSI) short-term interest rate as published by the Reserve Bank of India (RBI) to measure the benefit under the pre- and post-shipment export financing schemes. In this review, however, the Department changed its benchmark, adopting the ''cash credit'' short-term interest rate, as reported by the Government of India (GOI) in its March 13, 1997, original questionnaire response. According to respondents, the Department's justification for changing the benchmark was based on a statement by Small Industries Development Bank of India (SIDBI) officials at verification that castings exporters are not eligible for SIDBI financing at the small scale industry (SSI) interest rates. On December 2, 1996, following release of the Department's GOI verification report, respondents submitted a comment on that report, clarifying that ''all SSI castings exporters were eligible for non-export credit as SSI rates during the [POR].'' Accordingly, respondents argue that the Department should use the SSI interest rate as a benchmark to calculate the benefit from the export financing programs. Respondents made similar arguments in their rebuttal brief which will not be repeated in a separate comment.

Petitioners first argue that respondents December 2, 1996, letter constitutes new, unsolicited information and should be rejected. Petitioners further assert that record evidence does not support a finding that castings exporters in fact obtained non-export credit at SSI interest rates during the POR, notwithstanding respondents' claim that they were eligible for such credit. According to petitioners, § 771(5)(E)(ii) of the Act directs the Department to select a benchmark based on financing that could actually be received by the recipient, and not one

for which respondents merely claim they are eligible to receive.

The Department has, petitioners claim, complied with § 771(5)(E)(ii) of the Act, by selecting a benchmark from a ''comparable'' form of financing. According to GOI officials at verification, cash credit finance is comparable to financing received by exporters under the pre-and post-shipment export financing programs. Petitioners note that the same officials did not make such a claim with respect to SSI interest rates. With respect to the statute's direction to use a benchmark based on financing available ''on the market,'' petitioners assert that respondents failed to explain why market sourced cash credit financing is inferior to government directed SSI financing. Petitioners made similar arguments in their case brief which will not be repeated in a separate comment.

Department's Position

We disagree with respondents. During the POR, the producers/exporters of the subject merchandise obtained short-term financing under the pre- and post-shipment export financing programs. The companies are eligible for these loans based solely on their status as exporters. In determining whether a benefit has been conferred in the case of a loan, the statute very clearly directs the Department to examine ''if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market''. Section 771(5)(E)(ii) of the Act (emphasis added). While it is true that in prior proceedings of this case, we determined that the SSI interest rate was an appropriate benchmark to use in the calculation of the benefit under the export financing programs, information obtained at verification in this review has led us to change that finding.

In this administrative review, the Department reexamined its use of the SSI interest rate, in part because of new allegations that respondents benefitted from programs administered by the Small Industries Development Bank of India (SIDBI). In our meetings with SIDBI and other GOI officials at verification, we learned that castings producers would not finance their domestic operations at SSI rates, but, rather, that such financing would most likely be linked to the prime lending rate (PLR). It is also our understanding from SIDBI officials that castings exporters were not eligible for financing at SSI rates during the POR. *See* the November 19, 1996, Memorandum for Barbara E. Tillman Re: Verification of the Government of India Questionnaire Responses for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 5 (GOI VR) (Public Version, on file in the Central Records Unit, Room B–099 of the Main Commerce Building).

Respondents now argue that Department officials misunderstood what was stated at verification and that all castings exporters were eligible for SSI-linked financing. However, we disagree. The Department's findings with respect to interest rates are accurately reflected in the verification report. During verification, State Bank of India (SBI) officials stated that the domestic financing ''comparable'' to the pre- and post-shipment export financing during the POR was financing at the ''cash credit'' interest rate, as reported by the GOI in its March 13, 1996, questionnaire response. *See* GOI VR at 5. Furthermore, while respondents now claim that castings exporters were ''eligible'' to obtain SSI-linked financing, they do not dispute statements made by SIDBI officials that for non-export loans, castings exporters ''would most likely borrow at interest rates linked to the PLR.'' GOI VR at 8. The same officials, therefore, who claim that castings exporters are eligible for SSI programs, also believe that these companies would not, in fact, finance their non-export operations at SSI interest rates. This fact was further corroborated by Indian commercial bankers, who stated that an exporters' alternative source of financing during the POR was the PLR plus a spread. *See* the November 19, 1996, Memorandum for Barbara E. Tillman Re: Meeting with Citibank Officials for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 1 (Citibank VR) (Public Document, on file in the Central Records Unit, Room B–099 of the Main Commerce Building). Our discussions with bankers from the RBI also revealed that under the export financing programs, if exporters were unable to meet their obligations within a certain time period, ''banks were free to charge commercial interest rates.'' GOI VR at 2 (emphasis added). According to the RBI bankers, these rates ranged from 16 percent to 21 percent in 1994. Therefore, even if castings exporters were eligible for SSI rates, the rates paid by these companies on overdue export loans were not SSI rates, but, rather, commercial interest rates comparable to those charged to non-exporting companies.

Finally, evidence collected at Calcutta Ferrous, exporter of the subject merchandise, clearly indicates that non-export related financing by these companies was, in fact, not equivalent to the SSI interest rate during the POR. *See* the November 21, 1996, Memorandum for Barbara E. Tillman Re: Verification of the Calcutta Ferrous Limited's Questionnaire Responses for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 3–4 (CF VR) (Public Version, on file in the Central Records Unit, Room B–099 of the Main Commerce Building). Calcutta Ferrous officials explained the company maintains a ''cash credit'' account for domestic financing purposes. The documents we examined at verification showed that the company paid 16 percent on this financing through June 1994 and 19.5 percent after that date. *See* CF VR at 4. Record evidence, therefore, supports the Department's preliminary finding. Accordingly, for these final results, we will continue to use the cash credit interest rate in calculating the benefit from the pre- and post-shipment export financing programs.

Comment 6

According to respondents, in calculating the actual benefit to castings exporters under the PSCFC program, the Department failed to take into account penalty interest paid at interest rates higher than the benchmark. Respondents argue that the Department should have adjusted the benefit on those loans by the excess overdue interest paid by the company at the penalty interest rate because that rate is greater than the benchmark rate. Rather than account for this excess interest paid on the loans, the Department calculated a zero benefit where the interest rate on the portion of the loan that was overdue was higher than the benchmark rate. According to respondents, the Department should have calculated a negative figure and adjusted the actual benefit on the loan.

Petitioners argue that the Department should reject this methodology because it would permit a non-allowable offset to the countervailable benefit under the PSCFC program. According to petitioners, respondents fail to explain why an offset for penalty interest should be allowed when payment of that interest does not fall within the statute's list of allowable offsets under § 771(6). The penalty interest, petitioners assert, does not fall within that list, but, rather, merely assures that the terms of the program are met. The costs associated with such interest charges are, therefore, due to the recipient's failure to comply with the terms of the loan. As such,

petitioners state, this is merely a secondary economic effect which the Department has previously determined should not be used as an offset to a program's benefit. *See, e.g., Oil Country Tubular Goods from Canada; Final Affirmative Countervailing Duty Determination,* 51 FR 15037 (April 22, 1986), and *Fabricas el Carmen, S.A.* v. *United States,* 672 F. Supp. 1465 (CIT 1987).

Petitioners further claim that the Department has, in a comparable situation, refused to offset preferential with non-preferential loans in *Oil Country Tubular Goods from Argentina: Final Results of Countervailing Duty Administrative Reviews,* 56 FR 38116, 38117 (August 12, 1991) (*OCTG from Argentina*). In that case, petitioners note, respondents claimed that a loan-by-loan analysis overstated the benefit received and that, taken together, the loans received by the company provided no preferential benefit. In rejecting this argument, the Department asserted that it

> only examines loans received under programs that may potentially be countervailable [sic] if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-countervailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan.

Id. According to petitioners, the statue by extension also does not allow the Department to offset the less favorable interest period of a loan (the period during which the loan was overdue) with the period in which the loan was provided on preferential terms. This is particularly the case, petitioners state, when the higher penalty interest was a result of the company's failure to comply with the terms of the program.

Department's Position

We disagree with respondents. An adjustment to the benefit under the PSCFC program in the form advocated by respondents would be an impermissible offset to the benefit. Section 771(6) of the Act authorized the Department to subtract from the countervailable subsidy:

> (A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,
>
> (B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
>
> (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

As petitioners correctly note, penalty interest under the PSCFC program does not fall within this list of allowable offsets.

Respondents cite no administrative or court precedent in support of their argument, and provide no clear indication how the suggested adjustment would be calculated. Apparently, respondents would have the Department determine the amount of overdue interest that would have been paid by the company at the benchmark interest rate. Overdue interest above this amount would be considered ''excess interest'' and deducted from the benefit calculated for the negotiated part of the loan.

In light of how the PSCFC program operates, respondents' approach is inaccurate. As we explained in the preliminary results, under the PSCFC program, exporters discount their export bills with Indian commercial banks to finance their operations. By discounting an export bill, the company receives payment from the bank in the amount of the export bill, net of interest charges. The loan is considered ''paid'' once the foreign currency proceeds from an export sale are received by the bank. If those proceeds are not paid within the negotiated period, then the loan is considered ''overdue.'' In essence, however, this overdue period is like a new loan, because the original ''discounted loan period'' is fully accounted for, that is, the company has received payment from the bank and the interest on that payment has already been deducted. For the overdue loan, the bank will charge the company interest on the original amount of the loan at higher interest rates. The overdue interest rate varies, depending on the period for which the loan is overdue. Therefore, to determine whether interest charged on the ''overdue'' loan confers a countervailable benefit, we appropriately compared the overdue interest rate with the benchmark rate. If the benchmark rate was higher than the overdue interest rate, we found no benefit. Therefore, the adjustment suggested by respondents is inappropriate given the way in which the PSCFC program is structured.

Further, because respondents characterize interest paid on overdue loans for which the interest rate exceeded the benchmark as ''excess interest,'' respondents'' argument assumes that the overdue interest rate for certain PSCFC loans does not reflect comparable commercial rates. This is incorrect. In fact, statements by Indian government and commercial bankers at verification indicate that the interest rates charged on the overdue portion of PSCFC loans are ''commercial rates.'' *See Citibank VR* at 2 and *GOI VR* at 3–4. The GOI requires banks to charge even higher penalty, rates for some of these loans so that exporters comply with the terms of this preferential financing. Under comparable domestic financing, companies that negotiated short-term working capital loans, but which failed to meet the terms of the loan, would also be subject to penalties if the terms of the loan were not met. For these reasons, the benefit calculations for PSCFC loans have not been changed.

Comment 7

Petitioners state that the Department improperly failed to countervail the value of Advance Licenses because Advance Licenses are export subsidies and not equivalent to duty drawback. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the Illustrative List of Export Subsidies (Illustrative List), which defines one type of export subsidy as ''[t]he provision by governments of direct subsidies to any firm or any industry contingent upon export performance.'' Because Advance Licenses are issued to companies based on their status as exporters, and because products imported under such a license are duty-free, petitioners state that such licenses provide a subsidy based on the requirement that an export commitment be met.

Petitioners further claim that the Department has in this and previous reviews mistakenly confused the nature of the Advance License program with duty drawback programs. According to petitioners, for a duty drawback program not to be countervailed, it must meet certain conditions outlined in Item (i) of the Illustrative List. Item (i) provides that ''[t]he remission or drawback of import charges [must not be] in excess of those levied on imported goods that are consumed in the production of the exported products (making normal allowance for waste).'' This condition, according to petitioners, has not been met with respect to the Advance License program because the Indian government apparently has made no attempt to determine whether the amount of material that is imported duty-free under Advance Licenses is at least equal to the amount of pig iron contained in exported subject castings, *i.e.*, ''physically incorporated in the exported products.''

Moreover, petitioners argue that respondents' ability to transfer Advance Licenses to other companies under certain conditions is further evidence that this program is not the equivalent of a drawback program because the licenses are not limited to use solely for the purpose of importing duty-free materials. For these reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by respondents during the POR.

Respondents state that Advance Licenses allow importation of raw materials duty free for the purposes of producing export products. They state that if Indian exporters did not have Advance Licenses, the exporters would import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that although Advance Licenses are slightly different from a duty drawback system, because they allow duty free imports rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also indicate that if an Advance License had been transferred during the POR, then it might have been a subsidy; this did not occur, however.

Department's Position

As we explained in the *1993 Castings Final,* petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. Such administrative differences can also be found between a duty drawback system and an export trade zone or a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be consumed in the production of an exported product without the assessment of import duties.

The purpose of the Advance License is to allow an importer to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under Advance Licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are consumed in the production of an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that Advance Licenses are equivalent to a duty remission drawback. That is, the licenses allow companies to import, net of duty, raw materials which are physically incorporated into the exported products. Further, we have never found that castings exporters have transferred an Advance License. Accordingly, our determination that the provision of Advance Licenses is not countervailable remains unchanged.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—Producer/Exporter	Net subsidy rate (percent)
Calcutta Ferrous	5.77
Carnation Enterprise Pvt. Ltd.	2.56
Commex Corporation	1.42
Crescent Foundry Co. Pvt. Ltd.	8.16
Dinesh Brothers	5.85
Kajaria Iron Castings Pvt. Ltd.	16.06
Kejriwal Iron & Steel Works	15.21
Nandikeshwari Iron Foundry Pvt. Ltd.	3.40
R.B. Agarwalla & Company Pvt. Ltd.	4.59
RSI Limited	7.82
Seramapore Industries Pvt. Ltd.	9.43
Shree Rama Enterprise	13.90
Siko Exports	4.65
Super Iron Foundry	0.39
Victory Castings Ltd.	2.10

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As provided for in 19 CFR § 355.7, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, for those producers/exporters no countervailing duties will be assessed or cash deposits required.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (including companies listed on page 2, above, that did not export the subject merchandise during the POR) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, completed under the pre-URAA statutory provisions. *See Certain Iron-Metal Castings From India: Final Results of Countervailing Administrative Review,* 61 FR 64676 (December 6, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: June 4, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15606 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–403]

Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on oil country tubular goods (OCTG) from Argentina. For information on the net subsidy, *see* the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4149.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1984, the Department published in the **Federal Register** (49 FR 46564) the countervailing duty order on oil country tubular goods (OCTG) from Argentina. On November 5, 1992, the Department published a notice of ''Opportunity to Request an Administrative Review'' (57 FR 52758) of this countervailing duty order. We received a timely request for review from the U.S. Steel Group, a unit of USX Corporation.

We initiated the review, covering the period January 1, 1991 through December 31, 1991, on December 29, 1992 (57 FR 61873). The review covers one producer/exporter, Siderca, which accounts for all exports of the subject merchandise from Argentina, and 20 programs.

On September 17, 1993, the Department received allegations regarding new subsidies from the petitioner in the concurrent 1991 administrative review of cold-rolled carbon steel flat-rolled products from Argentina. After a careful review of the allegations, the Department decided that sufficient information was provided regarding alleged benefits provided under two new programs. These programs were alleged tax concessions provided to the steel industry under the April 11, 1991 Steel Agreement signed between the Government of Argentina and the Argentine steel industry, and preferential natural gas and electricity rates also provided under the Steel Agreement. Although these allegations were not made in this administrative review of OCTG, the allegations did pertain to the steel industry in Argentina. Therefore, the Department deemed it appropriate to seek information on the two alleged programs in this administrative review of OCTG.

On January 1, 1995, the effective date of the *Uruguay Round Agreements Act* of 1994 (the URAA), countervailing duty orders involving World Trade Organization (WTO) signatories which had been issued without an injury determination by the International Trade Commission (ITC), became entitled to an ITC injury determination under section 753 of the URAA. The order on OCTG did not receive an ITC injury investigation and Argentina was a member of the WTO. Therefore, we determined that the countervailing duty order on the subject merchandise was subject to section 753 of the URAA. *See Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27963 (May 26, 1995). For the countervailing duty order on OCTG from Argentina, the domestic interested parties exercised their right under section 753(a) of the URAA to request an injury investigation.

The Ceramica Decision by the Court of Appeals for the Federal Circuit

On September 6, 1995, the Court of Appeals for the Federal Circuit in a case involving imports of Mexican ceramic tile, ruled that, absent an injury determination by the ITC, the Department may not assess countervailing duties under 19 U.S.C. 1303(a)(1) (1988, repealed 1994) on entries of dutiable merchandise after April 23, 1985, the date Mexico became ''a country under the Agreement.'' *Ceramica Regiomontana* v. *U.S.*, Court No. 95–1026 (Fed. Cir., Sept. 6, 1995) (*Ceramica*).

Argentina attained the status of ''a country under the Agreement'' on September 20, 1991. Therefore, in consideration of the *Ceramica* decision, the Department, on April 2, 1996, initiated changed circumstances administrative reviews of the countervailing duty orders on Leather, Wool, OCTG, and Cold-Rolled Carbon Steel Flat-Rolled Products (Cold-Rolled Steel) from Argentina, which were in effect when Argentina became a country under the Agreement. *See Initiation of Changed Circumstances Countervailing Duty Administrative Reviews: Leather from Argentina, Wool from Argentina, Oil Country Tubular Goods from Argentina, and Cold Rolled Carbon Steel Flat Products from Argentina* (*Changed Circumstances Reviews*), 61 FR 14553 (April 2, 1996). These reviews focused on the legal effect, if any, of Argentina's status as a ''country under the Agreement,'' and whether the Department has the authority to assess countervailing duties on these orders. Because we had ongoing administrative reviews of the orders on OCTG and Cold-Rolled Steel that covered review periods on or after September 20, 1991, we had to determine whether the Department had the authority to assess countervailing duties on unliquidated entries of subject merchandise occurring on or after September 20, 1991, when Argentina became a ''country under the Agreement'' and before January 1, 1995, that date that Argentina became a ''subsidies Agreement country'' within the meaning of section 701(b) of the URAA.

On April 29, 1997, the Department determined that it lacked the authority to assess countervailing duties on entries of OCTG and Cold-Rolled Steel from Argentina made on or after September 20, 1991 and before January 1, 1995 (62 FR 24639; May 6, 1997). As a result we terminated the pending administrative reviews of the countervailing duty order on OCTG covering 1992, 1993, and 1994, as well as the pending administrative reviews of the countervailing duty order on Cold-Rolled Steel covering 1992 and 1993.

However, because the 1991 review covers a period before Argentina became a ''country under the Agreement,'' we must continue the 1991 administrative review to determine the amount of countervailing duties to be assessed on entries made between January 1, 1991 and September 19, 1991 (*i.e.*, up to the date Argentina became ''a country under the Agreement.'') Pursuant to the