853 F. Supp. 431 (CIT 1994) does not require the Department to include ''significantly'' higher rates in calculation of the country-wide rate. They state that a careful reading of that case, as well as *Ipsco Inc.* v. *United States,* 899 F. 2d 1192 (Fed. Cir. 1990), demonstrates that the courts in both cases were only concerned about the over-statement of rates owing to elimination of *de minimis* or zero margins from the country-wide rate calculation. Respondents claim that every company's rate is being pulled up to a percentage greater than it should be because the Department has included in the weighted-average country-wide rate the rates of companies which received their own ''significantly'' higher company-specific rates. Thus, they state that the country-wide rate is excessive for every company to which it applies. Respondents state that, not only is it unfair to charge this excessive countervailing duty, it is also contrary to law, in conflict with the international obligations of the United States, and violative of due process.

Petitioners state that respondents have misread *Ceramica* and *Ipsco.* They state that the plain language of *Ceramica* requires the Department to calculate a country-wide rate by weight averaging the benefits received by all companies by their proportion of exports to the United States. Petitioners state that while *Ceramica* and *Ipsco* dealt factually with the circumstances in which respondent companies had lower-than-average rates, the principle on which these cases is based applies equally to instances in which some companies have higher-than-average rates. They state that the courts have determined that the benefits received by all companies under review are to be weight-averaged in the calculation of the country-wide rate. Therefore, petitioners conclude that the Department followed the clear directives from the court.

Department's Position

We disagree with respondents that ''significantly different'' higher rate (including BIA rates) should not be included in the calculation in the calculation of the CVD country-wide rate. Respondents' reliance on *Ceramica* and *Ipsco* is misplaced. In those cases, the Department excluded the zero and *de minimis* company-specific rates that were calculated before calculating the country-wide rate. The court in *Ceramica,* however, rejected this calculation methodology. Based upon the Federal Circuit's opinion in *Ipsco,* the court held that the Department is required to calculate a country-wide CVD rate applicable to non-*de minimis* firms by ''weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' *Ceramica,* 853 F. Supp. at 439 (emphasis on ''all'' added).

Thus, the court held that the rates of *all* firms must be taken into account in determining the country-wide rate. As a result of *Ceramica,* Commerce no longer calculates, as it formerly did, an ''all others'' country-wide rate. Instead, it now calculates a single country-wide rate at the outset, and then determines, based on that rate, which of the company-specific rates are ''significantly'' different.

Given that the courts in both *Ipsco* and *Ceramica* state that the Department should include all company rates, both *de minimis* and non *de minimis,* there is no legal basis for excluding ''significantly different'' higher rates, including BIA rates. To exclude these higher rates, while at the same time including zero and *de minimis* rates, would result in a similar type of country-wide rates bias of which the courts were critical when the Department excluded zero and *de minimis* rates under its former calculation methodology.

Final Results of Review

For the period January 1, 1991 through December 31, 1991, we determine the net subsidies to be 0.00 percent *ad valorem* for Dinesh Brothers, Pvt. Ltd., 41.75 percent for Super Castings (India) Pvt. Ltd. , 16.14 percent for Kajaria Iron Castings Pvt. Ltd., and 5.53 percent *ad valorem* for all other companies.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/Exporter	Rate (percent)
Dinesh Brothers, Pvt. Ltd.	0.00
Super Castings (India) Pvt. Ltd.	41.75
Kajaria Iron Castings Pvt. Ltd.	16.14
All Other Companies	5.53

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 5.12 percent of the f.o.b. invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review from all companies except Super Castings (India) Pvt. Ltd., Kajaria Iron Castings Pvt. Ltd. and Dinesh Brothers, Pvt. Ltd.. Because Super Castings and Kajaria did not use the CCS program, the cash deposit rates for those companies will equal the calculated net subsidies of 41.75 percent and 16.14 percent, respectively. Because the net subsidy for Dinesh Brothers Pvt., Ltd. is zero, the Department will instruct the Customs Service not to collect cash deposits on shipments of this merchandise from this company entered or withdrawn for consumption on or after the date of publication of the final results of this administrative review.

This notice serves as the only reminder to parties subject to APO of their responsibilities 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–21436 Filed 8–28–95; 8:45 am]

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[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 January 24, 1995, 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, 1990 to December 31, 1990. We have completed this review and determine the net subsidies to be 4.29 percent *ad valorem* for Nandikeshwari, Pvt. Ltd., 18.52 percent for Overseas Steel, Pvt. Ltd., 22.32 percent for Sitaram Steel, Pvt. Ltd., and 10.16 percent *ad valorem* for all other companies. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: August 29, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Copyak and Alexander Braier, Office of Countervailing Compliance, 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

On January 24, 1995 the Department published in the **Federal Register** (60 FR 4592) the preliminary results of its administrative review of the countervailing duty order on Certain Iron-Metal Castings From India. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On February 23, 1995, case briefs were submitted by the Municipal Castings Fair Trade Council (MCFTC) (petitioners), and the Engineering Export Promotion Council of India (EEPC) and individually-named producers of the subject merchandise which exported iron-metal castings to the United States during the review period (respondents). On March 2, 1995, rebuttal briefs were submitted by the MCFTC and the EEPC. Comments addressed in this notice were presented in the case briefs.

The review covers the period January 1, 1990 through December 31, 1990. The review involves 14 companies and the following programs:

(1) Pre-shipment export financing
(2) Post-shipment export financing
(3) Income tax deductions under Section 80HHC
(4) Cash Compensatory Support (CCS) Program
(5) Sale of Import Licenses
(6) Advance Licenses
(7) Market Development Assistance
(8) International Price Reimbursement Scheme
(9) Free Trade Zones
(10) Preferential Freight Rates
(11) Preferential Diesel Fuel Program
(12) 100 Percent Export-Oriented Units Program

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by the 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.

Calculation Methodology for Assessment and Cash Deposit Purposes

Pursuant to *Ceramica Regiomontana, S.A.* v. *United States,* 853 F. Supp. 431, 439 (CIT 1994), the Department is required to calculate a country-wide CVD rate, *i.e.,* the all-other rate, by ‘‘weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.’’ Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Indian exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Three companies (Nandikeshwari, Pvt. Ltd., Overseas Steel, Pvt. Ltd., and Sitaram Steel, Pvt. Ltd.) received significantly different net subsidy rates during the review period pursuant to 19 CFR 355.22(d)(3). These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Comments

Comment 1

Petitioners state that the Department improperly calculated the amount of countervailable benefit conferred by the Cash Compensatory Support (CCS) program. They state that the Department failed to follow its standard practice of calculating benefits from a program based upon the date the benefit is received rather than the date the benefit is earned. Petitioners argue that the Department only calculates benefits on an ‘‘as earned’’ basis when the benefit is earned on a shipment-by-shipment basis and the exact amount of the benefit is known at the time of export. Petitioners claim that the CCS program does not meet this exception because the exact amount of benefits to be received under the CCS program is not known at the time of export.

Respondents state that petitioners are incorrect. Respondents claim that the exporter knew at the time of shipment the amount of rebate he or she would receive under the CCS program.

Department's Position

CCS rebates are paid upon export and are calculated as a percentage of the f.o.b. invoice price. Thus, these rebates are earned on a shipment-by-shipment basis, and the exact amount of the rebate is known at the time of export. Therefore, the Department calculated the benefit from the CCS program on an ‘‘as earned’’ basis based upon the date of export, consistent with our long-standing practice and in conformity with the *Proposed Rules*. Section 355.48(b)(7) of the *Proposed Rules* provides that, in cases of an export benefit provided as a percentage of the value of the exported merchandise (such as a cash payment or an over-rebate of indirect taxes), the timing of the receipt of countervailable benefits will be the date of export. *See*, e.g., Certain Textile Mill Products and Apparel From Colombia, 52 FR 13272 (April 22, 1987), Cotton Shop Towels From Pakistan, 53 FR 34340 (September 6, 1988), and Certain Textile Mill Products From Thailand, 52 FR 7636 (March 12, 1987).

Petitioners argue that the benefits from the CCS program should not be calculated in this manner because it was not clear at the time of export whether the exporter would receive the full amount of the CCS rebate. They base this argument on (1) the fact that, in the official publication in which the Government of India established the CCS rates, it reserved the right to withdraw or alter the rebates, and (2) the fact that the CCS rebate percentages would be reduced if the exporter waited six months or after the date of export or longer to submit the application for the rebates. However, the fact that a government may reserve the right to alter or terminate a program does not affect the timing of the receipt of benefits, or whether the exporter knew the amount of benefits he or she would receive. Indeed, one of the criteria used by the Department to determine whether a program which rebates indirect taxes is countervailable is whether the government periodically reviews and revises the rebate level based on changes in the indirect tax incidence incurred by the exporter. *See,* e.g., Leather Wearing Apparel From Argentina 59 FR 25611 (May 17, 1994).

Under the CCS program, exporters knew at the time of export that they would receive the full amount of the CCS rebate if they submitted their applications within six months of the date of export. Therefore, petitioners second point also does not merit a change in the our long-standing policy of calculating the benefit from the overrebate of indirect taxes based on the date of export of the merchandise.

Comment 2

Petitioners claim that the Department improperly set the cash deposit rate for the CCS program at zero. Petitioners state that the Department may only adjust the cash deposit rate if there has been a program-wide change as defined under section 355.50 of the Department's *Proposed Rules.* Petitioners claim that the CCS program does not qualify for an adjusted cash deposit rate under section 355.50 because the Government of India has only provided the Department with a copy of an ambiguous announcement of a suspension of the CCS program. They state that the announcement by India's Ministry of Commerce does not constitute an ''official act, such as the enactment of a statute, regulation, or decree'' as required by section 355.50 of the Department's regulations. Petitioners further state that the CCS program has only been suspended, not terminated. Petitioners state that, in Certain Fresh Cut Flowers from Ecuador, 52 FR 1361 (January 13, 1987), the Department determined that an indefinitely-suspended program implied the reinstatement of the program was possible and therefore refused to consider the indefinite suspension a program-wide change.

Respondents argue that the method of termination was as official as necessary under the Indian system of government. They state that the Department verified that the program was terminated and that no claims for benefits under the program were made by castings exporters after the termination date. Respondents further state that the Department verified that there were no outstanding residual benefits under the CCS program. Therefore, respondents conclude that the Department should maintain the CCS deposit rate at zero.

Department's Position

Section 355.50(a) of the *Proposed Rules* states that the Department may adjust the cash deposit rate when (1) there has been a program-wide change which occurred prior to the Department's preliminary results of review and (2) the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. In addition, section 355.50(b)(2) states that the change in the program must be effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree. India's Ministry of Commerce terminated the CCS program as of July 3, 1991. Therefore, there was a program-wide change in the CCS program which (1) occurred prior to the January 24, 1995 preliminary results of review and (2) resulted in a change in the amount of countervailable subsidies that the Department was able to measure. This program-wide change was effectuated by an official government announcement which satisfies the requirements of section section 355.50(b)(2).

We agree with petitioners that it is our practice not to adjust the cash deposit rate for programs which are suspended rather than terminated. However, we disagree with petitioners' assertion that the CCS program is only suspended. While the India Ministry of Commerce announcement terminating the program refers to the program as being suspended, the conclusion of the notice states that the program has been terminated. *See* the December 13, 1993 verification report entitled *Verification of the Government of India (GOI) Questionnaire Response for the 1990 Countervailing Duty Order on Certain Iron-metal Castings from India.* As the verification report explains, officials from the Government of India confirmed that the CCS program is terminated. Therefore, we have determined that the CCS program has been terminated.

Furthermore, section 355.50(d) states that the Department will only adjust the cash deposit rates for terminated programs if it determines that residual benefits will not be bestowed under the terminated program. As stated in the Preliminary Results of this review, to ascertain whether castings exporters received any residual benefits from this terminated program, we reviewed the exporters accounting ledgers through September 1993 (which was the time of our verification for the 1990 administrative review and over two years after the effective termination of the CCS program which was July 3, 1991). Based upon this examination, we found no evidence of any application for or receipt of residual benefits under the CCS program.

Therefore, we confirm the decision made in the Preliminary Results that the cash deposit rate be adjusted to zero for the CCS program.

Comment 3

Petitioners argue that, to the extent that any respondent received CCS payments on non-subject castings, the Department should calculate and countervail the value of CCS payments on non-subject castings in these administrative reviews. They state that the Department's failure to countervail subsidies on non-subject castings exports is at odds with the language and intent of the countervailing duty law, which applies to any subsidy whether bestowed ''directly or indirectly.'' They argue that subsidies conferred on non-subject castings should be countervailed because these subsidies provide indirect benefits on exports of the subject castings.

Respondents state that petitioners have misapplied the term ''indirectly.'' They state that the CCS paid on other merchandise is not ''indirectly'' paid on subject castings merely because it is paid to the same producer. Respondents argue that there is no benefit—either direct or indirect—to the subject merchandise when benefits are paid on other products. Respondents state that petitioners are putting forth the old ''money is fungible'' argument, which has never been accepted by the Department. They state the Department should not do so now.

Department's Position

Section 771(5)(A)(ii) of the Act states that subsidies can be ''paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise''. However, petitioners have misinterpreted the term ''indirect subsidy.'' They argue that a subsidy tied to the export of product B may provide an indirect subsidy to product A, or that a reimbursement of costs incurred in the manufacture of product B may provide an indirect subsidy upon the manufacture of product A. As such, they argue that grants that are tied to the production or export of product B, should also be countervailed as a benefit upon the production or export of product A. This is at odds with established Department practice with respect to the treatment of subsidies, including indirect subsidies. The term ''indirect subsidies'' as used by the Department refers to the manner of delivery of the benefit which is conferred upon the merchandise subject to an investigation or review. The term, as used by the Department, does not imply that a benefit tied to one type of product also provides an indirect subsidy to another product. This kind of interpretation proposed by petitioners is clearly not within the purview or intent of the statutory language under section 771(5)(B)(ii).

In our *Proposed Rules,* we have clearly spelled out the Department's practice with respect to this issue. ''Where the Secretary determines that a countervailable benefit is tied to the production or sale of a particular product or products, the Secretary will allocate the benefit solely to that product or products. If the Secretary determines that a countervailable benefit is tied to a product other than the merchandise, the Secretary will not find a countervailable subsidy on the merchandise.'' Section 355.47(a). This practice of tying benefits to specific products is an established tenet of the Department's administration of the countervailing duty law. *See,* e.g., Industrial Nitrocellulose from France, 52 FR 833 (January 9, 1987); Apparel from Thailand, 50 FR 9818 (March 12, 1985); and Extruded Rubber Thread from Malaysia, 60 FR 17515 (April 9, 1995).

Comment 4

Respondents argue that the CCS program does not provide an over-rebate of indirect taxes. They argue that the charges paid to the Indian port authority on imported pig iron are taxes paid to the Government of India and contend that, while the port charges are labeled as ''wharfage, berthage, pilotage, and towage,'' these charges are more in the nature of taxes since they are not tied to the real cost of these services. Accordingly, respondents state that the Department should reconsider its finding that these charges are service charges rather than taxes and therefore are not eligible for rebate under the CCS program. In addition, they argue that, even if the CCS payments may have been over-rebated, the Department has miscalculated the over-rebate by disallowing respondents' claim that ''port dues'' be treated as an indirect tax. Respondents' state that dues are not fees for services and therefore should have been allowed as offsets to the CCS.

Petitioners claim that information provided by respondents themselves reveals that the port and harbor ''taxes'' rebated under the CCS program are not indirect taxes but are charges for services. They state that respondents' position is based upon the claim that payment for these charges is made to the Calcutta Port Trust, an alleged entity of the Government of India. Petitioners state that a payment made to a government does not inherently mean that the payment is a tax. The type of port charges under discussion in the CCS program are similar to the user fees charged by the U.S. government. User fees are charged by the government to help defray the government's cost of providing a service to the public, and are not regarded as taxes under U.S. law.

Department's Position

The CCS program was established to provide a rebate of indirect taxes incurred on items physically incorporated into an exported product. Items (h) and (i) of the Illustrative List of Export Subsidies permits the non-excessive rebate of indirect taxes and import charges paid on items physically incorporated into an export product. However, the Items (h) and (i) do not permit the rebate of service charges on such items.

During the verification of the 1990 administrative review, we examined information which showed that the port charges claimed by the exporters to be indirect taxes were, in fact, service charges. The documentation gathered at verification indicates that the item claimed as port charges included berthage, port dues, pilotage, and towage charges. *See* the February 25, 1994 report titled *Verification of Information Submitted by RSI India Pvt. Ltd. for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India* which is on file in the Central Records Unit (room B009 of the Main Commerce Building). Because this was verified at the company level, we afforded the Government of India the opportunity to provide information to demonstrate that the port and harbor collections were actually indirect taxes rather than charges for services. The information provided by the Government of India did not demonstrate that these charges, which were used in the calculation of the indirect tax incidence, were indirect taxes or import charges that are allowable under item (h) or (i) of the Illustrative List of Export Subsidies. Therefore, we determined that the charges in question were service charges rather than import charges. As such, we disallowed these items in the calculation of the indirect tax incidence on items physically incorporated in the manufacture of castings under the CCS program. For further discussion of this analysis, *see* the May 26, 1994 briefing paper titled *Cash Compensatory Support (CCS) Program* which is on file in the Central Records Unit (room B009 of the Main Commerce Building).

Comment 5

Petitioners state that the Department improperly failed to countervail the value of advance licenses, because advance licenses are simply export subsidies and not the equivalent of a duty drawback program. Petitioners claim that the advance license program does not meet the criteria of a duty drawback system which would be permissible in light of Item (i) of the Illustrative List of Export Subsidies, annexed to the General Agreement on Tariffs and Trade (GATT) Subsidies Code (Illustrative List). They base this claim on the fact that (1) the advance licenses were not limited to use just for importing duty-free input materials because the licenses could be sold to other companies; (2) eligibility for drawback is always contingent upon the claimant demonstrating that the amount of input material contained in an export is equal to the amount of such material imported, which the respondents failed to do; and (3) the Government of India made no attempt to determine the amount of material that was physically incorporated (making normal allowances for waste) in the exported product as required under Item (i). For these reasons, petitioners state that the Department should countervail in full the value of advance licenses received by respondents during the period of review.

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 imports duty free rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also state that no advances licenses were sold.

Department's Position

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 incorporated into 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 physically incorporated into an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that respondents used advance licenses in a way that is equivalent to how a duty drawback scheme would work. That is, they used the licenses in order to import, net of duty, raw materials which were physically incorporated into the exported products. Since the amount of raw materials imported was not excessive vis-a-vis to the products exported, we determine that use of the advance licenses was not countervailable.

Comment 6

Petitioners claim that the Department understated the benchmark interest rate used to calculate the benefits for pre-shipment and post-shipment loans. They state that, rather than using the interest rate obtained from commercial banks during verification or the average lending rates published by the International Market Fund (IMF), the Department used the average interest rates published by the Reserve Bank of India (RBI) for small-scale industry loans to calculate the benchmark. Petitioners claim that these were regulated and preferential small-scale industry rates which were used to calculate average benchmark interest rates. As such, the Department merely compared interest rates for one type of preferential loan to interest rates for another type of preferential loan.

Respondents state that the RBI rates used by the Department are the commercial rates available in India. Therefore, it is those rates which should be used as the benchmark.

Department's Position

We have used the average interest rates for loans to small-scale industries as published by the RBI as the benchmark for the administrative reviews of this order. (*See, e.g.,* the 1988 and 1989 *Final Results of Countervailing Duty Administrative Review: Certain Iron Metal Castings from India,* 56 FR 52515 and 56 FR 52521; October 21, 1991.)

It is the Department's long-standing policy that a program is not specific under the countervailing duty law solely because it is limited to small firms or to small- and medium-sized firms. *See,* e.g., section 355.43(b)(7) of the *Proposed Rules,* and Textile Mill Products and Apparel from Singapore, 50 FR 9840 (March 12, 1985). Therefore, interest rates which are set for a loan program provided to small-size firms and industries can be used as an appropriate benchmark. (*See,* e.g., the discussion of the benchmark used in the FOGAIN program in Bricks From Mexico, 49 FR 19564 (May 8, 1984).) Because the castings exporters qualify as small-scale industry firms, we have used the interest rates set under this program as our benchmark.

Comment 7

Petitioners argue that the Department has improperly failed to countervail International Price Reimbursement Scheme (IPRS) benefits bestowed on non-subject castings. They state that the Department's failure to countervail such subsidies is at odds with the language and intent of the countervailing duty law, which applies to any bounty or grant whether bestowed directly or indirectly. In addition, because eligibility for IPRS payments is based on the use of domestic pig iron, and pig iron is fungible, castings exporters can easily avoid paying countervailable duties by making no claims for IPRS payments on the subject castings but rather make all such claims on non-subject castings. Therefore, if a castings exporter used approximately equal amounts of pig iron and scrap to manufacture its castings, it could receive IPRS payments for all of the pig iron it consumed by claiming that 100 percent of its pig iron was used to produce non-subject castings. Thus, petitioners state that, although IPRS claims would only be for exports of non-subject castings, the IPRS payments would reimburse the producer for the cost of pig iron actually consumed to manufacture subject castings as well as non-subject castings.

Department's Position

Our response to petitioners' argument that IPRS rebates received on non-subject exports provides an indirect benefit to exports of the subject merchandise can be found in the *Department's Position* for *Comment 3* above. We find no merit in petitioners' claim that the castings exporters can avoid paying countervailing duties by shifting their claims for IPRS payments from subject to non-subject castings. When claims are filed for IPRS payments, the amount of the rebate determined by the Government of India is based on the contention that 100 percent of the material used in the production of the exported good is domestic pig iron. This being the case, it is impossible to shift the claims from subject to non-subject merchandise because the IPRS payments are based upon 100 percent use of domestic pig iron regardless of the actual content of domestic pig iron, imported pig iron, or scrap used in the production of the exported good. In addition, at the point in time when the companies submitted their IPRS claims covering the period of this administrative review, the Department's policy was to countervail the full amount of IPRS rebates. Therefore, there was no incentive for the castings exporters to shift their domestic pig iron claims from subject to non-subject castings.

Comment 8

Petitioners state that under section 355.44 of the *Proposed Rules,* the Department defines a countervailable benefit as the full or partial exemption, remission, or deferral of a direct tax or social welfare charge in excess of the tax the firm otherwise would pay absent a government program. They state that, under the regulations, to examine the taxes the firm otherwise would have paid, the Department will take into account the firm's total tax liability as a result of a firm's use of a tax subsidy. Therefore, petitioners argue that the Department's approach to the treatment of tax subsidies should likewise apply to the receipt of the IPRS subsidies on non-subject castings, in that both types of subsidies reduce a firm's total costs whether it be in the form of taxes or the cost of pig iron inputs.

Respondents state that petitioners' argument is misplaced. They state that the IPRS is not remotely like a tax program. Furthermore, respondents claim that the IPRS received on non-subject merchandise does not benefit other merchandise the way a tax reduction might benefit all production.

Department's Position

Section 355.44(i)(1) of the *Proposed Rules* states that the countervailable benefit conferred by a tax program is the amount of taxes a company otherwise would have paid absent the use of the program. To determine that amount, the Department must examine the company's total tax liability and the effect of the tax program on that liability, as there are numerous variables which affect that liability. For example, if a tax program allows an exporter a tax deduction based on the value of 20 percent of its export sales, this does not necessarily mean that there is a benefit from this program. If the company has a net loss for the year before taking any tax deductions, then there is no benefit in the period of review provided from this tax program. With or without the use of this tax program, the company's tax liability is still zero.

The methodology the Government of India used to determine the amount of the benefit conferred by a tax program has no effect on how the Department determines whether a grant received by a company provides a countervailable benefit to the subject merchandise. Grants that are tied to production or export of only non-subject merchandise do not provide a countervailable benefit to the subject merchandise. As stated in our response to Comment 3, the allocation of countervailable benefits conferred upon a specific product or market is clearly detailed in section 355.47 of the *Proposed Rules.* This allocation methodology applies equally to grants as it does to tax programs. Although to determine the benefit from an export tax program, the Department must examine whether the tax program changes company's total tax liability, as explained above, the Department will allocate any benefit found from the use of that export tax program only over the company's export sales, not the company's total sales. *See,* e.g. Extruded Rubber Thread from Malaysia. It is for these reasons that we have determined that IPRS rebates provided upon non-subject merchandise do not provide a benefit to the subject castings exported to the United States.

Comment 9

Petitioners state that the Department should countervail benefits provided to castings exporters through exchange rate schemes. A verification report for the 1990 administrative review explains that, previously, companies converted dollars to rupees at exchange rates no higher than 25 rupees per dollar, but, under a new scheme, the RBI allowed companies to convert 40 percent of their dollars at this rate and remaining 60 percent of their dollars at a rate of 30 rupees per dollar. *See* the December 13, 1993 verification report entitled *Meetings with Commercial Banks for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-metal Castings from India.* Petitioners state that this program is targeted to certain export markets because it provides benefits for export earnings in U.S. dollars.

Respondents state that this allegation of a new subsidy is well beyond the deadline established under 19 CFR 355.31(c)(1)(ii). They also state that there is nothing in the record to suggest that this is a subsidy. Respondents contend that it appears that the program merely allows exporters to convert some of their dollars at the commercial rate, rather than the controlled rate. Furthermore, they state that there is no information in the record that respondents used this program. Respondents also claim that the fact the program refers to the conversion of dollars into rupees is not an indication of targeting because the U.S. dollar is the currency of international commerce.

Department's Position

The time limits for making allegations of a new subsidy in an administrative review are established under 19 CFR 355.31(c)(1)(ii). The allegation made by petitioner is untimely under the regulations and must be rejected. Further, this alleged subsidy program was not in place during the period of the administrative review. Rather, it was instituted in March 1992. *See* the *Reserve Bank of India Annual Report 1993–94* (page 22) which is on file in the Central Records Unit (room B009 of the Main Commerce Building).

Comment 10

Respondents state that countervailing the CCS payments and the income tax deductions under section 80HHC of the Income Tax Act double counts the subsidy from the CCS program. They argue that, under section 80HHC, payments received under the CCS program are considered export income which may be deducted from taxable income to determine the tax payable by the exporter. Therefore, respondents argue that, since CCS payments are also part of the deductions under 80HHC, to countervail the payments and then the deduction is to double count the CCS benefit. In addition, respondent's state that, just as the CCS payments form a component of profit for purposes of the 80HHC tax deduction, so do the payments received by respondents under the IPRS program. They argue that since IPRS rebates are no longer paid on subject castings exported to the United States, the deduction by respondents of IPRS rebates from income for 80HHC purposes is not a countervailable subsidy benefitting subject castings exported to the United States.

Petitioners claim that there is no double-counting of benefits because respondents first benefit from the excessive rebates under the CCS program, and also benefited again because the 80HHC program eliminated the need to pay taxes on the income from those rebates. Regarding respondents' comment on IPRS, petitioners state that respondents have argued for many years that IPRS payments merely represent the difference between the cost of domestic pig iron and the international price for pig iron. Therefore, petitioners conclude that because IPRS payments are not profit, they do not represent a benefit under 80HHC, and there is no reason to factor out the IPRS payments when calculating the subsidy from the 80HHC tax program.

Department's Position

Under section 80HHC of the Income Tax Act, the Government of India allows exporters to deduct from taxable income profits derived from the export of goods and merchandise. The benefit conferred by this program is the amount of taxes that would have been paid by the castings exporters absent this program. Therefore, the full amount of the tax savings realized by castings exporters from this exemption under the 80HHC program is countervailable.

Respondents' argument that we should adjust the benefit of the 80HHC tax program to account for CCS and IPRS rebates is at odds with the language and intent of the statute. The only permissible offsets to a countervailable subsidy are those provided under section 771(6) of the Act. The Department has consistently interpreted this provision of the statute as the exclusive source of permissible offsets. Such offsets include application fees paid to attain the subsidy, losses in the value of the subsidy resulting from deferred receipt, and export taxes specifically intended to offset the subsidy received. Adjustments which do not strictly fit the descriptions under section 771(6) are disallowed. (*See,* e.g., Textile Mill Products From Mexico, 50 FR 10824 (March 18, 1985).) Adjusting the benefit conferred by the 80HHC tax program to account for the CCS and IPRS rebates is not a permissible offset under section 771(6) of the Act. In addition, we also note that, with respect to respondents' CCS argument, that it is the Department's established policy to disregard the secondary tax effects of countervailable subsidies. *See*, e.g., Certain Fresh Atlantic Groundfish From Canada, 51 FR 10041 (March 24, 1986) and Fresh and Chilled Atlantic Salmon From Norway, 56 FR 7678 (February 25, 1991).

Comment 11

Respondents state that it is not appropriate to include company rates that are based on best information available (BIA) in the calculation of the country-wide rate. Respondents also state that the inclusion in the country-wide rate of companies' rates which are ''significantly'' higher than the country-wide rate is improper when those companies are also given their own separate company-specific rates. *See* 19 CFR 355.22(d)(3) for explanation about the calculation of individual, ''significantly different'' rates. Respondents argue that Ceramica Regiomontana, S.A. v. United States, 853 F. Supp. 431 (CIT 1994) does not require the Department to include ''significantly'' higher rates in calculation of the country-wide rate. They state that a careful reading of that case, as well as Ipsco Inc. v. United States, 899 F. 2d 1192 (Fed. Cir. 1990), demonstrates that the courts in both cases were only concerned about the over-statement of rates owing to elimination of *de minimis* or zero margins from the country-wide rate calculation. Respondents claim that every company's rate is being pulled up to a percentage greater than it should be because the Department has included in the weighted-average country-wide rate the rates of companies which received their own ''significantly'' higher company-specific rates. Thus, they state that the country-wide rate is excessive for every company to which it applies. Respondents state that, not only is it unfair to charge this excessive countervailing duty, it is also contrary to law, in conflict with the international obligations of the United States, and violative of due process.

Petitioners state that respondents have misread Ceramica and Ipsco. They state that the plain language of Ceramica requires the Department to calculate a country-wide rate by weight averaging the benefits received by all companies by their proportion of exports to the United States. Petitioners state that while Ceramica and Ipsco dealt factually with the circumstances in which respondent companies had lower-than-average rates, the principle on which these cases is based applies equally to instances in which some companies have higher-than-average rates. They state that the courts have determined that the benefits received by all companies under review are to be weight-averaged in the calculation of the country-wide rate. Therefore, petitioners conclude that the Department followed the clear directives from the court.

Department's Position

We disagree with respondents that ''significantly different'' higher rate (including BIA rates) should not be included in the calculation of the CVD country-wide rate. Respondents' reliance on Ceramica and Ipsco is misplaced. In those cases, the Department excluded the zero and *de minimis* company-specific rates that were calculated before calculating the country-wide rate. The court in Ceramica, however, rejected this calculation methodology. Based upon the Federal Circuit's opinion in Ipsco, the court held that Commerce is required to calculate a country-wide CVD rate applicable to non-*de minimis* firms by ''weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' Ceramica, 853 F. Supp. at 439 (emphasis on ''all'' added).

Thus, the court held that the rates of all firms must be taken into account in determining the country-wide rate. As a result of Ceramica, the Department no longer calculates, as it formerly did, an ''all others'' country-wide rate. Instead, it now calculates a single country-wide rate at the outset, and then determines, based on that rate, which of the company-specific rates are ''significantly'' different.

Given that the courts in both Ipsco and Ceramica state that the Department should include all company rates, both *de minimis* and non *de minimis*, there is no legal basis for excluding ''significantly different'' higher rates, including BIA rates. To exclude these higher rates, while at the same time including zero and *de minimis* rates, would result in a similar type of country-wide rates bias of which the courts were critical when the Department excluded zero and *de minimis* rates under its former calculation methodology.

Final Results of Review

For the period January 1, 1990 through December 31, 1990, we determine the net subsidies to be 4.29 percent *ad valorem* for Nandikeshwari, Pvt. Ltd., 18.52 percent for Overseas Steel, Pvt. Ltd., 22.32 percent for Sitaram Steel, Pvt. Ltd., and 10.16 percent *ad valorem* for all other companies.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate (percent)
Nandikeshwari, Pvt. Ltd	4.29
Overseas Steel, Pvt. Ltd	18.52
Sitaram Steel, Pvt. Ltd	22.32
All Other Companies	10.16

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 5.92 percent of the f.o.b. invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review from all companies except Nandikeshwari, Pvt. Ltd., Overseas Steel, Pvt. Ltd. and Sitaram Steel, Pvt. Ltd.. Because of the termination of benefits attributable to the CCS program, the cash deposit rates for these companies are 0.05 percent for Nandikeshwari, Pvt. Ltd. 14.28 percent for Overseas Steel, Pvt. Ltd. and 18.08 percent for Sitaram Steel, Pvt. Ltd.

This notice serves as the only reminder to parties subject to APO of their responsibilities 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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National Oceanic and Atmospheric Administration

[I.D. 040795A]

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on the Proposed Recovery Plan for Snake River Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and