DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Final Results and Partial Rescission 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 July 13, 1998, the Department of Commerce 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, 1996 through December 31, 1996 (63 FR 37534). 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: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4012, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers/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 Ltd.,
Carnation Industries Ltd.,
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Dinesh Brothers (P) Ltd.,
Kajaria Iron Castings Pvt. Ltd.,
Kejriwal Iron & Steel Works Pvt. Ltd.,
Metflow Corporation,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry,
R.B. Agarwalla & Company,
R.B. Agarwalla & Co. Pvt. Ltd.,
RSI Limited,
Seramapore Industries Pvt. Ltd.,
Shree Rama Enterprise,
Shree Uma Foundries,
Siko Exports,
SSL Exports,
Super Iron Foundry,
Uma Iron & Steel, and
Victory Castings Ltd.

Delta Enterprises, Metflow Corporation, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries, Siko Exports, and SSL Exports reported, through company certifications submitted on the record, that they did not export the subject merchandise to the United States during the period of review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are rescinding the review with respect to these companies. This review also covers 19 programs.

In the notice of preliminary results, we invited interested parties to comment on the preliminary results (63 FR 37534, July 13, 1998). On August 12, 1998, case briefs were submitted by the Engineering Export Promotion Council of India and the exporters of certain iron-metal castings from India (respondents), and the Municipal Castings Fair Trade Council and its members (petitioners). On August 19, 1998, rebuttal briefs were submitted by the 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 of Commerce (Department) is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998).

Scope of the Review

Imports covered by this 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 section 782(i) of the Act, we verified information submitted by the Government of India (GOI) and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examining 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 questionnaires, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. 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, has led us to modify our findings from the preliminary results for Dinesh Brothers (Dinesh). *See* Comment 1 below. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.20
Commex Corporation	0.13
Crescent Foundry Co. Pvt. Ltd	0.08
Dinesh Brothers Pvt. Ltd	1.04
Kajaria Iron Castings Pvt. Ltd	0.33
Nandikeshwari Iron Foundry Pvt. Ltd	0.22
R.B. Agarwalla & Company	0.34
RSI Limited	0.37
Seramapore Industries Pvt. Ltd	0.53
Super Iron Foundry	1.11
Uma Iron & Steel	0.34
Victory Castings Ltd	0.30

B. 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, has led us to modify our findings from the preliminary results for Calcutta Ferrous (Calcutta) and Dinesh. *See* Comment 1 below for Dinesh and the Memo to the File regarding the Calculations for the Final Results of the Review dated November 10, 1998 (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Calculation Memo*) for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.29
Carnation Industries Ltd	0.03
Commex Corporation	0.35
Crescent Foundry Co. Pvt. Ltd	0.31
Dinesh Brothers Pvt. Ltd	0.23
Kajaria Iron Castings Pvt. Ltd	0.42
Nandikeshwari Iron Foundry Pvt. Ltd	0.27
R.B. Agarwalla & Company	0.35
RSI Limited	0.20
Seramapore Industries Pvt. Ltd	0.05
Super Iron Foundry	0.12
Uma Iron & Steel	0.53
Victory Castings Ltd	0.40

C. 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, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.02
Dinesh Brothers Pvt. Ltd	0.05
Nandikeshwari Iron Foundry Pvt. Ltd	0.08
R.B. Agarwalla & Company	0.11
RSI Limited	0.08

D. Income Tax Deduction Under § 80 HHC

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, has led us to modify our findings from the preliminary results for Dinesh. *See* Comment 1 below. Our findings for the other companies have not changed as as result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	2.91
Carnation Industries Ltd.	2.92
Commex Corporation	4.79
Crescent Foundry Co. Pvt. Ltd.	4.53
Dinesh Brothers Pvt. Ltd.	1.82
Kejriwal Iron & Steel Works Pvt. Ltd.	11.76
Nandikeshwari Iron Foundry Pvt. Ltd.	3.71
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company	2.73
RSI Limited	2.73
Seramapore Industries Pvt. Ltd.	4.16
Shree Rama Enterprise	10.85
Super Iron Foundry	1.93
Uma Iron & Steel	0.40
Victory Castings Ltd.	2.17

E. 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 are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Carnation Industries Ltd.	0.24
Kajaria Iron Castings Pvt. Ltd.	0.68
Kejriwal Iron & Steel Works	1.00
RSI Limited	0.03
Seramapore Industries Pvt. Ltd.	0.73

F. 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, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	0.06
Carnation Industries Ltd.	0.13
Commex Corporation	0.06
Crescent Foundry Co. Pvt. Ltd.	0.06
Dinesh Brothers Pvt. Ltd.	0.13
Kajaria Iron Castings Pvt. Ltd.	0.26
Nandikeshwari Iron Foundry Pvt. Ltd.	0.13
R.B. Agarwalla & Company	0.11
RSI Limited	0.22
Seramapore Industries Pvt. Ltd.	0.07
Super Iron Foundry	0.16
Uma Iron & Steel	0.11
Victory Castings Ltd.	0.18

II. Programs Found To Be Not Used

In the preliminary results, we found that the producers/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 (EBR)
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
12. Payment of Premium Against Advance Licenses
13. Pre-Shipment Export Financing in Foreign Currency (PCFC)

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

Analysis of Comments

Comment 1: Use of Denominator for Dinesh

Respondents state that the Department misread Dinesh Brothers' (Dinesh) sales information and consequently used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. As a result of this error, the Department's calculations overstate the countervailing duty applicable to the company for the period of review.

Petitioners counter stating that the sales values used in the Department's calculations are consistent with the information provided in the company's response. They argue that the burden is on respondents to provide clear, complete responses to the Department's inquires.

Petitioners state that even if the Department has erred and used the wrong values, this issue highlights a continuing problem with respect to this order. That is, respondents often supply vague information in their questionnaire responses and then clarify the information only if the Department requests a further explanation or the respondents explain the information at verification. In this case, petitioners argue the Department did not feel it was necessary for Dinesh to explain the reporting of its sales values and the company was not verified. For these reasons, petitioners urge the Department to affirm its use of the sales values used in determining Dinesh's program benefits in the preliminary calculations.

Department's Position

Though we agree with petitioners that Dinesh's sales values were not clearly presented in the company's questionnaire response, after a further examination of the record, we agree with respondents that we did not use the correct f.o.b. values to calculate Dinesh's program benefits. In conducting our preliminary calculations, we incorrectly read Dinesh's sales chart and thus used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. Therefore, we have recalculated the *ad valorem* subsidies under each program using the correct f.o.b. values as our denominators. The program rates reported above and the final subsidy rate and cash deposit rate for Dinesh listed below reflect the use of the correct sales values.

Comment 2: Sale of Import License by Carnation

When calculating the benefit which Carnation Industries Ltd. (Carnation) received from the sale of an import license, respondents state that the Department mistakenly used an overstated revenue figure as the numerator in its calculation. They argue that the Department incorrectly used the amount of revenue Carnation earned on the sale as reported in the company's financial statements. Respondents state that this amount is inclusive of the sales price plus the tax which Carnation paid to the State of West Bengal. They state that Carnation did not receive the tax, and therefore, the correct amount of the benefit to Carnation is the sales price minus the tax.

Petitioners state that the respondents' argument must be rejected because the Department's regulations clearly state that: ''{i}n calculating the amount of a benefit, the Secretary will not consider the secondary tax consequences of the benefit.'' *See Countervailing Duties: Proposed Rule*, 62 FR 8818, 8856 (February 26, 1997). Petitioners further state that the Department's policy is clear from previous cases and has been upheld by the courts. *See, e.g., Certain Steel Products from Belgium; Final Affirmative Countervailing Duty Determinations*, 58 FR 37273, 37275 (July 9, 1993); *Geneva Steel* v. *United States*, 914 F. Supp. 563, 609–610 (CIT 1996); *Ipsco, Inc.* v. *United States*, 687 F. Supp. 614, 621–22 (CIT 1988); and *Michelin Tire Corp.* v. *United States*, 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985) (*Michelin Tire*).

In this review, petitioners state that the record clearly establishes that the benefit received from the sale of the license was the amount reported in the company's financial statements. Carnation's claim that it initially received something less than that amount is not supported by record evidence. Moreover, whether Carnation was obligated to pay taxes on the revenue earned is inconsequential to the Department's analysis. Therefore, the Department should affirm its preliminary results in this matter.

Department's Position

We agree with petitioners. Not only is the Department's long-standing policy to disregard secondary tax consequences of countervailable benefits, but also the statute is clear in regard to permissible offsets to subsidies. Section 771(6) of the Act provides an exclusive list of offsets which may be deducted from the amount of a gross subsidy, and an offset for income tax payments is not included in that list. For purposes of determining the net subsidy, the Department, pursuant to section 771(6), may subtract from the gross countervailable subsidy the amount of:

(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.

In *Michelin Tire*, the court upheld the Department's policy of disregarding secondary tax consequences, rejecting a claim that after-tax considerations should be included in the calculation of a subsidy. In its decision the court stated that: ''[T]hese effects [secondary tax effects] are too uncertain to be considered a necessary part of a subsidy calculation in these circumstances.'' *See* 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985). Therefore, based on the statute, case precedent, and the Department's policy to disregard secondary tax effects on subsidies, we have not altered our calculation of the subsidy which Carnation received from the sale of an import license during the review period.

Comment 3: Use of a Rupee-Loan Interest Rate Benchmark

Respondents contest the Department's use of a rupee-loan interest rate, rather than a dollar-denominated interest rate, to calculate the benefit on PSCFC loans. Respondents note that the Department has determined that PSCFC loans are denominated in dollars and that the discount rate is based on a dollar interest rate. Therefore, the Department should have used as its benchmark to determine the benefit conferred by PSCFC loans, a dollar-related interest rate. Respondents assert that since the Indian banks offering PSCFC financing could themselves borrow dollars at a rate linked to the London Interbank Offering Interest Rate (LIBOR), the appropriate benchmark to determine the subsidy element of the loans, if any, would be a LIBOR-linked rate.

Respondents contend that the Department's use of a benchmark, other than a LIBOR-linked rate, is inconsistent with item (k) of the ''Illustrative List of Export Subsidies,'' Annex I to the *Agreement on Subsidies and Countervailing Measures* (Illustrative List). Item (k) provides that an ''export credit'' is a subsidy only if governments or government-controlled banks provide ''export credits at rates below those which they actually have to pay for the funds so employed.'' Respondents assert

that PSCFC loans should not be viewed as subsidies so long as they are not provided at rates that are below the rates at which the banks themselves could borrow U.S. dollars. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates above the appropriate benchmark—a LIBOR-linked rate.

Petitioners argue that respondents are erroneously confusing the terms ''export credit'' and ''packing credit,'' the type of financing provided to castings exporters, when discussing item (k). Petitioners note that the Department has consistently interpreted the term ''export credit'' to refer to medium- and long-term loans and therefore, item (k) does not apply to the short-term export loans which are under review.

Additionally, petitioners assert that the Department has consistently rejected the cost-to-government'' methodology of item (k). In support of their argument, petitioners cite to 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 to 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 a 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 (September 5, 1989). Petitioners further point out that the Department upheld its repudiation of the ''cost-to-government'' standard contemplated in item (k) in the *Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures* (SAA). The SAA states that ''* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes.'' *See* H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). The petitioners assert that this language restates the Department's long-standing practice that the ''cost-to-government'' approach contemplated in item (k) does not adequately capture the benefits provided under short-term export financing programs. Therefore, the Department should reject respondents' argument and continue using a non-preferential interest rate based on comparable, rupee-based financing as a benchmark.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as the benchmark in measuring the benefits conferred by 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* Section 771(5)(E)(ii) of the Act.

In determining whether there is a difference between the amount the companies paid on the PSCFC loans and the amount they would have paid on a comparable commercial loan, we used, as our benchmark, where available, a company-specific interest rate for rupee-denominated short-term working capital loans obtained on the market during the review period. In the absence of a company-specific rate, we used the ''cash credit'' interest rate which is for domestic working capital finance and is comparable to pre- and post-shipment export finance. *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review,* 61 FR 64669, 64671 (December 6, 1996) (*1994 Castings Prelim*). In accordance with section 771(5)(E)(ii) of the Act, because the interest rate on PSCFC loans is less than what a company would have to pay on a comparable short-term commercial loan, we determined that PSCFC loans confer countervailable benefits.

We have also determined that PSCFC loans are limited to exporters, and only exporters have access to LIBOR-linked interest rates. 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. The SAA specifically states that ''* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes.'' *See*0 H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). For these reasons, we maintain that the correct benchmark to use in determining whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States, is the ''comparable'' commercial loan rate that the Indian exporters would actually obtain on the market.

Comment 4: Double-Counting of Subsidies

Respondents state that, for purposes of the section 80 HHC tax program (80 HHC), earnings from the sale of import licenses may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because revenue from the sale of licenses is also part of the deductions under 80 HHC, to countervail this revenue once as a direct subsidy, and then to countervail the tax deduction, which is made up of the same revenue, is to double count the subsidy from the import license sales.

Respondents also contend that the Department is double-counting the subsidy from the export financing programs. The financing programs reduce a company's expenses in financing exports, which in turn increases the company's profits on export sales. Because the 80 HHC deduction increases as export profits increase, the financing programs increase the 80 HHC deduction. Therefore, according to respondents, to countervail the export financing as a separate program from the 80 HHC, is to double-count the subsidies conferred by the export financing programs.

Respondents note that they appealed this issue of double-counting to the Court of Appeals for the Federal Circuit (CAFC) and in *Kajaria Iron Castings Pvt. Ltd.* v. *United States,* No. 97–1490 (Fed. Cir. September 8, 1988) (*Kajaria*), the CAFC ruled in favor of the respondents. Accordingly, respondents assert that the Department should revise its position on the issue double-counting for the final results of this review.

Petitioners respond that the Department has analyzed this issue of double-counting extensively in prior proceedings. *See, e.g., Certain Iron-Metal Castings from India; Final Results of Countervailing Duty Administrative Review,* 62 FR 32299–301 (June 13,

1997) (*1994 Castings Final*). 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. In addition, petitioners argue that the Department has explained in earlier reviews that the 80 HHC income tax exemption for export earnings is a countervailable subsidy that is separate and distinct from the subsidies received from export financing programs and the sale of import licenses, and therefore, each subsidy program should be separately countervailed.

Also, petitioners contend that it is not the Department's policy to examine the secondary tax effects of subsidies. Petitioners indicate that the Department's determination to separately countervail these different subsidies is supported by the courts' affirmance of the agency's policy to disregard any secondary effect of a direct subsidy on a company's financial performance. In support of this, petitioners cite *Saarstahl AG* v. *United States,* 78 F.3d 1539, 1543 (Fed. Cir. 1996). Petitioners assert that this approach is proper and reasonable given the difficulties inherent in an effort to calculate secondary effects. Petitioners cite to *Michelin Tire Corp.* v. *United States,* in which the court stated, ''These {secondary} effects are too uncertain to be considered a necessary part of a subsidy calculation.'' *See* 6 CIT 320, 328 (1983), *vacated on other grounds,* 9 CIT 38 (1985).

Petitioners further note that 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* at 246, 926 (codified at 19 U.S.C. 1677(5)(C)). The SAA explains that:

> [T]he Administration wants to make clear its view that the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.

Id. at 926. Petitioners state that 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 further indicate that though respondents argue that the Department should correct for the alleged double-counting issue by making adjustments to the 80 HHC subsidy percentage, they do not provide any comment on how the Department should do this. According to petitioners, the Department has acknowledged in earlier reviews that the adjustments requested by the respondents cannot be accomplished due to the multiple variables, which affect a company's costs, that would have to be isolated.

Department's Position

Respondents' argument that the subsidies provided under the export financing and import licensing programs have been countervailed twice, by also countervailing the full amount of the 80 HHC tax deduction, is incorrect. In *Kajaria,* the CAFC reviewed the Department's decision to countervail that portion of the Cash Compensatory Support (CCS) rebates found to be excessive, and to also countervail those over-rebates under the 80 HHC program. Under the CCS program, the GOI rebated indirect taxes on inputs consumed in the production an exported product. The CCS rebates were considered by the GOI to be export income. Under the GOI's 80 HHC program only profit from export income is exempt from tax liability. With respect to these particular facts, the CAFC in its decision concluded that by first countervailing the CCS over-rebates, as a distinct program, and then countervailing the same over-rebates again as tax exempt export income under the 80 HHC program, the Department had improperly double-counted the over-rebates.

In its decision, the court stated:

> * * * Commerce must avoid double-counting subsidies, *i.e.,* countervailing both the full amount of a subsidy and the non-taxation of that subsidy, when the party under investigation provides documentation that allows Commerce to separate the tax deduction based on the fully countervailed subsidy from the otherwise countervailable portion of the tax deduction.

Kajaria, No. 97–1490 at 24–25. In the present review, neither the interest saved under the export financing programs nor the proceeds earned on the sales of import licenses are deemed to be export income. There is no evidence on the record which demonstrates a direct link between these separate and distinct program subsidies and a specific tax exemption subsidy program, *i.e.,* the 80 HHC tax deduction. The respondents in this review did not provide either income and tax statements, or government descriptions of the subsidy programs which demonstrate that the export financing and import license subsidies are considered by the GOI to be export income and that the profit derived from such income is specifically exempt from tax liability under 80 HHC.

With respect to the export financing programs, the respondents stated that under these schemes, the GOI provides exporters with short-term export lending to finance their working capital requirements. The respondents' contention that as a result of such financing, an exporter realizes a reduction of interest expenses which in turn increases profits on export sales, is speculative. It is incorrect for respondents to assume that every rupee saved on interest costs increases the profits of the company by one rupee and therefore, the concessional financing programs increase the 80 HHC deduction since the deduction increases as profits from exports increase. Thus, we find no basis for the respondents' argument that, by countervailing the export financing programs and the 80 HHC deduction in full, the benefit to the exporter from the financing programs is being countervailed twice.

In regard to the sale of import licenses, the record is void of any indication that the profit a company realizes from the sale of an import license is exempt from tax liability. What evidence respondents did put on the record shows, for example, that Carnation Industries reported and documented on the record that the revenue it earned from the sale of an import licence during the review period was taxed by the State of West Bengal. Therefore, we find no basis for the respondents' argument that revenue earned from the sale of an import license constitutes export income, the profits from which may be deducted from taxable income under 80 HHC. Accordingly, we determine that the subsidy from the import license sale is not being double-counted by also countervailing in full the 80 HHC tax deduction.

Comment 5: Exclusion of Income Earned on Non-Subject Merchandise

According to respondents, where a company was able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise, the Department should have calculated the 80 HHC subsidy based on revenues and profits relating to subject castings only. Respondents assert that by not factoring out

incentives received on sales of merchandise other than subject castings, the subsidies found to be conferred by the 80 HHC program are greater than they ought to be. The respondents submit that it is *ultra vires* to countervail income earned on merchandise other than subject castings because only subject castings are covered by the order.

Respondents claim that two companies, Kejriwal Iron & Steel (Kejriwal) and R.B. Agarwalla & Co. (R.B. Agarwalla) were able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise. Kejriwal submitted a calculation showing export incentives received on sales of non-subject merchandise. The company factored out these incentives when calculating the benefit the 80 HHC program provided to subject castings. R.B. Agarwalla submitted an 80 HHC calculation demonstrating that a portion of its income was directly related to non-subject merchandise, and subtracted out this income in determining the benefit to subject castings provided by the tax program. Respondents assert, for these companies, the Department should revise its 80 HHC calculations countervailing only the income earned on subject castings.

Respondents note that the CAFC in *Kajaria,* stated that the Department improperly included revenue received on non-subject castings in determining the countervailing duty to be imposed on subject castings. *See Kajaria,* No. 97–1490 at 25–27. Respondents state that though the court's decision related to IPRS rebates received on non-subject castings, the court's ruling on the non-countervailability of tax deductions relating to non-subject castings applies to this review since the exporters received revenue on non-subject castings during the period of review. Therefore, in keeping with the decision in *Kajaria,* the Department should recalculate the 80 HHC benefit by deducting all revenues received on non-subject castings for those companies which were able to break down revenues relating to subject castings versus non-subject merchandise.

Petitioners note the respondents' argument has been rejected in prior reviews. Since the facts of this review are no different from the prior reviews, the Department should continue its policy of allocating the benefit from the 80 HHC program over total exports. The 80 HHC program is an export subsidy and the benefits provided under this program are not tied to the production or sale of a particular product or products. Petitioners assert that it does not matter whether an exporter is able to separate its revenues between subject and non-subject castings, because the 80 HHC program is an ''untied'' subsidy program.

Department's Position

We disagree with respondents that for the final results the Department should revise its benefit calculations for the 80 HHC tax exemption program in light of *Kajaria*. The circumstances and the record developed in this review are different from those in the case of *Kajaria*. In *Kajaria,* the Court ruled that the record showed that the IPRS rebates for non-subject merchandise were deemed by the GOI to be export income. Further, the Court found that profits derived from that export income were specifically exempt from income tax liability under the 80 HHC program. In short, rebates specifically identified as export income under one program were directly linked to the exemption from tax liability of profits derived from such export income under another subsidy program. It is clear from the CAFC's opinion that its holding was limited to the particular circumstances in *Kajaria*. The facts and record in this review are not the same as those in *Kajaria*. Thus, no revision to the 80 HHC benefit calculation is warranted.

During this administrative review, no exporter submitted information for the record which demonstrated that IPRS rebates were received for the sale of non-subject merchandise to the United States. In fact, no exporter submitted information that demonstrated that any alleged benefits received for non-subject merchandise were expressly denominated as export income, and that the profits derived from such export income were expressly exempt from tax liability under the 80 HHC program.

As mentioned above, respondents claim that the export incentives which Kejriwal received on the sale of non-subject merchandise should be factored out of the Department's calculation of the benefit to subject castings from the 80 HHC tax deduction. We disagree with the respondents. Kejriwal provided no documentation on the record to support its claim that the export incentives received were in fact export income earned on the sale of non-subject merchandise. Further, nowhere on the record does Kejriwal or the GOI indicate that export incentives are export income and that the section 80 HHC specifically exempts profits derived from that export income. Because the record is void of such information, we have not modified the 80 HHC benefit calculation for Kejriwal to exclude, from the computation, these export incentives.

In like manner, R.B. Agarwalla did not provide any documentation to support its claim that a portion of its income listed as duty drawback received on non-subject merchandise is specifically denominated as export income by the GOI. There is no information on the record which indicates that duty drawback is considered to be export income and that the section 80 HHC specifically exempts the profits derived from that income. Therefore, we have not made any adjustments to the 80 HHC benefit calculation for R.B. Agarwalla to take into account the duty drawback the company received on non-subject merchandise.

The burden of creating an adequate record lies with respondents and not with the Department. *NTN Bearing Corp. of America* v. *United States,* 997 F.2d 1453, 1458 (Fed. Cir. 1993), *quoting Tianjin Mach. Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992). In this review, neither Kejriwal nor R.B. Agarwalla developed such a record with respect to the *Kajaria*-type adjustment they are requesting. Moreover, the Department need not engage in any kind of subsidy tracing exercise. On this point, the CAFC was very clear:

> [W]e are mindful of the government's argument that Commerce does not engage in subsidy tracing because of the burden involved in sorting the tax treatment of subsidies. Again, our decision does not mean that in every review or investigation Commerce must trace the tax treatment of subsidies on non-subject merchandise when a tax deduction results in a countervailable subsidy to determine if the deduction is partially based on the subsidy on non-subject merchandise.

Kajaria, No. 97–1490 at 27. Accordingly, the Department has not made any adjustment to the 80 HHC calculations in the final results of this review to determine the subsidy bestowed on exports of the subject merchandise. Because respondents did not provide to the Department documentation with respect to export profits derived from export income earned on non-subject merchandise which is specifically exempt under the 80 HHC, we have continued to employ our ''untied'' benefit methodology to calculate the net subsidy attributable to exports of the subject merchandise for those exporters which claimed the 80 HHC tax deduction during the period of review. It is the Department's consistent and long-standing practice to attribute a benefit from an export subsidy that is not tied to a particular product or

market to all products exported by a firm. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370, (June 14, 1996) (*Pasta from Turkey*), and the *1994 Castings Final*, 62 FR 32303.

When an exporter cannot demonstrate to the Department that a subsidy is tied to specific merchandise, then the benefit is not tied to any specific product manufactured or exported by a firm, and therefore, the benefit is ''firm-wide.'' If a subsidy is firm-wide and not ''tied'' to specific merchandise, then the benefit from that subsidy is allocated over the firm's total exports, in the case of an export subsidy. By allocating the ''untied'' benefit provided under the 80 HHC over a company's total exports, we are making an ''apples-to-apples'' comparison. This ''untied'' benefit methodology accurately produces the net subsidy attributable to exports of the subject merchandise and provides for fair results. For these reasons, our calculation of the subsidy under section 80 HHC remains unchanged from the preliminary results.

Even if Kejriwal and R.B. Agarwalla demonstrated to the Department that their respective export incentives and duty drawback were in fact export income earned on non-subject merchandise (with respect to duty drawback, documentation would also have to indicate that imported pig iron was not incorporated into the subject merchandise) and that the 80 HHC specifically exempts profits derived from that export income, each company's net program subsidy rate would remain essentially unchanged. By factoring out export income attributable to non-subject merchandise from the 80 HHC deduction, we would adjust the benefit (the numerator) to reflect the 80 HHC tax deduction attributable to subject merchandise only. Because adjusting the benefit in this manner is contrary to the Department's long-standing practice with regard to the attribution of subsidies and our tying principles, we would then have to adjust the denominator. Since the numerator would reflect only subject merchandise, we would follow our long-standing principles for attribution, and divide the recalculated benefit only by exports of subject merchandise to determine the net subsidy rate for each company. Once all income attributable to non-subject merchandise is factored out of the calculation of the benefit, the amount that remains would be attributable solely to subject merchandise. As noted, the adjustments made would affect both the numerator and denominator and would result, in this proceeding, in net subsidy rates identical to the rates obtained by the Department's current methodology of considering the benefit of the 80 HHC program as ''untied.''

Comment 6: Penalty Interest Paid

According to respondents, in calculating the benefits received by castings exporters from post-shipment export loans, the Department failed to take into account penalty interest paid at interest rates higher than the benchmark. Respondents argue that where a company paid interest on loans at rates both less than and greater than the benchmark rate, all interest—including the overdue penalty interest paid at rates greater than the benchmark rate—needs to be taken into account when determining the actual benefit to the company from the loans. The respondents assert that the methodology employed by the Department virtually eliminates the overdue penalty interest paid from the calculation of the benefit from the post-shipment export loans.

The preliminary calculations demonstrate that where an export loan was initially taken at a preferential rate, the Department calculated the interest paid at the preferential interest rate and compared it to interest that would have been paid at the benchmark rate. Respondents argue that this methodology does not take into account all the interest paid by the exporter on the loan since it ignores overdue interest that the exporter may also have paid on the loan.

Respondents assert that the Department should have adjusted the benefit on the post-shipment export 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 the excess interest paid on the loans, the Department calculated a zero benefit where the interest rate on the portion of the loan overdue was higher than the benchmark rate. The respondents argue that the Department should correct its methodology so as to take into account the overdue penalty interest paid on the loans, because the benefit received by an exporter on any particular loan is a function of both the interest paid at a rate lower than the benchmark and the additional interest paid at a rate higher than the benchmark.

Petitioners state that the Department should reject the respondents' methodology for calculating the countervailable benefit under the export financing programs, because it would permit a non-allowable offset to the countervailable benefit under the programs. In addition, petitioners argue that 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 section 771(6) of the Act.

The penalty interest, petitioners assert, merely assures that the terms of the program are met. The costs associated with such penalty interest charges are, therefore, due to the recipient's failure to comply with the terms of the loan. The penalty which is based on the company's non-compliance with the terms of the program, represents nothing more than a secondary economic effect. Petitioners note that the Department has previously determined that a secondary economic effect 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), *Fabricas El Carmen, S.A.* v. *United States*, 672 F. Supp. 1465 (CIT 1987), *vacated in part (on other grounds), Fabricas El Carmen, S.A.* v. *United States*, 680 F. Supp. 1577 (CIT 1988).

Petitioners further note that the Department has, in a comparable situation, refused to offset preferential with non-preferential loans. *See 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, 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:

> [I]t only examines loans received under programs that may potentially be counteravailable [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. Petitioners argue that, by extension, the Department cannot, under the terms of the statute, 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.

Therefore, the Department is correct in calculating a zero benefit during the period in which the penalty rate exceeded the benchmark rate.

Department's Position

An adjustment to the benefit under the export financing programs in the form advocated by respondents would be an impermissible offset to the benefit. In accordance with section 771(6) of the Act, the Department may subtract from the gross countervailable subsidy the amount of:

(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 export financing programs does not fall within this list of allowable offsets.

Additionally, in light of how the post-shipment export financing programs operate, respondents' approach is inaccurate. As we explained in the preliminary results, exporters discount their export bills with Indian commercial banks to finance their operations. *See Certain Iron Metal Castings from India; Preliminary Results of Administrative Review*, 63 FR 37536 (July 13, 1998) (*1996 Castings Prelim*). 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 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 a higher interest rate. The overdue interest rate varies depending on the period for which the loan is overdue. To determine whether interest charged on the ''overdue'' loan confers a countervailable benefit, we compared the overdue interest rate with the benchmark rate. If the overdue interest rate was higher than the benchmark rate, we found no benefit. Therefore, the adjustment suggested by respondents is inappropriate given the way in which the export financing programs operate.

Comment 7: Company-Specific Benchmarks

Respondents disagree with the Department's use of a company-specific benchmark interest rate for determining the benefits which Calcutta Ferrous and Crescent Foundry respectively received under the pre- and post-shipment export financing programs. Respondents note that, for companies which did not have commercial short-term loans during the review period, the Department used as its benchmark the ''cash credit'' short-term interest rate which was provided by the GOI.

Respondents argue that since commercial loans were available to borrowers at the cash credit rate during the review period, it was inappropriate to use a higher rate as a benchmark for Calcutta Ferrous and Crescent Foundry merely because these companies borrowed at rates higher than the cash credit rate on certain commercial loans. It is the respondents' contention that, where a company borrows at a rate which is lower than the common benchmark, it is appropriate to use the lower, company-specific rate. However, where a company borrows at a rate higher than the common commercial rate, then the higher rate should not be the benchmark used for that company. Respondents argue that there is no reason to assume that a company, which happened to borrow at a higher rate, could not have taken loans at the lower rate during the period of review, and therefore, the Department should use the lower commercial rate. Thus, the Department should cap Calcutta Ferrous' and Crescent Foundry's benchmark rate at the level of the cash credit short-term interest rate which was found available to borrowers in India during the period of review.

Petitioners state that the respondents' argument should be rejected as it is inconsistent with the Department's preferred benchmark methodology. As directed by the Act, the Department is to measure the benefit obtained through a loan program by finding the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' *See* section 771(5)(E)(ii) of the Act. In measuring the benefit, it is the Department's preference to use company-specific rates where available and to use national averages (such as the cash credit rate) only in the event that the investigated firm did not take out any comparable commercial loans during the period. *See* Preamble to the Proposed Regulations, 62 FR 8829, 8830 (February 26, 1997). By using a company-specific benchmark rate for those companies which received, and paid interest on, short-term working capital loans obtained on the market during the period of review, the Department appropriately followed statutory and regulatory policy. For the remaining companies which did not receive, and pay interest on, comparable commercial loans, the Department used, as a benchmark, the next best rate, the national-average cash credit rate.

Petitioners further state that the respondents' argument is not in accordance with the Department's statutory guidelines, since, in certain cases, respondents' methodology would substitute the second best (*i.e.*, a national average rate) when the first best alternative (*i.e.*, a company-specific rate) is available. The respondents' proposed approach is simply a results-oriented argument designed to lower the countervailing duty rate applied to short-term, preferential loan programs. Moreover, it is mere speculation on the part of respondents to claim that companies which borrow at rates above the national-average rate could also borrow at the lower rate. Petitioners contend that it is this type of ambiguity that the statute and regulations address and therefore, the Department must reject respondents' proposed approach.

Department's Position

We disagree with the respondents' argument that the Department used inappropriately high benchmarks to calculate the benefits from the pre- and post-shipment export financing programs for Calcutta Ferrous and Crescent Foundry. As stated in section 771(5)(E)(ii) of the Act, in the case of a loan, a benefit is conferred ''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*'' (emphasis added).

During the review period, four of the twelve respondent companies received, and paid interest on, domestic working capital loans which were obtained in a commercial banking market. Accordingly, for these four companies, we used as our benchmark in determining the benefits each company received under the export financing programs, a company-specific rate; this benchmark was a weight-averaged rate based on the interest rates each company paid on its respective

commercial working capital loans. It is the Department's policy to use a company-specific benchmark rate in determining the benefit conferred by a government program. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review,* 63 FR 13626, 13634 (comment 9) (March 9, 1998).

For all other respondent companies which did not receive, and pay interest on, comparable commercial loans during the period of review, we used as our benchmark the next best alternative—the national-average ''cash credit'' rate. In the 1994 administrative review of this order, the Department determined that, in the absence of a company-specific benchmark, the most ''comparable'' short-term benchmark to measure the benefit under the export financing programs, is the cash credit interest rate. The cash credit interest rate is for domestic working capital finance and thus, comparable to pre- and post-shipment export financing.

Respondents argue that since commercial loans were available at the cash credit rate during the review period, it was inappropriate for the Department to use higher benchmark rates for Calcutta Ferrous and Crescent Foundry simply because these companies borrowed at higher rates on certain loans. As noted above, it is the Department's policy to use, when determining the benefit conferred by a loan provided under a government program, the interest rate a company would have paid on a comparable loan obtained on the market. During the review period, both Calcutta Ferrous and Crescent Foundry obtained commercial loans on the market. The market determined the interest rates at which these companies could borrow, and those rates were higher than the national-average cash credit rate. Respondents state that the Department should not assume that a company which happened to borrow at a rate higher than the national-average could not have taken loans at the lower rate during the period, and therefore, the Department should use the lower commercial rate. We find no basis for this argument. If Calcutta Ferrous and Crescent Foundry actually could have borrowed at the national-average rate, then the interest rates charged by the banks on the commercial loans would have reflected that. The fact that they did not is an indication that they could not. It would be unreasonable to expect a company to incur higher than necessary costs. Therefore, we disagree with respondents' argument that the Department should cap Calcutta Ferrous' and Crescent Foundry's company-specific benchmark rates at the level of the cash credit rate.

Comment 8: Countervailability of Advance Licenses

Petitioners argue that the Department improperly failed to countervail Advance Licenses which, they contend, are export subsidies. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the 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 licenses are duty-free, petitioners state these licenses provide a subsidy based on the requirement that an export obligation be met.

Petitioners claim that the Department has in this, as in prior reviews, mistakenly confused the nature of the Advance License program with a duty drawback program. For a duty drawback program not to be countervailed, it must meet certain conditions as 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 GOI makes no attempt to determine the amount of the imported duty-free material that is consumed in the production of the exported product.

According to petitioners, there is no evidence on which to base a conclusion that the amount of raw materials imported was not excessive vis-a-vis the products exported. The GOI's concern that a sufficient amount of value has been added to the exported products does not regulate the amount of raw materials incorporated to the exports. Petitioners argue that the yardstick used by the GOI for measuring compliance with the Advance License program falls short of any determination of whether the amount of raw materials imported was excessive in relation to the amount of raw materials found in the exported castings.

Petitioners further argue that no evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron being imported or exported, and without knowing this information, the amount of pig iron consumed in the production of exported subject castings cannot be ascertained. Additionally, the GOI's system of fixing ''input/output norms'' is hampered because exporters, who experience delays in the delivery of raw material inputs imported under an Advance License, may purchase the inputs on the domestic market. Thus, there is no way to ensure that the amount of raw materials imported was not excessive in relation to the amount of raw materials found in the exported castings.

Moreover, petitioners argue that an exporter's ability to transfer Advance Licenses to other companies is further evidence that this program is not equivalent to a drawback program because the licenses are not solely limited to the importation of duty-free materials. The GOI permits Advance Licenses to be transferred between companies under certain conditions and when transferring a license, an exporter would receive in return a monetary payment. For this and the above-indicated reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by the respondents during the period of review.

Respondents explain that the purpose of the Advance License scheme is to allow for the importation of raw materials duty free for the production of exported products. They state that if Indian exporters did not have Advance Licenses, the exporters would simply import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that just because Advance Licenses are slightly different from a duty drawback system, in that they allow duty free imports rather than provide for remittance of duty upon exportation, does not make them countervailable.

In response to the petitioners' claim that the GOI makes no attempt to determine the amount of imported material that is consumed in the production of exported products, respondents counter that the GOI does maintain such checks which have been verified by the Department in prior reviews. Respondents note that in prior reviews the Department has never found excessive imports, and this is one of the reasons why Advance Licenses have not been found to be countervailable. *See 1994 Castings Final.*

Respondents refute petitioners' claim that the GOI is concerned only with ensuring that a sufficient amount of value is added to exported products. According to respondents, the question of value of exports arises only in determining whether an exporter is eligible to receive an Advance License. Respondents also rebut petitioners'

claim that the GOI does not attempt to determine the grade of pig iron imported or exported. They state if more expensive grades of pig iron were imported than exported, and the pig iron was sold for a premium in the domestic market instead of producing exported castings, then the premium might be a subsidy. However, the respondent companies did not sell domestically any imported pig iron, rather they used it to produce castings for export. Additionally, respondents state that if a license was transferred for a fee during the review period, this might be a subsidy. However, in this review, all the licenses were used to import pig iron duty free for exported finished castings. Therefore, for these reasons, the Department should reject the petitioners' arguments regarding the Advance License scheme, and once again find the program to be a non-countervailable equivalent to duty drawback.

Department's Position

As we have discussed in prior reviews, petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. *See 1994 Castings Final.* Such administrative differences can also be found between a duty drawback system and 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 program is to allow a company 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.

In prior reviews, we have determined that Advance Licenses are equivalent to duty drawback. The licenses allow companies to import, net of duty, raw materials which are physically incorporated into the exported products. Further, we have found no evidence in this review, or in a prior review, that imports under Advance Licenses have been excessive, or that castings exporters have transferred such licenses. Accordingly, our determination that the provision of Advance Licenses is not countervailable remains unchanged for this review. However, if in a future review of this order, new information becomes available to the Department in regard to the manner in which the Advance License program operates, we will reevaluate at that time our determination of the program's non-countervailability.

Comment 9: Countervailability of the Duty Entitlement Passbook Scheme

Petitioners state the GOI has established during this review period the Duty Entitlement Passbook Scheme (Passbook Scheme) which is related to the Advance Licence scheme. Petitioners contend that this new scheme extends the export subsidies provided under the Advance License program and therefore is similarly countervailable. The purpose of the Passbook Scheme, which commenced in April 1996, is to widen the Advance License program, giving exporters greater flexibility in paying import duties. *See Memo to Barbara Tillman: Verification of the Government of India's Questionnaire Response in the 1996 Administrative Review* at 9, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*GOI VR*). Upon the exportation of goods by a Passbook holder, the GOI ''calculates, on the basis of standard input/output norms, the deemed import content of the exports and determines the basic customs duty payable on those imports.'' *Id.* at 8. The Passbook holder, upon receiving credit for the equivalent amount of the customs duty from the GOI, can ''pay the customs duties on any imported goods,'' not just the duties on the imported goods from which the credits were originally determined. *Id.* at 8.

Consequently, petitioners argue, just as with the Advance License program, the Passbook Scheme lacks an adequate monitoring system to ensure that the credits provided to Passbook holders are not excessive. No evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron either imported or exported in the finished goods to ensure that the amount of input material exported equals the amount imported. Moreover, the flexibility exporters have in using the Passbook credits to pay duties on any imports highlights that the Passbook Scheme is very much unlike a traditional duty drawback program. Therefore, petitioners assert that the Department should find the Passbook Scheme countervailable.

Respondents state the Passbook Scheme, like the Advance License program, operates in a manner equivalent to a duty drawback program allowing for imports of pig iron which is consumed in the production of exported castings. Therefore, the Passbook Scheme, for the same reasons as the Advance License program, is not a countervailable subsidy. Respondents argue that simply because the Passbook Scheme has been referred to as an ''export incentive'' does not make it a countervailable subsidy. Duty Drawback of Excise Duty, the Advance License program, and the Passbook Scheme are all ''export incentives'' because they are for exports; however, they are not, as the Department has previously determined, countervailable subsidies unless they provide excessive rebates.

Respondents further state that if the castings exporters did, in fact, use their Passbook credits to import products other than pig iron, a subsidy might exist; however, there is no evidence on the record that this was done by any of the castings exporters. Therefore, based on the reasons presented, the Department should find the Passbook Scheme, like the Advance License program, to be a non-countervailable equivalent to the duty drawback program.

Department's Position

Petitioners first alleged that the Passbook Scheme might be an export subsidy in their May 27, 1998 letter to the Department. *See Letter in regard to Pre-verification Comments* at 12, dated May 27, 1998, public version of the letter is on file in the Central Records Unit of the Department of Commerce (Room B–099). In accordance with section 351.301(d)(4)(B) of the Department's regulations, we found the petitioners' allegation of a new export subsidy to be untimely. *See Memo to the File: Untimely Allegations of New Subsidies,* dated June 5, 1998 on file in the Central Records Unit of the Department of Commerce (Room B–099). Because the allegation was untimely, we rejected petitioners' subsidy allegation with respect to the Passbook Scheme in this review. During the June 1, 1998 verification meeting with the GOI, the Passbook Scheme was discussed as an extension of the Department's inquiry of the Advance License program. However, because the Passbook Scheme was not a program under examination in this review, the Department did not obtain enough information to analyze whether the scheme is, or is not, a countervailable subsidy. If a future review of this order is requested by petitioners, we will

examine whether to initiate on the Passbook Scheme provided that petitioners file their allegation on a timely basis.

Comment 10: Kajaria's Long-Term Loans From the IDBI

Petitioners assert that the Department erred in the preliminary results of this review by not addressing the long-term loan assistance which Kajaria Iron Castings (Kajaria) received from the Industrial Development Bank of India (IDBI). Petitioners argue that the loan assistance is countervailable because (1) it is provided by the government; (2) it is export-oriented; (3) it allows a principal repayment holiday; and (4) it is likely provided on preferential terms.

To begin with, petitioners state, according to the agency's substantive regulations, the Department will investigate a loan provided by a government-owned bank only when the ''government-owned bank provided the loan at the direction of the government or with funds provided by the government.'' *See* proposed 19 CFR 355.44(b)(9)(ii), 54 FR 23366, 23381 (May 31, 1989). Since the GOI owes 74 percent of the IDBI's shares and 10 out of the 16 IDBI board members are government employees, petitioners contend this criterion is satisfied. *See* GOI VR at 10.

Petitioners further assert that evidence on the record demonstrates that the long-term loan was export-oriented. Petitioners note that during verification Kajaria officials stated that the company exports all of its merchandise. *See Memo to Barbara Tillman: Verification of Kajaria Iron Castings Ltd.'s Questionnaire Response in the 1996 Administrative Review* at 2, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Kajaria VR*).

Petitioners also argue that there is no evidence on the record to demonstrate that Kajaria's principal repayment schedule is normal with respect to commercial, long-term lending. In addition, petitioners state that both Kajaria and the GOI failed to demonstrate at verification that the loan was provided on commercial terms. The GOI simply stated at verification that ''[t]here is no consistency in regard to the interest rates or terms and conditions offered by banks on long-term financing.'' *See* GOI VR at 12. According to petitioners, it is likely that alternative long-term rates were significantly higher than the rate Kajaria received, as most of the short-term financing reported by the responding companies ranged as high as 22 percent. For these reasons, petitioners urge the Department to countervail the long-term loan assistance which Kajaria received from the IDBI.

Respondents contend that the loans received by Kajaria were not provided on terms ''inconsistent with commercial considerations,'' which is the criterion for finding such loans countervailable. *See* proposed regulations 19 CFR 355.44(b)(9)(ii), 54 FR at 23381. Respondents assert that a grace period before paying principal is consistent with commercial, long-term loans. Many commercial loans permit a grace period for repayment of principal until the facility, for which the loan was taken, is operational. This was, in fact, the reason for the delayed payment of principal on Kajaria's loan.

With respect to petitioners' argument that there was an ''additional benefit'' owing to the interest rate Kajaria paid on the loan, respondents state that short-term loans are more often than not provided at rates higher than those on long-term loans. Long-term construction loans are often secured by the facility being built, and this generally results in lower, not higher rates. Respondents also note that the Reserve Bank of India stated at verification that commercial long-term rates are ''usually lower than both the prime lending rate and the cash credit rate.'' *See* GOI VR at 12.

Further, respondents argue that petitioners' statement that Kajaria's export-orientation had any bearing on the approval of the loan is pure speculation. Respondents argue that there is nothing in the loan documents provided by Kajaria or in the company's verification report to suggest that the loan was contingent upon exports or that Kajaria's ''export-orientation'' was taken into account by the lenders. In fact, the IDBI specifically stated at verification that ''the project financing given to Kajaria was not tied to any expectation of exports.'' *Id.* at 11. Therefore, the Department should reject petitioners' arguments relating to Kajaria's long-term loans provided by the IDBI.

Department's Position

At our verification meeting with Kajaria officials, we inquired about the long-term loans which the company received from the IDBI. The officials explained that these long-term loans were received for the construction of a pig iron plant, which commenced production in February 1998. However there was insufficient time remaining before the scheduled date of the final results of this review to fully examine Kajaria's long-term financing. Therefore, in accordance with section 351.311(c)(2) of the Department's regulations, we are deferring an examination of Kajaria's long-term loans from the IDBI until a future administrative review of the company is requested.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.48
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.27
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.41
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.64
RSI Limited	3.63
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

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 below 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 discussed in the *1996 Castings Prelim*, the GOI terminated the PSCFC scheme effective February 8, 1996. All PSCFC loans received by respondents were repaid in their entirety (principal and interest) during the period of review. We verified that no residual benefits have been provided or received, and there is no evidence that a substitute program has been established. Therefore, in determining the cash deposit rates for the five castings producers/exporters which used the PSCFC program, we have not included the subsidy conferred by this program during the review period. We

determine that the cash deposit rates for the reviewed companies are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.46
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.22
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.33
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.53
RSI Limited	3.55
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

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 section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), 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) (now 19 CFR 351.212(c)), 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 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 will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See 1994 Castings Final*. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 61 FR 64676 (December 6, 1996) (*1993 Castings Final*). These rates shall apply to all non-reviewed companies, including those companies for which the review is being rescinded, until a review of a company assigned these rates is requested and completed. In addition, for the period January 1, 1996 through December 31, 1996, 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 section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30856 Filed 11–17–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 92–5A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Aerospace Industries Association of America (''AIA'') on April 10, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1992 (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 92–00001, was issued to Aerospace Industries Association of America on April 10, 1992 (57 FR 13707, April 17, 1992) and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992); October 8, 1993 (58 FR 53711, October 18, 1993); November 17, 1994 (59 FR 60349, November 23, 1994); and June 26, 1995 (60 FR 36262, July 14, 1995).

AIA's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): The Aerostructures Corporation, Nashville, TN (Controlling Entity: The Carlyle Group, Washington, DC); Alliant Techsystems Incorporated, Hopkins, MN; Barnes Aerospace, Windsor, CT (Controlling Entity: Barnes Group, Inc., Bristol, CT); CMS, Inc., Tampa, FL (Controlling Entity: Daimler-Benz North American Corporation, New York, NY); Ducommun Incorporated, Long Beach, CA; Dynamic Engineering Incorporated, Newport News, VA; Esterline Technologies, Bellevue, WA; Intertubine Corporation, Peabody, MA (Controlling Entity: NV Interturbine, The Netherlands); Kistler Aerospace Corporation, Kirkland, WA; Litton Industries, Inc., Woodland Hills, CA; MOOG Inc., East Aurora, NY; Pacific Scientific Company, Duarte, CA; Robinson Helicopter Company, Inc., Torrance, CA; Rockwell Collins, Inc.,