argument that the Department should utilize the verified U.S. sales in calculating a dumping margin in the instant investigation. Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) provided that subsections (1), (2), (3), (4), and (5) of section 782(e) are met. In the instant investigation, record evidence supports the finding that SAIL did not meet these requirements (*see, Facts Available* section above).

With regard to each respective subsection of 782(e): (1) SAIL did not provide information in a timely manner; (2) the information submitted could not be verified; (3) essential components of the information (*e.g.,* home market sales and cost information) are so incomplete that it cannot be used as a reliable basis for reaching a determination; (4) SAIL did not act to the best of its ability in providing the information and meeting the requirements established by the administering authority; and (5) the information cannot be used without undue difficulties. Accordingly, we are applying a margin based on total facts available to SAIL in the final determination. *See, Facts Available* section above.

Accordingly, pursuant to section 776(a)(2) of the Act, the Department has determined that the information on the record is unusable and is not a reliable basis upon which to calculate a margin in this investigation. Moreover, because we determine that SAIL has not acted to the best of its ability, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest margin alleged in the petition, as facts available.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from India that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for SAIL. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SAIL	72.49
All others[1]	72.49

[1] The Act normally prohibits inclusion in the ''All Others'' rate of any margins determined entirely on the basis of facts available, pursuant to section 776. However, where the estimated weighted-average margin is based entirely on facts available, we must use any reasonable method to establish the estimated ''All Others'' rate for exporters and producers not individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that a reasonable method is to use 72.49 percent, the highest margin alleged in the petition, which was also the source of our facts available margin for SAIL. This is consistent with the Department's practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8948 (1998).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33228 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

Final Determination: The U.S. Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from India. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition for this investigation was filed by Bethlehem Steel Corporation; U.S. Steel Group, a unit of USX Corporation; Gulf States Steel, Inc.; IPSCO Steel Inc.; Tuscaloosa Steel Corporation; and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India,* 64 FR 40438 (July 26, 1999) (*Preliminary Determination*), the following events have occurred. We issued a supplemental questionnaire on July 29, 1999, and we received a response to that supplemental questionnaire on August 6, 1999. From August 8 through August 20, 1999, we conducted a verification of the information submitted by the respondents. *See* Memoranda to David Mueller, Director, Office of AD/CVD Enforcement VI, dated September 20, 1999, ''Verification of the Questionnaire Responses of the Government of India (GOI)'' and ''Verification of the

Questionnaire Responses Submitted by the Steel Authority of India (SAIL)'' (GOI Verification Report and SAIL Verification Report, respectively), which are on file in public version form in our Central Records Unit (Room B–099 of the main Commerce building).

Petitioners, the GOI, and SAIL filed case briefs on September 29, 1999, and rebuttal briefs on October 4, 1999. On November 20, 1999, a public hearing was conducted.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. part 351 (1998) and to the current substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998, 63 FR 65348 (*CVD Regulations*).

Injury Test

Because India is a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On April 5, 1999, the ITC announced its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise. *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia,* 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation (*see Initiation of Antidumping Duty Investigations: Certain Cut-to-length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia,* 64 FR 12959 (March 16, 1999)). In accordance with section 705(a)(1) of the Act, we aligned the final determination in this investigation with the final determinations in the antidumping duty investigations of cut-to-length plate. *See Preliminary Determination,* 64 FR 40438 (July 26, 1999). Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than December 13, 1999. *See Postponement of Final Antidumping Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and Korea; Postponement of Final Countervailing Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, and Korea: and Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Product from Indonesia,* 64 FR 46341, 46342, (August 25, 1999).

Period of Investigation (POI)

Because SAIL is the only exporter/producer of the subject merchandise, the POI for which we are measuring subsidies is the period for SAIL's most recently completed fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period: Under section 351.524 of the CVD Regulations, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. Section 351.524(d)(2) of the *CVD Regulations* states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the U.S. Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation and establishes that the difference between the company-specific or country-wide AUL for the industry under investigation is significant. In this investigation, no party to the proceeding has claimed that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the *CVD Regulations,* we have allocated non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Under section 351.524 of the *CVD Regulations,* non-recurring benefits which equal less than 0.5 percent of a company's relevant sales are expensed in the year of receipt. SAIL realized non-recurring benefits under a program during two separate years. In the first year, SAIL realized a non-recurring benefit which was less than 0.5 percent of the total value of its export sales during that year. We did not allocate that benefit but rather expensed it in the year it was realized. In the second year, which was the POI, SAIL realized a benefit under the same program which was greater than 0.5 percent of the total value of its export sales during that year. Therefore, we allocated that benefit over 15 years.

Benchmarks for Loans and Discount Rate: SAIL did not report long-term company-specific fixed rate loans denominated in rupees. Therefore, for programs requiring a discount rate or the application of a rupee-denominated long-term benchmark interest rate, we relied upon the long-term rupee-denominated ''lending rates'' of private creditors reported in the International Monetary Fund's *International Financial Statistics.*

SAIL also reported several long-term foreign currency loans obtained from commercial sources for use as a benchmark where necessary. However, we are unable to rely upon those loans for benchmark purposes because the agreement dates and currencies are not consistent with the agreement dates and currencies of the loans under investigation and because SAIL reported its payments in rupees and reported weighted-average interest rates derived from those payments. We attempted (both during and after verification) but were unable to obtain any information regarding long-term foreign currency lending rates for companies in India. Therefore, we have used the curreny-specific ''Lending Rates'' from private creditors as published in *International Financial Statistics* as the benchmark for foreign currency loans.

For those programs requiring the application of a short-term interest rate benchmark, we used for benchmark purposes company-specific, short-term commercial interest rates reported by SAIL in accordance with section 351.505(3)(i) of the *CVD Regulations.*

I. Programs Determined To Be Countervailable

A. Duty Entitlement Passbook Scheme (DEPS)

In its May 10, 1999, response to the Department's original questionnaire, the GOI submitted copies of two publically available Ministry of Commerce publications—''Export and Import Policy'' and ''Handbook of Procedures'' (*see* Exhibits P and Q of the public version on file in the Central Records Unit, Room B–099 of the main Commerce building). These publications set forth the rules and regulations for the several programs which allow duty exemptions on imports. Chapter 7 of the ''Export and Import Policy'' contains the details of India's Duty Exemption Scheme, which consists of the DEPS and ''Duty Free Licenses'' (Advance Licenses, Advance Intermediate Licenses, and Special Imprest Licenses).

On April 1, 1995, the GOI enacted the Passbook Scheme (PBS). Administered under auspices of the Directorate General of Foreign Trade (DGFT), the PBS enabled GOI-designated manufacturers/exporters, upon export of finished goods, to earn import duty exemptions in the form of credits which could be used to pay customs duties on subsequent imports. The amount of PBS credit granted was determined according to the GOI's ''Standard Input/Output Norms Schedule'' (SIO Norms), which contains GOI-determined breakdowns of inputs needed to produce finished products. Rather than receiving cash, companies record their PBS credits in ''passbooks'' and then offset import duties on subsequent GOI-approved imports by making debit entries in their passbooks.

The PBS was discontinued on April 1, 1997. However, exporters are allowed to use their PBS credits for up to three years and, thus, exporters could use PBS credits as late as March 31, 2000. We established at verification that SAIL did not earn or use PBS credits during the POI.

India's DEPS was enacted on April 1, 1997, as a successor to the PBS. As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturer/exporters that have exported for a three-year period prior to applying for the program. The amount of pre-export DEPS credits that can be earned is capped at five percent of the average export performance of the applicant during the preceding three years. Pre-export DEPS credits are not transferable. At verification, we established that SAIL has not participated in the DEPS on a pre-export basis.

All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's SIO Norms. Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. With respect to subject merchandise, exporters are eligible to earn credits equal to 13 percent of the f.o.b. value of their export shipment. During the POI, SAIL earned post-export DEPS credits. SAIL used such credits during the POI, and did not transfer post-export DEPS credits during the POI.

Section 351.519 of the *CVD Regulations* sets forth the criteria regarding the remission, exemption or drawback of import duties. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are

consumed in the production of the exported product and in what amounts, or if the government has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The DEPS does not meet either of these standards. Upon exportation, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Therefore, the GOI has no system in place for determining whether the value of credits issued is equal to the amount of import duties that was payable on any imported items which were consumed in the production of the export shipment. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program because the GOI has provided SAIL with credits for the future payment of import duties. This program can only be used by exporters and therefore is specific under section 771(5)(A) of the Act. On this basis, we determine that the DEPS is a countervailable program.

In our *Preliminary Determination*, we calculated the total benefit to SAIL from the DEPS as the total amount of import duty exemptions claimed by SAIL during the POI, against the DEPS credits the company earned on its export shipments of subject merchandise to the United States. Upon further review of the operation of this program, in accordance with section 351.519(b)(2) of the *CVD Regulations*, we determine that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned rather than the date DEPS credits are used. At that time, the amount of the benefit is known by the exporter. The benefit to SAIL under this program is the total value of DEPS import duty exemptions that SAIL earned on its export shipments of subject merchandise to the United States during the POI. We also determine that the application fees paid by SAIL qualify as an ''...application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because DEPS credits all for the exemption of import duties. To derive the DEPS program rate, we first calculated the value of the credits that SAIL earned for its export shipments of subject merchandise to the United States during the POI by multiplying the f.o.b. value of each export shipment by 13 percent, the percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by SAIL's total exports of subject merchandise to the United States during the POI.

On this basis, we determine the net countervailable subsidy from this program to be 7.28 percent *ad valorem*. *See, also*, Comment 3 and Comment 4 of the ''Interested Party Comments'' section.

B. Advance Licenses

Under India's Duty Exemption Scheme, companies may also import inputs duty-free through the use of import licenses. Using advance licenses, companies are able to import inputs ''required for the manufacture of goods'' without paying India's customs duties (*see* chapter 7 of ''Export and Import Policy''). Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free. During the POI, SAIL used advance licences and also sold some advance licenses. SAIL did not use or sell any advance intermediate licenses or special imprest licenses during the POI.

The Department has previously determined that the sale of import licenses confers a countervailable export subsidy. *See, e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 63 FR 64050 (Nov. 18, 1998) (*1996 Castings*) and *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997) (*1994 Castings*). No new or substantive evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. During the POI, SAIL sold advance licenses or portions of advance licenses. Therefore, in accordance with section 771(5)(B) of the Act, we determine that SAIL's sale of advance licenses is an export subsidy and that the financial contribution in the form of the revenue received from the license sales constitutes the benefit to SAIL.

With respect to the use of advance licenses, the Department found, in *1994 Castings* (62 FR 32297 (June 13, 1997)), that the advance license system accomplished, in essence, what a drawback system is intended to accomplish, *i.e.*, finished products produced with imported inputs are allowed to be exported free of the import duties assessed on the imported inputs. The Department concluded that, because the imported inputs were consumed in the production of castings which were subsequently exported, the duty-free importation of these inputs under the advance license program did not constitute a countervailable subsidy. Subsequently, in *1996 Castings* (63 FR 64050 (Nov. 18, 1998)), we stated that we would reevaluate the program in light of new information as to how the program operates. In the petition for this investigation, petitioners provided new substantive information which indicated that the GOI does not value the licenses according to the inputs actually consumed in the production of the exported good. Based on this information, we initiated a reexamination of the advance license program.

SAIL used advance licenses during the POI. As explained above, section 351.519 of the *CVD Regulations* contains the criteria used to determine whether programs which provide for the remission, exemption, or drawback of import duties are countervailable. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are consumed in the production of the exported product and in what amounts, or if it has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The GOI reported in its questionnaire response and GOI officials explained at verification that products imported under an advance license need not be consumed in the production of the exported product. Upon exportation, in order to obtain an advance license, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Because the GOI then issues the advance license based on this list of inputted items, we find that the GOI does not base the licenses it issues on

the amount of import duties that were payable on the imported items that were consumed in the production of the export shipment, *i.e.*, the exported merchandise. In addition, because the licenses specify ranges of quantities to be imported rather than an actual amount of duty exemption that can be claimed, the actual value of the advance licenses is not known at the time the license is issued. Therefore, we determine that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. Because only exporters can receive advance licenses, this program constitutes an export subsidy under section 771(5A)(B) of the Act. A financial contribution is provided by the program under section 771(5)(D)(ii) of the Act because the GOI foregoes the collection of import duties.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because advance licenses are issued on a shipment-by-shipment basis. SAIL reported the advance licenses it used and sold during the POI which it received for exports of subject merchandise to the United States and the application fees it paid in order to obtain those licenses. Because SAIL was able to segregate its advance licenses according to specific export shipments, we included in these calculations exemptions claimed and proceeds realized during the POI which stemmed from exports of subject merchandise to the United States only. As in the *Preliminary Determination*, we continue to determine that benefits from advance licenses are conferred as of the date they are used, not the date of exportation of the export shipment for which the pertinent advance license is earned. *See* Department's Position of Comment 1 and Comment 2 below. We also determine that the application fees paid by SAIL qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

To calculate the program rate for the countervailable benefits conferred to SAIL from its use and sale of advance licenses, we first added the values of import duty exemptions realized by SAIL from the use of advance licenses during the POI (net of application fees) and the proceeds SAIL realized from sales of advance licenses during the POI (net of application fees). We then divided the total benefit by SAIL's total value of export of subject merchandise to the United States during the POI. On this basis, we determine the net countervailable subsidy from this program to be 3.33 percent *ad valorem*.

C. Special Import Licenses (SILs)

During the POI, SAIL sold through public auction two other types of import licenses—SILs for Quality and SILs for Star Trading Houses. SILs for Quality are licenses granted to exporters which meet internationally-accepted quality standards for their products, such as IS0 9000 (series) and IS0 14000 (series). SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a "Restricted List of Imports" in amounts up to the face value of the SIL, but they do not relieve the importer of import duties.

The Department's practice is that the sale of special import licenses constitutes an export subsidy because companies received these licenses based on their status as exporters. *See, e.g., 1996 Castings* and *1994 Castings*. No new substantive information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, in accordance with section 771(5)(B) of the Act, we continue to determine that this program constitutes a countervailable export subsidy and that the financial contribution in the form of the revenue received on the sale of licenses constitutes the benefit.

Because the receipt of SILs cannot be segregated by type or destination of export, we calculated the program rate by dividing the total amount of proceeds SAIL realized during the POI from the sales of these licenses by the value of SAIL's total exports. On this basis, we determine the net countervailable subsidy from this program be 0.15 percent *ad valorem. See, also,* Comment 5 of the "Interested Party Comments" section.

D. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to six times the value of the capital goods within a period of five to eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the *Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India*, 64 FR 19125 (April 19, 1999) (*Elastic Rubber Tape*), we determined that the import duty reduction provided under the EPCGS was a countervailable export subsidy. *See Elastic Rubber Tape*, 64 FR at 19129–30. We also determined that the exemption from the excise tax provided under this program was not countervailable. *See Elastic Rubber Tape*, 64 FR at 19130. No new information or evidence of changed circumstances has been provided to warrant a reconsideration of these determinations. Therefore, we continue to find that import duty reductions provided under the EPCGS to be countervailable export subsidies.

SAIL reported that it imported machinery under the EPCGS in the years prior to the POI and during the POI. For some of its imported machinery, SAIL met its export requirements. Subsequently, the amount of import duties on those imports for which SAIL claimed exemption was completely waived by the GOI. However, SAIL has not completed its export requirements for other imports of capital machinery. Therefore, although SAIL received a reduction in import duties when the capital machinery was imported, the final waiver on the potential obligation to repay the duties has not yet been made by the GOI.

We determine that SAIL benefitted in two ways by participating in this program. The first benefit to SAIL is the benefit from the waiver of import duty on imports of capital equipment. SAIL met its export requirement with respect to certain imports of capital equipment. Because the GOI has formally waived the unpaid duties on those imports, we have treated the full amount of the waived duty exemptions as a grant received in the year the waiver of unpaid duties occurred. For other imports of capital machinery, SAIL has not completed its export commitments and the final waiver of the potential obligation to repay the duties on those imports has not yet been made by the GOI.

Section 351.524 of the *CVD Regulations* specifies the criteria to be used by the Department in determining whether to allocate the benefits from a countervailable subsidy program. Under the *CVD Regulations*, recurring benefits are not to be allocated but are to be expensed to the year of receipt, while

non-recurring benefits are to be allocated over time. In this investigation, non-recurring benefits will be allocated over 15 years, the AUL of assets used by the steel industry as reported in the IRS tables.

Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. However, the *CVD Regulations* recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program traditionally considered a recurring subsidy, rather than to expense the benefits in the year of receipt. Section 351.524(c)(2) of the *CVD Regulations* allows a party to claim that a recurring subsidy should be treated as a non-recurring subsidy and enumerates the criteria to be used by the Department in evaluating such a claim. In the ''Explanation of the Final Rules'' (the Preamble) to the *CVD Regulations*, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. We also stated in the Preamble to the *CVD Regulations* that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies. See *CVD Regulations*, 63 FR at 65393. Because the benefit received from the waiver of import duties under the EPCGS is tied to the capital assets of SAIL, and therefore, is just such a benefit, we determine that it is appropriate to treat the benefit conferred to SAIL as non-recurring.

In its questionnaire response, SAIL reported all of the capital equipment imports it made using EPCGS licenses and the application fees it paid to obtain its EPCGS licenses. At verification, we confirmed the accuracy of the information submitted and obtained clarifications regarding certain amounts of duty waived, the timing of the waivers, and the application fees paid. We determine that the application fees paid by SAIL qualify as an ''* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act.

In order to calculate the benefit received from the waiver of SAIL's import duties on its capital equipment imports, we allocated the amount of duty waived (less application fees paid) beginning with the year amount of import duty outstanding was formally waived (not at the time the export requirements were met). As explained above in the ''Subsidies Valuation Information'' section, SAIL realized its non-recurring benefits under this program in two separate years. For each of those years, we performed the ''0.5 percent test'' prescribed under section 351.524(b)(2) of the *CVD Regulations.* Based on our test result, the amount of non-recurring benefit realized by SAIL in the first year must be expensed but the amount of non-recurring benefit realized in the second year is to be allocated. Accordingly, we determine that it is appropriate to allocate this benefit over the average useful life of assets in the industry, as set forth in the ''Subsidies Valuation Information'' section, above.

A second type of benefit received under this program was conferred on SAIL involve the import duty reductions received on the imports of capital equipment for which SAIL has not yet met its export requirements. For those capital equipment imports, SAIL has unpaid duties that may have to be paid to the GOI if the export requirements are not met. Therefore, we determine that the company had outstanding contingent liabilities during the POI. When a company has an outstanding liability and repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. *See* section 351.505(d)(1) of the *CVD Regulations.*

We determine that the amount of contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which SAIL applied but, as of the end of the POI, was not finally waived by the GOI. We calculated this benefit to be the interest that SAIL would have paid during the POI had it borrowed the full amount of the duty reduction at the time of import. Pursuant to section 351.505(d)(1) of the *CVD Regulations,* the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.,* the date of expiration of the time period for SAIL to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported.

To calculate the program rate, we combined the sum of the allocated benefits attributable to the POI and the benefit conferred on SAIL in the form of a contingent liability loan. We then divided that combined total benefit by the total value of SAIL's exports to all destinations during the POI. On this basis, we determine the net countervailable subsidy from this program to be 0.25 percent *ad valorem. See, also,* Comment 6 of the ''Interested Party Comments'' section.

E. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines against which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance, and may be denominated in either Indian rupees or in foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POI, the rate of interest charged on pre-shipment, rupee-denominated export loans up to 180 days was 12.0 and 13.0 percent. For those loans over 180 days and up to 270 days, banks charged interest at 15.0 percent. The interest charged on foreign currency denominated export loans up to 180 days during the POI was a 6-month LIBOR rate plus 2.0 percent for banks with foreign branches, or plus 2.5 percent for banks without foreign branches. For those foreign currency denominated loans exceeding 180 days and up to 270 days, the interest charged was 6-month LIBOR plus 4.0 percent for banks with foreign branches, or plus 4.5 percent for banks without foreign branches. Exporters did not receive the concessional interest rate if the loan was beyond 270 days.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export

documents to their lending bank. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment financing is, therefore, a working capital program. This financing is normally denominated in either rupees or in foreign currency, except when an exporter used foreign currency pre-shipment financing, then the exporter is restricted to post-shipment export financing denominated in the same foreign currency.

In general, post-shipment loans are granted for a period of no more than 180 days. The interest rate charged on these foreign currency denominated loans during the POI was LIBOR plus 2.0 percent for banks with overseas branches or LIBOR plus 2.5 percent for banks without overseas branches. For loans not repaid within the due date, exporters lose the concessional interest rate on this financing.

The Department has previously found both pre-shipment export financing and post-shipment export financing to be countervailable, because receipt of export financing under these programs was contingent upon export performance and the interest rates were lower than the rates the exporters would have paid on comparable commercial loans. *See, e.g., 1994 Castings,* 62 FR at 32998. No new substantive information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, in accordance with section 771(A)(B) of the Act, we continue to find that pre-shipment and post-shipment export financing constitute countervailable export subsidies.

To determine the benefit conferred on SAIL through the its rupee-denominated pre-shipment export financing, we compared the interest rate charged on these loans to a benchmark interest rate. SAIL reported that, during the POI, it received and paid interest on commercial, short-term, rupee-denominated cash credit loans which were not provided under a GOI program. Cash credit loans are the most comparable type of short-term loans to use as a benchmark because, like the pre-export loans received under this program, cash credit loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. Thus, we used these loans to calculate a company-specific, weighted-average, rupee-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on SAIL's pre-shipment rupee-denominated loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POI because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. Where the calculated amount of benchmark interest exceeded the actual interest paid, the difference is the benefit. We then divided the total amount of the benefit by SAIL's total exports. SAIL did not have any post-shipment rupee-denominated loans outstanding during the POI.

During the POI, SAIL also utilized pre-shipment and post-shipment export financing denominated in U.S. dollars. To determine the benefit conferred from this dollar pre-shipment and post-shipment export financing, we again compared the program interest rates to a benchmark interest rate. We used the company-specific interest rates from SAIL's ''bankers acceptance facility'' loans to derive the benchmark. SAIL's bankers acceptance facility loans were the only commercial short-term dollar lending received by the company during the POI. Because the effective rates paid by the exporters are discounted rates, we derived from the bankers acceptance facility rates a discounted weighted-average, dollar-denominated benchmark interest rate. We compared this company-specific benchmark interest rate to the interest rates charged on pre-shipment and post-shipment dollar-denominated loans and determined that the program interest rates were higher than the benchmark interest rate. Therefore, we determine that SAIL did not benefit from pre-shipment and post-shipment dollar-denominated export financing during the POI.

We determine the net countervailable subsidy from rupee-denominated pre-shipment export financing to be 0.10 percent *ad valorem. See, also,* Comment 7 of the ''Interested Party Comments'' section.

F. Loan Guarantees From the GOI

In its questionnaire response, the GOI reported that it has not extended loan guarantees pursuant to any program *per se.* Rather, the Ministry of Finance extends loan guarantees to selected Indian companies on an *ad hoc* basis, normally to public sector companies in particular industries. The GOI also reported that GOI loan guarantees are not contingent on export performance nor are they contingent on the use of domestic over imported goods. The GOI stated that, while it has not extended loan guarantees to the steel sector since 1992, it continues to extend loan guarantees to other industrial sectors on an *ad hoc* basis.

During the POI, SAIL had several long-term, foreign currency loans outstanding on which it had received loan guarantees from the GOI and the State Bank of India (SBI). According to SAIL, the loan guarantees were earmarked for certain activities related to the company's steel production (*i.e.,* worker training, modernization activities, etc.). In contradiction to the GOI's questionnaire response, SAIL finalized a loan agreement and, thus, received a GOI loan guarantee as late as 1994.

Section 351.506 of the *CVD Regulations* states that, in the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with a government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any differences in guarantee fees. Thus, to determine whether a government loan guarantee confers a benefit, we compare the total amount paid by the company (*i.e.*, the effective interest and guarantee fees) for the loan with the total amount it would have paid for a comparable commercial loan.

Using the benchmark rates discussed in the ''Subsidies Valuation Information'' section above for comparison purposes, we found that the total amounts SAIL paid for its GOI-guaranteed loans were less than total amounts SAIL would have otherwise paid for comparable commercial loans. Thus, the loan guarantees from the GOI conferred a benefit on SAIL equal to the difference between these two amounts. The GOI's provision of loan guarantees is specific under section 771(5A)(D)(iii)(II) of the Act because it is limited to certain companies selected by the GOI on an *ad hoc* basis. In addition, a financial contribution is provided under the program as defined under section 771(5)(D)(i) of the Act. To calculate the rate of subsidy during the POI, we divided the benefit by SAIL's total sales during the POI. Consistent with our practice regarding transnational subsidies, we did not include in our calculations SAIL's World Bank, KFW, and Finnish Export Credit loans.

On this basis, we determine the net countervailable subsidy to be 0.14 percent *ad valorem. See, also,* Comment 8 and Comment 9 of the ''Interested Party Comments'' section.

II. Program Determined To Be Not Countervailable

GOI Loans Through the Steel Development Fund (SDF)

The SDF was established in 1978 at a time when the steel sector was subject to price and distribution controls. From 1978 through 1994, an SDF levy was imposed on all sales made by India's integrated producers. The proceeds from this levy were then remitted to the Joint Plant Committee (JPC), the administrating authority consisting of four major integrated steel producers in India that have contributed to the fund over the years. These levies, interest earned on loans, and repayments of loans due are the sources of funds for the SDF.

Under the SDF program, companies that have contributed to the fund are eligible to take out long-term loans from the fund at favorable rates. All loan requests are subject to review by the JPC along with the Development Commission for Iron and Steel. At verification, we confirmed the GOI's claim that it has not contributed any funds to the SDF. Because the SDF was funded by producer levies and other non-GOI monies and there is no evidence of direct or indirect funding by the GOI, SDF loans do not confer a financial contribution as defined under section 771(5)(D)(ii) of the Act. Therefore, consistent with our practice regarding such producer funds, SAIL's SDF loans do not confer a financial contribution from the GOI to SAIL.

On this basis, we determine that the SAIL's SDF loans are not countervailable. *See, also,* Comment 10 of the ''Interested Party Comments'' section.

III. Programs Determined To Be Not Used

Based upon the information provided in the responses and the results of verification, we determine that SAIL did not apply for or receive benefits under the following programs during the POI:

A. Passbook Scheme (PBS)

B. Advanced Intermediate Licenses

C. Special Imprest Licenses

D. Tax Exemption for Export Profits (Section 80 HHC of the India Tax Act)

Interested Party Comments

Comment 1: The Use of Advance Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of advance licenses is the equivalent to the use of a non-excessive duty drawback program. They contend that, while the structure of India's advance license program may differ from traditional duty drawback programs, the use of advance licenses is not countervailable. Rather, through the use of advance license, exporters obtain duty exemptions that do not exceed the duties payable on the imported inputs used to produce the exported product. They argue that the GOI has a reasonable and effective procedure for confirming which inputs are consumed in the production of the exported products, and in what amounts, and that the GOI uses the SIO norms to ensure against excess drawback.

The GOI and SAIL contend that the mere fact that duty-free imports under a particular advance license need not be physically incorporated into the product exported under the same advance license does not automatically render the advance license program a subsidy. They argue that the regulations only require that the duty-free inputs be used to produce the type of product that is being exported. The regulations do not require that the actual exported product be physically incorporated with the duty-free imports made under the same advance license. They also state that the use of post-export advance licenses is similar to the use of the U.S. substitution drawback regime in that the applicant need only correlate or link the imported items with exported products.

Petitioners contend that the advance license program is not a permissible duty drawback program. First, they argue that there is no requirement that imported inputs be used in the production of the exported merchandise. They argue that the GOI's reliance on the SIO norms and the value-added requirement does not ensure that the amount of benefits granted are not excessive. They argue that the relevant SIO norm is neither a producer-specific nor product-specific norm'' but encompasses a broad range of carbon, alloy and stainless steel products made by all producers of such products in India. Therefore, the SIO norm does not limit the amount of benefits granted to SAIL to those imported inputs that SAIL actually consumes in the production of exported cut-to-length plate.

In addition, Petitioners contend that the advance license program does not meet the substitution drawback criteria because the GOI has no mechanism for tracking items imported under advance license and that, in the absence of such a mechanism, there can be no means for ensuring that any domestic inputs used as substitutes are used in the same quantities, and are of the same quality and characteristics as the imported inputs.

Department's Position: We disagree with respondents. The first step in our analysis is to examine whether the GOI has in place and applies an effective system for confirming that imported inputs are consumed in the production of the exported product and in what quantities. Although section 351.519 of the regulations recognizes a longstanding principle that governments may remit or drawback import charges levied on imported inputs, the caveat to that provision is that such recognition will be accorded when the finished product is exported. 19 CFR 351.519 (1999). Section 351.519 incorporates the rule set forth in Annexes II and III of the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). These annexes provide the analytical framework for addressing the issue. The preamble to the *CVD Regulations* makes clear that we first determine whether the government has a sufficient system in place to confirm the consumption of the imported inputs and the quantity of the imported inputs consumed in the production of the exported product.

> [u]nder the modified [linkage] test, we will *first* examine whether the exporting government has a system in place that confirms which inputs are consumed in the production of the exported product, and in what amounts, and which taxes are imposed on the inputs consumed in production. Where we find that such a system is in operation, we will examine the system to determine whether it is reasonable, effective, and based on generally accepted commercial practices in the exporting country.

CVD Regulations, 63 FR at 65348, 65413 (Nov. 25, 1998) (emphasis added). Thus, only if a government has a legitimate and effective monitoring system will we then attempt to determine whether that system prevents excessive drawback. Of course, qualification as a substitution drawback system also requires that a government has in place and applies a monitoring system to confirm consumption, quantity, and,

additionally, equality in characteristics of domestic inputs used in place of imported ones. 19 CFR 351.519(a)(ii).

At verification, GOI officials stated that the GOI had no way of confirming whether imported inputs were actually consumed in the production of steel. They also stated that the GOI had no way of knowing whether home market inputs were used in the production of the exported product or whether imported inputs are used to produce products destined for export or the domestic market. They explained the GOI uses its SIO Norms to establish the quantities and maximum import values to be imported under an advance license.

We determine that the use of advance licenses is not equivalent to the use of a permissible duty drawback program. Upon review of the application procedures and the process for issuing a licenses, we found that GOI issues an advance license based on a list of inputs submitted by the exporter and the quantities prescribed in the SIO norms. In this application and approval process, however, there is no way to ascertain whether the items listed for an export shipment were imported inputs or domestic inputs. For a given input listed in an application, the GOI does not know how much was imported and how much was purchased domestically. Therefore, the GOI issued advance licenses without confirming whether the items, upon which it based those licenses, were indeed imported inputs consumed in the production of the export shipment of domestic inputs.

We also determine that the use of advance licenses is not equivalent to the use of a permissible substitution drawback program. The GOI does not have a system in place for confirming that inputs imported under that advance license are used to produce the exported product. The GOI merely presumes that the imported inputs were consumed in the production of the exported product because these inputs are needed for production of cut-to-length plate. Under Annex III to the SCM agreement and section 351.519 of the *CVD Regulations,* the drawback substitution scheme must accomplish substitution on a one-to-one ratio between the imported input and the home market input. The GOI has also failed to provide evidence that such an objective is accomplished under the advance license system.

In summary, the GOI has no way to know whether imported inputs are consumed in subsequently exported products as required under Annex III to the SCM agreement or whether an amount imported was equal to the home market substitutes consumed in the exported product. Consequently, the entire amount of the benefit conferred is countervailable, as directed under section 351.519 of the *CVD Regulations* and reflected in Annexes II and III to the SCM Agreement. Because the GOI does not have a sufficient monitoring system, there is no need to further address whether the system prevents excess drawback or is a viable substitution drawback system.

Finally, at the hearing, the GOI argued that the type of advance licenses used by SAIL is no longer available. This argument was not made in the GOI's case brief and the record contains no factual evidence on which to base this statement. Section 351.310 states that arguments presented at the hearing are limited to those arguments raised in the case briefs. Because the Government of India failed to make this argument in its case brief, we will not address this argument.

Comment 2: Timing and Calculation of Advance License Benefits

SAIL states that it is the Department's practice to measure the benefit from an export subsidy according to the time of export. SAIL then argues that the Department should measure any benefit to SAIL from its advance licenses on an ''as earned basis'' because SAIL knew the exact amount of duty exemption that it earned under each license at the time of export. SAIL concludes that, because it did not earn any benefits under the advance license program during the POI, the Department may not allocate any benefits to SAIL for its use of advance licenses during the POI. SAIL also argues that, whenever a license is tied to a particular market and a particular product, the Department should attribute the benefit only to that market and product.

Petitioners state that the Department's practice is to measure the benefit of an export subsidy on an ''as earned'' basis when the benefit is calculated as a percentage of the FOB value of the exported merchandise on a shipment-by-shipment basis and the exporter knows the amount of benefit it will receive at the time of export. They argue that advance licenses are not valued according to these criteria and, thus, the benefits should be calculated at the time they were used or sold. They argue that the SIO norm is used to determine the quantities of specified articles the license holder will be eligible to import free of duty. They state that an advance license holder may know the quantities of the specified articles that it will be eligible to import but, until such merchandise is actually imported and the dutiable value of the merchandise is established, it does not know the value of the customs duties that will be forgiven.

Petitioners also argue that the Department's advance license calculations for the *Preliminary Determination* contain two ministerial errors. They argue that the value of one of the customs duty exemptions and the value of one of the applications fees were incorrectly brought forward from one spreadsheet to another. In addition, they voice a concern that SAIL's submissions regarding advance licenses may not be accurate. They also point out that the information in the advance license documentation submitted by SAIL in Exhibit 27 to its June 25, 1999 supplemental questionnaire response does not reconcile with the data listed for that license in SAIL verification exhibit VE–19.

Department Position: Upon making an export shipment, an exporter can apply for and obtain an advance license. The advance license will list the specific items which can be imported under the license, including the total quantity of goods which can be imported and the maximum value of those future imports that can be made using that license. The GOI establishes those quantities and maximum import values using its SIO Norms. Although an exporter knows the quantities and maximum value of imports it could make under the advance license, the actual value of duty exemptions cannot be determined until the license is actually used by the exporter. Because the actual benefit derived from the use of advance licenses, *i.e.,* the amount of duty exemptions received by the exporter, can only be determined when the license is used, respondents are incorrect when they state that the benefit from this program should be determined on an ''as earned basis.'' Therefore, we calculated SAIL's benefit from this program based on the date the company used advance licenses. This methodology is consistent with prior Department practice. *See e.g., Final Negative Countervailing Duty Determination; Fresh Atlantic Salmon from Chile,* 63 FR 31347, 31440–41 (June 9, 1998) (exports were not associated with particular export transactions so amount could not be calculated); *Certain Pasta from Italy,* 63 FR 17372, 17378 (April 9, 1998) (Preliminary Results of First Countervailing Duty Administrative Review) (uncertainty in restitution benefits because amount granted did not always equal the amount declared by the company); *Final Results of Countervailing Administrative Review: Certain Iron Metal Castings from India,*

56 FR 41658, 41661–62 (Aug. 22, 1991) (lag time between export and identification of the price chosen to calculate IPRS payment).

We do not however agree with Petitioners' comments about the accuracy of SAIL's advance licenses data. The materials provided in Exhibit 27 include a sample application, sample shipping bills, and a sample advance license. These documents do not represent a complete set of supporting documentation for one particular license but are merely examples from different transactions. Thus, it is not surprising that the destination information on these sample shipping bills does not match the destination data listed for the advance license also provided in Exhibit 27. Most importantly, we verified the accuracy of all the information used in the calculation of the benefit for this program.

Comment 3: The Use of DEPS Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of DEPS licenses is equivalent to the use of a non-excessive duty drawback program. They contend that, for the reasons discussed in the above section regarding advance licenses, the SIO Norms and the program's value-added requirement constitute an effective monitoring system. They also argue that the fact that the DEPS provides the exporter duty drawback in the form of credits rather than cash does not make the program a subsidy. In addition, SAIL notes that, during the POI, it used all of its DEPS credits to import a single major input used in the production of the subject merchandise.

Petitioners argue that the DEPS does not qualify as a permissible drawback program and therefore SAIL's DEPS credits are countervailable. They argue DEPS credits may be used to import any article, not just inputs used in the production of the exported merchandise. They further state that SAIL is not required to import or consume any imported inputs in the production of the exported goods in order to obtain post-export DEPS credits. They also argue that, because post-export DEPS credits can be used to offset duties on any imports and are transferable, exemptions are not limited to inputs consumed in the production of the exported goods. Petitioner state that the fact that SAIL may have imported a single major input is irrelevant because the Department's regulations are clear that the government in question (not the importer) must maintain an effective system for guarding against excessive drawback or the entire amount of the benefits will be countervailable.

Department Position: We disagree with respondents for the reasons outlined in response to Comment 1, above. The GOI issues DEPS licenses without confirming whether and in what amounts imported inputs were used to produce the export shipment against which the license is to be based. Consequently, the GOI has no system for monitoring that DEPS licenses are valued according to the import duties that were payable for inputs imported for the production of the exported product.

Comment 4: Timing and Calculation of DEPS Benefits

SAIL argues that, if the DEPS is determined to be countervailable, the Department should measure the benefit from its post-export DEPS credits on an ''as used'' basis. SAIL explains that, due to administrative irregularities and confusion with regard to how the program operated, it did not know how much credit it earned at the time of export.

Petitioners argue the Department should measure the benefit to SAIL under the DEPS using all of the DEPS credits ''earned'' by SAIL on its exports of the subject merchandise to the United States during the POI. They state that this is the appropriate methodology because (1) post-export DEPS credits are provided on a shipment-by-shipment basis, and (2) SAIL knew the exact amount of DEPS credits it would earn on its shipments because the credit rates are published by the GOI.

Department's Position: We agree with petitioners. Under the new CVD regulations, the benefit is measured on an ''as earned'' basis under the following conditions. If the program permits exemption of import duties upon export, the Department normally will consider the benefit as having been received upon exportation. 19 CFR 351.519(b)(2) (1999). We calculate the benefit on an ''earned'' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known. *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey; Final Results and Partial Recission of Countervailing Duty Administrative Reviews,* 63 FR 18885, 18888 (April 16, 1998). *Accord Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Reviews,* 61 FR 50273, 50275 (Sept. 25, 1996); *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review,* 60 FR 44843, 44844 (Aug. 29, 1995).

DEPS credits are based upon the f.o.b. value of the shipment. Thus, the amount of the benefit is known to the recipient upon export. Unlike advance licenses, which are issued according to the quantities and maximum values of the items to be imported, DEPS credits are equal to the amount of import duty exemptions that the credit-holder is eligible to claim. Despite some initial uncertainty on the part of SAIL as to how the program operated and the amount of duty exemption that would be granted, SAIL was able to confirm the rates applicable and know the value of its credits by June 1997, which was not long after the program was implemented and at the beginning of the POI.

Comment 5: Calculation of the Benefit from Selling SILs

Petitioners point out that, at verification, SAIL officials explained that SAIL reported its revenues from its sales of SILs net of tax. They argue that, because sales tax does not qualify as an application fee, deposit or other payment pursuant to 771(6)(A) of the Act, the Department should include in its calculations the sales taxes reported in SAIL verification exhibit VE–13.

SAIL argues that the Department should not include the sales taxes in its calculations pertaining to sales of SILs. They argue that SAIL does not realize any benefit when the buyer of a SIL incurs a sales tax liability and pays it through the seller (SAIL).

Department's Position: The only adjustments which can be made to a subsidy benefit are those enumerated under section 771(6) of the Act. Under section 771(6)(A), the Department is only authorized to adjust the benefit from a subsidy by ''any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' No other adjustments to the benefit received under this program are applicable under section 771(6)(A) of the Act. Therefore the revenue earned by respondent on its special import licenses is the countervailable benefit received by SAIL under this program. No other offsets or adjustments to that benefit, such as taxes, are authorized under the Act.

Comment 6: Timing and Calculation of EPCGS Benefits

SAIL argues the Department should treat SAIL's EPCGS import duty exemptions as non-recurring grants and allocate the benefits during the POI pursuant to section 351.524 of the *CVD*

Regulations. SAIL explains that, for its imports of capital equipment under the EPCGS, SAIL received partial duty exemptions at the time of importation. SAIL further explains that the exemptions were subject to certain export performance commitments and that SAIL has always met its export commitments under the program.

Petitioners argue the Department should not treat SAIL's EPCGS benefits as being received at the time the capital goods were imported. They argue that the Department has previously considered and rejected this argument in *Elastic Rubber Tape,* 64 FR 19125, 19129 (April 19, 1999). They argue that the Department should allocate the benefits according to the dates that the export obligations were fulfilled. For the instances in which SAIL had export obligations outstanding during the POI, they argue that the Department should regard the amount of duty exemption as an interest-free loan and calculate the benefit by applying its contingent liability methodology.

They also note that, at verification, SAIL officials indicated that SAIL paid a single application fee for the three licenses utilized during the POI. Accordingly, they argue that the Department should exclude from its calculations only the single application fee paid by SAIL. In addition, they note that, at verification, the Department discovered a slight error in the duty rate reported for one of SAIL's capital equipment imports under the EPCGS.

Department's Position: As explained above, we treated the benefits provided under the EPCGS as non-recurring benefits and allocated them according to when the pertinent export requirement was lifted and not the date of importation. Although SAIL claims it has always met its export requirements, there is no evidence on the record that the GOI waived SAIL's export requirements. The benefit from this program, which is the waiver of the import duties, is not confirmed until the pertinent export requirements are met by the exporter. Therefore, the methodology proposed by SAIL, which is based on the date the capital equipment was imported, is not appropriate because that is not the point at which the waiver of duty is made.

In our final calculations, we subtracted the application fees discussed by petitioners only once and corrected for the error regarding the duty rate as well.

Comment 7: Benchmarks for Pre-shipment Export Financing

SAIL argues that the Department should use SAIL's commercial paper issuances rather than it's cash credit loans to determine whether a benefit is provided for rupee-dominated pre-shipment export financing. SAIL argues that the commercial paper issuances are preferable because they represent the most market-based arms-length interest rate for rupee-denominated short-term borrowing.

Petitioners argue that the Department should use SAIL's cash credit loans for benchmark purposes because they are the most comparable to SAIL pre-shipment export financing loans. They state that both types of credit are secured by the corporate assets of SAIL, but SAIL's commercial paper issuances are not secured.

Department's Position: Section 771(5)(E)(ii) of the Act states that the benefit from a loan program is based upon the difference the recipient pays for the program loan and the amount the recipient would pay on a comparable commercial loan. SAIL's rupee-denominated pre-shipment loan export loans and its cash credit loans operate in the same way, as running lines of credit which can be drawn against as needed. Therefore, we determine that the cash credit loan is a comparable commercial loan with respect to the pre-shipment loan provided under this program. The cash credit loan is also a ''market-based arms-length'' rupee-dominated short-term loan.

Comment 8: Treatment of SAIL's Long-Term Foreign Currency Loans

Citing section 351.527 of the CVD Regulations, SAIL argues that the Department should exclude from its calculations SAIL's foreign currency loan from the World Bank. SAIL then argues that the Department should also exclude SAIL's foreign currency supplier credit loans. SAIL explains that the financing structure for supplier credits—which is fixed by the suppliers, not SAIL—requires SAIL to pay a higher purchase price for all non-cash purchases of capital equipment from the supplier (as opposed to a lower purchase price if SAIL were to pay cash up-front). SAIL then argues SAIL derived no benefit from its supplier credits because they carry an ''implicit interest rate'' which exceeds the interest rate that was otherwise available on the comparable commercial market. In addition, SAIL argues that the Department should exclude from its calculations its Kreditanstalt fur Weideraufbau (KFW) loans and its Finnish Export Credit (FEC) supplier credit loans. SAIL argues that these loans are not countervailable because they were disbursed by government-owned banks in compliance to the Agreement on Guidelines for Officially Supported Export Credit (''OECD Consensus'').

The GOI and SAIL argue that SAIL's loans from the State Bank of India (SBI) should also not be included in the calculations. The GOI argues that the SBI's foreign currency loan guarantees are purely commercial in character and bear no relationship to the GOI's loan guarantee policies or practices. SAIL also argues that, in the *Preliminary Determination,* the Department erroneously treated SAIL's foreign currency loans from the SBI as GOI-guaranteed loans. SAIL argues that these loans were not guaranteed by the GOI but rather were guaranteed by the largest and most important commercial bank in India.

Petitioners argue that the SAIL's GOI loan guarantees were provided in limited numbers and therefore are specific. They then argue that the Department should include in its calculations all of the long-term guaranteed foreign currency loans reported by SAIL. Based on information obtained at verification that commercial bankers would have been unwilling to provide loan guarantees to SAIL, they argue the GOI's provision of loan guarantees on SAIL's loans from international lending or development institutions was not consistent with commercial considerations. With regard to SAIL's supplier credit loans, they argue that SAIL was unable to provide documentation that interest is factored into the amount of the loan. They argue that the GOI guarantees clearly played the decisive role in the lenders' decisions to grant SAIL these loans. Finally, they argue the loan guarantees provided by the GOI-owned SBI are countervailable. They maintain that, at the time SAIL received loan guarantees from the SBI, it could not have obtained guarantees from private sector banks because it was viewed as too great a financial risk. They also argue that the references to documents regarding the lending policies of the KFW and the FEC in SAIL's September 29, 1999 case brief constitute the submission of factual information after the deadline prescribed under 19 CFR 351.301(b)(1).

Department's Position: At verification, we discussed with SAIL officials the foreign currency loans SAIL received from the World Bank and the KFW, two well-known international lending/development institutions. We learned that SAIL also received supplier credit loans through FEC, which is a Finnish government bank. *See* SAIL Verification Report at 15. Consistent with our practice of not countervailing transnational subsidies, we excluded

from our calculations all of SAIL's transnational loans. In addition, we excluded from the calculations any loans which were not guaranteed by the GOI. We do not agree with Petitioners' argument that SAIL could not have obtained commercial loan guarantees and therefore none of the guarantees provided to SAIL were commercial in nature. We are not examining the creditworthiness of SAIL in this investigation. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 64 FR 12996 (March 16, 1999) (*Initiation*). Therefore, information or argument regarding SAIL's financial health at the time it obtained its loans cannot be a basis for including or excluding from the calculations loans that were not guaranteed by the GOI.

Comment 9: Benchmarks for SAIL's GOI-Guaranteed Loans

SAIL argues that SAIL's SBI-guaranteed long-term foreign currency loans should be used for benchmark purposes in calculating the benefit conferred by the GOI guarantees that SAIL received. SAIL argues that the guarantee fee charged to SAIL by the SBI was a reasonable commercial guarantee fee, considering SAIL's status as a large public sector company in reasonable financial health. SAIL states that commercial foreign currency lenders in general regarded loan guarantees by the SBI as providing comparable security to GOI loan guarantees. Accordingly, SAIL argues that the Department should not use a methodology of comparing the total cost of borrowing, *i.e.*, the combination of interest and guarantee costs. Rather, SAIL argues that Department need only account for any difference in guarantee fees and should simply compare the GOI guarantee fee (1.20%) with the guarantee fee charged by SBI. Then the Department should multiply the difference by the outstanding balance during the POI for each GOI-guaranteed loan and divide the total by SAIL's total sales during the POI.

Petitioners argue that, in absence of a company-specific benchmark interest rate for SAIL, the Department should not use for benchmark purposes the ''lending rates'' published in *International Financial Statistics.* They argue that, pursuant to section 351.505(a)(3)(ii) of the *CVD Regulations,* the use of a national average interest rate is intended to be representative of a loan that ''could have been taken out'' by SAIL. They then argue that, during the period in which SAIL obtained GOI-guaranteed loans, SAIL could not have obtained loan guarantees from commercial banks. They state that a company viewed by commercial bankers as posing too great a risk to be eligible for loan guarantees could not have obtained loans at the same interest rates charged to SBI's best customers. Accordingly, they propose that the Department should adopt an approach which is analogous to applying a risk premium when a company is uncreditworthy. They argue that such an approach should be used with respect to the loans SAIL received from international lending or development institutions as well.

In its rebuttal brief, SAIL takes issue with Petitioners' argument that the Department should select benchmark interest rates which reflect an inability on the part of SAIL to obtain long-term long guarantees from commercial banks. SAIL argues that there is substantial evidence on the record that commercial banks were willing to make long-term foreign currency loans to SAIL, including evidence that independent credit rating agencies gave SAIL high ratings.

Department Position: We disagree with SAIL that SAIL's SBI-guaranteed long-term foreign currency loans can be used for benchmark purposes. The loans for which SAIL received guarantees from the SBI are not denominated in the same currency as any of SAIL's GOI-guaranteed long-term foreign currency loans and, in all but one instance, were agreed upon in different years. Therefore, the SBI-guaranteed loans cannot be used for benchmark purposes. We also disagree with SAIL that the Department should only consider differences in guarantee fees. Section 771(5)(E)(iii) of the Act makes clear the basis for calculating the benefit from a guaranteed loan is a comparison of what the recipient paid for the guaranteed loan (including any guarantee fees) with what the recipient would pay to obtain comparable commercial financing. This standard, which is repeated in section 351.506 of the *CVD Regulations*, replaced the pre-URAA practice, under which we followed the methodology proposed by SAIL. Given the change in standard, we have followed the methodology outlined in our regulations and compared the costs of the GOI-guaranteed loans with the appropriate benchmark as discussed in the ''Subsidies Valuation Information'' section above.

With respect to Petitioners'' concerns about using national average interest rates for benchmark purposes, we acknowledge that the ''lending rates'' published by the IMF are not ideal. However, there is no information on the record containing interest rates that can be regarded as preferable. As explained above, we attempted to obtain other information regarding long-term foreign currency interest rates. At verification, we were unable to obtain any information regarding the foreign currency or other long-term interest rates available during the years in which the GOI provided guaranteed loans to SAIL. The ''lending rates'' published in *International Financial Statistics* are the only interest rates on the record of this investigation which can reasonably be used for benchmark purposes. In addition, we did not initiate an examination of SAIL's creditworthiness. *See Initiation,* 64 FR 12996 (March 16, 1999). Consequently, we did not include a risk premium in the calculation of our benchmark.

Comment 10: SAIL's SDF Loans

Petitioners argue that SAIL's long-term SDF loans are countervailable under section 771(5)(B) of the Act. In short, they argue that (1) the levies used to fund the SDF are, in essence, taxes and thus constitute GOI contributions to the SDF, (2) the GOI controls the SDF funds, and (3) SAIL received a financial contribution from the GOI in the form of soft SDF loans. Throughout their initial and rebuttal comments regarding the SDF, petitioners refer to information contained in an article that was attached to their September 29, 1999, case brief.

Petitioners argue that the statute does not make an exception for governments that direct tax levies into special government-directed ''funds'' as opposed to placing such funds in the general treasury. They argue that section 771(5)(B)(iii) of the Act defines as countervailable the types of loans made by the GOI under the SDF because, under this statute, a government need not make a financial contribution itself to give rise to a subsidy. They then argue that, by making soft loans through the SDF, the GOI has foregone revenue to which it is entitled and has therefore made a financial contribution under section 771(5)(D)(ii). They also argue that, because the SDF was created through levies on sales to consumers, SAIL's SDF loans are transfers of funds from the GOI and therefore constitute financial contributions under section 771(5)(D)(i) of the Act.

The GOI and SAIL contend that SAIL's SDF loans are not countervailable. They argue that the SDF was funded from levies on steel producers and other non-GOI sources and that the Department's practice is to not countervail benefits received by producers from such ''producer'' funds.

They argue that, because the GOI did not contribute any funds to the SDF, SAIL has not received a financial contribution from the GOI as a result of its SDF loans.

In addition, SAIL notes that the article and related arguments contained in Petitioners case brief constitutes factual information. SAIL points out that this information was submitted after the time limit prescribed in section 351.301(b)(1) of the *CVD Regulations,* should not be made a made a part of the record, and should be ignored by the Department.

Department's Position: We agree with respondents. At verification, we confirmed that the SDF was funded by producer levies and other non-GOI sources. *See,* SAIL Verification Report at 10. Therefore, there is no basis for concluding that the SDF loans received by SAIL confer a financial contribution to SAIL from the GOI. In addition, there is no information on the record indicating that the GOI contributed tax revenues to the SDF either directly or indirectly. There is no information on the record indicating that the GOI controls the SDF. Accordingly, there is no basis on the record of this investigation for determining that SAIL's SDF loans are countervailable.

We agree with SAIL that Petitioners' case brief contains new factual information. We also agree that the information was submitted in violation of section 351.301(b)(1) of the *CVD Regulations.* We returned the brief and article to the Petitioners and requested that they submit a redacted brief, which contains no references or argument regarding the article or any new factual information. *See* Memorandum to file Re: Removal of Untimely Factual Information from the Record, dated December 13, 1999, which is on file in the public file of our Central Records Unit (Room B–0990 of the main Commerce Building). Therefore, all arguments relating to information in the article cannot be addressed.

Comment 11: Treatment of SAIL's Stockyard Sales

Petitioners argue that the figure reported for the total value of SAIL's sales it too large because the figure includes the f.o.b.(stockyard) value of SAIL's stockyard sales rather than the f.o.b.(factory) value of those sales. They argue that, in calculating the ad valorem program rates for SAIL, the Department should use an adjusted figure.

Department's Position: We agree with Petitioners. The original figure reported by SAIL includes the f.o.b. (stockyard) value of SAIL's stockyard sales rather than the f.o.b. (factory) value of those sales. At verification, we requested SAIL to derive the f.o.b. (factory) value of its stockyard sales. See SAIL Verification Report at 5 and 6. We adjusted the figure for SAIL's total value of sales during the POI so that the value of SAIL's stockyard sales is included on an f.o.b. (factory) basis. We used this adjusted sales figure for the final determination.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the GOI Verification Report and the SAIL Verification Report, which are on file in our Central Records Unit (Room B–099 of the main Commerce building).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual countervailable subsidy rate for the company under investigation—SAIL. This rate will also be used for purposes of the ''all others'' rate. We determine that the total estimated net countervailable subsidy rates are as follows:

Producer/exporter	Net subsidy rate
Steel Authority of India (SAIL).	11.25% ad valorem.
All others	11.25% ad valorem.

In accordance with our Preliminary Determination, we instructed the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from India which were entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our Preliminary Determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999, and November 22, 1999.

If the ITC determines that material injury or threat of material injury does not exist, this investigation will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If the ITC determines that such injury does exist and issues a final affirmative determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above.

ITC Notification

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

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Frank Thomson, Office 4, Group II, Import Administration, International Trade Administration,