Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

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

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Kristen Johnson, or Michael Grossman, Office of CVD/AD Enforcement II, 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 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 Italy. For information on the countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

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

Case History

Since the publication of our preliminary determination in this investigation (*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 Italy,* 64 FR 40416 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

We issued supplemental questionnaires on July 23, 26, and 27, 1999, to ILVA S.p.A. (ILVA) and ILVA Lamiere e Tubi S.p.A. (ILT) (collectively referred to as ILVA/ILT), Palini & Bertoli S.p.A. (Palini & Bertoli), and the Government of Italy (GOI), respectively. We received the respondents' questionnaire responses on September 3, 1999. We conducted verification of the countervailing duty questionnaire responses from September 13 through September 24, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40416), and the final antidumping duty determination was postponed (*see* 64 FR at 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR at 46341). On November 8, 1999, we issued to all parties the verification reports for ILVA/ILT, Palini & Bertoli, and the regional government of Friuli Venezia Giulia. On November 12, 1999, we issued the verification report for the GOI. Petitioners, the GOI, and ILVA/ILT filed case briefs on November 18, 1999. Rebuttal briefs were submitted to the Department by the petitioners and ILVA/ILT on November 23, 1999. The case hearing was held on November 30, 1999.

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 these investigations 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 these investigations 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 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 effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Italy 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 Italy materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published 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 Italy of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations,* 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Corporate History of ILVA/ ILT [1]

Prior to 1981, the Italian government holding company Istituto per la Ricostruzione Industriale (IRI), controlled Italy's nationalized steel industry through its wholly-owned subsidiary, Finsider S.p.A (Finsider). The steel operations of Finsider were subdivided into three main companies: Italsider (carbon steel); Terni (stainless and special steel); and Dalmine (pipe and tube). Italsider was the sector leader and the primary producer of the subject merchandise. In 1981, the GOI implemented a restructuring plan, restructuring Finsider into several operating companies including: Nuova Italsider (carbon steel flat products); Terni (speciality flat steels); Nuova Sias (special long products); and other steel product divisions. In the course of the 1981 Restructuring Plan, Italsider transferred all of its assets, with the exception of certain plants, to Nuova Italsider. Italsider became a one-company holding company with Nuova Italsider's stock as its primary asset.

During 1987, Finsider restructured three of its main operating companies: Nuova Italsider, Deltasider, and Terni. Nuova Italsider spun-off its assets to Italsider and transferred its shares in Italsider to Finsider. Nuova Italsider ceased operations after this divestment and Finsider had direct ownership of Italsider. Upon completion of the 1987 restructuring, Italsider re-emerged as the steel sector's carbon steel products producer.

Later in 1987, Finsider and its main operating companies (Italsider, TAS, and Nuova Deltasider) were placed in liquidation, and the GOI subsequently implemented the 1988 Restructuring Plan. The goal of the 1988 Restructuring Plan was to restructure Finsider and its operating companies, assembling the group's most productive assets into a new operating company, ILVA S.p.A. (ILVA S.p.A. or (old) ILVA), which was created on January 1, 1989. The 1988 Restructuring Plan, like the 1981 plan, was submitted to and approved by the European Commission (EC). In accordance with the plan, ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies, and Finsider closed certain facilities to comply with the EC's requirements. With respect to Italsider, part of the company's liabilities and the majority of its viable assets, including assets associated with the production of carbon steel flat-rolled products, were transferred to ILVA S.p.A., which commenced production on January 1, 1989. Non-productive assets and a substantial amount of liabilities were left behind with Finsider and the liquidating operating companies.

The facilities retained by ILVA S.p.A were organized into four primary operating groups: carbon steel flat products, stainless steel flat products, stainless steel long products, and seamless pipe and tube. In 1992, ILVA Lamiere e Tubi (ILT), a carbon steel flat products operation, was created as a wholly-owned subsidiary of ILVA S.p.A. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. The other subsidiaries were service centers, trading companies, and an electric power company, among others. ILVA S.p.A., together with its subsidiaries, constituted the ILVA Group. The ILVA Group was wholly-owned by IRI.

Although ILVA S.p.A. was profitable in 1989 and 1990, the company encountered financial difficulties in 1991, and became insolvent by 1993. On October 31, 1993, ILVA S.p.A. entered into liquidation. On December 31, 1993, IRI demerged ILVA S.p.A.''s main productive assets and a share of its liabilities into two new companies: ILVA Laminati Piani (ILP) (carbon steel flat products) and Acciai Speciali Terni (AST) (speciality and stainless steel flat products). On January 1, 1994, ILP and AST were formally established as separately incorporated firms in advance of privatization. *See Memorandum to David Mueller: Verification Report for ILVA S.p.A. and ILVA Lamiere e Tubi,* dated November 8, 1999 (public version on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building) *(ILVA/ILT Verification Report)*, at Exhibit 1993/94–1 and *Memorandum to David Mueller: Verification Report for the Government of Italy,* dated November 12, 1999 (public version on file in the CRU) *(GOI Verification Report)* at 11. ILT, the carbon flat steel products operation, was transferred to ILP as its wholly-owned subsidiary. The remainder of ILVA S.p.A.''s assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua (a.k.a., ILVA in Liquidation).

In 1995, 100 percent of ILP was sold through a competitive public tender managed by IRI with the assistance of Istituto Mobiliare Italiano (IMI). The sale of ILP was executed through a share purchase agreement between IRI and a consortium of investors led by Riva Acciaio S.p.A. (RIVA) and investment companies. The contract of sale was signed on March 16, 1995, and all shares of ILP were transferred to the consortium on April 28, 1995. As of that date, the GOI no longer maintained any ownership interest in ILP or had any ownership interest in any of ILP's new owners.

On January 1, 1997, RIVA changed the name of ILP to ILVA S.p.A (creating the ''new'' ILVA, referred to hereafter as ILVA or (new) ILVA). ILVA continues to wholly-own ILT. Within RIVA's corporate structure, ILT, at its Taranto Works facility, produces the subject merchandise, which is exported to the United States. ILVA, with the assistance of ILVA Commerciale S.p.A. (ICO), a sales company wholly-owned by ILVA, is responsible for selling and exporting the subject merchandise to the United States and other markets.

[1] As discussed in this section, ILVA/ILT's carbon steel predecessor companies are: Nuova Italsider (1981–1987), Italsider (1987–1988), ILVA S.p.A. (1989–1993), and ILP (1994–1996).

As of 1998, RIVA owns and/or controls 82.0 percent of ILVA and two foreign-incorporated investment companies own the remaining 18.0 percent.

According to ILVA/ILT, Sidercomit Taranto C.S. Lamiere S.r.l. (Sidercomit) was created in 1992, as an indirect subsidiary of (old) ILVA. Sidercomit became an operating unit within (new) ILVA in 1997, and currently operates service centers for the distribution of merchandise, including the subject merchandise for ILVA/ILT. Any benefits to Sidercomit under programs that have been found countervailable have been mentioned separately within those program sections below.

Corporate History of Palini & Bertoli

Palini & Bertoli, a 100 percent privately-owned corporation, was incorporated in December 1963. Palini & Bertoli has never been part of the Italian state-owned steel industry.

Change in Ownership

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993) (*Certain Steel from Austria*), we outlined our methodology for the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.,* privatization), or the spinning-off (*i.e.,* sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the sale of the company. We then take the simple average of these ratios. This averaged ratio serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun-off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit.

Use of Facts Available

Both the GOI and ILVA/ILT failed to fully respond to the Department's questionnaires concerning the program ''Debt Forgiveness: 1981 Restructuring Plan.'' Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the GOI and ILVA/ILT failed to submit the information that was specifically requested by the Department, we find that the respondents have failed to cooperate to the best of their abilities. Therefore, we have based our determination for this program on the facts available.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* 19 CFR 351.308(c). In the absence of information from the GOI and ILVA/ILT, we consider the February 16, 1999 petition, as well as our findings from the final determination of *Certain Steel from Italy* to be appropriate bases for a facts available countervailing duty rate calculation. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy,* 58 FR 37327, 37329–30 (July 9, 1993) (*Certain Steel from Italy*).

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information. With respect to the program for which we did not receive complete information from the respondents, the secondary information was corroborated through exhibits (*i.e.,* financial statements) attached to the petition. The financial transactions discussed within Finsider's 1984 and 1985 financial statements confirm that the GOI engaged in transactions which are tantamount to the assumption of debt and debt forgiveness. Based on such review of the transactions discussed in the financial statements, we find that the secondary information (*i.e.,* the petition and *Certain Steel from Italy*) has probative value and, therefore, the information regarding the debt forgiveness provided under the 1981 Restructuring Plan has been corroborated.

Subsidies Valuation Information

Allocation

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 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 the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

On June 21, 1999, ILVA/ILT submitted to the Department four tables illustrating company-specific AUL calculations for (old) ILVA, ILP, ILT, and (new) ILVA, both separately and in combination. In addition, the GOI provided estimates of the country-wide AUL for the Italian steel industry. Based upon our analysis of the data submitted by ILVA/ILT regarding the AUL of their assets, we preliminarily determined that the calculation which takes into consideration all producers of the subject merchandise over the past 10 years is the most appropriate AUL calculation. However, because this calculation did not yield a company-specific AUL which is significantly different from the AUL listed in the IRS tables, in the *Preliminary Determination,* we used the 15 year AUL as reported in the IRS tables to allocate non-recurring subsidies under investigation for ILVA/ILT in the preliminary calculations.

After considering the parties' comments and verifying the data submitted by ILVA/ILT regarding the AUL of their assets, we continue to use a 15 year AUL for ILVA/ILT. We have rejected respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI and are using the IRS tables pursuant to 19 CFR 351.524(d)(2)(i). For an explanation of why we are rejecting ILVA/ILT's company-specific AUL and the country-wide depreciation information, see *Comment 2.*

In its questionnaire response of July 6, 1999, Palini & Bertoli stated that it ''does not have sufficient resources to respond'' to the Department's inquiry of whether the company wished to rebut the 15 year AUL as reported in the IRS tables. Therefore, we are using a 15 year AUL for Palini & Bertoli.

Equityworthiness

In measuring the benefit from a government equity infusion, in accordance with section 351.507(a)(2) of the Department's CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to section 351.507(a)(3) of the Department's CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion.

In this case, private investor prices are unavailable; therefore, it is necessary to determine whether ILVA/ILT's predecessor companies were unequityworthy in the years in which equity infusions were made. Our review of the record has not led us to change our findings from prior investigations, in which we found ILVA/ILT's predecessor companies, Nuova Italsider and (old) ILVA, unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g.,Certain Steel from Italy,* 58 FR 37328; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40477 (July 29, 1998) *(Wire Rod from Italy); Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508, 15511 (March 31, 1999) (*Plate in Coils from Italy*) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy,* 64 FR 30624, 30627 (June 8, 1999) *(Sheet and Strip from Italy).* We have not examined whether (old) ILVA was equityworthy in 1989 and 1990, because the company did not receive an equity infusion from the GOI in either of those years.

Section 351.507(a)(3) of the Department's CVD Regulations views an infusion of equity into an unequityworthy company as inconsistent with the usual investment practices of private investors. In such cases, the Department will apply the methodology described in section 351.507(a)(6) of the regulations, treating the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year in which the infusion was received based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* section 351.505(a)(4)(i) of the CVD Regulations.

Italsider, Nuova Italsider, and (old) ILVA were found to be uncreditworthy from 1977 through 1993. *See Certain Steel from Italy,* 58 FR at 37328–29, *Wire Rod from Italy,* 63 FR at 40477, and *Sheet and Strip from Italy,* 64 FR at 30627. In its September 3, 1999 response, ILVA/ILT stated that the Department has incorrectly determined that Finsider and (old) ILVA were uncreditworthy, since these companies were able to borrow money from commercial lenders at prevailing market rates of interest. ILVA/ILT discussed the existence of IRI guarantees as the reason why both Finsider and (old) ILVA were able to obtain loans at commercial interest rates. *See* ILVA/ILT's September 3, 1999 Questionnaire Response (QR), at 12–13.

We disagree with respondents. The existence of commercial loans to a government-owned company is not dispositive for purposes of determining the company's creditworthiness. In the preamble to the CVD Regulations, we state that for government-owned firms, the Department will make its creditworthiness determination by examining those factors listed in paragraph (a)(4)(i) of section 351.505. *See* Preamble to the CVD Regulations, 63 FR at 65367. Those factors outlined in paragraph (a)(4)(i) include, among other things: (1) the receipt by the firm of comparable, commercial financing, (2) the present and past financial health of the firm as indicated by various financial indicators, (3) the firm's past and present ability to meet its costs and fixed financial obligations with its cash flow, and (4) evidence of the firm's future financial position.

No information with respect to the above factors has been presented in this investigation that would lead us to reconsider our earlier findings that Italsider, Nuova Italsider, and (old) ILVA were uncreditworthy from 1977 through 1993. Therefore, consistent with our past practice, we continue to find Italsider, Nuova Italsider, and (old) ILVA uncreditworthy from 1977 through 1993.

We have not analyzed ILP's, (new) ILVA's, or ILT's creditworthiness in the years 1994 through 1998, because the companies did not negotiate new loans with the GOI or EC during these years.

Benchmarks for Long-Term Loans and Discount Rates

In the *Preliminary Determination,* we based our discount rates on the Italian

Bankers' Association (ABI) rates, which was consistent with the Department's finding in *Wire Rod from Italy,* 63 FR at 40477 and *Sheet and Strip from Italy,* 64 FR at 30626–30627. However, at verification, we learned that the ABI rate does not represent a long-term interest rate, but is rather an average of the short-term interest rates commercial banks charge to their most favored customers. A Bank of Italy (BOI) official explained at verification that an overdraft loan is the most wide-spread short-term instrument of financing available in Italy for companies and individuals. There is no set maturity on an overdraft loan and a company or individual repays the principal when the banks call in the loans. The Italian Bankers Association averages the banks' short-term interest rates to arrive at the ABI rate which the BOI publishes in its economic bulletins and annual reports. *See GOI Verification Report,* at 3–4.

At verification, we inquired whether the BOI collects data on long-term interest rates charged by commercial banks. We learned that only recently (i.e., beginning with financial year 1995) has the BOI started to compile statistics on long-term interest rates charged by banks. The only long-term interest rate for which the BOI has historical yearly information is the rate charged on treasury bonds issued by the GOI. *See Id.*

Because we were unable to gather information on commercial long-term interest rates from either the BOI or independent research for the period 1984 through 1998, and the government bond rate does not represent a commercial rate, for purposes of this final determination, we have continued to use the ABI rates to construct discount rates. We note that, in *Wire Rod from Italy,* the ABI rate was said to be ''the most suitable benchmark for long-term financing to Italian companies.'' *See Memorandum to Barbara Tillman re: Countervailing Duty Investigation of Certain Stainless Steel Wire Rod from Italy: Discussions with Company Officials from Gabetti per L'impresa, Banca Di Roma, and Reconta Ernst & Young,* dated June 3, 1998 (public document on file in CRU).

In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent, which is determined by the company's financial health. *See Wire Rod from Italy,* 63 FR at 40477. Additionally, information on the record indicates that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses for overdraft loans in 1997, as an approximation of the expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate that a company would pay. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* section 351.505(a)(1) of the CVD Regulations. Therefore, we have added the average of the spread (*i.e.,* 2.28 percent) and borrowing expenses (*i.e.,* 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which ILVA/ILT or their predecessor companies were uncreditworthy (*see* ''Creditworthiness'' section above), we calculated discount rates in accordance with the formula for constructing a long-term benchmark interest rate for uncreditworthy companies as stated in section 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the weighted-average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998).[2] For the probability of default by a creditworthy company, we used the weighted-average cumulative default rates reported for the Aaa to Baa-rated categories of companies in the study. The weighted-average cumulative default rates for the Aaa to Baa-rated categories is indicated as the ''Investment Grade'' default rates. *See Memorandum to the File: Moody's Investment Grade Default Rates,* dated November 9, 1999 (public document on file in the CRU). For non-recurring subsidies, the average cumulative default rates for both uncreditworthy and creditworthy companies were based on a 15 year term, since all of ILVA/ILT's allocable subsidies were based on this allocation period.

In addition, ILVA/ILT had two long-term, fixed-rate loans under ECSC Article 54 outstanding during the POI. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See* section 351.505(a)(2)(i) of the CVD Regulations. Consistent with the *Preliminary Determination,* we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars. We have used these rates since we were unable to obtain at verification or through independent research, a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the years in which the loans were contracted, we calculated the uncreditworthy benchmark rates in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations.

I. Programs Determined To Be Countervailable

Government of Italy Programs

A. Equity Infusions to Nuova Italsider and (Old) ILVA [3]

The GOI, through IRI, provided new equity capital to Nuova Italsider or (old) ILVA, two predecessor companies of ILVA/ILT that produced carbon steel plate, in every year from 1984 through 1992, except in 1987, 1989, and 1990. We determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. These equity infusions constitute financial contributions, as described in section 771(5)(D)(i) of the Act. Because they were not consistent with the usual investment practices of private investors (*see* ''Equityworthiness'' section above), the equity infusions confer a benefit within the meaning of section 771(5)(E)(i) of the Act. Because these equity infusions were limited to Finsider and its operating companies, Nuova Italsider and (old) ILVA, we determine that they are specific within the meaning of section 771(5A)(D)(iii) of the Act.

We have treated these equity infusions as non-recurring subsidies given in the year each infusion was received because each required a separate authorization. We allocated the equity infusions over a 15 year AUL.

[2] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore, for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody's Investors Service's publication dated February 1998 (at Exhibit 28).

[3] In the *Initiation Notice,* these equity infusions were separately listed as ''Equity Infusions into Italsider/Nuova Italsider'' and ''Equity Infusions into ILVA.''

Because Nuova Italsider and (old) ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See* ''Subsidies Valuation Information'' section, above. We noted, and petitioners discussed in their November 18, 1999 case brief, that a ministerial error was made in the *Preliminary Determination* with respect to the 1986 equity infusion Nuova Italsider received from IRI. *See* Petitioners' November 18, 1999 Case Brief, at 48. The error was numerical and was insufficient to require a ministerial error correction of the preliminary calculations. For this final determination, we have corrected the error.

For equity infusions originally provided to Nuova Italsider, a predecessor company that produced carbon steel plate, we consider these equity infusions to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. Accordingly, we did not apportion to the other operations of (old) ILVA any part of the equity infusions originally provided directly to Nuova Italsider. While we acknowledge that it would be our preference to look at equity infusions into (old) ILVA as a whole and then apportion an amount to ILP when it was spun-off from (old) ILVA, we find our approach in this case to be the most feasible since information on equity infusions provided to the non-carbon steel operations of (old) ILVA is not available. For the equity infusions to (old) ILVA, however, we did apportion these by asset value to all (old) ILVA operations in determining the amount applicable to ILP.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales[4] during the POI. On this basis, we determine the net countervailable subsidy to be 3.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any equity infusions from the GOI.

[4] Since February 1997, ILVA and ILT have had an exclusive sales arrangement, by which, all of ILT products are sold to ILVA, which, in turn, sells them to outside customers. When ILVA purchases goods from ILT, ILVA considers the purchase as an increase of inventory and the transaction is recorded as an ''acquisition cost'' in its accounting books. *See ILVA/ILT Verification Report*, at 2. Because of this sales arrangement, we are using as our denominator, ILVA's 1998 sales sourced from the company's unconsolidated financial statement.

B. Debt Forgiveness: 1981 Restructuring Plan

The GOI reported that the objective of the 1981 Restructuring Plan was to redress the economic and financial difficulties the iron and steel industry was realizing in the early 1980's. The GOI stated that this plan, which extended to 1985, due to the prolonged crisis within the sector, envisaged financial interventions to aid in the recovery of the Finsider group. As discussed above in the ''Use of Facts Available'' section, the GOI and ILVA/ILT failed to submit complete information in regard to the assistance provided under the 1981 Restructuring Plan. Therefore, based on the facts available, we determine that certain financial transactions conducted in association with the 1981 Restructuring Plan are countervailable subsidies.

Following Italsider's transfer of all its company facilities to Nuova Italsider in September 1981, Italsider held 99.99 percent of Nuova Italsider's shares. In 1983, Italsider was placed in liquidation. While in liquidation, Italsider sold its shares of Nuova Italsider to Finsider in December 1984. The sales price was 714.6 billion lire. As part of this payment, Finsider assumed Italsider's debts owed to IRI of 696.4 billion lire. The difference between the 714.6 billion lire and 696.4 billion lire was paid directly by Finsider to Italsider.

On December 31, 1984, Finsider also granted to Italsider a non-interest bearing loan of 563.5 billion lire to cover losses realized from the liquidation. A matching provision was also made to Finsider's ''Reserve for Losses on Investments and Securities,'' to cover the losses of the liquidation of Italsider. Following a shareholders' meeting of Finsider on December 30, 1985, the amount of 563.5 billion lire was disbursed to cover the losses of Italsider and Italsider's state of liquidation was revoked.

In *Certain Steel from Italy*, the Department determined that the 1981 Restructuring Plan merely shifted assets and debts within a family of companies, all of which were owned by Finsider, and ultimately, by the GOI. Therefore, we determined that both the 696.4 billion lire assumption of debt and the 563.5 billion lire debt forgiveness were specifically limited to the steel companies and constitute countervailable subsidies. *See Certain Steel from Italy*, 58 FR at 37330. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant a reconsideration of the earlier finding that the debt assumption and debt forgiveness are countervailable subsidies. Therefore, consistent with our treatment of these transactions in *Certain Steel from Italy*, we determine that the 1984 assumption of debt and 1985 debt forgiveness constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with *Certain Steel from Italy*, debt assumption and debt forgiveness are treated as grants which constitute financial contributions under section 771(5)(D)(i) of the Act. The transactions also confer benefits to the recipient within the meaning of section 771(5)(E)(i) of the Act, in the amount of the debt coverage. Because the debt assumption and debt forgiveness were limited to Italsider, one of ILVA/ILT's predecessor companies, we determine that these transactions are specific within the meaning of section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we have treated the assumption of debt and debt forgiveness to Italsider as non-recurring subsidies because each transaction was a one-time, extraordinary event. We allocated the 1984 debt assumption and 1985 debt forgiveness over a 15 year AUL. *See* the ''Allocation Period'' section, above. In our grant formula, we used constructed uncreditworthy discount rates based on our determination that Italsider was uncreditworthy in 1984 and 1985. *See* ''Benchmark for Long-Term Loans and Discount Rates'' and ''Creditworthiness'' sections, above.

As with the equity infusions originally provided to Nuova Italsider, we consider the assumption of debt and debt forgiveness to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. To determine the amount appropriately allocated to ILP after its privatization, we followed the methodology described in the ''Change in Ownership'' section above. We divided this amount by ILVA's sales during the POI. On this basis, we determine the net countervailable subsidy to be 1.09 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

C. Debt Forgiveness: 1988 Restructuring Plan

As discussed above in the ''Corporate History of ILVA/ILT'' section of this notice, the GOI liquidated Finsider and its main operating companies in 1988, and assembled the group's most productive assets into a new operating company, ILVA S.p.A. (*i.e.*, (old) ILVA).

The Finsider restructuring plan was developed at the end of 1987, and was approved by the GOI on June 14, 1988, and by the EC on December 23, 1988. The objective of the plan was to restore the industrial, financial, and economic balance to the public iron and steel-making sector in Italy. The restructuring plan included the voluntary liquidation of Finsider, and IRI's assumption of the debts not covered by the sale of assets of the companies being liquidated. IRI was the majority owner of Finsider, and therefore, the party responsible for payment of Finsider's debts.

A transfer of assets and liabilities from Finsider to (old) ILVA was to be accomplished at the latest by March 31, 1990. Upon completion of the 1988 Restructuring Plan, (old) ILVA owned Finsider's productive assets and a small portion of the group's liabilities. Included in the transfer were the productive portions of the flat-rolled facilities located at Taranto, Genoa, and Novi Ligure.[5] The liquidating companies retained the non-productive assets and the vast majority of the liabilities, which had to be repaid, assumed, or forgiven. Thus, while (old) ILVA emerged from the process with a positive net worth, the other companies were left with capital structures in which their liabilities greatly exceeded the liquidation value of their assets.

We determine that certain financial transactions associated with the 1988 Restructuring Plan constitute countervailable subsidies. In 1988, IRI established a fund of 2,943 billion lire to cover losses which Finsider would realize while in liquidation. As of December 31, 1988, Finsider had accumulated losses in excess of its equity. In order to prevent Finsider from becoming insolvent during 1989, IRI utilized 1,364 billion lire of the fund to forgive debts it was owed by Finsider to cover the losses. We determine that IRI's action of forgiving Finsider's debts in 1989, constitutes a countervailable subsidy.

Later in 1990, IRI forgave debts it was owed by Finsider when it purchased (old) ILVA's stock from Finsider (and Terni) for 2,983 billion lire. The 2,983 billion lire was used to pay the liquidated companies' debts which existed at the time of the sale. Prior to the preliminary determination, ILVA/ILT disagreed with our characterization in *Certain Steel from Italy* that the share purchase was an act of debt forgiveness. They stated that the price paid by IRI for (old) ILVA's shares reflected the market value of the shares and, therefore, the purchase was not an act of debt forgiveness. We preliminarily disagreed with ILVA/ILT's argument and determined that IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness; however, we stated that we would seek further clarification of the stock purchase transaction for the final determination. *See Preliminary Determination*, 64 FR at 40422.

In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed prior to (old) ILVA's share purchase, which related to the future expected financial performance of the company. We examined the McKinsey & Company (McKinsey) report of August 1988, which respondents claim provides a comprehensive analysis of the expected future financial performance of (old) ILVA. For reasons discussed in *Comment 7*, we find that the McKinsey report did not assess the expected future financial health of (old) ILVA. Rather, we find that the report examined the viability of the government's 1988 Restructuring Plan for the period 1988 to 1990, and assessed whether the creation of (old) ILVA would conform with the EC's trade and competition rules. *See GOI Verification Report*, at 5. Therefore, on January 1, 1989, the day on which IRI committed to purchasing (old) ILVA's shares, IRI did not have sufficient financial data and analysis which would have allowed it to evaluate the potential risk versus the expected return in (old) ILVA. *See Id.*, at 9–10. Because IRI did not undertake the financial analysis that a private investor would have prior to purchasing shares, we determine that ILVA's share purchase was not in accordance with the normal investment practice of a private investor.

Consistent with our preliminary determination, we find that IRI's purchase of (old) ILVA's shares from Finsider merely shifted assets (*i.e.*, ownership of company stock) within a family of companies which were all owned by the government. The purpose of IRI's decision to purchase (old) ILVA's stock on January 1, 1989, was to provide to Finsider in liquidation cash to repay debts. As such, IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness. Thus, we determine that IRI's purchase of (old) ILVA's stock is a countervailable subsidy because it effectively forgave Finsider's debts.

At the *Preliminary Determination*, we noted that Finsider's 1989 Annual Report at page 12 states that: ''During the fiscal year, your company [Finsider] recorded losses totaling 1,568 billion lire; therefore, the circumstances reoccur for which the shareholder IRI later renounced its own credits necessary to cover the difference.'' Thus, Finsider realized a net loss of 1,568 billion lire for fiscal year 1989. In order to avoid insolvency of the company, IRI should have, but did not, forgive the 1,568 billion lire it was due to cover Finsider's losses in excess of equity during 1990. At the *Preliminary Determination*, we stated that we would seek additional information regarding Finsider's 1,568 billion lire of losses.

For this final determination, we have examined whether IRI expected to receive payment of the 1,568 billion lire debt which Finsider owed it in 1990. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell for cash to pay the debt owed to IRI. On the basis of these facts, we determine that IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, we determine that IRI provided to Finsider debt forgiveness of 1,568 billion lire in 1990. For a further discussion see *Comment 6*.

On the basis of the record evidence, we determine that the debt forgiveness which IRI provided in 1989 and 1990, constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt coverage. Because the debt forgiveness was received by only (old) ILVA, a predecessor company of ILVA/ILT, we determine that the debt coverage is specific under section 771(5A)(D)(iii)(I) of the Act.

The record of this investigation demonstrates that (old) ILVA did not obtain all of Finsider's assets. Based on the information submitted to the Department, we have calculated the percentage of Finsider's assets which were transferred to (old) ILVA. We calculated that, on December 31, 1988, 71.31 percent of Finsider's assets were transferred to (old) ILVA. We also

[5] The subject merchandise which ILT produced and (new) ILVA exported to the United States in 1998, was produced at the Taranto facilities.

calculated the value of the additional assets which were transferred to (old) ILVA during the course of 1990. We then summed the assets transferred to (old) ILVA in 1989 and 1990, and divided that amount by Finsider's total asset value as of December 31, 1988, to derive the percentage of Finsider's assets which were obtained by (old) ILVA. On this basis, we calculated that 84.94 percent of Finsider's assets were transferred to (old) ILVA. For a further discussion see the Department's Position to *Comment 5*.

To determine the benefit from these countervailable subsidies, we have treated the amounts of debt forgiveness provided under the 1988 Restructuring Plan as non-recurring grants because they were one-time, extraordinary events. For the debt forgiveness provided in 1989, we applied 71.31 percent to the amount of debt forgiveness to determine the amount attributable to (old) ILVA. With respect to the debt forgiveness provided in 1990, we applied 84.94 percent to the total amount of debt forgiveness to determine the amount attributable to (old) ILVA. Because (old) ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt forgiveness provided in 1989 and 1990, over a 15 year AUL. *See* the ''Subsidies Valuation Information'' section, above.

We also apportioned the debt coverage by asset value to all (old) ILVA operations in determining the amount applicable to ILP. We next applied the repayment portion of our change in ownership methodology to the debt forgiveness to determine the amount of the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 5.12 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

In addition, at the time of the *Preliminary Determination*, there was ambiguity as to whether the GOI provided additional financial assistance to Finsider in liquidation, and if so, the amount of assistance actually disbursed (*see* 64 FR at 40423). For purposes of the preliminary determination, we found, based on the information provided to the Department by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT of the assistance provided under the 1988 Restructuring Plan.

At verification, we discussed with GOI and company officials the aid disbursed to Finsider for the closure of steel plants and other losses realized in the liquidation process. In particular, we asked the officials to account for the financial assistance the EC authorized for plant closure costs and liquidation losses in the 89/218/ECSC Decision of December 23, 1988. We learned that the EC authorized the disbursement of a maximum of 738 billion lire in additional financial aid to Finsider to cover costs and losses realized in the liquidation process. However, the GOI and ILVA/ILT officials stated that, although the EC authorized the additional financial assistance, this aid was not needed. They stated that no additional assistance was required because the cash received from the sale of Finsider's assets was greater than expected. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. To confirm whether this additional 738 billion lire of assistance was provided, we examined Finsider's and IRI's 1989 financial statements and found no evidence that IRI provided additional aid to Finsider based upon the 89/218/ECSC Decision. Therefore, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

D. Debt Forgiveness: 1993–1994 Restructuring Plan, ILVA-to-ILP [6]

During 1992 and 1993, (old) ILVA incurred heavy financial losses, which compelled IRI to place the company into liquidation. In December 1993, the Italian government proposed to the EC a plan to restructure and privatize (old) ILVA by the end of 1994. The reorganization provided for splitting (old) ILVA's main productive assets into two new companies, ILP and AST. ILP would consist of the carbon steel flat production of (old) ILVA, receiving the Taranto facilities. AST would consist of the speciality and stainless steel production. The rest of (old) ILVA's productive assets (*i.e.*, tubes, electricity generation, specialty steel long products, and sea transport), together with the bulk of (old) ILVA's existing debt and redundant work force were placed in a third entity known as ILVA Residua. Under the restructuring plan, ILVA Residua would sell those productive units it could for cash to pay debts and then would be liquidated, with IRI (*i.e.*, the Italian government) absorbing the remaining debt.

The demerger of the majority of (old) ILVA's viable manufacturing activities and a portion of its liabilities occurred on December 31, 1993. On January 1, 1994, ILP and AST were formally established as separate corporations which, respectively, had operating assets and relatively modest debt loads. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–1. (Old) ILVA in liquidation became a shell company, known as ILVA Residua, with liabilities far exceeding its assets, although it did contain some operating assets that were later sold. The liabilities which remained with ILVA Residua had to be repaid, assumed, or forgiven. On April 12, 1994, the EC, through the 94/259/ECSC decision, approved the GOI's restructuring and privatization plan for (old) ILVA and IRI's intention to cover ILVA Residua's remaining liabilities.

We determine that ILP received a countervailable subsidy on January 1, 1994, within the meaning of section 771(5)(B)(i) of the Act, when the bulk of (old) ILVA's liabilities were placed in ILVA Residua, rather than being proportionately allocated to ILP and AST when they were formally established as separate corporations. The retention of liabilities by (old) ILVA that should have been transferred to ILP when the company was created constitutes a financial contribution to ILP in accordance with section 771(5)(D)(i) of the Act in the form of debt forgiveness. Prior to the separate incorporation of ILP and AST, (old) ILVA significantly wrote down the value of its assets, thereby increasing the net liabilities that it retained when ILP and AST were created. These write-downs can be tied to specific assets that were either transferred to ILP and AST, or retained by (old) ILVA. In order to more accurately calculate the value of the benefit to ILP from the debt forgiveness, we have factored in the value of each company's asset write-downs, to determine the total benefit from debt forgiveness to ILP and AST, rather than apportioning the total benefit by using a ratio calculated from the asset values each company took at the point of demerger. This is further discussed below and in *Comment 11*.

We determine that the amount of liabilities which resulted from the 1993–94 Restructuring Plan which should have been attributable to ILP, but were instead retained by ILVA Residua, was equivalent to debt forgiveness for ILP at the time of its separate incorporation. In accordance with our practice, debt forgiveness is treated as a

[6] This program was referred to as ''Debt Forgiveness Given in the Course of Privatization in Connection with the 1993–1994 Restructuring Plan'' in the *Initiation Notice* (*see* 64 FR at 13000).

grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

We also determine, based on record evidence, that the liquidation process of (old) ILVA did not occur under the normal application of a provision of Italian law, and therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. As stated above, the liquidation of (old) ILVA was done in the context of a massive restructuring/privatization plan of the Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because (old) ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized (old) ILVA operations, we find that the assistance provided under the 1993–1994 Restructuring Plan is *de facto* specific. In support of this finding, we note the EC's 94/259/ECSC decision, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. As set forth in the EC's decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies. For a further discussion see *Comment 13.*

To determine the benefit attributable to ILP, it is first necessary to determine the total amount of liabilities which the government forgave. We would prefer to base our calculation on information at the time a portion of (old) ILVA's assets and liabilities were demerged to ILP and the company was separately incorporated. However, the information contained in (old) ILVA's 1993 financial statement regarding the assets and liabilities of the company was found to be unreliable by the company's auditor. We note the following statement within the ''Report on the Management'' section of ILVA Residua's 1994 annual report: ''In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available.'' *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. Because this information has been determined to be unreliable, we have resorted to facts otherwise available. As such, we have used information contained in the EC's 10th Monitoring Report which provides the most reliable data that is on the record for determining the benefit conferred by this program. We intend, however, to seek additional information to establish the value of the debt forgiveness at the time of the separate incorporation of ILP, in a subsequent administrative review should this investigation result in a countervailing duty order.

Therefore, based upon the methodology that we employed in the final determination of *Sheet and Strip from Italy,* the amount of liabilities that we attributed to ILP is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report (*see* 64 FR at 30628). In calculating the amount of unattributable liabilities remaining after the separate incorporation of ILP, we started with the most recent ''total comparable indebtedness'' amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation (old) ILVA. In order to calculate the total amount of unattributed liabilities which amounted to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; for assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); for the liabilities transferred to AST and ILP; for income received from the sale of ILVA Residua's productive assets; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of (old) ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy* (*see* 63 FR at 40478). As discussed above, we subtracted the value of the asset write-downs taken by ILVA.

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific (old) ILVA assets. We apportioned this debt to ILP, AST, and viable assets of ILVA Residua based on their relative asset values. We used the total consolidated asset values reported for ILP and AST for the year ending December 31, 1993.[7] The asset values recorded for ILP and AST as of December 31, 1993, were the opening asset values for each company when they were separately incorporated on January 1, 1994. *See ILVA/ILT Verification Report*, at 12 and Exhibit 1993/94–2, for ILP's asset value. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets those assets sold to IRI, because the sales do not represent sales to a non-governmental entity. To ensure that liabilities retained by ILVA Residua were properly apportioned across the three companies, we added the amount of the write-downs that were tied to the asset pool which ILP took when it was separately incorporated from (old) ILVA. The total amount of write-downs were previously subtracted from the pool of liabilities.

We have treated the debt forgiveness provided to ILP as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that (old) ILVA was uncreditworthy in 1993, the year in which the 1993–94 Restructuring Plan was approved by the GOI. *See* ''Benchmarks for Long-Term Loans and Discount Rates'' and ''Creditworthiness'' sections, above. We followed the methodology described in the ''Change in Ownership'' section above to determine the amount of benefit appropriately allocated to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 13.27 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefits under this program.

E. Capital Grants to Nuova Italsider Under Law 675/77

In 1977, the Italian Parliament passed Law 675 to establish an industrial plan for Italy which was experiencing an economic downturn. The objective of the law was to identify those industries vital to the economic health and development of Italy and provide to them financial assistance to modernize

[7] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

and restructure production facilities. *See GOI Verification Report*, at 16. In total, eleven sectors were identified as eligible for assistance. *See Certain Steel from Italy*, 58 FR at 37330–31. The types of funding provided under Law 675/77 included: (1) interest payments on bank loans and bond issues; (2) low interest loans granted by the Ministry of Industry; (3) grants for companies located in the South; (4) grants for personnel retraining; and (5) increased VAT reductions for firms located in the Mezzogiorno area.

In *Certain Steel from Italy*, we verified that of the sectors which received Law 675/77 funding, steel accounted for 36.4 percent of the total funding provided under Law 675/77 (*see* 58 FR 37331). On this basis, we determined that assistance provided to steel companies under Law 675/77 is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is countervailable.

In regard to the record of the instant investigation, the GOI stated that the objective of the capital grants program was to support the development of regions in the south of Italy. *See* GOI's May 28, 1999 QR. The only eligibility criterion for receipt of this ''one-time'' assistance was the location of factories in the south of Italy.

Consistent with our preliminary finding, we determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. The capital grants constitute a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grants. Because the steel sector was found to be the dominant user of Law 675/77 and the capital grants were limited to enterprises located in the south of Italy, we determine that the program is specific under section 771(5A)(D)(iii) and (iv) of the Act.

At the verification of this investigation, we examined the application which Italsider submitted on February 20, 1980, for assistance under Law 675/77, and the corresponding approval notification of November 19, 1982. We noted that Nuova Italsider, the successor company to Italsider, was awarded a grant of 125,040 million lire. We examined Nuova Italsider's financial statements and learned that the grant was disbursed in several tranches during the years 1985, 1986, and 1987.

To determine the benefit, we have treated the capital grant as a non-recurring subsidy because the receipt of the grant was a one-time, extraordinary event. Because the benefit to Nuova Italsider is greater than 0.5 percent of the company's sales for 1982 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. We applied the change in ownership methodology to the capital grant to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.13 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

F. Early Retirement Benefits

Law 451/94 was created to conform with EC requirements of restructuring and capacity reduction of the Italian steel industry. Law 451/94 was passed in 1994, and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, and into January 1997, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during this period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In the final determinations of *Plate in Coils from Italy* and *Sheet and Strip from Italy,* 64 FR at 15514–15 and 64 FR at 30629–30, respectively, as well as in the *Preliminary Determination* of the instant investigation, 64 FR at 40425–26, the Department determined that early retirement benefits provided under Law 451/94 are countervailable subsidies under section 771(5)(B)(i) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451/94 relieves the company of costs it would have normally incurred by having to employ individuals until the normal age of retirement. Also, because Law 451/94 was developed for, and exclusively used by, the steel industry, we determined that Law 451/94 is specific within the meaning of section 771(5A)(D)(iii) of the Act. No new factual information or evidence has led us to change our prior findings that early retirements under Law 451/94 are countervailable.

As in the *Preliminary Determination,* we have treated one-half of the amount paid by the GOI as benefitting the company. Recognizing that, under Law 223/91, ILP would have been required to enter into negotiations with the unions before laying off workers, it is impossible for the Department to determine the outcome of those negotiations absent Law 451/94. At one extreme, the unions might have succeeded in preventing lay offs. If so, the benefit to ILP would be the difference between what it would have cost to keep those workers on the payroll and what the company actually paid under Law 451/94. At the other extreme, the negotiations might have failed and ILP would have incurred only the minimal costs described under the so-called ''Mobility'' provision of Law 223/91, which identifies the minimum payment the company would incur when laying off workers. The benefit to ILP would have been the difference between what it would have paid under Mobility and what it actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear, given the EC regulations that called for restructuring within the steel industry, that ILP would have laid off workers. However, we do not believe that ILP would have simply fired the workers without reaching accommodation with the unions. GOI officials have indicated that failure to negotiate a separation package with the unions would likely have led to social strife. Therefore, we have proceeded on the assumption that ILP's early retirees would have received some support from ILP.

In attempting to determine the level of post-employment support that ILP would have negotiated with its unions, we examined the situation facing (old) ILVA before ILP and AST were separately incorporated. By the end of 1993, (old) ILVA had established an overall plan for terminating redundant workers—a plan that would ultimately affect both ILP and AST. Under this plan, early retirees would first be placed on a temporary worker assistance measure under Law 223/91, Cassa Integrazione Guadagni—Extraordinario (CIG–E), while awaiting the passage of Law 451/94, and then would receive benefits under Law 451/94, once implemented. This indicates that, at the time an agreement was being negotiated with the unions and the Ministry of Labor on the terms of the layoffs, (old) ILVA and its workers were aware that government contributions would ultimately be made to workers' benefits. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's prior practice has been to treat half of the amount paid by the government as benefitting the company. We have stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this

assistance is likely to have an effect on the outcome of the negotiations. While we continue to adhere to this logic in the preamble to the CVD Regulations, we stated that we would examine the facts of each case to determine the appropriate portion of the funds to be considered countervailable. *See* CVD Regulations, 63 FR at 65380.

With respect to ILP and its workers, we determine that, under Italian Law 223, ILP would be required to negotiate with its unions about the level of benefits that would be made to workers permanently separated from the company. Since (old) ILVA and its unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, some portion of the payment is countervailable. However, we have no basis for apportioning the benefit. Therefore, we consider the benefit to ILVA/ILT to be one-half of the amount paid to the workers by the GOI under Law 451/94.

Consistent with the Department's practice with regard to allocation of worker-related subsidies, we have treated benefits to ILVA/ILT under Law 451/94 as recurring grants expensed in the year of receipt. To calculate the benefit received by ILVA/ILT during the POI, we multiplied the number of employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 1.39 percent *ad valorem* for ILVA/ILT.

As mentioned in the ''Corporate History of ILVA/ILT'' section of this notice, in October 1993, (old) ILVA entered into liquidation and became known as ILVA Residua. In December 1993, IRI initiated the demerger of (old) ILVA's main productive assets into two new companies, ILP and AST. On January 1, 1994, ILP and AST became separately incorporated firms. The remainder of (old) ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. By placing much of this redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively ''clean slate'' in advance of their privatizations. ILP and AST were relieved of having to assume their respective obligations to those redundant workers who were placed in ILVA Residua and received early retirement benefits under Law 451/94. Therefore, we have determined that ILVA/ILT has received a countervailable benefit during the POI, because it was relieved of a financial obligation that would otherwise have been due.

In order to calculate the subsidy received by ILVA/ILT during the POI, we first needed to determine the appropriate number of early retirees in ILVA Residua that originally should have been apportioned to ILP. Consistent with our findings for the 1993–94 Restructuring Plan, we used the asset value we apportioned to ILP as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation. We then multiplied this percentage by the total number of ILVA Residua early retirees. It was then necessary to estimate the numbers and salaries of early retirees by employee type since the GOI did not provide this information. To do this, we applied the same ratios of workers by employee type as ILP retired, and applied this to ILVA Residua. We also used the same salaries of ILVA/ILT employees by worker type. As we did with ILP early retirees, we then multiplied the number of employees, by employee type, by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 0.66 percent *ad valorem* for ILVA/ILT.

The Sidercomit unit of ILVA/ILT also received early retirement benefits under Law 451/94 separately from ILVA/ILT. As we did with ILVA/ILT, we multiplied the total wages of the early retirees by 40 percent and then divided this amount by the total sales of ILVA during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT.

Upon consolidation of the above determined rates, we determine a total net countervailable subsidy of 2.06 percent *ad valorem* for ILVA/ILT under Law 451/94 for the POI. Palini & Bertoli did not use this program.

G. Exemptions From Taxes

Presidential Decree 218/1978 exempted firms operating in the Mezzogiorno from both the ILOR and IRPEG profit taxes. Companies are eligible for full exemption from the 16.2 percent ILOR tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of the center-north of Italy for ten consecutive years after profits first arise. New companies undertaking productive activities in the Mezzogiorno are entitled to a full exemption from the IRPEG tax (37 percent of a majority of profits and 19 percent of certain profits) for ten consecutive years after the project is completed. While the ILOR tax was repealed beginning with tax year 1998, a successor tax, IRAP, has been introduced beginning with tax year 1998.

We determine that exemptions from ILOR and IRPEG taxes are countervailable subsidies in accordance with section 771(5)(B)(i) of the Act. These tax exemptions constitute financial contributions under section 771(5)(D)(ii) of the Act, since revenue that is otherwise due is being foregone. Because these exemptions are limited to a group of enterprises or industries within a designated geographical region, they are specific in accordance with section 771(5A)(D)(iv). Benefits resulting from ILOR and IRPEG tax exemptions were found to be countervailable in *Certain Steel from Italy* (*see* 58 FR at 37334–35).

ILT received an exemption from the IRPEG tax and a partial exemption from the ILOR tax on its 1997 tax return, filed during the POI. In order to calculate the benefit stemming from the exemption from IRPEG, we multiplied ILT's total profits that would otherwise have been subject to IRPEG by the IRPEG tax rate. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 1.05 percent *ad valorem* for ILVA/ILT.

To compute ILT's partial exemption from ILOR, we took the amount of profits exempted from the ILOR tax, as shown in ILVA/ILT Verification Exhibits Tax-2 and Tax-3, and multiplied that amount by the ILOR tax rate of 16.2 percent to determine the benefit. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 0.24 percent *ad valorem* for ILVA/ILT. Upon consolidation of the IRPEG and ILOR exemptions, we determine the net consolidated subsidy for ILVA/ILT to be 1.29 percent *ad valorem*. Palini & Bertoli did not use this program.

H. Exchange Rate Guarantees Under Law 796/76

Law 796/76 established a program to minimize the risk of exchange rate

fluctuations on foreign currency loans. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (*i.e.,* the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. Italsider contracted two loans, one in 1978, and the other in 1979. Both of these loans were ultimately transferred to ILVA/ILT. These two foreign currency denominated loans were outstanding during the POI and exchange rate guarantees applied to both.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lire depreciates against the foreign currency beyond the two percent limit. When this occurs, the borrower receives a benefit in the amount of the difference between the guaranteed rate and the actual exchange rate.

During the recent verification of the GOI in the *Plate in Coils from Italy* and *Sheet and Strip from Italy* investigations, GOI officials explained that over the last decade, roughly half of all guarantees made under this program were given to coal and steel companies. *See Results of Verification of the Government of Italy,* Memorandum to the File, dated February 3, 1999 (public version of the document is available on the public file in the CRU). This is consistent with the Department's finding in a previous proceeding that the Italian steel industry has been a dominant user of the exchange rate guarantees provided under Law 796/76. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy,* 60 FR 31996 (June 19, 1995). No new information to contradict these earlier findings of specificity has been received in this case. Therefore, we determine that the program is specific under section 771(5A)(D)(iii)(II) of the Act.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. ILVA/ILT and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies 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. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount ILVA/ILT paid under this program during the POI. *See Wire Rod from Italy,* 63 FR at 40479.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

I. Interest Grants on Loans Under Law 64/86

The GOI has maintained a system of ''extraordinary intervention'' in southern Italy since the 1950's, authorizing aid to the disadvantaged region. Over time, various laws were passed, including Decree 218/78, relating to the extraordinary intervention in the South. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the South into one development policy.

In 1992, Sidercomit was created as a subsidiary of (old) ILVA. In 1997, Sidercomit became an operating unit within (new) ILVA. During verification, the Department determined that in 1996, Sidercomit received a loan for which it was granted interest contributions under Law 64. Subsequent to receiving this loan, but prior to the POI, Sidercomit was subsumed into ILVA as an operating unit, and was no longer a separate corporate entity.

ILVA/ILT did not report these interest contributions in its questionnaire responses. We found at verification, through examining the financial statements of (new) ILVA and discussions with company officials, that Sidercomit had received a ''soft loan'' in 1996, which was ultimately recorded in (new) ILVA's financial statements once Sidercomit was subsumed into (new) ILVA. We further learned that, under this loan, the Ministry of Industry was to assume a large part of the interest payments, which effectively reduced the payments for Sidercomit. The Ministry pays the interest contributions directly to the bank. As such, these contributions reduce the interest rate that Sidercomit (and now (new) ILVA) must pay on the loan. Accordingly, under section 771(5)(D)(i) of the Act, we have determined that these interest contributions represent financial contributions.

Under section 771(5A)(D)(iv) of the Act, we determine that these contributions are specific since assistance under Law 64 was only available to a limited geographical region within the country. This is consistent with our determinations in numerous Italian countervailing duty investigations, including the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 30288, 30293 (June 14, 1986). Pursuant to section 771(5)(E)(ii) of the Act, we are calculating the benefit conferred as the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' In this particular case, the benefit conferred is equal to the amount of the interest contributions provided by the GOI during the POI. We have divided the benefit over ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Development Grants Under Law 30 of 1984

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia

Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies could receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Law 30 has not been officially terminated by Decree, but funding for grants outlined under the law has not been provided since 1993. Those projects approved for funding prior to 1993, would still receive the grant at the conclusion of the investment project.

At verification, the Department learned that companies from all industries that planned future industrial investments were eligible to receive development grants under Law 30. Eligibility under the law was, however, confined to certain geographical areas within the Friuli-Venezia Giulia region. Eligible firms were those operating in mountainous zones north of Udine, those in the provinces of Trieste and Gorizia, and those in the industrial areas of Aussa Corno and San Vitto al Tagliamento. Because these grants are available to firms within designated areas of the Friuli-Venezia Giulia region, they are specific in accordance with section 771(5A)(D)(iv) of the Act. The grants provided under this program represent a financial contribution under section 771(5)(D)(i) of the Act.

In 1989, Palini & Bertoli submitted to the regional government an application for a development grant under Law 30. The company received approval for the grant in 1989, and received the grant in 1993. To determine the benefit, we have treated the grant as a non-recurring subsidy because receipt of the grant was a one-time, extraordinary event. Because the benefit to Palini & Bertoli is greater than 0.5 percent of the company's sales for 1989 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. To calculate the benefit, we determined the benefit allocable to the POI and divided it by Palini & Bertoli's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for Palini & Bertoli. ILVA/ILT did not use this program.

European Commission Programs

A. ECSC Loans Under Article 54

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a ''back-to-back'' basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

We determine that these loans constitute a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, which confers a benefit to the extent the interest rate is less than the benchmark interest rate. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, *Certain Steel from Italy*, 58 FR at 37335, and *Plate in Coils from Italy*, 64 FR at 15515, because loans under this program are provided only to iron and steel companies. The EC has also indicated on the record of this investigation that Article 54 loans are only available to steel and coal companies which fall within the scope of the ECSC Treaty. Therefore, we determine that this program is specific pursuant to section 771(5A)(D)(i) of the Act.

ILVA/ILT had two long-term, fixed-rate loans outstanding during the POI, each denominated in U.S. dollars. These loans were contracted by Italsider, one in 1978 and one in 1979. Consistent with *Wire Rod from Italy*, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars (*see* 63 FR at 40486). We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on both of ILVA/ILT's two Article 54 loans was lowered part way through the life of the loan. The interest rate on the loan contracted in 1978 was lowered in 1987, and the rate on the loan contracted in 1979 was lowered in 1992. Therefore, for the purpose of calculating the benefit, we have treated these loans as if they were contracted on the date of this rate adjustment. Because ILVA was uncreditworthy in the year these loans were contracted, 1987 and 1992 (based on the interest rate adjustments mentioned above), we calculated the uncreditworthy benchmark rate in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations. *See* ''Benchmark for Long-Term Loans and Discount Rates'' section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the CVD Regulations, we employed the Department's long-term fixed-rate loan methodology. We compared ILVA/ILT's interest rates on the two loans to our benchmark interest rate for uncreditworthy companies on interest paid by ILVA/ILT during the POI. We then divided the benefit by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.02 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

ILVA/ILT was also repaying four ECSC loans under Article 54 during the POI that were taken by ILP for the construction of housing for coal and steel industry workers. Funding for these loans came entirely from the ECSC operational budget, which is composed of levies imposed on coal and steel producers, investment income on those levies, guarantee fees and fines paid to the ECSC, and interest received from companies that have obtained loans from the ECSC. Consistent with previous determinations, because ECSC funding for these types of loans is completely from non-government sources, we find these loans to be not countervailable. *See Electrical Steel from Italy*, 59 FR at 18364 and *Certain Steel from Italy*, 58 FR at 37336.

II. Programs Determined To Be Not Countervailable

Government of Italy Programs

A. Law 308/82

On March 16, 1999, the Department initiated on the program ''Grants to ILVA.'' In their May 13, 1999 response, ILVA/ILT report that Italsider was approved for a grant under Law 308/82 in 1983. In *Certain Steel from Italy*, we verified that benefits under Law 308/82 were widely and fairly evenly distributed with no one sector or sectors receiving a disproportionate amount. Because Law 308/82 grants were not limited to a specific enterprise or industry, or group of enterprises or industries, we determined them to be not countervailable. *See Certain Steel from Italy,* 58 FR at 37336. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant the Department to revisit its earlier determination that grants provided

under Law 308/82 are not countervailable.

B. Unpaid Portion of Payment Price for ILP

Petitioners alleged that the GOI effectively gave RIVA a zero-interest loan on a portion of the contract price agreed to by RIVA for ILP, because RIVA has not paid the full contract price for ILP. RIVA reported that the company entered into arbitration after the transfer of ownership of ILP in April 1995. RIVA stated that it did not invoke arbitration to challenge the purchase price of ILP, but invoked arbitration to obtain an indemnity from pre-existing and unreported liabilities in accordance with the indemnification provision of the contract of sale. The dispute concerns whether IRI owes RIVA a sum of money as indemnification for liabilities, which RIVA has potentially incurred as a result of the acquisition of ILP. To preserve its leverage in the dispute and ensure that the company will obtain relief in the event that it is awarded indemnification by the arbitration panel, RIVA has withheld payment of amounts due to IRI under the contract of sale.

We inquired about the arbitration procedure and whether any Italian company which purchases either a government-owned or private entity can enter into arbitration to remedy a dispute. RIVA reported that Article 25 of the contract of sale provides for arbitration under the rules of the International Chamber of Commerce and that Article 806 of the Italian Civil Code authorizes the use of arbitration to settle litigation. Any company in Italy that purchases another company from either the government or a private seller can include such an arbitration provision in the contract of sale. Because the use of arbitration to settle disputes between two parties is a normal commercial practice in Italy and there is no information that this particular arbitration has proceeded in a non-commercial manner, we determine that no countervailable benefit has been provided under this process.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Interest Contributions Under Law 25 of 1965

Under Regional Law 25 of 1965, companies making manufacturing investments in the region of Friuli-Venezia Giulia were eligible to receive interest contributions from the region on loans taken out for those investments. For a firm to receive interest contributions, it had to construct a new industrial plant, or modernize or expand an existing plant. Interest contributions effectively lower the interest rate on a loan taken out for such an investment. While the firm pays interest on the loan at an agreed-upon rate, the regional government will reimburse the company the difference between the agreed-upon rate and a reference rate decided on by the region. The Department learned at verification that, although the program has not been officially terminated, no regional investments made after 1991 have been approved for interest contributions.

The regional government approved Palini & Bertoli for interest contributions in 1991. The company began receiving payments in 1993, after construction of a new plant was completed. During the POI, Palini & Bertoli received two interest contributions under Law 25. We verified that assistance under Law 25 was provided to a large number of firms from a wide range of industries throughout the entire region of Friuli-Venezia Giulia, and that the steel industry did not receive a disproportionate share of assistance under the program. Because interest contributions under Regional Law 25 are not specific in accordance with section 771(5A)(D) of the Act, we determine that this program is not countervailable.

III. Programs Determined To Be Not Used

Government of Italy Programs

A. Lending From the Ministry of Industry Under Law 675/77

ILVA/ILT reported that at the time of its privatization the company became responsible for certain loan obligations of its predecessor companies. ILVA/ILT was responsible for repaying loans provided under Law 675/77, which were applicable to those facilities that produce the subject merchandise. We confirmed at verification that the repayment obligations on these loans ended in December 1997. We also verified with the GOI that no new loans have been provided under Law 675/77 since 1987. Because ILVA/ILT did not have loans under Law 675/77 outstanding during the POI, we determine that the program was not used.

B. Interest Contributions Under Law 675/77

ILVA/ILT reported and we verified that the company received an interest contribution in 1998, against a loan provided under Law 675/77. Because the loan against which the interest contribution was received was repaid in full in December 1997, we determine that this program was not used during the POI. It is the Department's practice to treat an interest contribution as countervailable on the date the company made the corresponding interest payment, despite any delay in the receipt of the interest contribution. This is because the company's entitlement to the interest contribution was automatic when it made the interest payment and the amount of any benefit from the interest contribution was known at the time of the interest payment. Therefore, we find, for purposes of the benefit calculation, that the benefit was received at the time the interest payment was made, and, as such, the program was not used during the POI. *See e.g., Sheet and Strip from Italy*, and *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Italy*, 60 FR 33577, 33579 (June 28, 1995) (*Oil Country Tubular Goods from Italy*).

C. Law 305/89

ILVA/ILT reported that (old) ILVA, its predecessor company, applied for a grant under Law 305/89 in 1990. The GOI approved (old) ILVA's application in 1991, and awarded the company a grant of 2.2 billion lire. However, payment of the grant was delayed. We learned at verification that ILP received a portion of the grant in 1996, and ILVA/ILT received the remaining portion of the grant in 1997. We applied the 0.5 percent allocation test against the full grant amount approved in 1991. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the amount of the grant received under Law 305/89 to be less than 0.5 percent *ad valorem* of (old) ILVA's sales in 1991. Therefore, even if we determined that Law 305/89 is countervailable, the grant would have been expensed in the years of receipt, 1996 and 1997. Because the grant would be expensed, it would not provide any benefit to ILVA/ILT during the POI. Therefore, we determine that Law 305/89 was not used by ILVA/ILT.

D. Interest Grants for ''Indirect Debts'' Under Law 750/81

In 1984, Italsider received a residual payment of 25.3 billion lire against interest grants provided in fiscal years 1981, 1982, and 1983. At verification, we learned that under Law 750 of 1981, the GOI approved funding for IRI, which was providing financial assistance to its sub-holdings that were incurring debts. *See GOI Verification Report*, at 19–20. In 1981, 1982, and 1983, Italsider incurred costs, associated with debts, at the Bagnoli plant and the Elba Island

mines, and the grant received in 1984, was for the plant and mines. However, since the grant was received in 1984, the POI (*i.e.*, 1998) would be the last year of the allocation period. Therefore, even if we were to allocate the grant over time, rather than expense it in the year of receipt, any benefit during the POI would be less than 0.005 percent *ad valorem.*

E. Capital Grants Under Decree 218/78 and Law 64/86

The GOI reported that (old) ILVA received a grant in 1988, under Decree 218. The original grant amount was approved in 1978. We applied the 0.5 percent test against the full grant amount approved in 1978. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the benefit as less than 0.5 percent *ad valorem* of Italsider's sales in 1978. Additionally, Sidercomit and Centro Acciai received several grants under Decree 218 and Law 64 between 1984 and 1997. We summed all grants by year of approval and applied the 0.5 percent test against the total amounts for each year. We calculated the benefit as less than 0.5 percent *ad valorem* of the sales of ILVA/ILT or its respective predecessor company corresponding to the year the grants were received. Therefore, even if we determined that this program is countervailable, the above-mentioned grants would have been expensed in the respective years of receipt. Because the grants would be expensed and would not provide any benefit to ILVA/ILT during the POI, we determine that this program was not used.

F. Urban Redevelopment Packages Under Law 181/89

ILVA/ILT and its predecessor companies, ILP and (old) ILVA, received grants under Law 181/89 between 1991 and 1997. No grants were received during the POI. Because the approved amount of each grant, separately, was less than 0.5 percent of total sales of ILVA/ILT (or predecessor company) in the corresponding year, we would expense the benefit of each approved grant in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, since the grants would be expensed in the years of receipt, and ILVA/ILT would not realize any benefit during the POI, we determine that Urban Redevelopment Packges under Law 181/89 were not used.

G. Grants to ILVA

For a discussion, *see* Comment 20, below.

H. Closure Payments Under Law 481/94 and Predecessor Law

I. Closure Grants Under Laws 46 and 706

J. Decree Law 120/89

K. Law 488/92

L. Law 341/95 Tax Concessions

M. Interest Rate Reductions Under Law 902

N. Interest Contributions Under the Sabatini Law

O. Export Marketing Grants Under Law 394/81

P. Law 549/95: Tax Exemptions on Reinvested Profits for Steel Producers in Objective 1, 2, and 5(B) Areas

European Commission Programs

A. European Social Fund (ESF)

The GOI has reported that ESF grants were provided to Nuova Italsider, Italsider and (old) ILVA from 1985 through 1993. Because the total of all grants provided under the program in each year was less than 0.5 percent of total sales of Nuova Italsider, Italsider or (old) ILVA (depending on the year of approval) in the corresponding year, we would expense the benefit of each grant payment received in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, there is no benefit to ILVA/ILT during the POI.

ILVA/ILT has reported that ESF payments were also made to ILP in 1994 and 1995, and to ILVA/ILT in 1998, for the DUSID, DUTEM, and DUMES training programs having taken place in 1994 and 1995. While some ILP employees took part in these training programs, there is no evidence that ILP benefitted from the ESF payments under these training programs, or that these programs provided training to ILP employees that ILP would otherwise have had to incur. As such, we find that these programs do not provide a countervailable subsidy. *See* Comment 19, below.

Based on the fact that grants received in 1985 through 1993, would provide no benefit to ILVA/ILT during the POI, and that funds received for the DUSID, DUTEM, and DUMES training programs are not countervailable, we determine that the ESF was not used by ILVA/ILT.

B. Interest Rebates on ECSC Article 54 Loans

C. ECSC Conversion Loans, Interest Rebates, Restructuring Grants and Traditional and Social Aid Under Article 56

D. ERDF Aid

E. Resider and Resider II (Commission Decision 88/588)

IV. Programs Determined Not To Exist or To Have Been Terminated

A. Additional Debt Forgiveness in the Course of Privatization

B. Grants to ILVA To Cover Closure and Liquidation Expenses as Part of the 1993–1994 Privatization Plan

C. Working Capital Grants to ILVA in 1993

With respect to the programs A, B, and C listed above, the GOI reported in its May 10, 1999 questionnaire response that all monetary assistance (old) ILVA received in the course of the 1993–1994 Restructuring Plan was effected in the EC Decision 94/259/ECSC of April 12, 1994. We found no evidence at verification that there was any further debt forgiveness or grants provided as part of the 1993–1994 Restructuring Plan beyond the assistance outlined in the April 12, 1994 EC decision. We therefore determine that these programs do not exist.

D. Personnel Retraining Grants Under Law 675/77

The GOI reported, and we verified, that personnel retraining grants provided under Law 675/77 were terminated in 1987. The government stated that the resources provided under this program were allocated over the years 1981 through 1987. The GOI reported that no other law providing personnel retraining grants or financial allocations under Law 675/77 have been approved since 1987.

E. VAT Reductions Under Law 675/77

The GOI reported, and we verified that, the tax reductions referred to in Section 18 of Law 675 of August 12, 1977, were terminated effective March 29, 1991. Pursuant to Section 14(3) of Law 64 of March 1, 1986, Section 18 of Law 675/77, applied for a period of five years from the date of promulgation of the law.

F. Grants to RIVA/ILP

Interested Party Comments

The case brief submitted by the GOI addresses, what they consider to be, errors and omissions contained the in the GOI's verification report issued by

the Department on November 12, 1999. Principally, they state the errors concern the liquidation of Finsider and the assistance provided by IRI in connection with the liquidation. The GOI also states that no subsidies passed through to the new owner of ILP upon its privatization in 1995, and that failure by the Department to recognize this fact would be inconsistent with U.S. obligations under the WTO Agreement. With regard to the GOI's statement on the privatization of ILP, we address the issue of privatization in *Comment 14* below. Because the other comments made by the GOI are not substantive arguments, we have not addressed them separately.

Palini & Bertoli did not submit any comments, therefore, when we refer to ''respondents'' below, we are referring to ILVA/ILT, except for *Comment 14* where we refer to ILVA/ILT and the GOI.

Comment 1: Use of ILVA's Verified 1998 Sales

Respondents argue that the Department in calculating the final CVD rates should use the correct and verified 1998 sales denominator. They state that at the time of the preliminary determination ILVA (*i.e.*, (new) ILVA) had not completed its official trial balance for 1998. When preparing for verification, using the finalized trial balance, ILVA found that the sales denominator submitted earlier to the Department was incorrect. Respondents note that the Department confirmed the correct sales denominator at verification, and therefore, that sales denominator should be used in the final determination.

Department's Position: We agree with the respondents that the Department should use ILVA's verified 1998 sales figure as the denominator to calculate the final CVD rates. We verified the correct 1998 sales figure by reconciling that amount to ILVA's completed trial balance which was examined at verification. Therefore, we have used ILVA's corrected 1998 sales denominator in the final determination.

Comment 2: Average Useful Life of Assets

Respondents provided four tables illustrating its proposed company-specific AUL calculations for ILVA's (*i.e.*, (new) ILVA) and ILT's assets, both separately and in combination. Both respondents and petitioners have focused their arguments on two of the four tables. The primary difference between the AUL calculations contained in each of these two tables is the treatment of the 1993 write-down of ILVA's assets. The first calculation presents a simple division of the annual average gross book values of the depreciable fixed assets by the aggregated annual charge to accumulated depreciation over a ten-year period (calculation 1). The second calculation adjusts the figures contained in the first calculation to reduce the gross book values by the amount of write-downs that occurred in connection with the 1993–94 restructuring and demerger of ILP from the (old) ILVA (calculation 2).

According to respondents, they provided the Department an inadequate explanation of ILVA's AUL worksheets prior to the *Preliminary Determination*, and, as a result, the Department relied on a worksheet (calculation 1) that substantially overstated the value of ILVA's depreciable assets. Respondents further maintain that, as demonstrated at verification, using the correct numbers from the correct worksheet yields an AUL for the renewable physical assets of ILVA and ILT of approximately 11 years.

Respondents state that this 11-year AUL not only accords with Generally Accepted Accounting Principals (GAAP) and is consistent with ILVA's financial statements, but also reflects precisely the type of normalizing adjustment required by the Department for companies that have recorded asset write-downs as per the preamble to the Department's final CVD Regulations, (see 63 FR at 65397). Respondents maintain that because ILVA made the normalizing adjustment, the Department should use this 11-year AUL from calculation 2 in its final determination. According to respondents, the AUL calculation, which was provided by respondents and used by the Department in its preliminary determination does not produce an AUL using actual asset values, since it disregards the write-downs of 1993. In other words, this calculation does not include the normalizing adjustment for the asset write-down, and as a result seriously distorts the AUL calculation. Respondents also claim the Department cannot accept the calculation 1 result, because it omits the normalizing adjustment for the asset write-down and the only purpose served by calculation 1 was to illustrate the impact of the 1993 write down on the asset values and depreciation recorded in calculation 2.

Petitioners contend that calculation 1 provides the closest approximation to the AUL methodology established by the Department in 19 CFR 351.524(d)(iii) and that this calculation produces an AUL of assets that does not differ by a year or more from the 15 year period provided for in the IRS tables. Therefore, petitioners request that the Department use the AUL established by the IRS as it did in the preliminary determination.

Petitioners contend that adjusting the asset values to account for the extraordinary write-downs in the value of ILVA's fixed assets in 1993 due to the liquidation of ILVA in connection with the 1993–94 restructuring has the effect of distorting the AUL calculation in a manner that makes the calculation unreliable for purposes of determining ILVA/ILT's company-specific AUL. Petitioners cite the preamble to the current regulations (*see* 63 FR at 65396) to support their contention that the company-specific AUL calculation is not appropriate ''* * * for companies that have been sold and that it presents problems when a company revalues its assets, for example, as a result of declaring bankruptcy.''

Petitioners cite *Steel Wire Rod from Germany* to support the contention that whether or not an asset write-down is done in accordance with GAAP is not necessarily the determining factor when examining whether these write-downs should be reflected in the average annual gross value of fixed assets in the AUL calculation. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Germany*, 62 FR 54990, 54999 (October 22, 1997) (*Steel Wire Rod from Germany*). Petitioners state that the asset write-down adjustment does not represent a reasonable estimate of the life of equipment at the time it was purchased, but instead ILVA/ILT 's calculation represents a mixture of the average useful life of the assets and the remaining useful life of assets after the revaluation. They further state that a company-specific AUL may be inappropriate when the company under investigation has faced recent changes in ownership or bankruptcy.

Finally, both respondents and petitioners argue that the country-wide AUL information provided by the GOI should not be used by the Department.

Department's Position: Under 19 CFR 351.524(d)(2), the Department presumes that the AUL set out in the IRS's 1977 Class Life Asset Depreciation Range System is the appropriate allocation period by which to allocate non-recurring subsidies, and the burden is placed on the party contesting these AULs to establish that the IRS tables do not reasonably reflect the company-specific AUL. In addition, the contesting party must demonstrate that the company-specific AUL differs significantly from the AUL in the IRS tables.

It is clear from the preamble to the CVD Regulations that, based on the Department's experience, using a company-specific AUL in situations where there have been major asset revaluations in connection with bankruptcy poses significant problems: ''We have found that the method [i.e., company-specific AUL calculation] may not be appropriate for companies that have been sold and that it presents problems when a company revalues its assets as a result of declaring bankruptcy (*see, e.g., Steel Wire Rod from Germany*, 62 FR at 54990 (October 22, 1997)).'' *See* CVD Regulations, 63 FR at 65396. In addition, the preamble states: ''It may also be necessary to make normalizing adjustments for factors that distort the calculation of an AUL. We are not in a position at this time to provide additional detail in the regulation itself on when we will make normalizing adjustments and how such adjustments will be made because the types of necessary adjustments will likely vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation, or where the economy of the country in question has experienced persistently high inflation.'' *See Id.*, at 65397.

With regard to this last statement from the preamble, we disagree with respondents that adjusting the AUL calculation for the asset write-downs, as was done in calculation 2, is the normalizing adjustment called for in the regulations. Respondents misread the regulations; it is precisely the existence of a massive asset write-down that requires a ''normalizing adjustment'' in the first place. We also find the distinction drawn between Saarstahl's situation in *Steel Wire Rod from Germany* and ILVA/ILT by respondents to be uninformative. There is little substantive difference between a situation where a company acquires assets from another company then revalues them at acquisition cost and a situation where assets are revalued before the transfer with the new owner carrying the assets on its books at the new revalued amount.

The basic point being made in the Department's regulations is that the basis of a company-specific AUL calculation is called into question when a situation exists such as the situation we are currently facing with ILVA/ILT, *i.e.*, numerous changes in ownership, a massive asset write-down, and bankruptcy. We do not agree with respondents that the only issue here is one of consistency between the numerator and the denominator in the company-specific calculation. The larger issue is whether we should depart from the IRS asset depreciation schedules. We do not find the fact that the 1993 asset write-downs were in accordance with GAAP to be particularly persuasive. The AUL calculation is an attempt to derive the average useful life of renewable physical assets. Whether or not it is in accordance with GAAP, the accounting treatment of asset values, which is usually done for tax purposes, does not necessarily attempt to accurately reflect the physical life of a particular asset. Because there are so many different ways to calculate asset values for tax purposes, the IRS constructed its tables to ensure consistency. There is a tendency on the part of the Department to rely on the IRS tables because, as is stated in the preamble to the countervailing duty regulations: ''In our experience, we have found that for most industries and most types of subsidies, the IRS tables have provided an accurate and fair approximation of the AUL of assets in the industry in question. * * *'' *See* CVD Regulations, 63 FR at 65396. In other words, the presumption that the IRS tables do not reflect the actual physical life of an asset for a particular company is not an easy one to overcome. In our view, respondents have failed to meet this threshold.

As noted above, respondents have provided four different AUL calculations, all with different results. By respondents' own admission, very little, if any explanation of how these calculations were done was provided until relatively late in the case. Respondents have argued that the main issue in the AUL calculation for this investigation is a simple matter of consistency between the numerator and the denominator. Respondents argument that their calculation 2, which takes the asset write-downs into account in both the asset value and depreciation, is the only reliable calculation is unpersuasive. Calculation 1, which we relied upon in the Preliminary Determination, is flawed according to respondents, because the asset values do not reflect the write-down while depreciation does reflect the write-down. Since by respondents' own admission, calculation 1 is flawed, we are rejecting calculation 1 as a basis for the company-specific AUL.

With regard to the Italian country-wide AUL, 19 CFR 351.524(d)(2)(iii) states that ''A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.'' The GOI has not met this burden, nor have respondents argued that they have.

We therefore reject respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI, and have used the IRS tables for purposes of determining the period over which to allocate non-recurring subsidies.

We note that in the 1993 *Certain Steel* cases, our practice was to use the IRS tables to allocate non-recurring subsidies over time. Subsequent to that case, the Court overturned over use of the IRS tables in favor of company-specific rates. *See* British Steel plc v. United States, 879 F. Supp. 1254 (CIT 1995) and British Steel plc v. United States, 929 F. Supp. 426, 439 (CIT 1996). Under the current regulations, we have decided to revert to the IRS tables as a rebuttable presumption. In a 1997 Italian investigation, while we did attempt to calculate a company-specific AUL, we were unable to do so and used a surrogate AUL instead. *See Wire Rod from Italy*, 63 FR 40477.

While our preference is to apply the same AUL to the same subsidies across cases, we have not been able to do that in Italy due to the changes in our allocation methodology mandated by the Court and our subsequent decision to use the IRS table as a rebuttable presumption. This is the first Italy case subject to the new regulations. Accordingly, we are applying the regulatory standard to determine the AUL.

Comment 3: 1984 Debt Transfer Was Not a Countervailable Event

Respondents disagree with the Department's classification of the 1984 debt transfer from Italsider to Finsider as being equivalent to a government grant. They note that, under section 771(5)(D) of the Act, the Department can countervail a transfer of debt only if it involves a financial contribution from the government.

In 1984, debts were transferred from Italsider's balance sheet to that of Finsider, which under the sole shareholder provision of the Italian Civil Code, had legal responsibility for all debts of Italsider. Respondents contend that the debts remained fully in effect, but that Finsider now had direct rather than indirect responsibility for their payment. They argue that IRI made no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Respondents point out that the Department itself

recognized that the transfer ''merely shifted assets and debts within a family of companies, all of which were owned by Finsider.'' They submit that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Since no debt was forgiven in 1984, the Department has no legal or factual justification to countervail the 696.4 billion lire of debt which was transferred within the Finsider Group.

Petitioners urge the Department to continue to use facts available to make its finding with respect to the debt forgiveness provided under the 1981 Restructuring Plan. They state that, despite numerous requests, the GOI failed to provide to the Department the necessary information regarding the 1984 assumption of debt and 1985 debt forgiveness. Therefore, the Department should continue to rely on information provided in the petition and *Certain Steel* Products from Italy (see 58 FR at 37329–30), and determine that the 1984 assumption of debt and 1985 debt forgiveness are countervailable subsidies.

Department's Position: We disagree with ILVA/ILT that IRI provided no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Under section 771(5)(D)(i) of the Act, the GOI provided a financial contribution when it allowed Finsider to assume the debts Italsider owed to IRI. The benefit provided to Italsider was debt forgiveness. *See* section 351.508 of the CVD Regulations.

We also disagree with respondents' argument that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Respondents have not demonstrated that the 696.4 billion lire which was transferred to Finsider in 1984, was part of the 1,364 billion lire of debt forgiveness which IRI provided to Finsider in 1989. As noted above, we requested information from respondents on several occasions regarding the debt assumption and debt forgiveness provided under the 1981 Restructuring Plan. The burden is on respondents to provide to the Department the necessary information with which to conduct a complete analysis. Absent information regarding how the 1984 debt transfer is connected to the 1989 debt forgiveness, the Department must rely on the facts available.

Therefore, we affirm our *Preliminary Determination* that, based on the facts available, the 696.4 billion lire transferred to Finsider in 1984, was tantamount to debt forgiveness because respondents have not demonstrated that it was part of Finsider's 1,364 billion lire debt which IRI forgave in 1989.

Comment 4: Allocation of Benefits From the 1981 Plan Using the Correct Asset Ratios

Respondents assert that the Department has incorrectly allocated 100 percent of the countervailable benefits received by Italsider and Nuova Italsider to ILP. During verification, the Department reviewed the separation of certain carbon steel flat product assets that occurred between 1985, and the creation of ILP on January 1, 1994, verifying that ILP inherited only 88.29 percent of the total fixed, productive assets of Nuova Italsider. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1.

Respondents submit that under, long-standing policy, the Department apportions benefits to successor and spin-off companies on the basis of asset ratios. As noted in the 1993 General Issues Appendix, to calculate benefits, the Department divides ''the value of the assets of the spun-off unit by the value of the assets of the company selling the unit.'' *See* GIA, 58 FR at 37269. Therefore, consistent with this established policy, the Department should attribute benefits in accordance with the ratio of assets that actually traveled with ILP.

Petitioners argue that the Department should reject the information regarding the assets of Nuova Italsider because, not only was it untimely, but is also inconsistent with other evidence on the record. Section 351.301 of the Department's procedural regulations mandates that ''a submission of factual information is due no later than * * * seven days before the date on which the verification of any person is scheduled to commence.'' They emphasize that verification was the first time ILVA/ILT mentioned a 1985 Restructuring Plan and the transfer of Nuova Italsider's assets. No such plan was discussed in the GOI's questionnaire response, though the Department requested information on ''the restructuring of the Italian steel industry from 1981 through 1998,'' including ''a detailed description of each restructuring plan.'' See Department's March 19, 1999 questionnaire, at Section II–1, Part I, Question A.1.

Petitioners add that, should the Department decide to consider this new information, it should not reduce the subsidy benefit to (new) ILVA (*i.e.*, formerly named ILP) from the 1981 Restructuring Plan because the information provided by ILVA/ILT does not clearly establish that any productive units of Nuova Italsider were spun-off in 1985. They argue that the mere fact that assets related to certain plants were not listed as part of the assets of ILP does not establish that they were spun-off as productive units in 1985. In fact, there is record evidence that two plants were in fact closed down as part of the 1988 and 1993–94 Restructuring Plans. *See* EC Decision 89/218/ECSC of December 23, 1988, and EC Decision 94/259/ECSC of April 12, 1994.

ILVA/ILT rebuts petitioners' arguments, stating that there was no restructuring plan in 1985, and that the company has never maintained otherwise. Respondents explain that ILVA/ILT's verification exhibit simply traces the disposition of assets under the 1988 and 1993–94 restructuring plans that Italsider and Nuova Italsider had owned prior to 1987, but which ultimately did not travel to ILP. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1. They state that the asset allocation arose for the first time in the *Preliminary Determination*, when the Department incorrectly presumed that 100 percent of the assets of Nuova Italsider traveled to ILP.

Department's Position: Information regarding the percentage of Nuova Italsider's assets which were transferred to ILP was first presented to the Department during ILVA/ILT's verification. Thus, the Department did not have sufficient time between the presentation of the information and this final determination to permit a thorough examination of the accuracy of the data. In addition, information necessary to determine the amount of productive assets which remained with Nuova Italsider was not placed on the record of this investigation. Therefore, in accordance with section 351.311(c)(2) of the Department's procedural regulations, we have deferred consideration of the percentage of Nuova Italsider's assets which were transferred to ILP. If this investigation goes to order and an administrative review is requested, we will, at that time, examine this issue again if complete information is provided in that review.

Comment 5: Use of the Verified Asset Ratio to Apportion Finsider Benefits From the 1988 Restructuring Plan

Respondents state that, at the *Preliminary Determination*, the Department allocated the countervailable benefits from the 1988 Restructuring Plan in accordance with an asset allocation table prepared by ILVA/ILT which used the best

information available prior to verification (see 64 FR at 40423). At verification, IRI, the owner of both Finsider and (old) ILVA, provided to the Department a more precise allocation of assets between Finsider and (old) ILVA based on IRI's consolidated financial statements. *See GOI Verification Report*, at 7 and *ILVA/ILT Verification Report*, at 10. Respondents argue that the Department not only verified the asset ratio using IRI's consolidated statements, but also tied the results to (old) ILVA's consolidated financial statements. Therefore, in line with the Department's long-standing policy of allocating benefits in accordance with asset ratios, respondents argue that the Department should use the correct and verified ratio of 51.2 percent to allocate the benefits of the Finsider restructuring to (old) ILVA.

Petitioners assert that the Department's methodology in the *Preliminary Determination* with respect to the percentage of debt forgiveness from the 1988 Restructuring Plan attributable to (old) ILVA is incorrect. They argue that only where a portion of Finsider's assets were transferred to a productive unit other than (old) ILVA, should the Department allocate a portion of the subsidy amount to those assets. They note that this approach was taken by the Department in *Plate in Coils from Italy* (*see* 64 FR at 15523) and is consistent with the opinion of the CIT in *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (1985) (*British Steel*). In that decision, the court ruled that "the competitive benefit of funds used to acquire assets does not cease upon the assets' premature retirement, but rather such benefit continues to contribute to the firm's manufacture, production, or exportation of products accomplished by the firm's remaining assets." *See British Steel*, at 296.

However, if the Department insists on calculating the percentage of Finsider's assets actually transferred to (old) ILVA as a result of the 1988 Restructuring Plan, petitioners urge the Department to reject the estimate used in the *Preliminary Determination* and the estimate provided at verification. They contend that these estimates are incorrect because: (1) the estimate used in the preliminary analysis does not account for the additional assets transferred to (old) ILVA in 1990, as part of the 1988 Restructuring Plan, and (2) neither calculation accounts for the write-down in the value of Finsider's assets which took place in 1989. Therefore, if the Department continues to use ILVA/ILT's calculations for the final, the amount of debt forgiveness that benefitted (old) ILVA will be substantially underestimated.

Petitioners claim that it would be inappropriate to use net asset values from the end of 1989 or 1990, to estimate the assets transferred from Finsider to (old) ILVA, because the asset values were substantially written down in 1989, in connection with the restructuring. To compare asset values after the write-down (those assets in (old) ILVA) with asset values before (those assets remaining in Finsider) will inevitably lead to the incorrect conclusion that a substantial amount of Finsider's assets were not transferred to (old) ILVA.

In their rebuttal brief, ILVA/ILT submits that petitioners have confused the benefit of liquidation, *i.e.*, debt coverage, with the allocation of this benefit. They contend that liquidation provides a benefit because it enables a spun-off company to emerge without the unsustainable debt burden that had deprived the company in liquidation of viability; it is the liquidated company that lacks viability, not the individual assets. The viability of the assets of the Finsider Group was demonstrated both by the audited financial statements of 1988, and by the subsequent success of the liquidated Finsider Group in generating revenue from the sale of assets to offset its net debt coverage.

ILVA/ILT further states that since the benefit was received by the Finsider Group as a whole, the Department must allocate the benefit over the entire Group. As stated in the GIA, "The amount of the potential pass-through subsidy is calculated by applying the ratio of the book value of the productive unit sold to the book value of the assets of the entire company at the time the productive unit is spun-off." *See* GIA, 58 FR at 37268. Accordingly, the Department must use a ratio that bases the asset values in the numerator (the assets of each successor) and the asset values in the denominator (all assets of the predecessor, before the spin-offs) on the same base year and the same valuation method. Respondents add that it is the Department's established policy to use book value in the last accounting period preceding the spin-offs, taken from the consolidated audited financial statements.

Department's Position: We reject the respondents' asset allocation calculation, which indicates that 51.2 percent of Finsider's assets were transferred to (old) ILVA. The calculation appears to take into consideration Finsider's asset value of December 31, 1988, prior to the write downs, and (old) ILVA's asset value after the write downs, and consequently derives an incorrect percentage of assets transferred. Record evidence indicates the opposite of ILVA/ILT's statement that "assets were transferred from Finsider to ILVA at their written down value." We note in IRI's 1989 consolidated financial statement that Finsider's net fixed asset value for year-end 1988, was 8,023 billion lire. For year-end 1989, Finsider's net fixed asset value was 1,345 billion lire and (old) ILVA's was 3,910 billion lire. These amounts closely reconcile to those presented in the June 14,1989 McKinsey report[8] which indicates that the write down of assets occurred on January 1, 1989, after they were transferred to (old) ILVA on December 31, 1988. We learned at verification that Finsider transferred assets to (old) ILVA on December 31, 1988, in advance of the company's commencement of production as a steel company on January 1, 1989. *See GOI Verification Report*, at 6.

We further note that ILVA/ILT was not able to substantiate their claim that Finsider's assets were transferred to (old) ILVA at their written down value. In support of their statement, respondents simply translated a paragraph from Finsider's 1989 financial statement. ILVA/ILT did not place information on the record which clearly indicates when the asset write downs were taken or the method by which the assets were revalued. In particular, at verification, ILVA/ILT did not demonstrate that Finsider's net fixed asset value of 8,023 billion lire as of December 31, 1988, was the value of the company's assets post-write downs.

On the basis of the record evidence, for purposes of this final determination, we have recalculated the percentage of Finsider's assets transferred to (old) ILVA using pre-write down asset values. To calculate the percentage of assets transferred to (old) ILVA, we used information from the June 14, 1989 McKinsey report which the GOI submitted to the Department on July 9, 1999. The report indicates that Finsider as of December 31, 1988, had a net fixed asset value of 8,610 billion lire. Of Finsider's assets, 6,140 billion lire of the assets were conferred to (old) ILVA on December 31, 1988. On January 1, 1989, (old) ILVA's assets were written down. This information demonstrates that prior to the write downs, 71.31 percent of Finsider's assets were transferred to (old) ILVA.

We agree with petitioners that it is necessary to add to the 71.31 percent asset figure the assets transferred to (old) ILVA during 1990. During 1990,

[8] This report was submitted to the Department by the GOI on July 9, 1999.

705 billion lire in assets were transferred to (old) ILVA. *See* (old) ILVA's 1990 Annual Report, at 46, contained in the February 16, 1999 Petition, at Volume VIII, Exhibit 4 and 5. Because it is likely that the 705 billion lire is based on asset values after the write-downs of 1989, we have assumed that these assets were written down by a similar percentage as (old) ILVA'' assets on January 1, 1989, (*i.e.,* 39.9 percent). Accordingly, we have increased the value of the assets transferred during 1990, to their pre-write down value of 1,173 billion lire. We then summed the 1,173 billion lire and the 6,140 billion lire assets values, to arrive at the total asset value of 7,313 billion lire which was transferred to (old) ILVA. Therefore, we determine that, in total, 84.94 percent of Finsider's assets were transferred to (old) ILVA.

Respondents are incorrect in arguing that the methodology to be applied here is the ''spin-off'' methodology described in the GIA. We do not consider the creation of (old) ILVA to be a ''spin-off'' from Finsider, because they were still government-owned companies. Normally, in such a situation, we would not separate the untied subsidies within the corporate group. However, the facts of this case, *i.e.*, numerous restructurings and assumption of liabilities by the government which should have been taken by each new company created, dictate that we must apportion the subsidies provided to each of the new companies created. The most reliable way to determine the percentage of subsidies provided to the predecessor companies that are attributable to the successor companies is through the value of the assets taken by each company.

Comment 6: Debt Forgiveness Provided From the Reserve Fund

Petitioners claim that, in the *Preliminary Determination*, the Department did not countervail the 1,568 billion lire in net losses which Finsider realized in 1989, stating that it would seek additional information in regard to Finsider's indebtedness to IRI (*see* 64 FR at 40422–23). While the Department notes in its verification report that Finsider is still officially in liquidation, the fact that Finsider has not paid IRI for the debt a decade after the 1988 restructuring should be sufficient for the Department to determine that this debt has been forgiven. *See GOI Verification Report*, at 8. They state that since the 1988 restructuring, Finsider has been a shell corporation that assumed the liabilities which were stripped from those assets transferred to (old) ILVA. Accordingly, the Department must countervail the 1,568 billion lire debt forgiveness as benefitting (old) ILVA in 1990, the year in which it was identified, as an amount that would not be repaid to IRI.

In their rebuttal brief, ILVA/ILT states that the reserve fund involved a suspension rather than a forgiveness of debt. *See GOI Verification Report*, at 8 and ILVA/ILT's September 3, 1999 QR, at Exhibit 1. They emphasize that the record demonstrates that no forgiveness of the 1,568 billion lire debt has yet occurred and that Finsider, in liquidation, continues to possess assets that may enable it to cover the debt without recourse to IRI's reserve. *See GOI Verification Report*, at 9. Because IRI has not forgiven Finsider's remaining debt, and ultimately may not need to forgive any of this debt, they argue that no countervailable forgiveness has yet occurred.

Department's Position: On the record of this investigation, the GOI has reported that in 1988, IRI established a fund of 2,943 billion lire to cover Finsider's losses while in liquidation. *See* GOI's July 8, 1999 QR, at Program 4, Question 3a and *GOI Verification Report*, at 8. The government stated that the fund equaled the total amount of assistance IRI expected to provide to Finsider during the liquidation process. IRI, which earlier extended 2,943 billion lire in loans to Finsider, questioned whether Finsider would default on the loans, and therefore, established the reserve fund to cover the outstanding loans. *See GOI Verification Report*, at 8.

Finsider realized losses of 1,364 billion lire in 1988. To prevent Finsider from becoming insolvent, IRI utilized 1,364 billion lire of the fund in 1989, to forgive debts Finsider owed to it. In 1989, Finsider realized losses of 1,568 billion lire. Because the purpose of the reserve fund was to cover losses that Finsider would realize while in liquidation, IRI should have, but did not, cover the 1,568 billion lire of losses in 1990, by forgiving debt of an equivalent amount.

At verification, we learned that Finsider, which remains in liquidation, still had losses of 1,568 billion lire carried forward in its financial statement of December 31, 1998. Likewise, within IRI's financial statement as of year-end 1998, IRI still maintained a balance of 1,568 billion lire in the reserve fund. *See GOI Verification Report*, at 9. IRI officials explained that the agency expects Finsider to repay all outstanding debts with revenue realized through the sale of remaining assets. However, until the liquidation is officially terminated, IRI must keep the fund on its books in case any outstanding debts cannot be covered with cash earned from the sale of assets. *See Id.*

We analyzed whether, when Finsider realized losses of 1,568 billion lire in 1990, IRI expected to receive payment against the debts owed to it by Finsider. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell to obtain cash to pay IRI. On the basis of these facts, we determine that in 1990, IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, for this final determination, we find that in 1990, IRI provided to Finsider debt forgiveness of 1,568 billion lire.

Comment 7: IRI's Purchase of Finsider Shares

Respondents contend that IRI's purchase in 1990, of (old) ILVA's shares from Finsider, Italsider, and Terni in liquidation was step one of a two-step asset purchase. They state that the liquidators of the Finsider Group used a two-step process to raise cash for the benefit of creditors by selling assets of the liquidated companies. In step one, Finsider, Italsider, and Terni in liquidation sold assets to (old) ILVA in exchange for shares of the company. In step two, Finsider, Italsider and Terni in liquidation sold their shares in (old) ILVA to IRI in exchange for cash at the same value. Respondents contend that this two-step sale enabled the companies in liquidation to liquidate productive assets at the assets' appraised market value for the benefit of their creditors.

They argue that, because IRI's purchase of shares was an asset sale at market value, the Department has no legal or factual basis for countervailing the transaction. They stress that this process was not ''tantamount to debt forgiveness,'' stating that IRI simply purchased the shares in (old) ILVA which Finsider, Italsider and Terni in liquidation had received in exchange for the assets which they transferred to (old) ILVA. IRI paid the assets' appraised market value to Finsider, Italsider and Terni in liquidation. Under section 771(5)(E)(iv) of the Act, a

purchase of assets by or for the government provides a countervailable benefit only ''if such goods are purchased for more than adequate remuneration'' and that adequate remuneration ''shall be determined in relation to prevailing market conditions.''

Respondents state that the appraisal of the assets in question was based on prevailing market conditions, and utilized the comprehensive market assessment of McKinsey, as described in ILVA/ILT's September 3, 1999 QR. Therefore, they argue that no countervailable benefit was conveyed because the remuneration provided by the government for the assets was adequate.

Petitioners argue that the McKinsey study was not an analysis of whether (old) ILVA in 1990, was a good investment. Rather, the study was an analysis of the viability of the 1988 Restructuring Plan, *i.e.*, whether the restructuring of Finsider into (old) ILVA would meet the objectives set out by the GOI and the EC. At verification, the Department learned that ''[t]he consulting firm of McKinsey & Company was hired to examine whether the creation of ILVA S.p.A. would conform with the EC's trade and competition rules.'' *See GOI Verification Report*, at 5. No analysis of the risk of an investment in (old) ILVA versus the potential return of such an investment is contained in the study, nor any comparison to the expected return of alternative investment opportunities, as is required under the Department's practice.

Petitioners add that there is no basis for concluding that the GOI was acting as a normal investor in buying (old) ILVA's shares in 1990. They highlight (old) ILVA's negative return on equity for the years 1986, 1987, and 1988, and conclude that no private investor would have made an investment in such a financially unsound company. On the basis of this information, the Department should determine that (old) ILVA was unequityworthy in 1989, and that IRI's purchase of (old) ILVA's shares was equivalent to debt forgiveness.

In their rebuttal brief, ILVA/ILT dispute petitioners' argument that (old) ILVA was unequityworthy in 1989. They state that. contrary to petitioners' calculation, which appears to have been based on data for Finsider in liquidation and not (old) ILVA, (old) ILVA had a return on equity of 7.6 percent for 1989. The McKinsey report, which they contend does satisfy the Department's requirements for investment studies, projected a level of profitability of 12.8 percent in 1990, for (old) ILVA.

Department's Position: As in our *Preliminary Determination*, we continue to find that IRI's purchase of (old) ILVA's shares is countervailable. It is the Department's position that prior to purchasing shares of a company, it is the usual investment practice of a private investor to evaluate the potential risk versus the expected return. This includes an objective analysis of information sufficient to determine the expected risk-adjusted return and how such a return compares to that of alternative investment opportunities of similar risk. In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed *prior to* (old) ILVA's share purchase, which related to the future expected financial performance of the company.

We disagree with respondents that IRI's purchase of (old) ILVA's shares in 1990, was preceded by a comprehensive and objective financial analysis of (old) ILVA. We find that the McKinsey report which was commissioned by the EC and the GOI, examined not the expected financial performance of (old) ILVA, but assessed the viability of the government's ''ILVA Steel Plan'' (*i.e.*, the 1988 Restructuring Plan) for the period 1988 to 1990. The scope of the study was to ''examine the ILVA Steel Plan trying to verify consistency with the Italian government proposals' and focused on (old) ILVA's steel making activities to ensure compliance with the EC's trade and competition rules. *See GOI Verification Report*, at 5. We note that the McKinsey team's evaluation involved: (1) reviewing the ILVA plan with the managers to ensure a full understanding of the underlying programs; (2) validating the feasibility of the plan using sound management principles; and (3) verifying EC mandated guidelines for price/cost squeeze and profitability. *See* McKinsey Report, ''Evaluating the Viability of the ILVA Steel Plan,'' of August 5, 1988, in the GOI's July 8, 1999 QR.

We determine that the McKinsey report did not incorporate the type of objective, quantitative analysis that an investor would require prior to a share purchase to evaluate the potential risk versus the expected return of an investment in (old) ILVA. There is no financial forecasting of (old) ILVA which would inform the investor of the viability of the company. Respondents discuss in their case brief that the McKinsey report evaluated (old) ILVA's ability to realize a minimum level of profitability of 12.8 percent in 1990. *See* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 6. However, respondents have taken that ''probability'' out of context. In fact, the report states, ''[T]he overall plan meets CEC [EC] guidelines for a 2.5 percent annual price/cost squeeze and exceeds guidelines for a minimum MOL [operating margin improvement]-profitability level in 1990 of 12.8 percent of revenue.'' *See Id.* As discussed in the report, the MOL level of 12.8 percent of consolidated revenues is the target level that (old) ILVA had to reach, as a whole, in order to meet the EC guidelines for viability, and not the company's projected profitability. The report further states that when calculating (old) ILVA's MOL profitability-level, the McKinsey team had no confirmation of (old) ILVA's official financial plans. Therefore, they assumed a normal capital structure for (old) ILVA in their evaluation and urged the government to create a sound financial base for the new enterprise. *See Id.*, at section ''1990 Profitability Meets CEC Guidelines.''

The facts on the record indicate that IRI, which committed itself on January 1, 1989, to purchase (old) ILVA's shares from Finsider, did not have sufficient financial data which would have allowed it to evaluate the potential risk versus the expected return in an investment in (old) ILVA. Further, at the GOI's verification, we learned that under Italian law, a company in liquidation must sell all of its assets to repay outstanding debt. *See GOI Verification Report*, at 9–10. IRI, which wanted to remain in the steel business, committed itself on the day (old) ILVA was created, to purchase from Finsider the shares of the company. *See Id.* With the cash from the sale, Finsider repaid a portion of its outstanding debts. *See Id.* Therefore, on the basis of the record evidence, IRI did not act like a private investor when it decided to purchase (old) ILVA's stock on January 1, 1989. The purpose of the share purchase was to provide to Finsider with cash to repay debts.

Comment 8: Finsider Received No Countervailable Operating Assistance During Its Liquidation

Respondents argue that the Department should not countervail the amount of 738 billion lire which was the ceiling the EC imposed on IRI's coverage of losses incurred during the liquidation of Finsider. They contend that IRI provided no such assistance apart from the 1,364 billion lire in loss coverage which the Department has countervailed separately. They point out that IRI demonstrated that the global

assistance amount did not exceed 1,364 billion lire, as documented in the relevant financial statements. *See GOI Verification Report*, at Exhibits Plan 1988/1–6.

Petitioners argue that the Department should affirm its preliminary determination for the following reasons: One, the GOI claimed that no assistance beyond the 1,364 billion lire in debt forgiveness from 1989, was provided by IRI; however this statement made at verification conflicted with the GOI's own July 8, 1999 QR. *See GOI Verification Report*, at 10, and GOI's July 8, 1999 QR, at Part II, P.S. Q. Program 4. Two, the GOI could not provide any documentation to support its claim that IRI only provided 1,364 billion lire in assistance. *See GOI Verification Report*, at 10.

Department's Position: In the *Preliminary Determination*, we discussed the ambiguous information on the record regarding the additional financial assistance, if any, the GOI provided to Finsider in liquidation (*see* 64 FR at 40423). We preliminarily found, based on information provided by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT regarding all assistance provided under the 1988 Restructuring Plan.

We learned that through the 89/218/ ECSC Decision of December 23, 1988, the EC authorized the disbursement of a maximum of 738 billion lire in additional financial assistance to Finsider to cover costs and losses realized in the liquidation process. However, because the cash received from the sale of Finsider's assets was greater than expected, IRI did not have to disburse to Finsider any portion of the 738 billion lire of aid authorized for closure costs and liquidation expenses. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. At verification, we examined Finsider's and IRI's 1989 financial statements, in particular, sections where such assistance would have been recorded. We found no evidence that IRI provided any aid to Finsider in addition to the 1,364 billion lire in 1989. Therefore, on this basis, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

Comment 9: Allocation of the 1993 Restructuring Benefits Using the Consolidated Asset Values for the ILVA Group

Respondents contend that in the *Preliminary Determination*, the Department incorrectly allocated the benefits from the 1993–94 ILVA restructuring to ILP, AST and ILVA Residua. Though it is the Department's policy to allocate benefits to successor and spin-off companies by asset value, the Department did not use the actual consolidated asset values of all three companies as the denominator for its allocation of the 1993–94 benefits. Rather, the Department used the consolidated asset values only for ILP and AST. For ILVA Residua, the Department ''used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua.'' See *Preliminary Determination*, 64 FR at 40424. They explain that by using the consolidated assets of ILP and AST, but not ILVA Residua, the Department distorted the allocation and exaggerated the benefits attributed to ILP from the restructuring.

The respondents stress that by using a surrogate value for ILVA Residua's assets, the Department erred in three fundamental respects: First, the Department had no basis in law or accounting to use a surrogate, because ILVA/ILT submitted the actual consolidated asset value for ILVA Residua as recorded in audited financial statements. Second, the surrogate was based not on year-end 1993 data, but on ''the purchase price plus debts'' of ''operations sold from ILVA Residua.'' *See Id.* These sales occurred after year-end 1993, and, in many cases, not until years later. In contrast, the ILP and AST assets used in the *Preliminary Determination* were from year-end 1993 financial statements. For purposes of consistency and accuracy, allocations of asset values must incorporate the value of all the assets at one common point in time. Third, respondents emphasize that the Department used as its surrogate the post-1993 purchases of assets from the unconsolidated ILVA Residua, which excluded the asset values of the many subsidiary companies that ILVA Residua sold in market transactions. They add that by using consolidated assets for ILP and AST (*i.e.*, including subsidiary companies owned by ILP and AST), but using a surrogate only for the unconsolidated ILVA Residua's assets (*i.e.*, excluding subsidiary companies), the Department significantly understated the asset value of ILVA Residua in comparison to ILP and AST as of year-end 1993.

Petitioners argue that the correct asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. This approach reflects the fact that the debt forgiveness should only be allocated to the viable assets of (old) ILVA and not to any assets that were to be closed or otherwise ceased to be viable. *See Plate in Coils from Italy*, 64 FR at 15523.

They contend that this analysis is consistent with legal precedent with respect to subsidies provided for closure of inefficient plants. Petitioners cite *British Steel* in which the CIT ruled that subsidies used to close redundant facilities provide countervailable benefits to the remaining, productive assets of the recipient firm because ''redundancy funds and plant closures make the recipient more efficient and relieve it of significant financial burdens.'' *See British Steel*, at 293. They also reference the GIA, in which the Department states: ''* * * subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company.'' *See* GIA, 58 FR at 37269.

It would not be appropriate to allocate the debt forgiveness to the total assets of ILVA Residua as of year-end 1993, as this would allocate benefits to assets that were closed or otherwise became non-viable following the restructuring. They emphasize that, at verification, the ILVA/ILT officials could not support their statement that all assets remaining in ILVA Residua were viable. *See ILVA/ILT Verification Report*, at 11. Therefore, the Department should continue to rely on the EC's 10th Monitoring Report for purposes of determining the viable assets remaining in ILVA Residua, and use that figure for purposes of allocating the debt forgiveness of the 1993–94 Restructuring Plan among ILP, AST and ILVA Residua.

Department's Position: We find that, given the information on the record, the most reliable asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. It is the Department's practice to apportion otherwise untied liabilities remaining in a shell corporation to the new, viable operations that had been removed from the predecessor company. Therefore, consistent with our past practice, we have assigned a portion of these liabilities to ILP and AST based on the ratio of assets each company took to the total viable assets of all three companies, including ILVA Residua.[9] This approach is consistent with the methodology employed in the recent

[9] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

stainless steel investigations. *See, e.g., Plate in Coils from Italy*, 64 FR at 15523.

As stated earlier in the notice, based on the record evidence of this investigation, the EC's 10th Monitoring Report is the only reliable information available to the Department to establish the value of those productive assets which remained in ILVA Residua at the point ILP and AST were separately incorporated. We disagree with respondents that the best source of data is the consolidated asset value for ILVA Residua as of December 31, 1993. Evidence on the record indicates that the asset value for ILVA Residua as of year-end 1993, is seriously flawed. At verification, the EC economist who monitored the restructuring and privatization of (old) ILVA stated that the ''balance sheets for December 31, 1993, provide only an estimate of ILVA in Liquidation's indebtedness which IRI would have to cover, the amount of debts to be transferred, etc.'' *See GOI Verification Report*, at 13. He also explained that the balance sheets of December 31, 1994, were the first audited financials of IRI and ILVA Residua since the commencement of the liquidation in the fall of 1993. *See Id.*

We examined ILVA Residua's 1994 annual report and noted the following statement pertaining to 1993, within the ''Report on the Management:'' ''In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available.'' *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. In addition, at verification, we obtained a listing of the amount of assets from each ILVA Group company which were placed in ILVA Residua as of December 31, 1993. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–4. Respondents claimed, but could not document, that all of the assets were viable. *See ILVA/ILT Verification Report*, at 11. As the auditor's opinion clearly indicates, the asset value for ILVA Residua, recorded in the company's financial statement as of December 31, 1993, was distorted, and respondents have submitted no evidence to substantiate their claim that the assets were accurately valued. As such, it is not appropriate to apportion the subsidies to ILVA Residua using the company's 1993 consolidated asset value. To determine the amount of liabilities from the 1993–94 Restructuring Plan, that should be apportioned to ILVA Residua, we must first determine the value of the productive assets that remained in ILVA Residua.

Given that the Department does not have the necessary asset values to make this determination from financial statements prepared at the point (old) ILVA's assets were demerged into ILP and AST, we consider that the EC report provides the only reliable information on the record to determine the viable assets which remained in ILVA Residua. The EC report provides a list of subsidiaries and shareholdings sold by ILVA Residua from 1993 through 1998, together with the sales price for each company and the debts transferred from ILVA Residua upon each sale. Respondents themselves note this fact in their case brief: ''The 10th EC Monitoring Report describes these sales [*i.e.*, ILVA Residua's assets sold in market transactions], which involved virtually all of ILVA Residua's consolidated assets.'' *See* ILVA/ILT's November 18, 1999 Case Brief, at 16. Moreover, the EC Monitoring Report notes that ''[t]he privatisation or the sale of shareholdings of all the companies formerly part of the ILVA Group (over 100 companies) is now practically completed,'' with only a negligible amount of assets remaining to be sold.

Therefore, to calculate the asset value of the viable operations, which were in ILVA Residua, we summed the cash price paid plus debts transferred at the time of their sale. We believe this approach provides a reasonable surrogate asset value because the newly sold company's books will, by the basic accounting equation of ''assets equal liabilities plus owners'' equity,'' reflect an asset value that is equal to the debts transferred plus the cash purchase price. The debts transferred become the liabilities in the new company's books, while the cash purchase price becomes the owners' equity. *See Plate in Coils from Italy*, 64 FR at 15523. Given the record evidence of this investigation, this calculation is the most reasonable estimate of the amount of viable assets that were left in ILVA Residua upon the separate incorporation of ILP and AST. However, should this investigation result in an order and an administrative review is requested, we will examine whether, at the point ILP and AST were separately incorporated, more accurate information can be obtained with regard to the value of those productive assets which remained in ILVA Residua.

Comment 10: Countervailable Debt Coverage Should Be Offset by Revenue From ILP/AST Sales

Respondents state that the Department's preliminary analysis, guided by the EC's 10th Monitoring Report, disregarded the EC's treatment of revenue from the sale of ILP and AST as an offset to debt coverage. They argue that, by overlooking this revenue offset, the Department overstated the net amount of debt coverage. The record of the case demonstrates the legal obligation of the GOI and IRI to use the revenue from the sale of ILP and AST for the benefit of ILVA Residua's creditors. *See GOI Verification Report*, at 14. Since revenue from the ILP and AST privatizations is no different from revenue generated by the sale of ILVA Residua's other productive enterprises, they argue that all revenue should be deducted from the gross liabilities of ILVA Residua prior to attributing any countervailable debt coverage to ILP.

In support of their argument, respondents note that the EC in its Decision 94/259 of April 12, 1994, at Article 3(2), states: ''The income obtained through the sale of the companies in the (old) ILVA Group shall be used in full to reduce the indebtedness of the group.'' Because the revenue from the privatizations was intended to reduce the debt coverage provided by IRI to ILVA Residua, the Department has no legal justification to exclude this revenue from its calculation of the net debt relief attributable to the liquidation process. Respondents add that under the Italian Civil Code, IRI had a legal obligation to the ILVA Group's creditors to apply the revenue from the subsequent privatizations of ILP and AST for the creditors' benefit.

They further state that the Department in the *Preliminary Determination* (*see* 64 FR 40424) recognized the revenue from asset sales by ILVA Residua as an offset to the countervailable debt coverage provided by the liquidation. Because no justifiable distinction can be drawn between the ILP and AST privatization revenue and the revenue from other asset sales, the Department should apply the 2,665 billion lire from the privatization of ILP and AST as an offset to the countervailable debt coverage attributed to the 1993–94 restructuring process.

Petitioners counter that the subsidy at issue is the amount of liabilities stripped from the operating company of (old) ILVA, which were placed in ILVA Residua, and not the amount of ILVA Residua's debts the GOI ultimately forgave or paid, nor the source of the

funds used to satisfy the debt. ILVA/ILT is confusing the benefit to the recipient of the subsidy the Department must measure (*i.e.,* the net liabilities stripped from ILP) with the subsequent transactions between ILVA Residua and the GOI. They argue that the Department rejected the same argument in *Plate in Coils from Italy* (*see* 64 FR at 15522–23), stating that such an analysis would calculate the cost to government, rather than the benefit to the recipient, in violation of the law. Petitioners submit that the same analysis is applicable in the instant investigation.

They add that there is a fundamental difference between the revenue from the privatization of ILP and AST and the revenue from other asset sales by ILVA Residua. Despite ILVA/ILT's claims, the GOI's receipt of cash from the proceeds of its sale of ILP (and AST) did not come from (old) ILVA itself and therefore does not constitute an ''offset'' to the liabilities stripped from (old) ILVA. Petitioners note that section 771(6) of the Act provides a list of proper offsets in determining the net countervailable subsidy and the proceeds from a privatization are not included within the list.

Department's Position: As mandated by law under section 771(5)(E) of the Act, the Department must calculate subsidies as the benefit to the recipient and not the cost to the government as proposed by respondents. Accordingly, we must determine, at the time ILP was spun-off from (old) ILVA, the benefit that ILP received, calculated as the portion of (old) ILVA's liabilities which was forgiven on behalf of ILP. At the time of ILP's separate incorporation of January 1, 1994, ILP clearly benefitted to the extent that it did not assume a proportional share of (old) ILVA's liabilities. ILP emerged with a positive equity position as a result of ILVA Residua's assumption of the vast majority of (old) ILVA's liabilities, which included that portion of liabilities which should have been transferred to ILP.

While the EC's Monitoring Report is a useful source of information about the liquidation of (old) ILVA, the methodologies the EC employs to measure and report amounts associated with the liquidation may not be appropriate for our purposes, *i.e.,* for identifying and measuring the countervailable benefit to ILP from the GOI's liquidation activities. For example, we cannot rely on calculations based on the cost to the government rather than the benefit to the recipient. *See Sheet and Strip from Italy*, 64 FR at 30633.

It is the Department's practice to determine the benefit to a respondent as the amount of liabilities that are not directly associated with any given assets that the respondent should have taken. *See Plate in Coils from Italy*, 64 FR at 15522–23. If liabilities are not properly distributed to a new company through a restructuring process, a benefit is conferred upon the productive assets of the new entity. The assumption by a government of those liabilities not apportioned is the countervailable event. If the new company is later sold, as was the case with ILP, then the Department applies its change in ownership methodology to determine the portion of the purchase price attributable to the repayment of prior subsidies. We note that the cash transfer for ILP did not take place at the time of the company's separate incorporation, but over a year later when ILP was sold to the RIVA Group in April 1995. Therefore, consistent with the Department's policy, we determine that ILP received a benefit when it was separately incorporated from (old) ILVA; the benefit was that portion of liabilities of (old) ILVA which should have transferred to ILP, but instead remained with ILVA Residua. *See, e.g., Electrical Steel from Italy*, 59 FR at 18365, and *Certain Steel from Austria*, 58 FR at 37221.

Comment 11: ILVA 1993 Asset Write-Downs

Respondents contend that as a matter of law, accounting and simple fact, the Department's preliminary approach to this subject was in error. In the *Preliminary Determination,* according to respondents, the Department countervailed the asset write-downs taken by (old) ILVA in 1993, treating the write-downs as a countervailable event. This, according to respondents, reflected the Department's preliminary view that the write-downs generated losses and that these losses were the equivalent of debts that would have to be covered by the government. Respondents maintain that the asset write-downs taken by the ILVA Group in 1993 amounted to 1,780 billion lire, including write-downs of 1,685 billion lire for assets that would later be transferred to ILP.

Respondents claim that both Italian and U.S. GAAP require the write down of asset values, once the impaired condition of the assets is manifest, particularly in the face of an impending sale or transfer of assets. Respondents state that the correct application of these accounting rules in the current investigation requires an appreciation of the fundamental distinctions between asset write-downs, losses, and debts.

According to respondents, the occurrence of a loss by a company, as reflected on the balance sheet by a reduction in shareholder's equity and an accompanying asset write-down, involves neither a direct transfer of funds into the company nor the forgiveness of any debts. Rather, the asset write-downs are accounting entries required by Italian and U.S. GAAP in the event the losses reflect a material impairment of an asset's earnings potential over its remaining useful life. The asset write-down does not ''cause'' the loss; instead events or circumstances which cause losses, such as overcapacity or obsolescence, may require an extraordinary write down of asset values on the asset side of the balance sheet and an offsetting reduction to a capital account on the liabilities/shareholders' equity side of the balance sheet.

Respondents take issue with the Department's analysis in the *Preliminary Determination.* Although respondents agree that under section 771(5)(D) of the Act, the Department has an obligation to identify a ''financial contribution'' from the government to (old) ILVA, they believe the Department erred in preliminarily determining that asset write-downs are a ''direct transfer of funds'' in accordance with section 771(5)(D)(I). *See Preliminary Determination,* 64 FR at 40423.

Respondents claim that two fundamental flaws with the Department's *Preliminary Determination* are evident. First, the Department has confused ''real'' events and obligations with accounting entries that create no such obligations. Second, the Department has double or even treble counted benefits conferred by a single financial contribution. Regarding the confusion over ''real'' events versus accounting entries, respondents state that the assumption or forgiveness of a debt is equivalent to a grant only if the government voluntarily pays a debt on behalf of the company, or voluntarily waives its right to receive a payment from the company. They further state that above all, there has to be a debt and it has to be forgiven and that a loss is not a debt and is by no means equivalent to a debt. A loss is recorded on the income statement and typically impacts the balance sheet as a reduction to retained earnings, reserves or other capital account. If the loss-making company wants to avoid an erosion in its capital, it can replenish its funds either by obtaining additional equity or incurring additional debt. The loss, in and of itself, will have no direct impact

on debt and may never have any impact on debt, given other means of absorbing losses available to the company. Respondents contend that an asset write-down neither increases debt nor forgives debt. The act of borrowing is a ''real'' event, not simply an accounting event, just as the act of debt forgiveness is a ''real'' event, whereas the recording of an asset write-down, or the reduction of shareholders' equity, are accounting entries that impose no new obligations on the company.

Regarding double counting the benefit from a single financial contribution, respondents state that the failure to distinguish between (1) past financial contributions, (2) potential future financial contributions, and (3) actual financial contributions that occur in subsequent years, has led the Department to double or even treble count the benefit from individual contributions of the same capital. To the extent that the government contributed either equity or debt to (old) ILVA, and thereby conferred a subsidy, those financial contributions remain countervailable over the AUL period. To the extent the government forgave accumulated debt, that act of debt forgiveness is also potentially countervailable. Respondents go on to argue that an intervening loss and asset write-down incurred by the company that received the original equity infusion, and that might later benefit from a debt forgiveness, would not represent an additional financial contribution from the government or confer a separate countervailable benefit. In the absence of a new financial contribution, as defined by section 771(5)(D) of the Act, there can be no subsidy.

In (old) ILVA's case, according to respondents, the 1991/92 equity infusions of 660 billion lire provided a financial contribution from the GOI that supported the acquisition of assets and other operations of (old) ILVA and thereby conferred a countervailable benefit. (Old) ILVA's subsequent losses (and associated write downs) involved no additional financial contribution or benefit because they involved no affirmative action of any sort on the government's part. Instead, they simply reflected the company's failure to earn a profit. As described above, such losses result in a reduction of retained earnings or other capital account on the balance sheet. No government action is associated with an accounting entry of this type, and no benefit is conferred. An additional financial contribution by the government can be said to occur only in the event of additional equity infusions, loans or debt forgiveness provided by the government. Thus, to impose countervailing duties in connection with the 1993 asset write-down would unlawfully double penalize ILVA for the same capital.

Petitioners contend that the debt forgiveness and coverage of losses provided by IRI to ILP (now (new) ILVA) in connection with the 1993–94 Restructuring Plan provided a financial contribution to (new) ILVA in the form of a direct transfer of funds—the equivalent of a grant—as described in section 771(5)(D)(I) of the Act. Petitioners cite *Sheet and Strip from Italy*, 64 Fed. Reg. at 30,628. They point out that ILVA/ILT has repeatedly argued that the coverage of losses by the GOI resulting from asset write-downs in the various restructurings of the Italian state-owned steel industry does not constitute a financial contribution and that this argument is in error.

Petitioners cite *Plate in Coils from Italy* in their argument that the Department has previously considered the countervailability of the coverage of losses resulting from the write-down of assets in connection with the 1993–94 restructuring. In that case the Department found that because the asset write-downs generated a loss that was eventually covered by the GOI through its debt forgiveness to ILVA, the asset write-downs are countervailable. Petitioners also cite *Electrical Steel from Italy* for their assertion that the Department has previously considered countervailability of asset write-downs in Italy. In that case assets transferred from a GOI created ''shell company'' (TAS) to (old) ILVA were written down prior to the transfer and as a result, the GOI created ''shell company'' was forced to absorb greater losses, which were countervailed.

According to petitioners, in order to understand the connection between the countervailable benefit from the reduction of liabilities afforded (old) ILVA and the asset write-downs, the Department need only consider the methodology it used to determine the amount of countervailable benefit that arises from the liabilities that were stripped from (old) ILVA in the 1993–94 restructuring. In particular, the countervailable benefit equals the total (gross) liabilities transferred out of (old) ILVA minus the total assets transferred, which equals the net liabilities transferred. For example, if the government transfers $100 in gross liabilities and $20 in assets, then the net benefit is $80. Obviously, the correct result from this calculation depends on the correct value of both the gross liabilities and the assets. If, in this example, it is determined after the transfer takes place that the assets are, in fact, worth only $10 and are written down accordingly, then the true amount of net liabilities transferred is $90—or $10 more as reflected in the amount of the asset write-down.

Respondents dispute petitioners use of *Electrical Steel from Italy* (see, 59 FR at 18359) pointing out that the passages from that final used by petitioners address the Finsider restructuring (not the (old) ILVA restructuring) and that this passage neither references nor identifies a financial contribution. In fact, respondents claim that the *Electrical Steel from Italy* determination illustrates that by focusing exclusively on the perceived benefit without identifying any financial contribution, the Department has unlawfully engaged in double counting of a single subsidy event. Further, respondents dispute petitioners' other cited case, *Plate in Coils from Italy* (*see*, 64 FR at 15525). Respondents argue that the issue of countervailing asset write-downs *in Plate in Coils from Italy* was decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation, which is necessary for the Department to reach an informed determination.

Respondents argue that the Department has countervailed (old) ILVA's equity infusions that preceded the asset write-down as well as the debt forgiveness that followed the asset write-downs, and that it would be unlawful to countervail the intervening asset write-downs, which involved no new or separate financial contribution from the GOI.

Department's Position: Respondents misunderstand the Departments position concerning the asset write-downs that (old) ILVA took in 1993 as part of the restructuring/privatization plan. We disagree with respondents that the technical GAAP requirements on asset write-downs of either country are particularly relevant to the issue. The main point is that retained liabilities of (old) ILVA represent the portion of the company not covered by assets and, therefore, this is the pool of liabilities covered by the GOI. To clarify, the recognition of the fact that (old) ILVA's assets had become impaired in value (a real event), and needed to be written-down, increases the retained losses (i.e., negative equity), in the same manner as any other operating expense or loss. The large retained losses, while not technically debt, represents the portion of the company's liabilities that cannot be covered by the sale or transfer of assets. It is clear that the total amount

of debt is not increased by the asset write-downs. However, the writing down of assets must be factored in to accurately reflect the amount of debt the GOI is forgiving.

It is important to note that in its history of examining asset write-downs in connection with Italian state-owned steel industry restructurings, the Department has not determined that asset write-downs per se are countervailable events. In each instance, the Department referred to the specific situation in the Italian steel industry, where debt forgiveness was involved. Certainly, there are many instances where private sector companies revalue their assets in accordance with GAAP for perfectly legitimate reasons. What the Department has consistently determined in *Electrical Steel from Italy, Plate in Coils from Italy*, and *Sheet and Strip from Italy*, is that coverage of liabilities by the GOI, whether those liabilities are created or increased by asset write-downs or any other economic event, is countervailable. In all of these cases, the Department was presented with the issue of how to apportion liabilities that were retained by the GOI that should have been transferred to the new companies, ILP and AST. To the extent that asset write-downs, recorded prior to the separate incorporation of the companies, increased the liabilities retained by the GOI, the Department has considered those write-downs in the calculation of the benefit from the debt forgiveness. The real issue here is how to apportion liabilities retained by the GOI across the companies created by the 1993–94 Restructuring Plan, namely AST and ILP. We can only identify the actual liabilities covered by the government if we factor in the value of the asset write-downs. Because the asset write-downs can be tied to specific assets that went to ILP and AST, it is appropriate to factor these into our calculation. Assigning the amounts of the tied write-downs to the appropriate companies (ILP and AST) is a more reliable way to apportion the liabilities that should have been transferred.

We disagree with respondents' argument that *Electrical Steel from Italy* is not relevant here because it involved Finsider's restructuring rather than (old) ILVA's restructuring. Respondents' distinction between these two cases is largely cosmetic. Respondents' allegation of double counting benefits is also without merit. In its calculation of the total benefit from the 1993–94 Restructuring Plan, the Department was careful to deduct the amount of liabilities associated with (old) ILVA's asset write-downs from the amount of liabilities covered by the GOI that were apportioned according to asset values. The amount of net liabilities created by the asset write-downs associated with assets transferred to ILP were then added directly to the first calculation described above to arrive at the total amount of countervailable debt forgiveness, thereby negating the possibility of double counting. This calculation is consistent with *Plate in Coils from Italy*. We disagree with respondents that *Plate in Coils from Italy* is not relevant here since that case was ''decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation'' (*see* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 19). The issue in this current case as well as the *Plate in Coils from Italy, Sheet and Strip from Italy*, and *Electrical Steel from Italy* cases is not the completeness of the record. It is the countervailability of liabilities/losses covered by the GOI and how to apportion those amounts among respondent companies.

Comment 12: Any Benefit From Debt Coverage Was Received at the Time of the Original Loans, Not Upon Liquidation of (Old) ILVA or Finsider

Respondents disagree with the Department's analysis that the debt coverage provided at the time of the liquidation of Finsider in 1988 and the ILVA Group in 1993, was a new and separately countervailable benefit. They argue that the actual benefit was many years before, when IRI guaranteed the loans that it later had to cover during the liquidations of Finsider and (old) ILVA. It was the loan guarantees that later obliged IRI to provide the debt coverage, and therefore, the only possible subsidy event occurred at the time when IRI provided the guarantees, *i.e.,* at the time of the original commercial borrowings.

Respondents also argue that the loan guarantee which (old) ILVA received at the time of its commercial borrowings was consistent with normal commercial practice in Italy, and thus, did not provide a countervailable benefit, citing to section 351.506(b) of the CVD Regulations. They state that Article 2362 of the Italian Civil Code makes the sole shareholder an automatic guarantor of all loans obtained by its wholly-owned subsidiary, and point to information placed on the record that demonstrates the widespread use of the sole shareholder structure in Italy. However, if the Department finds a countervailable benefit, then that benefit could only have occurred at the time of the original commercial borrowings which IRI guaranteed and not at the time of liquidation. Respondents argue that the Department would be impermissibly double-counting a single subsidy event by finding that IRI's coverage of the same loans during liquidation subsequently provided a new countervailable benefit.

Petitioners state that, with respect to the 1988 restructuring, there is record evidence that the guarantee of Finsider debt by IRI was an integral part of the overall 1988 Restructuring Plan. First, IRI issued an explicit guarantee to the Finsider Group's creditors that all the principal and interest of the Group's existing loans would be repaid. *See* EC Decision 89/218/ECSC of December 23, 1988, contained in the Petitioners' November 12, 1999 Case Brief, at Exhibit 1, page 77. The guarantee issued in connection with the 1988 restructuring was issued in 1988, and not when any outstanding loans were made to Finsider at some earlier date. Therefore, the proper countervailable event is the actual provision of the debt forgiveness and coverage of losses in connection with the 1988 restructuring.

With regard to the 1993–94 Restructuring Plan, there were no IRI ''guarantees'' of loans to (old) ILVA prior to the enactment of the plan. According to ILVA/ILT's September 3, 1999 QR, the provisions of Italian Civil Law (*i.e.,* Article 2362) did not apply to IRI, the ''sole shareholder'' of (old) ILVA, until July 1992, when IRI was converted into a public limited company. Thus, the ''sole shareholder'' guarantee argued by respondents could not have been applicable to any loans taken by (old) ILVA, or predecessor companies, prior to July 1992. They add that record evidence indicates that (old) ILVA's loans pre-date July 1992. Therefore, petitioners argue that the ''guarantee'' provided by IRI under Article 2362 is irrelevant to this case and the countervailable event is the forgiveness of debt and coverage of losses that occurred when (old) ILVA was demerged into AST and ILP. In addition, petitioners argue that the ''sole shareholder'' provision is not a normal loan guarantee.

Department's Position: ILVA/ILT's arguments that the Department is countervailing the wrong subsidy event (*i.e.,* debt forgiveness provided under the 1988 and 1993–94 Restructuring Plans) and double-counting subsidies in terms of both loan guarantees and debt coverage are incorrect. We find that, even if there had been some earlier loan guarantee by the GOI, a loan guarantee and the forgiveness of debt are two

separate and distinct subsidy events. In a commercial context, where a borrower defaults on a loan that is guaranteed, the borrower is still liable to the guarantor for the debt that is now being paid by the guarantor. Thus, if a borrower defaulted on a government-provided loan guarantee, the borrower would still be liable to the government for the debt, and the subsequent forgiveness of the debt would be a separate, countervailable event from the government-provided loan guarantee. *See* section 351.508 of the CVD Regulations.

Comment 13: Italy's Generally Available Liquidation Process Provided No Countervailable Benefits

Respondents state that even if the Department regards liquidation as a separate subsidy event from the original loan guarantees provided by IRI, the Department must address the question of specificity under section 771(5A) of the Act. They discuss that in the *Preliminary Determination,* the Department found a specific benefit from the liquidation of (old) ILVA, under the theory that liquidation occurred under an EC directive which was specific to (old) ILVA (see 64 FR at 40423–24). Respondents argue, however, that the liquidation occurred under a generally applicable provision of the Italian Civil Code, not under an EC directive.

In support of their argument, respondents state that (old) ILVA entered into voluntary liquidation on October 31, 1993, in accordance with Articles 2448 *et. seq.* of the Italian Civil Code, which is similar to U.S. bankruptcy procedure. The liquidation took place prior to the EC's April 1994 Commission Decision which provided the EC with oversight authority to prevent ''unfair competition'' and to protect ''conditions of trade in the Community steel industry.'' *See* EC Decision 94/259 of April 1994, contained within ILVA/ILT's May 13, 1999 questionnaire response, at Exhibit 16.

Respondents argue that the same liquidation procedures automatically apply to all Italian corporations, regardless of whether they are privately-held or state-owned, and regardless of the industrial sector in which they operate (*i.e.,* broad cross-section of firms utilize the process without any disproportionate or predominant users or favoritism in the law's application). The Court of Rome's acceptance of (old) ILVA's entry into liquidation was not the type of discretionary government action that justifies a finding of specificity by the Department.

They further discuss that judicial precedent has firmly established that receivership under a generally-available bankruptcy law does not confer a countervailable subsidy, citing *Al Tech Specialty Steel Corp.* v. *U.S.,* 661 F. Supp. 1206 (CIT 1987) (*Al Tech*). The court in *Al Tech* upheld the Department's finding, in *Certain Stainless Steel Products from Spain,* that the receivership of Olarra had extinguished prior subsidies received in the form of loans to that company. In that case, the Department ruled that ''where the [local] court has specifically recognized the company's receivership, we find that any countervailable benefits associated with loans incorporated in the receivership plan cease to exist.'' *See Certain Stainless Steel Products from Spain,* 47 FR 51453, 51455 (November 15, 1982).

Petitioners state that the Department rejected the same ''generally-available liquidation'' argument with respect to a similar restructuring plan for Cogne S.p.A. in *Wire Rod from Italy* (*see* 63 FR 40498). They submit that the record of the instant investigation provides clear evidence that the privatization of ILP and AST was the purpose of (old) ILVA's liquidation and that, as in *Wire Rod from Italy,* the liquidation was merely the mechanism through which one aspect of a massive government restructuring and state aid plan was to be implemented.

Based on this record evidence, petitioners conclude that ILVA/ILT's argument that (old) ILVA's liquidation was a normal proceeding under Italian law is specious at best. The Plan was limited by its terms to one entity, (old) ILVA, and the benefits were limited to (old) ILVA and its two privatized companies: ILP and AST. The Department in both *Plate in Coils from Italy* (*see* 64 FR 15508) and *Sheet and Strip from Italy* (*see* 64 FR 30624) treated the 1993–94 Restructuring of (old) ILVA as providing specific countervailable subsidies to AST. To petitioners' knowledge, the only other entities in Italy to receive similar restructuring benefits were other pieces of the Italian state-owned steel industry, such as Cogne, itself formerly a part of (old) ILVA; and these benefits were found to be specific (*see, Stainless Steel Wire Rod,* 63 FR 40475). Therefore, under section 771(5A)(D), the Department should continue to find the 1993–94 Restructuring Plan *de facto* specific.

Petitioners also argue that ILVA/ILT's reliance on *Al Tech* to support its position is misplaced. *Al Tech* involved a normal recourse to traditional bankruptcy protection, in which the company in question received traditional benefits under a receivership plan without special consideration. *See Al Tech,* at 1212. The court made clear that the mere use of a bankruptcy law would not insulate a subsidy recipient from the countervailing duty law where special benefits were bestowed on specific enterprises. *See Id.*

Department's Position: Consistent with our determination in *Wire Rod from Italy* (*see* 63 FR 40498), we disagree with respondents' argument pertaining to the sole shareholder provision of Italian law. The record evidence demonstrates that the liquidation of (old) ILVA, including the debt forgiveness provided, was done in the context of a massive restructuring/privatization plan undertaken by the GOI, which was approved and monitored by the EC. The debt forgiveness which ILP realized was provided in the context of a massive state-aid package designed to allow the GOI to restructure and privatize its steel holdings. At verification, GOI officials ''emphasized that the goal of the 1993–94 Restructuring Plan was not simply the liquidation of ILVA S.p.A and demerger of AST and ILP, but the privatization of the Italian steel industry.'' *See GOI Verification Report,* at 10–11.

While the EC did not direct the GOI to place (old) ILVA in liquidation on October 31, 1993, the 1993–94 restructuring and privatization plan, of which liquidation was an integral part, was subject to the approval of, and monitoring by,[10] the EC. In fact, ILVA/ILT, in their May 13, 1999 response, states that ''[T]he restructuring that occurred during the liquidation process was reviewed by the EC under its competition rules and resulted in the EC decision [of April 12, 1994].'' This statement indicates that the restructuring and liquidation were not separate events, but two processes which the GOI set in motion with the ultimate objective of privatizing (old) ILVA through the demerger and separate incorporation of two spin-off companies: ILP and AST.

The evidence on the record demonstrates that the liquidation was not a normal occurrence, but was part of an extensive state-aid package designed to bestow special benefits on a specific enterprise. In support of our

[10] As stated in the EC's April 12, 1994 approval, the GOI was responsible for furnishing reports on the implementation of the ''privatization and reorganization programme and in particular * * * financial data necessary to allow the Commission to assess whether its conditions and requirement are fulfilled.'' *See* EC's 94/259/ECSC Decision of April 12, 1994, at 69.

finding that the 1993–1994 Restructuring Plan is *de facto* specific, we note the EC's 94/259/ECSC decision of April 12, 1994, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. *See* EC's 94/259/ECSC decision of April 12, 1994, at 65. As set forth in the EC's approval decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies.

Comment 14: The Extinguishing Versus Pass-Through of Subsidies During Privatization

The GOI and ILVA/ILT argue that, based on the verified circumstances of the sale of ILP, the Department must conclude that privatization extinguished any prior subsidies to (old) ILVA. The respondents first posit that ILP's privatization, monitored by the EC, was an open and competitive process, and therefore, was conducted at ''arm's-length.'' The privatization of ILP was accomplished through a public tender with negotiation of terms between IRI and competing bidders to establish an acceptable price. They equate the sale of ILP to that of British Steel. They note that a WTO dispute resolution panel recently determined that open and competitive bidding procedures which result in payment of a market price for a privatized company will extinguish prior subsidies to that company.

They add that U.S. law recognizes that privatization can extinguish subsidies. *See* Section 771(5)(F) of the Act and *Delverde S.r.l.* v. *United States,* 989 F. Supp. 218, 228 (CIT 1997). They argue that based on the record of this investigation, U.S. law would support a determination that no subsidies passed through to the new owners of ILP upon its privatization in 1995. The sale of ILP occurred at a market price and therefore involved payment for the market value of the company, including the current value of any subsidies received by the company prior to privatization.

Petitioners argue that the URAA confirms that subsidies remain fully countervailable following a change in ownership, referencing section 771(5)(F) of the Act. They add that record evidence indicates that none of the subsidies bestowed on ILP's predecessor companies should be treated as ''repaid'' as a result of the 1995 privatization of ILP. The purchase price of ILP was below fair market value, and therefore, no prior subsidies were extinguished in the sales transaction. In support of their position, they note that the GOI placed restrictions on the buyer of ILP such that the company could not be shut down and no employees could be terminated for a period of three years after the sales transaction. *See GOI Verification Report,* at 14–15. Such restrictions undoubtedly caused many potential bidders not to participate in the privatization process and surely reduced the value of ILP to those bidders still willing to participate. Thus, the purchase price agreed to by RIVA was undoubtedly lower than a ''negotiation process directed at obtaining the highest possible return.'' They add that the ''below-market'' price agreed upon by RIVA and the GOI has yet to be fully paid, as the sale is in arbitration. Therefore, it is not rational to conclude that any subsidies were repaid, much less extinguished in the purchase transaction.

Department's Position: Under our existing methodology, we neither presume automatic extinguishment nor automatic pass through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies are allocated to the privatized company. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining the extent to which the countervailable benefits received by ILP's predecessor companies passed through to ILP.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and ILP's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that, when ILP was privatized, a portion of the benefits received by (old) ILVA, and other predecessor companies, passed through to the privatized company and a portion was repaid to the government. This is consistent with our past practice and has been upheld in the Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) (*British Steel II*) and *Delverde II.*

Furthermore, ILVA/ILT's contention that the sale of ILP was an arm's-length, market-valued transaction does not demonstrate that previous subsidies were extinguished. Section 771(5)(F) of the Act states that the change in ownership of the productive assets of a foreign enterprise does not require an automatic finding of no pass through even if accomplished through an arm's-length transaction. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, the SAA directs the Department to exercise its discretion in determining whether a privatization eliminates prior subsidies by considering the particular facts of each case. *See* SAA at 928.

Lastly, with respect to the respondents' comments concerning the recent finding by a WTO Dispute Settlement Panel that an arm's-length privatization automatically extinguishes prior subsidies received by government-owned firms, the Department notes that this was an interim (*i.e.,* preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.

Comment 16: Repayment Portion of Change-in-Ownership Analysis

According to petitioners, Congress intended that countervailing duties be imposed to offset subsidies to production. Since changes in ownership do not affect production, the petitioners conclude that they should also not affect countervailing duty liability.

The petitioners distinguish between the subsidies themselves and countervailing duty liabilities arising from those subsidies. Citing the GIA (58 FR at 37260) where it quotes *British Steel Corp.* v. *United States,* 605 F. Supp. 286, 294 (CIT 1985), the petitioners state that the Department is obligated, when injury exists, to impose duties when subsidies have been provided ''with respect to the manufacture, production or export * * * of a class or kind of merchandise'' imported into the United States. To show that the liability for such subsidies is attached to production, the petitioners cite to the same where it states, ''if a benefit or advantage is received in connection with the production of merchandise,'' that benefit or advantage is a ''bounty or grant on production.'' To further demonstrate the linking of countervailing duty liabilities to production in a post-URAA case, the petitioners cite the Final Results of Redetermination Pursuant to Court Remand, *Delverde, SrL* v. *United States,* Consol. Ct. No. 96–08–01997, *aff'd, Delverde, SrL* v. *United States,* 24 F. Supp.2d 314 (CIT 1998) where it states:

> Once the Department determines that a ''subsidy'' has been provided, it measures the amount of the subsidy, attributes the subsidy to the appropriate production * * *

Generally speaking, the practical results of this system is to link liability for, as an example, pasta subsidies to pasta production.''

The petitioners maintain that after a change in ownership, a company will produce at the same cost, in the same volume and with the same artificial advantages born of subsidies. Petitioners claim that this happens because the profit-maximizing level of price and output are unchanged. According to petitioners, regardless of whether a buyer or seller captures the benefit of a subsidy after a change in ownership, the buyer still acquires the subsidy-augmented production facilities and uses them at the same profit-maximizing level, thus leaving the misallocation of resources arising from the subsidies and the threat to the companies' competitors unchanged.

To show that the seller actually captures the benefit of previously bestowed subsidies, the petitioners cite a publication by the U.S. Department of Agriculture which states that subsidies to farmers have created inequities between existing and entering farmers by increasing the cost of acquiring land for entering farmers.[11] The petitioners maintain that even though sellers gain the windfalls from subsidies during a change in ownership, the reallocation of countervailing duty liabilities back to the sellers is inappropriate. First of all, the price paid by a buyer is discounted for the risk associated with the countervailing duty liabilities, according to petitioners. In addition, since the seller no longer has control over production, the petitioners state that imposing duties on the seller would not have the effect of offsetting the artificial advantages on production arising from the subsidies.

The petitioners further argue that the reallocation/repayment aspects of the Department's change-in-ownership methodology amount to measuring the effects of subsidies and taking account of events subsequent to the bestowal of the same. According to 19 CFR 351.504–511, the Department should not take into account the effects of subsidies and, instead, should measure benefits at the time of bestowal.

Finally, the petitioners take issue with the Department's practice of automatically conducting a repayment/reallocation analysis as part of its change-in-ownership methodology. According to the petitioners, the URAA legislative history makes it clear that such automatically was not intended by Congress where it says that the Department must continue to countervail subsidies following a normal (*i.e.,* fairly priced) ownership change without lessening or reallocating unamortized subsidy benefits unless something else occurs during the transaction that ''actually serve[s] to eliminate * * * subsidies.'' See S. Rep. No. 103–412 at 92 (1994).

Department's Position: The petitioners' main argument is that subsidy liabilities are attached to production; therefore, subsidy amounts cannot change when production remains unchanged. While we agree that subsidies benefit production, that does not require the conclusion that subsidies cannot change without changes in production. Our rationale for applying repayment calculations as part of our change-in-ownership methodology does not pre-suppose that production has changed. Rather, our methodology is based on the idea that a portion of the purchase price for ownership rights may remunerate the seller for prior subsidies.

To the extent we countervail the portion of the subsidy existing after repayment or reallocation, we are executing our mandate ''to impose duties with respect to the manufacture, production or export of a class or kind of merchandise.'' Not reducing the subsidy by the amount of repayment or reallocation for a seller would amount to over-imposing duties. Our repayment/reallocation methodology, as part of our change-in-ownership methodology, has been litigated and upheld by the Courts (*see Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) *British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) and *Delverde, SrL.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

Regarding the petitioners' argument that the risk of countervailing duty liabilities will be taken into account by a buyer, we agree that this might occur and result in a discounted price for the company being sold. However, at the time the changes in ownership relevant to the investigation occurred, the Department's change-in-ownership methodology was being challenged in court. Therefore, while there might have been some risk, there was no certainty of a countervailing duty liability. Any attempt to account for the risk would be purely speculative.

We disagree with the petitioners' assertion that the ''automatic'' nature of the repayment/reallocation analysis is contrary to the URAA legislative history. The legislative history simply says that a change in ownership ''does not by itself require the Commerce Department to determine that a countervailable subsidy * * * continues to be countervailable, even if the change in ownership occurs through an 'arm's length transaction ' ''and that ''the sale of a firm at 'arm's length' does not automatically extinguish any previously-conferred (sic) subsidies.'' See S. Rep No. 103–412 at 92 (1994). To the extent our repayment/reallocation methodology does not make any presumptions as to whether there will be any repayment/reallocation as a result of a change in ownership, there is nothing inherently automatic in its nature. Nowhere does the legislative history require that ''something else'' must happen, as was argued by the petitioners, before subsidies can be extinguished.

Finally, regarding the petitioners' argument that the repayment/reallocation calculation amounts to measuring to the effects of subsidies, we disagree. Our calculation does not look at the effects of a subsidy, but instead looks at the effects of changes in ownership on the subsidy.

Comment 16: Discount Rate for Net Present Value Calculations

Respondents argue that in the *Preliminary Determination,* the Department used an uncreditworthy discount rate to calculate the benefit stream from non-recurring subsidies over the entire AUL period, while using a creditworthy discount rate to discount these same benefits in 1998, back to 1995, the year of ILP's privatization. It is respondents' view that under 19 CFR 351.524(d)(3) and 351.505(a)(4), the Department must, in selecting a discount rate for any allocation of benefits, determine creditworthiness ''in the year in which the government agreed to provide the subsidy.'' Respondents argue that since the Department has to use the subsidy approval year, and since the Department regards (old) ILVA's predecessors as uncreditworthy during that period, the Department must assign an uncreditworthy interest rate to (old) ILVA for all of its net present value (NPV) calculations.

Petitioners state that if the Department chooses to apply its repayment methodology in this case, they do not disagree with the concept that the Department should use consistent discount rates for all NPV calculations for its final determination and that discount rates are properly determined at the time of subsidy bestowal.

[11] U.S. Farm Programs and Agricultural Resources, USDA Economic Research Service, Agricultural Information Bulletin No. 614 (Sept. 1990).

Department's Position: We disagree with both respondents and petitioners concerning our use of discount rates. Consistent with our past practice, we have used the discount rate prevailing at the time of privatization. This issue was discussed in the GIA: ''Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to *the net present value of all remaining benefits at the time of privatization.*'' (emphasis added) *See* GIA, 58 FR at 37263. This is the same approach taken by the Department in *Plate in Coils from Italy,* and *Sheet and Strip from Italy.* Given the Department's past practice and the language of the GIA, it is inappropriate to use the original discount rates from the subsidy allocation formula to calculate the net present value of remaining benefits at the time of privatization.

Comment 17: Early Retirement Benefits

Petitioners contend the appropriate benefit to ILVA/ILT from Law 451/94 is the full amount of the payments made by the GOI to workers attributable to ILVA/ILT under Law 451/94. They state it is now clear that, absent a government early retirement program, ILVA/ILT would not have been in a position to lay-off a substantial number of workers. Therefore, the workers were in a position to insist on the benefits received and, absent Law 451/94, the obligation would have fallen fully on ILVA/ILT.

Petitioners also contend that, since the GOI still owned (old) ILVA when the negotiations took place, before the adoption of Law 451, it was the GOI that negotiated the lay-offs and the early retirement program with the unions. ILP, which was bought the next year by Riva, was the beneficiary of the GOI's efforts to pay off the unions so as to avoid social strife while still creating a viable ILP that could be sold to a private investor.

Also, petitioners argue that since the proposed industrial plan was a critical factor for determining which bidder could purchase ILP, it is reasonable to assume that the GOI would have had extreme difficulty selling ILP to anyone, had it not established Law 451/94 and ensured a negotiated settlement with the unions on the necessary early retirement program for (old) ILVA. Indeed, the Riva Group was forced to agree as a condition of its purchase of ILP that no lay-offs of employees (beyond those previously agreed to by the unions in March 1994) could happen for a period of three years.

Respondents counter that the sales contract mandated the continued operation of production lines (''with the purpose of ensuring continuity of production'') as well as the continued employment of workers. They state that, contrary to petitioners' assertion that the contract demonstrates ILP would have kept all early retirees on its payroll in the absence of Law 451/94, the contract actually confirms that it was the production cut-backs and restructuring requirements that resulted in the adoption of Law 451 in 1994. As noted in the contract, without production cutbacks, no layoffs would have been needed. The choice between mass firings and Law 451/94 was not and has never been the choice that ILVA actually faced.

Regarding whether the program is countervailable, respondents argue Law 451/94 provided no countervailable benefit to ILVA because the government required the steel industry to restructure, based on the requirements set forth by the EC. In recognition of the costs imposed, the EC authorized member governments to provide early retirement and other ''social rehabilitation'' benefits. The restructuring and production cut-backs ordered by the EC and the GOI provided the legal basis for the early retirement benefits. Respondents argue that the Department does not consider worker assistance to benefit a company if the government provides the assistance for the specific purpose of offsetting costs imposed on that company by an industry-specific government program, as outlined in the General Issues Appendix.

Respondents further state that ILVA would not ''normally'' have incurred an early retirement burden, because it would not ''normally'' have needed to shutter capacity and shed workers under an EC and GOI restructuring plan. Absent the costs of restructuring, there would have been no Law 451/94 and no early retirement benefits. Under 19 CFR 351.513 and the GIA, Law 451/94 is not countervailable because it did not relieve ILVA of an obligation that it would normally have incurred.

Respondents also state that absent Law 451/94, ILVA's workers would have used the Mobility provision. ILVA had the legal right to lay off redundant workers without paying them annual compensation. In the absence of Law 451/94, ILVA would not have kept these workers on the payroll. Instead, ILVA would have negotiated with the unions under Law 223 and the non-specific provisions for early retirement under that law.

Petitioners contend that ILVA was not mandated to lay-off workers and therefore any early retirement benefits received under Law 451/94 provided a countervailable benefit. While ILVA/ILT claims Law 451/94 was adopted to offset the burden of EC requirements imposed on the Italian steel industry, petitioners argue that it was the EC's intention to provide an additional subsidy to the European steel industry, not some additional legal obligation on the industry. While it is true that the EC did mandate some reductions in production capacity for ILVA, petitioners state this was not done in the form of a legal directive, but rather, as a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA and the massive subsidy program inherent in the Plan that had been proposed by the GOI. Moreover, even if one considered this a legal requirement, there is still no indication on the record in this investigation that ILVA was legally required to lay-off employees. Rather, the obligation, if any, was on ILVA to reduce production capacity. Petitioners contend Law 451/94 was not a device that ILVA could use to lay off workers, but only to grant early retirement to those that volunteered. Given these facts, petitioners argue the costs ILVA would have borne under Mobility are irrelevant to the Department's analysis of this program.

Department's Position: According to section 351.513(a) of the CVD Regulations, worker related subsidies provide a benefit to the extent that the assistance relieves a firm of an obligation that it would normally incur. We disagree with respondents' argument that the Department does not consider worker assistance to benefit a company if the government provides the assistance for offsetting costs imposed on that company by a government program. The industry restructuring, in and of itself, was not mandated by the GOI. Rather, the resulting capacity reductions, and corresponding layoffs associated with those reductions, were a condition for the receipt of additional subsidies. Thus, the capacity reductions in the Italian steel industry were a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA, and its inherent subsidies. These capacity reductions would necessitate the layoffs. Further, since negotiations with the unions took place while the GOI still owned (old) ILVA, the GOI, in effect, negotiated the early retirements with the unions. Therefore, early retirement under Law 451 can be considered as another benefit to ILP, as an attempt to make it more attractive to a potential buyer in advance of its privatization.

As to whether the company could have used the ''Mobility'' provision of Law 223 in the absence of Law 451, we disagree with respondents' claims that

laying off a significant number of employees would not have caused social unrest because those employees would have been compensated under Mobility. We have no way of knowing what the social implications would have been had there been a massive layoff in the steel industry. However, we note that benefits available under Mobility are far less generous than the benefits provided under Law 451. We also note that the GOI officials explained to us at verification that there would likely be social strife associated with such a large number of layoffs. Because of these factors, it is not unreasonable to assume that negative social implications would have occurred had the steel industry simply laid off a large number of employees.

Respondents point out that, as stated by the Department in *Plate in Coils from Italy* and *Sheet* and *Strip from Italy,* the benefit to ILP would have been the difference between what it would have paid under Mobility and what the company actually paid under Law 451/94. However, as explained by the Department, this is relevant only if we knew that the outcome of the negotiations between the Ministry of Labor, the company and the unions would have resulted in the union's failure to prevent any layoffs. The fact is that, under Law 223, the company would have had to enter into negotiations with the unions before laying off such a large number of workers, and we have no way of knowing what the outcome of those negotiations would have been, absent Law 451.

With regard to ILVA Residua early retirees, we find asset value apportioned to ILP, as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation, to be the most appropriate method to apportion the correct number of ILVA Residua early retirees to ILP. This is consistent with our findings for the 1993–94 Restructuring Plan. We disagree with respondents' argument that we should only apportion those ILVA Residua early retirees who worked at facilities connected to the operations of ILP. To the extent Law 451 provides a benefit to the entire entity of (old) ILVA by relieving it of costs it would otherwise have had to bear, the benefits flow to the entire entity, regardless of which facilities employed the workers.

In addition, we disagree with respondents' characterization that the Department verified all of the other ILVA Residua retirees came from facilities that ''were never connected to any of the activities of ILP.'' The Department's ILVA/ILT Verification Report states:

> We were able to verify that the following facilities were not involved in the production or sale of carbon steel plate products: Aosta; Bagnoli; Campi; Levate; Miniere dell'Elba; Piombino; Sesto S.G. + ex Uve/MI; Terni; Torino; and Torre Annunziata. For the remaining facilities, we verified that carbon steel plate production or sales either did, or could have, taken place there. The total number of those employees is 893, as calculated on page 10 of Verification Exhibit L451–5.[12]

Lastly, 26 early retirees attributable to ILVA Pali Dalmine, a former ILVA subsidiary that was sold prior to the POI, were not included in our calculation of the benefit to ILVA/ILT resulting from Law 451, since they would not have been employed by the company during the POI, absent Law 451.

Comment 18: Exemptions From Taxes

Petitioners contend that, in the *Preliminary Determination,* the Department failed to countervail the ILOR tax exemption that ILT benefitted from during the POI. At verification, the Department confirmed ILT benefitted from an exemption of both IRPEG and ILOR on its 1997 tax return, filed during the POI.

ILVA/ILT states that, at verification, the Department confirmed the repeal of the ILOR tax in 1997. ILOR no longer applied during the period of investigation. ILT received no exemption from ILOR in the 1998 tax year because the tax itself no longer existed. Under 19 CFR 351.526(b), repeal of ILOR constitutes a program-wide change because it ''(1) is not limited to an individual firm or firms; and (2) is effectuated by an official act, such as the enactment of a statute, regulation, or decree.'' As provided in 19 CFR 351.526(a), the Department should take this program-wide change into account in establishing the estimated countervailing duty cash deposit rate.

Petitioners counter by stating that the benefits available under ILOR are completely unaffected by its repeal. Petitioners contend that the repeal of ILOR does not constitute a program-wide change since it was accompanied with the implementation of a new tax, IRAP, which is a substitute for ILOR. ILVA/ILT's argument also ignores subsection (d) of 19 CFR 351.526, which provides that:

> The Secretary will not adjust the cash deposit under paragraph (a) of this section if the program-wide change constitutes the termination of a program and * * *. The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

ILVA/ILT also states the Department should use the verified benefit calculations for the ILT tax exemptions from IRPEG. At verification, the Department confirmed that IRPEG tax without the exemption would have applied only partially at the 37% rate, because a small portion of income would have qualified for a 19% rate. By reviewing ILT's tax return, the Department verified that the value of the IRPEG exemption for the 1997 tax year was smaller than that which was used in determining the benefit in the *Preliminary Determination.*

Department's Position: We agree with petitioners that ILT's exemption of the ILOR tax provides a countervailable benefit during the POI. While respondents are correct that the ILOR tax was repealed beginning in the tax year 1998, ILT received an exemption of the ILOR tax on its 1997 tax return, which was filed in 1998, the POI. According to the Department's long-standing practice, a benefit takes place at the time of receipt, which, in this case is 1998, the year in which the tax return was filed. *See* section 351.509(b)(1) of the CVD Regulations. It is also clear to the Department that IRAP, for which eligibility for an exemption is similar to that of ILOR, is essentially a successor tax to ILOR; therefore, in accordance with section 351.526(d)(2), the cash deposit rate should not be adjusted in this instance.

After examining evidence at verification, we agree with ILVA/ILT that a portion of the profit to which the IRPEG tax applies should be calculated at the rate of 19%, with the remainder calculated at the rate of 37%.

Comment 19: European Social Fund (ESF)

Petitioners argue that, at verification, it was determined that at least some ILP employees participated in ESF training programs that took place in Taranto in 1994 and 1995. Since ILVA/ILT officials could not confirm how many of the total participants were ILP employees, the Department must countervail the full amount of the ESF payments as benefitting ILP since companies normally incur the costs of training to enhance the job-related skills of their own employees. The Department has previously countervailed ESF training funding to Italian steel producers.

[12] *See ILVA/ILT Verification Report,* at page 21.

ILVA/ILT states that the Department verified that these payments were not grants but were instead payments earned by ILP ''for services provided'' in connection with training and tutoring of workers in the Taranto area under an ESF grant administered by IRI. The Department noted that 11 of 64 workers that received training were from ILP, according to the explanation and partial documentation presented at verification. None of the training programs covered skills specific to the steel industry, and most of the workers attending had no connection to ILP. This general training course attended by workers of many firms did not relieve ILP of the obligation to provide steel-specific training to its workers and therefore is not countervailable under section 351.513 of the CVD Regulations.

Department's Position: Certain Stainless Steel Hollow Products From Sweden, 52 FR at 5799, states that ''because we saw no evidence that: (1) the classes were for jobs related to stainless steel production; or (2) that either of these companies was relieved of any expenses it otherwise would have incurred absent this program, we determine that no countervailable benefit was bestowed under this program.'' Based on our findings at verification, and the overall record of this investigation, there is nothing to suggest that the training programs in which ILP and ILVA/ILT received payment for services provided (DUSID, DUTEM, and DUMES) were related to the steel industry in general, let alone production of subject merchandise, or that the company was relieved of expenses it otherwise would have incurred.

Comment 20: Grants to ILVA

Petitioners argue that, while ILVA/ILT had claimed that the amounts listed in its annual reports for 1989–1992 as ''Grants and Aid for Operations'' were totals of grants provided under various programs being separately investigated, at verification, ILVA/ILT officials could not reconcile the figures from 1989–92 annual reports with the amounts the company received under the various separate programs. Petitioners claim that these discrepancies, together with the fact that the Department found such grants to be countervailable subsidies in *Certain Steel from Italy,* the Department should countervail these grants in the final determination.

Respondents counter that, legally, *Certain Steel from Italy* has no probative value and that the current investigation of ILVA is not an administrative review of *Certain Steel from Italy,* therefore the Department has no legal authority to use information from *Certain Steel from Italy* for any purpose whatsoever in the current, unrelated investigation. ILVA/ILT states that the Department investigated and verified the benefits that (old) ILVA received under all of the programs that might potentially have applied to ILVA between 1989–1992. In its June 21, 1999 questionnaire response, and again at verification, ILVA provided worksheets and supporting documentation that accounted for the sum total of ''Grants and Aid for Operations'' recorded on (old) ILVA's financial statements. The company noted that the majority of the benefits to (old) ILVA during those years came from interest contributions under Law 675/77. However, because the ILVA that now exists is not the same company or under the same ownership as the (old) ILVA, it has no access to records of the actual receipt or amount of interest contribution payments to (old) ILVA between 1989–1992. Respondents further state that ILVA did demonstrate in its June 21 response and at verification that: (1) the interest contribution obligations of the GOI would have resulted in actual interest contribution payments over this period; and (2) these payments could have fully offset the difference between the sum total of ''Grants and Aid for Operations'' recorded on old ILVA's financial statements and the amounts verified by the Department under the specific programs applicable at that time. Respondents argue that ILVA has, therefore, satisfied the burden of accounting for the benefits in question.

Department's Position: We agree with respondents that the company has satisfied the burden of accounting for any discrepancy between the amounts recorded in the financial statement and the amounts verified. We concluded from our verification that benefits received as interest contributions under Law 675 are listed in the ''Grants and Aid for Operations'' account in the company's financial statements. Although we could not completely tie these contributions directly to the financial statement, this is due to the difference in the recording of interest contributions for financial statement purposes and the recording of the actual receipt of the contributions in the company's internal accounts.

Comment 21: Additional Subsidies Discovered at Verification

Petitioners state that, at verification, the Department discovered that Sidercomit, which merged with ILVA in 1997, received a loan under Law 64 of March 1, 1986, in 1996, and in 1998, received interest contributions against that loan. Petitioners argue that these interest contributions on behalf of ILVA/ILT constitute a countervailable subsidy. Petitioners further claim that, as outlined in the ILVA/ILT Verification Report, these interest grants were provided to Sidercomit ''for the processing of quarto plate (*i.e.,* cleaning, painting, and packaging of quarto plate) at the Taranto facility,'' therefore, pursuant to 19 CFR 351.525(b)(5) of the Department's regulations, should be attributed only to ILVA/ILT's cut-to-length plate sales. Therefore, the Department should use ILVA/ILT's 1998 sales of subject merchandise as the denominator in its calculation of the *ad valorem* rate attributable to this benefit.

ILVA/ILT does not contest the countervailability of the interest contribution, but does challenge petitioners' proposed allocation method. Sidercomit was created in 1992 as a subsidiary of IDI S.p.A., which was in turn a subsidiary of (old) ILVA. Thus, at the time Sidercomit received the loans, it was a separate subsidiary of ILVA. However, in 1997, Sidercomit became an operating unit within ILVA and remained a unit within ILVA during the POI. As a result, respondents argue the interest contribution received during the POI benefitted all of ILVA, not just Sidercomit. This is confirmed by the fact that ILVA, not Sidercomit, is the recipient of the interest contribution. ILVA/ILT further states that the record establishes that Sidercomit operates service centers for the distribution in Italy of quarto plate and other products produced by ILVA/ILT. Therefore, respondents claim, the Department should determine that the interest contribution benefitted all of ILVA's production, not just the subject merchandise.

Petitioners also contend that the Department, during verification, obtained additional information regarding grants to ILVA/ILT under Decree 218 and Law 64. As noted above, Decree 218 and Law 64 were found to provide specific benefits in *Certain Steel Products from Italy.* Therefore, petitioners argue, these grants are countervailable subsidies. Respondents counter that, as their only justification for this request, petitioners cite the 1993 *Certain Steel from Italy* determination. *Certain Steel from Italy* was a best information available (BIA) determination which has no probative value and no connection to this investigation. Since petitioners have provided no information to support their request, and since the record demonstrates that ILVA received no benefits during the POI under these programs, ILVA/ILT argues that no

countervailing duties should be imposed in connection with these programs.

Department's Position: The interest contributions received against the loan to Sidercomit represent a countervailable benefit to ILVA/ILT. We agree with petitioners that these interest contributions were tied to the production of plate and, as such, should be attributed to all of ILVA's plate sales, not just the plate produced by ILT. However, it is not clear from the record that we have total sales (both domestic and export) of plate over which to attribute these interest contributions. While we do have sales of subject merchandise produced by ILT and sold by ILVA, it is not clear that this figure reflects total sales of all plate by ILVA. Therefore, we have attributed the interest contributions to ILVA's total sales. We note that, even if we were to attribute the interest contributions to the sales figure for subject merchandise, the subsidy rate would be negligible.

With regard to Capital Grants under Decree 218 and Law 64, since the total amounts of the benefits received by ILVA/ILT and its predecessor companies would be expensed in the years of receipt, and since no grants were provided during the POI, we find it unnecessary to reach the issue of whether this program is countervailable.

Comment 22: ''Green Light'' Treatment of Subsidies

Petitioners state that, in the *Preliminary Determination,* the Department properly rejected the requests made by the GOI and ILVA/ILT that certain regional subsidies be considered non-countervailable under the green light provisions of section 771(5B) of the Act. Petitioners further point out that the GOI waived its green light claims at verification.

ILVA/ILT does not contest petitioners' argument that the GOI waived its prior request for green light treatment of certain programs in the context of this investigation.

Department's Position: At verification, GOI officials stated that they did not wish to further pursue the issue of green light treatment of certain subsidies, and that they were waiving their prior green light claim. Therefore, the Department will not grant green light treatment to any program in this investigation, and does not rule on the validity of the GOI's prior green light claim.

Comment 23: Imports Under Temporary Bond (TIB)

Respondents state that in response to the Department's preliminary countervailing duty determination, ILVA submitted to the Department a formal request that the Department harmonize its treatment of ILVA's temporary importation bond entries that were subsequently exported to Canada in the countervailing duty phase of this proceeding with its approach in the antidumping proceeding. In that request, ILVA informed the Department that, in the antidumping investigation, the Department excluded ILVA's TIB entries from its margin calculation because such entries were not ''entries for consumption.'' ILVA also argued that exclusion of ILVA's TIB entries from the antidumping investigation required that the Department exclude those same entries, for suspension of liquidation and cash deposit purposes, from the corresponding countervailing duty investigation. Respondents maintain that, to date, the Department has not responded to this request.

Respondents reaffirm their position that U.S. law requires that TIB entries be included in the Department's dumping margin calculation, because the TIB entries are ''entered for consumption.'' Respondents argue the statute thereby requires the Department to include TIB entries in its margin calculations, suspend liquidation on those entries, and collect estimated antidumping *and* countervailing duties. If, however, in the final determination of the antidumping investigation, the Department continues to treat ILVA's TIB entries as not being ''entries for consumption,'' respondents request that the Department harmonize both the antidumping and countervailing duty investigations. Specifically, ILVA requests that the Department issue instructions to Customs specifying that Customs not suspend liquidation of TIB entries and not collect estimated cash deposits of estimated countervailing duties on those entries.

Petitioners state that none of ILVA/ILT's arguments are relevant to the Department's final determination in this countervailing duty investigation. Any issues regarding the dumping margin calculations, according to petitioners, should be addressed in the separate antidumping investigation of carbon-quality steel plate from Italy and for purposes of this countervailing duty investigation, the Department should issue its standard instructions to the Customs Service regarding suspension of liquidation and assessment of duties.

Department's Position: We agree with petitioners that none of respondents' comments concerning the treatment of the TIB entries in question with respect to the dumping margin calculation is relevant to this proceeding. Further, respondents agree with the approach taken by the Department at the *Preliminary Determination* with respect to the suspension of liquidation of entries and collection of estimated countervailing duties since the Department directed Customs to suspend liquidation of all imports of subject merchandise from ILVA/ILT. With respect to entries subject to suspension of liquidation and collection of duties, we have continued to follow the approach to the TIB entries in question taken in the companion antidumping duty investigation for cut-to-length carbon steel plate from Italy. (See that notice for further discussion of how these entries will be treated in terms of assessment of duties.)

Comment 24: Mid-Year Convention

Petitioners discuss that the Department, in amortizing grants over time, continues to use a methodology which assumes that subsidies are received on the first day of the year. They argue that the Department's methodology is unreasonable and biased against a full subsidy offset, and is in violation of the law.

ILVA/ILT counters stating that it is the Department's long-standing policy to allocate benefits as if the subsidy was received at the beginning of the year of receipt. They discuss that in the final CVD regulations, the Department rejected the ''mid-year convention''; *i.e.*, the proposition that it should assume grants are received in the middle of the year. Respondents conclude that nothing in the petitioners' presentation merits a reconsideration of the Department's position against the mid-year convention.

Department's Position: The petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations.

Verification

In accordance with section 782(i) of the Act, except where noted, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the 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 verification reports, which are on file in the CRU of

the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 26.12 percent *ad valorem* for ILVA/ILT. We determine that the total estimated net countervailable subsidy is 0.12 percent *ad valorem* for Palini & Bertoli, which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to Palini & Bertoli for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' On this basis, we determine that the all-others rate is 26.12 percent *ad valorem*, which is the rate calculated for ILVA/ILT.

Company	Net subsidy rate
ILVA/ILT	26.12% *ad valorem.*
Palini & Bertoli.	0.12% *ad valorem.*
All others	26.12% *ad valorem*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Italy, 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**, with the exception of Palini & Bertoli, which was *de minimis* in the *Preliminary Determination.* 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.

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

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.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

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.

[FR Doc. 99–33237 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

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

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai and Gregory Campbell, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–4087 or 482–2239, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers or exporters of certain cut-to-length carbon-quality plate (carbon plate) from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by the Bethlehem Steel Corporation, U.S. Steel Group, Gulf States Steel, Inc., IPSCO Steel Inc., and the United Steel Workers of America (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of our preliminary determination in the **Federal Register** (*see 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 France*, 64 FR 40430 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

On September 21, 1999, we initiated an investigation of whether advances by the Government of France (GOF) to the Societe pour le Developpement de l'Industrie et de l'Emploi (SODIE) through Usinor since 1991 provided countervailable benefits to Usinor (*see* Memorandum on Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate, September 21, 1999). We issued questionnaires on SODIE advances to the GOF and Usinor on October 18, 1999. The GOF and Usinor responded to the SODIE questionnaires on November 3, 1999.

On October 7–15, 1999, we verified the responses of Usinor, Sollac S.A. (Sollac), Creusot Loire Industrie S.A.(CLI), GTS Industries S.A. (GTS) and the GOF (collectively known as ''the respondents''). Verification took place at: Usinor and the GOF in Paris, France; GTS in Dunkirk, France; and AG