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Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Italy, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**, with the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

der Dillinger Hüttenwerke (Dillinger), the parent company of GTS, in Dillingen, Germany.

The petitioners and the respondents submitted case briefs on November 12 , 1999. On November 18, 1999, the petitioners, the respondents and Dillinger submitted rebuttal briefs. A public hearing was held November 22, 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 this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

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

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

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to our regulations as codified at 19 CFR Part 351 (1998) and *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (CVD Regulations).

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary finding 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 France 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). The ITC will make its final injury determination within 45 days of this final determination by the Department.

Period of Investigation

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

Company History

The GOF identified Usinor, Sollac, CLI, and GTS as the only producers of the subject merchandise that exported to the United States during the POI. Sollac and CLI are wholly-owned subsidiaries of Usinor (a holding company), and GTS is partially owned by Usinor.

Usinor

In 1984, the GOF was a majority shareholder of Usinor. In 1986, Usinor was merged with another state-owned company, Sacilor, into a single company called Usinor Sacilor. Usinor Sacilor was 100 percent owned by the GOF.

In 1995, Usinor Sacilor was privatized, principally through the public sale of shares. In October 1997, the GOF reduced its direct shareholdings to 1 percent. As of August 1998, the GOF has no direct ownership interest in Usinor but retains a minority indirect interest in the company.

GTS

Prior to 1992, GTS was 89.73 percent owned by Sollac, a subsidiary of Usinor. In 1992, Sollac transferred its shares in GTS to Dillinger. In return, Dillinger transferred to Sollac shares it held in Sollac of an equivalent value. At that time, Dillinger was majority owned by DHS-Dillinger Hutte Saarstahl AG (DHS), a German holding company, which, in turn, was 70 percent owned by Usinor.

In 1996, Usinor reduced its interest in DHS from 70 to 48.75 percent. At that time, DHS owned 95.3 percent of Dillinger, which in turn, owned 99 percent of GTS.

Attribution of Subsidies

The GOF has identified three producers of subject merchandise in this investigation: Sollac, CLI and GTS. During the POI, both Sollac and CLI were wholly-owned by and consolidated subsidiaries of Usinor. With respect to GTS, prior to 1996, it was majority owned by Usinor since Usinor held 70 percent of DHS, which in turn, held approximately 95 percent of Dillinger, GTS' direct parent company. However, since 1996 and during the entire POI, Usinor's interest in DHS has been 48.75 percent, i.e., slightly less than a majority.

The issue before the Department is whether the subsidies granted to Usinor are attributable to GTS given that GTS is no longer majority-owned by Usinor. Section 351.525 of the *CVD Regulations* states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross-ownership exists. According to section 351.525(b)(6)(vi) of the *CVD Regulations*, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The Preamble to the *CVD Regulations* identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership'' (63 FR at 65401).

In the *Preliminary Determination*, we found that there was no cross-ownership between Usinor and GTS. Interested parties commented on cross-ownership and attribution (see Comment 1 below). Based on our analysis of information on the record of this proceeding and comments by interested parties, we continue to find that Usinor's ownership interest in DHS, the holding company of GTS' parent, Dillinger, is insufficient to establish cross-ownership between Usinor and GTS during the POI. We base this determination on the following: (1) Usinor has less than a majority voting ownership in DHS; (2) Usinor does not control GTS directly or indirectly; and (3) although GTS uses Usinor affiliates to transport and sell some of its merchandise, there is no evidence that Usinor controls the sales that its affiliates make for GTS. For more details, see the Department's position on Comment 1 below.

Therefore, for this final determination, we have calculated a separate net subsidy rate for GTS. However, since GTS was part of the Usinor Group for much of the allocation period, we have attributed a portion of subsidies received by Usinor through 1996 to GTS (see the ''Change in Ownership'' section below).

Change in Ownership

In the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit. Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (i.e., in this case, 1985 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment 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 of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to payment for 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. We next estimate the portion of the purchase price going towards payment for prior subsidies in accordance with the privatization methodology outlined above.

As discussed above in the ''Case History'' section of this notice, two important changes of ownership have occurred with respect to the producers of the subject merchandise. First, Usinor's ownership of GTS has declined over time so that Usinor is no longer a majority owner of GTS. Second, Usinor has been privatized. In addition, Usinor sold (in whole or in part) various productive units: Ugine (1994); Centrale Siderurgique de Richemont (CSR) (1994); Entreprise Jean LeFebvre (1994); and various productive units to FOS-OXY (1993).

To determine the amount of subsidies that potentially transfers with a spun off productive unit, we have measured that productive unit's assets in relation to the subsidized assets of the seller (see Comment 8 below). In particular, because we normally attribute subsidies to production occurring in the jurisdiction of the subsidizing government (see section 351.525(b)(7)), we believe we should calculate the share of subsidies that can potentially transfer with the sale of Usinor's French productive units in relation to Usinor's total French assets (as opposed to Usinor's total worldwide assets). As explained below, we lack the information to make this calculation in this determination, but for the spin-off of GTS, we have developed a substitute measure for that amount based on sales.

Using this information, we have applied the spin-off and privatization methodologies described in the GIA. Regarding spin offs, we first determined the portion of subsidies that potentially transfers with the spun-off unit based on that unit's share of assets (or French sales). For the latter three transactions described above (involving CSR, Entreprise Jean LeFebvre, and FOS-OXY), the entire productive unit was transferred. Consequently, the entire amount of subsidies attributable to these productive units were potentially transferred and, also, potentially reallocated to Usinor through the payment for these companies. Similarly, the privatization of Usinor involved virtually all of Usinor's shares and, hence, the entire amount of Usinor's remaining subsidies potentially transferred with Usinor and, also, were potentially repaid to the seller.

The sales of Ugine and GTS present variations from the sales discussed above. While the sales of Ugine and GTS are spin offs of productive units, these units have been only partially spun off. Moreover, the sale of Ugine must be distinguished from the sale of GTS because after Usinor's sale of Ugine's

shares in 1994, Usinor continued to be the majority owner of Ugine. While it would be possible to apply the change-in-ownership methodology to this transaction (and we did so in *French Stainless*), there is no impact on the subsidy to Usinor. This is because even after the partial spin off, Ugine continued to be part of the consolidated Usinor Group. Thus, the total amount of subsidies within the Usinor Group would not diminish as a result of the partial spin off of Ugine, nor would Usinor's denominator change. Since Usinor's ownership in Ugine did not diminish further after 1994 (indeed, Usinor subsequently repurchased the Ugine shares it had sold) and we have not applied the change-in-ownership methodology to Usinor's repurchase of Ugine's shares (*see French Stainless*), there is no need to perform the change-in-ownership calculation for the partial spin off of Ugine.

GTS' situation by the POI was very different from that of Ugine. As discussed above, after 1996, GTS was no longer part of the consolidated Usinor Group. Therefore, any subsidies properly attributed to GTS would no longer be counted among Usinor's subsidies, nor would GTS' sales be included in Usinor's sales. To reflect this change in GTS' status, we have applied the spin off methodology twice. First, we have applied the methodology to the 1992 transfer of GTS shares from Sollac to DHS. We have done this by determining the subsidies potentially allocable to GTS in 1992. We have then reduced this total by the percentage of ownership in GTS that transferred outside the Usinor Group in 1992 to arrive at the amount of subsidies subjected this amount to the repayment methodology. We note that Usinor continued to be a majority owner of GTS after the 1992 transaction and, hence, that Usinor and GTS would continue to be treated as a single company. However, unlike the situation with Ugine, it is necessary for us to apply the change-in-ownership methodology to this 1992 transaction. This is because we have to calculate a subsidy rate for 1998, a point in time when Usinor and GTS are being treated as separate companies. If we failed to apply the change-in-ownership methodology to the 1992 transaction, and only applied it to the 1996 transaction, the amount paid for GTS in 1996 (assuming we had that information) would not be commensurate with the total amount of ownership that had transferred over time.

The second application of the change-in-ownership methodology to Usinor/GTS is also a partial spin off. In recognition of the fact that this transaction reduces Usinor's ownership of GTS below 50 percent and our finding that Usinor does not direct or control the use of GTS' assets (see Comment 1 below), with the result that GTS's sales will no longer be treated as Usinor's sales, we believe the spin off methodology requires us first to assign to GTS its full share of Usinor subsidies (reduced in proportion to the amount of GTS sold in 1992). The amount of these subsidies that are then reallocated to Usinor is calculated taking into account the percentage change in Usinor's ownership of GTS and the price paid by the new owner of the GTS shares.

The Use of Facts Available

Certain information requested of respondents was not provided in this investigation. Specifically, Usinor failed to respond to the Department's questions concerning creditworthiness for the years 1992 though 1995. The GOF failed to provide information on the distribution of investment and operating subsidies (other than those from the water boards) received by Usinor. Nor did it demonstrate at verification that it had provided information on use of ESF funding by all Usinor group members. Finally, the EC did not provide information with respect to the distribution of European Social Fund (ESF) funding.

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 EC, the GOF and Usinor failed to submit the information that was specifically requested by the Department, we have based our determination for these programs 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 C.F.R. 351.308(c). In the absence of information from the EC, the GOF and Usinor, we consider the February 16, 1999 petition, as well as our findings in *French Stainless* and other information gathered during the course of this investigation to be appropriate bases for a facts available countervailing duty rate calculation.

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.

We relied upon *French Stainless* regarding Usinor's creditworthiness during the period 1992 through 1995. With respect to ESF funding and investment and operating subsidies (other than those provided by the water boards) for which we did not receive complete information from the respondents, we relied upon findings in *French Stainless* and information in the petition indicating that these programs are specific. Based on our review of the findings in *French Stainless* and the information in the petition, we find that this secondary information has probative value and, therefore, the information has been corroborated.

Subsidies Valuation Information

Allocation Period

The current investigation includes untied, non-recurring subsidies to Usinor that were found to be countervailable in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France,* 58 FR 37304 (July 9, 1993) *(French Certain Steel):* PACS, FIS, and Shareholders' Advances. For the *Preliminary Determination,* we allocated those subsidies over 14 years because we have already assigned this company-specific allocation period to those subsidies in other proceedings. See *French Stainless.* See also Final Results of

Redetermination Pursuant to Court Remand on General Issue of Allocation, British Steel plc, v. United States, Consol. Ct. No. 93–09–00550–CVD. After considering interested parties comments on this issue, we have continued to apply a 14-year allocation period to these subsidies for this final determination. For further details, see Comment 13 below.

We have found no other allocable non-recurring subsidies received by Usinor and GTS in the instant proceeding.

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 section 351.595 of the *CVD Regulations*.

Usinor was found to be uncreditworthy from 1982 through 1988 in *French Certain Steel,* 58 FR at 37306. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, we continue to find Usinor uncreditworthy from 1985 through 1988.

In *Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 64 FR 12996 (March 16, 1999), we stated that the petitioners provided sufficient information to lead us to believe or suspect that Usinor was uncreditworthy from 1992 through 1995. Therefore, we requested Usinor to provide data that would allow us to analyze its creditworthiness during this period.

Usinor did not provide the information requested by the Department citing the ''formidable burdens which would be involved in responding to the Department's Creditworthiness questions.'' Consequently, the Department has decided to use facts available in accordance with section 776 (a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' In this investigation, Usinor refused to answer on more than one occasion, the creditworthiness questions in the Department's original and supplemental questionnaires. Therefore, the Department determines it appropriate to use an adverse inference in selecting the discount rate to be applied in these years.

Benchmarks for Loans and Discount Rates

In accordance with sections 351.505 (a) and 351.524 (c)(3)(i) of the *CVD Regulations,* we used Usinor's company-specific cost of long-term, fixed-rate loans, where available, for loan benchmarks and discount rates for years in which Usinor was creditworthy. In the *Preliminary Determination* for years where Usinor was creditworthy and a company-specific rate was not available, we used the average yields on long-term private-sector bonds in France as published by the OECD. Interested parties commented on the calculation of the non-company-specific benchmark rate. In response to these comments, we have revised our benchmark for this final determination. Specifically, we are using an average of the following long-term interest rates: medium-term credit to enterprises (MTCE), and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. (See Comment 18 below for further discussion of this issue.)

For the years in which Usinor was uncreditworthy (see ''Creditworthiness'' section above), we calculated the discount rates in accordance with section 351.524(c)(3)(ii) of the *CVD Regulations.* To construct these benchmark rates, we used the formula described 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 average cumulative default rate reported for 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). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the Aaa to Baa-rated categories of companies as reported in this study.[1] See Memorandum to Case File; Clarification of Moody's Default Data (December 13, 1999).

[1] 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 Investor Service's publication, February 1998.

Based upon our verification and our analysis of the comments received from interested parties, we determine the following:

I. Programs Determined To Be Countervailable

GOF Programs

A. Loans With Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into ''loans with special characteristics,'' or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *French Stainless, French Certain Steel,* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France,* 58 FR 6221 (January 27, 1993) *(French Bismuth),* the Department determined that the conversion of PACS to common stock in 1986 constituted a countervailable equity infusion. This equity infusion was limited to Usinor Sacilor and was, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, this equity infusion provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 equity infusion in accordance with section 77(5)(A) of the Act.

We have treated the 1986 equity infusion as a non-recurring grant

received in the year the PACS were converted to common stock. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefit of the equity infusion over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amounts of the equity infusion appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 1.35 percent ad valorem for Usinor and 1.70 percent ad valorem for GTS.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances in 1985 and 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *French Stainless, French Certain Steel,* and *French Bismuth,* the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. These grants were limited to Usinor and Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these grants provided a financial contribution to Usinor and Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine these grants provide a countervailable benefit in accordance with section 77(5)(A) of the Act.

Because the 1986 shareholders' advance was less than 0.5 percent of Usinor's sales of French-produced merchandise during the year of approval, this grant was expensed in the year of receipt. See *CVD Regulations,* 64 FR at 65415.

We have treated the 1985 shareholders' advance as a non-recurring subsidy. Using the allocation period of 14 years, this shareholders' advance continues to provide a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the 1985 shareholders' advance over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of the grant appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS'' total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 0.54 percent ad valorem for Usinor and 0.68 percent ad valorem for GTS.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Siderurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *French Stainless, French Certain Steel* and *French Bismuth,* the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 were countervailable equity infusions. These equity infusions were limited to Usinor Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 and 1988 equity infusions in accordance with section 77(5)(A) of the Act.

We have treated the 1986 and 1988 equity infusions as non-recurring subsidies received in the years the FIS bonds were converted to common stock. Using the allocation period of 14 years, the 1986 and 1988 FIS bond conversions continue to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the equity infusions over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of the equity infusion appropriately allocated to Usinor and GTS. Dividing these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI, we determine the net subsidy rate to be 3.56 percent ad valorem for Usinor and 4.48 percent ad valorem for GTS.

D. Investment/Operating Subsidies

During the period 1987 through 1998, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Stainless,* the Department determined that the funding provided to Usinor by the water boards (les agences de l'eau) and certain work/training grants were not countervailable. Therefore, we are not investigating those programs in this proceeding.

For the remaining amounts in these accounts, including certain work/training grants that differed from those found not countervailable in *French Stainless,* the GOF did not provide any information regarding the distribution of funds, stating that, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was ''insignificant and would * * * be expensed.'' Given the GOF's failure to provide the requested information, we are using ''facts available'' in accordance with section 776(a)(2)(A) of the Act. Further, section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' In this investigation, the GOF has refused to answer the Department's repeated requests for data regarding the distribution of grant funds. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

The investment and operating subsidies provided in the years prior to the POI were less than 0.5 percent of Usinor's sales of French-produced merchandise in those years. Therefore, we have expensed these grants in the years of receipt, in accordance with section 351.524 (b)(2) of the *CVD Regulations.* To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we determine Usinor's net subsidy rate to be 0.11 percent ad valorem. GTS did not receive any of these investment and operating subsidies during the POI.

E. Subsidies Provided Directly to GTS

GTS' 1996 condensed financial statements include a ''capital subsidy'' in the amount of FF 2.1 million. GTS claims that this amount reflects the unamortized balance of a grant that was provided to GTS pursuant to an agreement dated December 29, 1987, between the GOF and Usinor. The grant was given to support the development of a machine for the accelerated cooling of heavy plate during the hot-rolling process. The grant was provided in two disbursements made in 1988 and 1990.

The GOF responded to the Department's questions on this capital subsidy stating that because of its size, the amounts would be expensed in a period outside the POI. Therefore, the GOF did not provide information on the distribution of other grants that might have been given under the same program.

The total amount approved in 1987 was less than 0.5 percent of Usinor's sales of French-produced heavy plate in 1987. Therefore, we determine that these grants did not confer a countervailable subsidy during the POI.

F. Myosotis Project

Since 1988, Usinor has been developing a continuous thin-strip casting process, called ''Myosotis,'' in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maîtrise de L'Energie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments in 1989, 1991, and 1993. The second agreement, between Ugine and the AFME, covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The third agreement, with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Stainless,* the Department determined that funding associated with the 1989 and 1991 contracts constituted countervailable subsidies within the meaning of section 771(5) of the Act. Since the GOF did not provide any information indicating that the grants were provided to other companies in France, the Department determined that the grants were specific within the meaning of section 771(5A)(D) of the Act. Also, the Department found that these grants provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act. No new information has been submitted to warrant a reconsideration of our earlier finding. Therefore, we continue to find that the grants associated with the 1989 and 1991 Myosotis contracts constitute countervailable subsidies within the meaning of section 771(5) of the Act. Because the amounts received under the 1989 and 1991 contracts were less than 0.5 percent of Usinor's sales of French-produced merchandise during their respective year of approval, these grants were expensed in the years of receipt. See *CVD Regulations,* 64 FR at 65415.

With respect to the reimbursable advance received in 1997, the GOF has requested that we find this subsidy non-countervailable under section 771(5B)(B)(ii)(II) of the Act, i.e., that this is a green-light subsidy. We have determined that we do not need to address the issue whether this subsidy is countervailable because the benefit of the reimbursable advance during the POI is less than 0.5 percent. As stated in the Preamble to the *CVD Regulations*:

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See *CVD Regulations,* 63 FR at 65388.

In accordance with section 351.505(d)(1) of the *CVD Regulations,* we are treating this reimbursable advance as a contingent liability loan because the GOF has indicated that repayment of the loan is contingent on the success of the project. We used as our benchmark a long-term fixed-rate loan consistent with section 351.505(a)(2)(iii) of the Department's regulations. Since Usinor would have been required to make an interest payment on a comparable commercial loan during the POI (*see French Stainless*), we calculated the benefit from the reimbursable advance as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, we find the net subsidy rate to be 0.00 percent ad valorem for Usinor. GTS did not receive subsidies under this program.

EC Programs

European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the European Union. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, the ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The member states are responsible for identifying and implementing the individual projects that receive ESF financing. The member states also must contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below), and 75 percent of

the project's total cost for Objective 1 projects. For all programs implemented under Objective 4 in France, 35 percent of the funding comes from the EC, 25 percent from the GOF, and the remaining 40 percent from the company.

According to the questionnaire responses, CLI received an ESF grant for an Objective 4 project. The amount received during the POI was a portion of a larger ESF grant authorized for CLI in 1996.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. See section 357.513(a) of the *CVD Regulations*. Only limited information was provided in the questionnaire responses about the purpose of this grant; therefore, we are unable to determine whether it relieved CLI of any legal or contractual obligations. With regard to specificity, the EC has not provided complete information about the distribution of ESF grants. In addition, the GOF was unable to show at verification that it had reported all ESF grants to Usinor Group companies during the POI.

Consequently, the Department has decided to use facts available in accordance with section 776(a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Since Usinor, the GOF and the EC failed to provide complete information to the Department, we determine it appropriate to use an adverse inference in concluding that: CLI was relieved of an obligation in receiving the ESF grant; the ESF grant is specific within the meaning of section 771(5A)(D) of the Act and that the benefit was tied to goods produced by CLI. Also, we find the grant to be a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Based on the foregoing, we determine that the 1998 ESF grant is countervailable within the meaning of section 771(5) of the Act.

The Department normally expenses the benefits from worker-related subsidies in the year in which the recipient is relieved of a payment it would normally incur. See CVD Regulations, 63 FR at 65412. Dividing the amount received by CLI in 1998 by CLI's 1998 sales of French-produced merchandise yields a net subsidy rate of 0.00 percent ad valorem for Usinor. GTS did not benefit from ESF funding during the POI.

II. Programs Determined Not To Be Countervailable

GOF Programs

A. 1994 Purchase of Power Plant for Excessive Remuneration

The Department initiated an investigation of this program prior to the issuance of the final determination of *French Stainless.* This program was subsequently found to be not countervailable in *French Stainless.*

B. GOF Conditional Advance on New Steel Development

Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry to support a project aimed at developing a new type of steel for use in the production of catalytic converters. Since the GOF conditional advance is for a project aimed at developing a new type of steel which does fall within the scope of this proceeding, we find that this program is tied to non-subject merchandise and not countervailable with respect to this investigation only.

III. Other Programs

A. Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric arc furnaces. The first disbursal of funds occurred on July 17, 1998. Repayment of the reimbursable advances will begin on July 31, 2002.

Since these advances may someday be repaid, we are treating them as contingent liability loans. Section 351.505(d)(1) of the *CVD Regulations*. Under the methodology specified in the Department's new regulations, the benefit occurs when payment would have been made on a comparable commercial loan. Section 351.505(b) of the *CVD Regulations*. As stated in *French Stainless*, Usinor would make interest payments on its long-term loans on an annual basis and such a payment schedule would not be considered atypical of general French banking practices. See *French Stainless*, 64 FR at 30780. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of this reimbursable advance would not be due until the year 1999.

Given that no payment would be due during the POI, we determine that there is no benefit to Usinor from these reimbursable advances during the POI. Consequently, we have not addressed whether this reimbursable advance is countervailable.

B. Post-1991 SODIE Advances

As discussed in the ''Case History'' section of this notice, the decision to investigate post-1991 SODIE advances was made at a late date in this investigation. Because of this, we were not able to seek clarification of the information supplied in the GOF and Usinor responses. Therefore, we are not making a determination on the countervailability of the post-1991 SODIE advances in this investigation. If this proceeding results in a countervailing duty order, we will examine the post-1991 SODIE advances in an administrative review, if requested. See Comment 16 below.

IV. Programs Determined To Be Not Used

Based on the information provided in the responses and our findings at verification, we determine that the responding companies did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. Shareholders Guarantees

B. Long-Term Loans From CFDI

EC Programs

A. Resider and Resider II Program

B. ECSC Article 54 Loans

C. ECSC Article 56(2)(b) Redeployment/ Readaptation Aid

D. Grants From the European Regional Development Fund (ERDF)

Interested Party Comments

Comment 1: Treatment of GTS

The petitioners argue that the Department's preliminary decision to treat GTS as separate from Usinor was unreasonable, inconsistent with past Department practice and contrary to law. The petitioners maintain that GTS should continue to be treated as part of the Usinor group, along with the other two producers of subject merchandise (*i.e.*, CLI and Sollac), with all receiving a single subsidy rate for the Usinor group.

The petitioners base this on their claim that the Usinor group was and remains fully vertically integrated, with ownership of raw materials, basic production facilities, steel processing operations, service centers, marketing arms and distribution services fully consolidated. Furthermore, the petitioners argue that calculating a single subsidy rate for the group is

consistent with past practice. The petitioners state that in *French Certain Steel, French Bismuth,* and *French Stainless,* the Department treated the Usinor group, not the individual group producers, as the relevant respondent; consequently, GTS' subsidies were included in the Usinor numerator and its sales were included in the Usinor denominator.

The petitioners argue that despite Usinor's reduction of its indirect ownership interest in GTS below the 50 percent level in 1996, the reasons for approaching Usinor as a group have not changed; namely: (1) GTS and Usinor share common marketing and transportation services which provide a vehicle for the transmittal of subsidies and the potential for export shifting should the Department assign different rates, and (2) GTS does not have audited financial statements for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate.

The petitioners dispute the Department's application of its cross-ownership regulation in the Preliminary Determination. The petitioners maintain that the relevant regulation is 19 CFR. 351.525(b)(6)(iii) which states that if a subsidy is received by a holding company ''the Secretary will attribute subsidies to the consolidated sales of the holding company and its subsidiaries.'' Additionally, the petitioners maintain that Usinor and GTS do not cross-own each other. Instead, Usinor has one-way partial ownership of GTS.

Finally, even if the cross-ownership regulation does apply, the Department should still treat GTS as part of the Usinor group, in the petitioners' view. The petitioners point to *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 53332 (July 26, 1999) (*Brazil Carbon Plate*) in which the Department found cross-ownership between two companies when one company owned only 49.8 percent of the other.

Moreover, the petitioners argue that Usinor effectively controls GTS because: (1) Usinor's 48.31 percent ownership interest in GTS far exceeds any other owner, (2) the next largest shareholder, Saarstahl with 32.14 percent indirect ownership interest in GTS, is in bankruptcy and its shares can only be voted on by the bankruptcy trustees, and (3) Usinor, with three of the eight GTS Board members, controls GTS' Board of Directors. Additionally, the petitioners point out that the Department learned at verification that Dillinger controls GTS. The petitioners argue that this control by Dillinger is not inconsistent with Usinor's control of GTS since Usinor is the largest shareholder of Dillinger's parent company, DHS. Furthermore, the petitioners argue that the Chairman of both DHS and Dillinger Supervisory Boards is a representative of Usinor and that Usinor's presence on DHS's and Dillinger's Supervisory Board gives Usinor considerable power.

The respondents disagree with the petitioners that the Department should treat GTS as if it were still part of the Usinor group. The respondents maintain that under section 351.525(b)(6)(iii) of the *CVD Regulations* (relating to holding companies), Usinor's subsidies should not be attributed to GTS because it is not included in Usinor's consolidated holdings. Instead, the Department properly looked to section 351.525(b)(6)(ii) of the *CVD Regulations,* (relating to cross-ownership) to determine whether any subsidies should be attributed to GTS as a result of cross-ownership between GTS and Usinor. The respondents argue that the Department correctly concluded that there is no cross-ownership between GTS and Usinor since Usinor cannot control or direct GTS' assets in essentially the same manner it could its own.

The respondents argue that the record is clear that Usinor does not have any direct interest in GTS or Dillinger (GTS' parent company), and only a minority interest in DHS (Dillinger's parent company). The respondents argue that verification confirmed that Usinor cannot use or direct the assets of DHS given its minority shareholding, the power accorded to labor on DHS' Supervisory Boards, and that all the seats on DHS' Management Board are held by employees. The respondents explain that Usinor's role in GTS is further attenuated and that Dillinger directs the individual assets of GTS. Therefore, the respondents maintain that cross-ownership does not exist, and the Department cannot attribute Usinor's subsidies to GTS.

Dillinger rejects petitioners' argument that the Department should continue to treat GTS as part of the Usinor group based on the fact that GTS was part of the Usinor group during the *French Certain Steel* investigation. Dillinger points out that in the POI of the instant proceeding, GTS is no longer consolidated in the Usinor group's financial statements. Additionally, Dillinger points out that the Department has promulgated new regulations which mandate that the Department treat GTS as a separate company.

Dillinger also rejects petitioners' argument that internal transfers and shared marketing services within the Usinor group provide a vehicle for the transmittal of subsidies. Dillinger states that GTS is no longer a consolidated member of the Usinor group so this argument is not relevant. Furthermore, Dillinger argues that petitioners' argument was not accepted by the Department in *French Certain Steel* nor has it been adopted in subsequent cases. Dillinger also rejects the petitioners' argument that the Department does not have audited financial statements for GTS for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate. Dillinger argues that this is not true and that the petitioners have not identified a single piece of missing information that the Department would need to calculate a separate rate.

Dillinger argues that the Department should continue to calculate a separate rate for GTS since the Department's new regulations at 19 CFR 351.525(b)(6)(iv) require a finding of cross-ownership in order to attribute subsidies. Dillinger maintains that there is no cross-ownership between the two companies because: (1) Usinor only has a minority ownership interest in DHS, (2) Usinor does not have ''golden share'' in DHS, and (3) Usinor's indirect ownership interest is matched by the combined ownership of Saarstahl and the Government of Saarland. Furthermore, Dillinger argues that Usinor's large minority ownership interest in DHS is irrelevant because the DHS General Assembly requires at least a 70 percent majority for approval. Therefore, Dillinger points out that Usinor's ownership interest does not come close to the level that would enable it control DHS, Dillinger, or GTS.

Lastly, Dillinger argues that petitioners' argument that Usinor has a dominant presence on the GTS Board of Directors is irrelevant. Dillinger points out that all shareholder representatives on GTS' Board of Directors are elected by Dillinger. Dillinger points out that the fact that three of the eight directors elected by Dillinger happen to be representatives of Usinor is merely a business decision made by Dillinger based on its prior affiliation with that company.

Department Position: Although the petitioners have raised several valid concerns about treating GTS as separate from Usinor, we have examined this matter closely and concluded that, on balance, the facts of this case support calculating separate subsidy rates for Usinor and GTS.

At the outset, we note that we do not share the petitioners' view that Section

351.525 (b)(6)(iii) (regarding holding companies) is the relevant provision for deciding how to attribute subsidies in this case. Although Usinor was a holding/parent company during the POI, GTS was no longer a consolidated member of the Usinor group and GTS' sales were not reported in Usinor's consolidated sales. Thus, subparagraph (b)(6)(iii) does not lead us to attribute Usinor's subsidies to GTS. Instead, we believe that the applicable regulation is Section 351.525(b)(6)(ii), which addresses situations involving cross ownership.

In applying this subparagraph, the petitioners have asked that we take into account two types of concerns. First, because Usinor is a vertically integrated company and because certain services are shared among Usinor companies, including GTS, they should be viewed as a single company. Second, although Usinor is not the majority owner of GTS, it should be viewed as controlling GTS. We address these points in turn.

The petitioners are correct that both GTS and Usinor, as producers of subject merchandise, share service centers, marketing arms, and channels of distribution. GTS makes a certain number of its French sales through a subsidiary of Sollac and some of its U.S. sales to an importer which is also owned by Sollac. However, we reviewed these transactions carefully at verification and found no indication that they were not at arm's length. Therefore, we found no basis to conclude that subsidies were transmitted from Usinor to GTS (or vice versa) as a result of GTS using Usinor affiliates for these services.

To the extent that the petitioners rely on the Department's decision ''to collapse'' respondents in the *Affirmative Countervailing Duty Determination and Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy and Turkey,* 61 FR 30288, 30308 (June 14, 1996) (*Italy Pasta*) as the basis for treating Usinor and GTS as a single company, we note that *Italy Pasta* predates the current regulations. We also are not persuaded by the precedents involving the Usinor group. Until 1996, GTS' results were consolidated in the Usinor Group. Therefore, even under our current regulations, Usinor's subsidies would be attributed to GTS and a single CVD rate would be calculated. With respect to *French Stainless,* which had a 1997 POI, GTS' sales were not included in Usinor's sales because GTS was no longer included in Usinor's consolidated results.

Regarding Usinor's alleged control of GTS, as noted above, Usinor indirectly owned 48.75 percent of GTS during the POI. Because this level of ownership is close to the majority ownership required to find cross ownership, we have examined closely whether Usinor controls GTS directly, or indirectly through its ownership position in DHS. In analyzing whether two companies should be treated as one for purposes of calculating a countervailing duty rate, we believe that the control analysis undertaken in connection with subparagraph (b)(6)(ii) should identify situations where the ''interests of these two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the corporations in essentially the same ways it can use its own assets (or subsidy benefits).'' See the Preamble to the *CVD Regulations* (63 FR at 65401).

In this connection, the petitioners have pointed to *Brazil Carbon Plate,* where the Department found cross ownership although the major shareholder held less than a majority ownership position. We note that the facts in this case differ from those in the Brazil case. In *Brazil Carbon Plate,* one shareholder directly held 49.8 percent while the remaining shareholders were numerous (*i.e.,* more than 10) and each held a small ownership interest percentage with no one shareholder coming close to controlling one-quarter of the shares that the main shareholder controlled (64 FR at 53334). In the instant proceeding, Usinor's ownership interest is indirect (via DHS) and there are only three other shareholders in DHS, two of which are affiliated and together match Usinor's ownership interest. Specifically, while Usinor's ownership interest in DHS is unquestionably large, it is matched by two affiliated shareholders, SAG Saarstahl AG at 33.75 percent and Government of Saarland at 15 percent.

We have also considered whether Usinor controls GTS via control over its Board of Directors and its parent companies, Dillinger and DHS. First, we do not believe that Usinor controls GTS Board of Directors, notwithstanding the fact that Usinor has three of the eight representatives on GTS' current Board. According to the information we received, Usinor cannot control the GTS Board because all Board members are selected by Dillinger, and there is no indication that Usinor has guaranteed ownership of these three seats. Dillinger has stated that its decision to have Usinor representatives on GTS' Board was a business decision based on their knowledge of the industry.

Second, we find that Usinor does not control Dillinger, notwithstanding the fact that Usinor is the largest shareholder of Dillinger's parent company, DHS. We recognize, in certain situations and in certain countries, that a large minority interest such as Usinor's interest in DHS could lead a finding of control by that shareholder. However, because DHS and Dillinger are German companies in the coal, iron and steel sector, they are governed by laws which limit the shareholders' ability to control a company. In the case of DHS and Dillinger, information on the record shows that the day-to-day operational decisions and long-term business decisions concerning DHS and Dillinger are made by DHS's and Dillinger's Supervisory and Management Boards, and Usinor did not and could not control these decision-making bodies given its ownership interest during the POI.[2]

During the POI, Dillinger's Supervisory Board consisted of 15 members, three of which were Usinor company representatives. Given that Supervisory Board decisions require a 50 percent majority and Usinor had only three representatives on this Board, it was impossible for Usinor to control Dillinger's Supervisory Board. Additionally, the Department notes that laws governing the membership of Dillinger's Supervisory Board require an equal number of labor and shareholders' representatives. Given this legal requirement, Usinor's minority indirect ownership interest could not enable it to gain a significant presence on the Supervisory Board to control decision making. With respect to Dillinger's Management Board, we note that it consists of employees from DHS and Dillinger. Therefore, Usinor does not control the Dillinger's Management Board.

Similarly with respect to DHS, resolutions requiring approval of DHS' General Assembly of Shareholders (which includes the election of the Supervisory Board members) require 70 and 90 percent majorities. DHS' Supervisory Board requires a 50 percent majority for the approval of decisions, and Usinor holds only three out of 21 seats on this Board. Like Dillinger's Management Board, DHS' Management Board is made up of employees.

Based on all the information regarding Usinor and its ability to direct or control GTS, we have concluded, on balance, that such control does not exist. Therefore, we have determined that

[2] Because more specific information concerning the types of decisions made by both Dillinger and DHS's Supervisory and Management Boards is business proprietary, the Department cannot discuss them here.

cross ownership does not exist between Usinor and GTS.

Comment 2: 1996 Transfer of Usinor's Ownership Interest in DHS Should Not Be Treated as a Spin-Off of GTS

The respondents argue that the Department erroneously applied its change-in-ownership methodology to the 1996 partial reduction of Usinor's ownership interest in DHS. The respondents maintain that this transaction was not a sale or transfer of GTS because no GTS shares changed hands and, therefore, it should not be treated as a spin-off of GTS. The respondents explain that the fact that the transaction had the effect of reducing Usinor's indirect beneficial interest in GTS was an incidental result of the transaction, not the focus.

The respondents point out that the Department has made clear that it will not apply its change-in-ownership methodology to every transaction that affects the ownership of a productive unit. The respondents state that in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508, (March 31, 1999) (*Italian Plate*), the Department declined to perform its change-in-ownership methodology to a transaction involving the sale/transfer of indirect beneficial interests of the Italian respondent, AST, because the ownership interest was relatively small and so remote from the company upon which the subsidies were conferred. The respondents argue that Usinor's 1996 transaction is similar to the Italian one in that in both cases, the productive units (GTS and AST) were not involved in the transaction and the exchange occurred two levels up the corporate chain from the productive unit.

Additionally, the respondents argue that the Department's practice and regulations preclude attributing subsidies to GTS as a consequence of the 1996 transaction because the transfer of shares involved DHS, a German company upon which no alleged subsidies involved in this investigation were conferred. The respondents argue that the Department's regulations at 19 CFR 351.525(b)(7) do not permit the attribution of subsidies across borders. Therefore, they maintain it is impossible for Usinor's subsidies to be attributed to GTS through Usinor's transfer of shares in DHS, a German company.

The petitioners take issue with the respondents' claim that German ownership of GTS' stock somehow relieves GTS' production of countervailable French subsidies. The petitioners argue that the subsidies in question were provided to French steel production which included GTS. The petitioners argue that the real issue is whether Usinor's reduction of its ownership interest in DHS in 1996 leads to reallocation of the subsidies received by GTS. The petitioners believe that there should be no reallocation of subsidies as a result of this transaction since the respondents have contended that nothing substantive really happened as a result of this transaction.

The petitioners object to the respondents' application of the transnational rule because the petitioners believe that it is not applicable here as it only deals with initial bestowal of subsidies not attribution. The petitioners point out that even if the transnational rule applies, it does not apply to subsidies tied to French production which are the only subsidies at issue in this case. Finally, the petitioners note that if the respondents' application of the transnational rule is correct, then companies could insulate their subsidiaries from all countervailing duty liability by setting up their ownership in foreign holding companies.

Department Position: We disagree with the respondents that we erroneously applied our change-in-ownership methodology to the 1996 reduction of Usinor's indirect interest in GTS. For this final determination, the Department has revised its treatment of the subsidies received by GTS when it was part of the Usinor Group by assigning to GTS its pro rata share of Usinor's subsidies (based on GTS' sales/assets as a percentage of Usinor's sales/assets). Since those subsidies have been attributed to GTS and a portion of GTS has been sold, it is appropriate to apply our change-in-ownership methodology to the 1996 transaction in the instant proceeding.

We believe that the situation can be distinguished from that in *Italian Plate*. First, the net result of this transaction resulted in the termination of GTS' consolidation in Usinor's financial results. Second, the seller (Usinor) was owned, in part, by the Government of France. Therefore, Usinor's sale of its DHS shares resulted in the disposition of a portion of GTS to private parties. This is in contrast to *Italian Plate* where minority private owners were selling their interests in AST's parent companies to other private companies.

We further disagree with the respondents that the Department's regulations preclude the attribution of subsidies to GTS as a consequence of the 1996 transaction because Usinor's sale of its DHS shares was to a foreign company. While the Department's regulations require it to attribute subsidies to products produced within the territory of the subsidizing government, GTS is located in France (*see* 19 CFR 351.525(b)(7)). Therefore, even if those subsidies flowed from Usinor to the German company which purchased Usinor's DHS shares, our attribution rules require that the subsidies be attributed to DHS' French production, *i.e.,* GTS.

Comment 3: The Department Must Correct the Misapplication of its Change-in-Ownership Methodology to the 1996 Transaction

The respondents suggest that if the Department were to continue to treat the 1996 DHS transaction as a spin-off of GTS, then it must correct the misapplication of its change-in-ownership methodology in the *Preliminary Determination*. The respondents argue that in the *Preliminary Determination* the Department treated the transaction as involving 100 percent of GTS' assets rather than a partial spin-off of a small portion of Usinor's indirect beneficial interest in GTS, as stipulated in the GIA (58 FR at 37273). In the GIA, the respondents point out that the Department stated that pass-through of subsidies must correspond to the extent of the interest being transferred. The respondents do not agree with the Department's analysis that Usinor's reduction of its interest in DHS was ''akin to a total sale since Usinor no longer had the ability to control or direct GTS' assets as its own'' (see Memorandum from the Team to Susan Kuhbach regarding the Ministerial Error Allegation for Preliminary Determination (September 22, 1999)). The respondents believe that the methodological rationale advanced in the *Preliminary Determination* is not consistent with the Department's decision not to require change in control before applying its change-in-ownership methodology.

The respondents argue that it is impossible for the Department to treat the 1996 DHS transaction as a 100 percent transfer of GTS when the Department treated the 1992 sale of Sollac's ownership interest in GTS as a partial spin-off. Additionally, the respondents argue that methodology applied to the 1996 transaction in the *Preliminary Determination* is inconsistent with the Department's repayment methodology since the calculation provided for 100 percent of GTS' assets as transferred but repayment could have been only been based on the price paid for the assets actually

transferred which was 21.25 percent of DHS' shares. Therefore, the respondents argue that if the Department continues to treat the 1996 transaction as a spin-off involving GTS, it should revise the assets to reflect the percentage that was actually transferred.

The petitioners take issue with the respondents' suggestion that because only 21 percent of DHS was transferred, a maximum of 21 percent of the subsidies provided to GTS' production can be countervailed. The petitioners point out that the respondents' argument is based on the incorrect assumption that no subsidies are attributable to GTS' production prior to the 1996 transaction. The petitioners contend that the real question is to what extent, if any, is the 21 percent of the subsidies repaid or reallocated. The petitioners further argue that the 1996 transaction does not change the fact that 79 percent of the previously allocated subsidies inhere in GTS' assets and, therefore, are attributable to GTS.

The petitioners do not believe that the methodology used in the *Preliminary Determination* to attribute subsidies to GTS as a result of the 1996 transfer is inconsistent with its past practice. The petitioners argue that once the Department decided that the result of the 1996 transaction required it to calculate a separate rate for GTS, it first correctly determined the total amount of the subsidies potentially allocable to GTS' production.

The petitioners point out that the second step of the change-in-ownership calculation requires it to determine the amount of subsidies repaid or reallocated by the partial sale. The petitioners believe that the Department correctly applied its methodology by determining that this transaction could have only resulted in the repayment/reallocation of a maximum of 21 percent of the subsidies since only 21 percent of the assets were transferred. The petitioners reject the respondents' claim that there is inconsistency or unfairness in the Department's application of its change-in-ownership methodology in this transaction.

Department Position: We have revised the calculation used in the *Preliminary Determination.* Beginning with the 1992 transaction and continuing with the 1996 transaction, we have determined the subsidies allocable to GTS (in accordance with the spin-off methodology described in the GIA). Then, as ownership of GTS transferred out of Usinor, we applied our change-in-ownership methodology to measure the amount of subsidies that were reallocated to Usinor. This approach was necessitated by our decision that GTS should be treated as separate from Usinor during the POI. In short, because GTS' sales were no longer included in the Usinor Group's sales, it was incorrect to include subsidies attributable to GTS (because it was part of the Usinor Group when these subsidies were received) as Usinor's subsidies.

We disagree that this revision from the *Preliminary Determination* conflicts with the position taken by the Department in *Italian Plate* regarding changes in control. Specifically, there does not have to be a change in control of a company for the Department to apply the change-in-ownership methodology. However, when a company moves from being part of a consolidated group to outside the consolidated group because of a change in ownership, it is appropriate to ensure that the proper share of subsidies is assigned to the company.

Comment 4: Privatization Should Extinguish Any Previously Bestowed Subsidies

The respondents argue that the circumstances of Usinor's privatization compel the Department to find that any previously conferred subsidies were eliminated and did not pass through to the privatized company. The respondents point out that the URAA directs the Department to examine all the circumstances of a privatization to determine whether and to what extent subsidies have been extinguished or passed through to the private buyer. Similarly, the SAA at 928 directs the Department to devise an appropriate methodology to determine whether and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies. The respondents argue that the countervailing duty law states that a subsidy can only be found where a benefit is conferred as the result of a government financial contribution. The respondents maintain that the payment of a market price for all or part of a previously subsidized entity should extinguish previously bestowed countervailable subsidies because the purchased entity is acquired at full value and, thus, there is no benefit. See 19 CFR 351.503(b)(1). Since Usinor's privatization consisted mainly of the sale of shares to the public for fair market value by means of international and French public offerings, the full value of any previously conferred subsidies was embodied in the purchase price and those subsidies were eliminated upon Usinor's privatization.

Additionally, the respondents note that a WTO Dispute Settlement Panel recently found in a case involving hot-rolled lead and bismuth carbon steel products from the United Kingdom that the Department had violated its WTO obligations in determining that the sale of a company to private bidders did not automatically extinguish subsidies that the company received when it was government owned.

The petitioners dispute the respondents' claim that Usinor's privatization eliminates benefits from pre-privatization subsidies. According to the petitioners, this same argument has been repeatedly rejected by the Department, the CIT, and Congress. Specifically, the respondents argument that there is no benefit after Usinor's privatization because the shares were purchased at fair market value is misplaced since the Department's obligation with respect to a benefit analysis refers to the initial bestowal of the subsides not to a competitive benefit received after privatization.

The petitioners further believe that the respondents have wrongly accused the Department of failing to examine all factual circumstances as directed by the statute. The petitioners argue that the requirement to ''examine all circumstances'' relates to determining whether any repayment of subsidies has taken place, not, as respondents characterize, whether a competitive advantage has been received. Petitioners claim that the respondents' argument would be tantamount to a presumption that subsidies do not survive privatization, a presumption which the petitioners argue the URAA's change-in-ownership provision was enacted to preclude.

The petitioners argue that the record in the instant proceeding fully supports the Department's decision to countervail Usinor's sales post-privatization. In support of this, the petitioners point out that Usinor is wholly unchanged by the privatization as the privatization was merely a stock sale and Usinor has made clear that its management did not change in any way after the privatization.

Lastly, with respect to the WTO report, the petitioners point out that this interim report cannot change the clear Congressional mandate which expressly overturns Usinor's argument with respect to this issue.

Department Position: Under our existing methodology we presume neither 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 pass through to the privatized company. In the instant proceeding, we have relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to the privatized Usinor and to the productive units that have been spun off by Usinor.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor'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 Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel*), and *Delverde, SrL.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

Furthermore, Usinor's contention that the sale of Usinor was an arms-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 arms-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' and the petitioners' 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 5: Repayment Portion of Change-in-Ownership Analysis

According to the 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. This happens, state the petitioners, because the profit-maximizing level of price and output are unchanged. According to the 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.[3] 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 the 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 automaticity 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).

The respondents emphasize that the petitioners' argument that there must be specific evidence of repayment has been considered and rejected by the Department in the GIA (58 FR at 37264). In addition, the respondents state that there is nothing about the Ugine transactions or Usinor's 1995 privatization that would disqualify these transactions from being analyzed under the Department's change-in-ownership methodology.

Department 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

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

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.'' 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).

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 methodology does not examine the effects of a subsidy.

Comment 6: Spin-Offs of Productive Assets

The petitioners maintain that in the event the Department decides to continue applying the repayment portion of its change-in-ownership analysis, it should only conduct such analyses for sales of enterprises that Usinor has demonstrated to be productive units. In particular, the petitioners question whether Usinor has demonstrated that the enterprises sold to FOS-OXY and Enterprise Jean Lefebvre in 1994 were, at the time of sale, ''productive'' within the meaning articulated in the GIA, *i.e.*, capable of generating sales and operating independently. See GIA 58 FR at 37268.

In *French Stainless,* state the respondents, the Department found that Entreprise Jean LeFebvre was a lime production facility and FOS-OXY an oxygen-generating one. According to the respondents, the production of oxygen and lime both constitute production; therefore, the treatment of these two companies as ''productive units'' in the *Preliminary Determination* was proper. In any event, the respondents point out that the issue is moot in that no subsidies were spun-off from Usinor as a result of either of these two transactions because all benefits were found to be reallocated to Usinor.

Department Position: As stated above in Comment 5, we are continuing to apply our repayment analysis. However, the application of this analysis in this case results in all subsidies potentially spun-off to Entreprise Jean LeFebvre and FOS-OXY remaining with Usinor. Therefore, the respondents are correct that the issue is moot.

Comment 7: Assets v. Sales in Apportioning Subsidies

The petitioners point out that the Department's practice of using relative asset value to apportion subsidies between units in a spin-off analysis was born from administrative convenience in the *Certain Steel* investigations to cover situations where a unit does not have identifiable sales. See GIA 58 FR at 37268. Prior to *Certain Steel,* the petitioners note that the Department acknowledged the reasonableness of apportioning subsidies via relative sales by stating:

> [B]ecause it is the Department's long-standing practice to allocate subsidies over the sales of subject merchandise, it is reasonable to use the ratio between the sales of [the spun-off unit] and the sales of the [parent] . . . as the basis on which we would apportion the subsidies.

See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6237 (July 9, 1993) (UK Bismuth). In situations where sales are disproportionate compared to assets, the use of assets to apportion subsidies can be distortive in light of the statute's goal of offsetting subsidized U.S. sales, state the petitioners. Accordingly, the petitioners argue that subsidies should be apportioned based on relative sales in situations where both the parent and the spun-off unit have sales.

Acknowledging that the Department expressed a preference for asset values over sales values in *UK Bismuth,* the respondents argue that the Department later expressed its clear intention in the GIA to adopt a practice of using assets where it stated, ''asset values are the more appropriate basis upon which to measure the portion of the subsidy which potentially passes through'' (58 FR at 37268). According to the respondents, adopting an approach that could be applied consistently was a reasonable step by the Department as opposed to using different measures from one case to another depending upon the information available. In addition, the respondents state that the Department has consistently used asset values in other proceedings, *see, e.g., French Stainless* 64 FR at 30776–77.

Department Position: We agree with the respondents that it is the Department's practice and preference to apportion subsidies based on assets. In many instances, such as in spin-offs of units that were not previously considered to be profit centers, sales values may not be available. In using assets to apportion subsidies, we have a measure that can be applied in all cases which adds to predictability. Moreover, it avoids the situation where the spin off of one productive unit in a company which happens to have a sales value would be treated differently than the spin off of another productive unit in the same company which does not have a sales value. However, we recognize that there may be situations where an exception to this rule is necessary. As stated in our response to Comment 8 below, information on the record does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin offs occurred. For details on how we are addressing this situation for purposes of this final determination, see Comment 8:

Comment 8: French v. Total Usinor Assets

Should the Department continue to use assets as the basis for allocating subsidies between GTS and the Usinor Group, argue the petitioners, then it should base the calculation of Usinor's assets only on the relevant pool of assets over which the subsidy benefits would be applicable, *i.e.,* French assets in this case. The petitioners note that this information was requested at verification but not provided. Lacking information on Usinor's French assets, the petitioners suggest that the Department use sales to allocate the

subsidies between Usinor and GTS, in particular, Usinor's sales of French-produced merchandise net of intra-company transactions.

The respondents argue that the use of total assets has been the Department's practice since the Certain Steel cases where it said in the GIA that the potential pass-through of subsidies would be calculated by comparing the book value of ''the productive unit sold to the book value of the assets of the entire company'' (58 FR at 37273). The respondents add that this same methodology of allocating subsidies based total assets was used in the *French Stainless* case.

Department Position: This is the first time that the question of what group of assets to use in allocating subsidies between units under our change-in-ownership methodology has arisen as an issue of contention. While our prior general statements on the use of assets may have referred to ''total assets,'' this is because our basic assumption was that for a typical respondent, subsidy benefits would apply equally to all assets. However, we acknowledge that the asset values used for purposes of apportioning benefits between units as part of our change-in-ownership methodology should correspond to those assets to which subsidies would properly be attributed (*i.e.*, assets in facilities located in France). Such an approach is entirely consistent with our view that governments subsidize domestic production and not foreign production, which has been upheld by the Courts. See Preamble to the *CVD Regulations (*63 FR at 65403); see also Inland Steel Industries v. United States, 188 F. 3d 1349, 1360–61 (Fed. Cir. 1999) (where the Court held that the Department's presumption that subsidies are tied to domestic production on the premise that a foreign government normally intends to principally benefit its domestic production ''is eminently reasonable'').

Information on the record of this case, however, does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin-offs occurred. This information was requested of Usinor too late in the proceeding for it to provide. Therefore, for those transactions for which French sales values are available for both Usinor and the units being spun off, we are using sales to allocate subsidies in this case. For those transactions for which French sales values are not available, we will continue to use total assets to allocate subsidies for purposes of this final determination. Should a countervailing duty order be put in place in this case, we will, however, pursue French asset values during the course of any administrative review that may occur.

Comment 9: Sale of and Buyback of Ugine Shares

Should the Department continue to calculate repayment as part of its change-in-ownership analysis, the petitioners take issue with its application to the partial spin-off of Ugine shares that were eventually repurchased by Usinor a short time later. If the Department allows for the reduction in subsidy benefits in this case via repayment, the petitioners argue that an incentive would be created for foreign producers to buy and repurchase their productive units in order to dissipate their countervailable subsidy benefits. The petitioners note that while the amount of repayment with respect to the Ugine transactions was small, the concept is important in principle.

The respondents counter by saying that both the initial sale of Ugine shares and their later repurchase by Usinor were legitimate, arm's-length transactions. According to the respondents, these were not sham or churning transactions, as supposed by the petitioners. Since these were legitimate transactions, the respondents maintain that application of the Department's change-in-ownership methodology is warranted.

Department Position: We agree with the respondents that there is nothing on the record of this case indicating that there is anything illegitimate about these transactions. However, because Ugine would continue to be consolidated in the Usinor Group, and we did not apply our change-in-ownership methodology to the repurchase of Ugine's shares by Usinor, application of the change-in-ownership methodology would not affect subsidies to the Usinor Group. This is because in any reallocation of subsidies from the sale of Ugine's shares, the reallocated portion would go to Usinor. However, Usinor's subsidy benefits, including the amount reallocated would be attributed to all members of the consolidated Usinor Group, including Ugine. Likewise, any amount allocable to Ugine would have been attributed to the Usinor Group.

Comment 10: The 1995 Privatization of Usinor

Should the Department continue to apply its repayment methodology to privatizations, the petitioners argue that no repayment should be found in the 1995 privatization of Usinor. According to the petitioners, the ''repayment'' of subsidy benefits to the government was not possible in this case since the purchase price for Usinor was retained by Usinor, itself, and not passed on to the GOF.

According to the respondents, the 1995 privatization of Usinor involved the sale of shares for cash and no part of the purchase price inured to Usinor. The respondents add that Usinor's capital increase, to which the petitioners allude, was properly not included among the programs to be examined during this investigation because the purchase of shares by private investors did not provide countervailable benefits to Usinor.

Department Position: We agree with the respondents that the 1995 privatization of Usinor was a legitimate transaction for which a change-in-ownership calculation is appropriate. All monies paid for existing Usinor shares during the privatization process were received by the parties holding those shares prior to the transaction, *i.e.*, proceeds from the sale of shares held by the GOF were paid to the GOF, those from shares held by Clindus (the subsidiary of Credit Lyonnais holding Usinor shares) were paid to it. The only monies received by Usinor during the privatization process were those it received for the sale of new shares in a public offering. The sale by Usinor of new shares was like any other private company offering shares as a means of raising capital. In such cases, it is proper for the seller (*i.e.*, the company itself) to hold on to the proceeds of the sale.

Comment 11: Disposition of Benefits Spun-Off in 1992 GTS Transaction

Since the 1992 transaction was a share swap that did not push GTS outside of the Usinor Group, state the petitioners, this transaction should not be viewed as a spin off. Should the Department continue to apply a spin-off calculation to this transaction, the petitioners state that the distinct benefit stream for the spun-off portion of GTS should be properly applied as was not done in the calculations for the *Preliminary Determination.*

While the 1992 transaction did not result in the loss of control of GTS by Usinor, the respondents argue that it was, nonetheless, a partial spin-off to third parties. As such, the respondents conclude that the Department's treatment of this transaction in the *Preliminary Determination* as a partial spin-off was in accord with its practice with respect to partial changes in ownership.

Department Position: As discussed in the ''Change in Ownership'' section of the notice, we have applied our change-

in-ownership methodology to the 1992 transaction. It is necessary to do this because a portion of GTS moved from Usinor to non-Usinor ownership and Usinor received payment for that portion of subsidies attributable to GTS. Although GTS is not treated as a separate company until 1996, we need to account for the 1992 transaction so that the amount of subsidies potentially reallocated to Usinor 1996 is commensurate with the amount of ownership that has transferred up to time.

Comment 12: Calculation of the Portion of Benefits Spun-Off in 1992 GTS Transaction

Should the Department continue to do a partial spin-off calculation with respect to the 1992 GTS transaction, the petitioners argue that it must correct its calculation of the portion of Usinor benefits potentially being spun-off by virtue of the partial sale of GTS. According to the petitioners, the Department should first determine the benefit attributable to GTS as a whole, and then multiply that amount by the percentage of GTS being sold to determine what, if any, reallocation occurs.

The respondents take issue with the petitioners' proposition that subsidies should be attributed to all of GTS' assets, including those not spun-off, with respect to the 1992 partial spin-off. According to the respondents, under the Department's change-in-ownership methodology with respect to partial changes in ownership, the subsidy benefits attributable to the portion of GTS that was not sold and remained with Usinor do not travel with the sold portion. Rather, the respondents claim that those benefits should remain with Usinor and be attributed across the consolidated French sales of Usinor.

Department Response: Given the circumstances of this case, in particular the facts that GTS goes through two partial changes in ownership prior to the POI and is being treated as a separate company, we have performed our calculations as suggested by the petitioners. That is, beginning in 1992, we have calculated subsidies attributable to GTS based on GTS' share of Usinor's assets in that year. The level of the ownership change in 1992 (and also 1996) serves to cap the amount of subsidies reallocated to Usinor as a result of the payments for GTS. Although only a portion of GTS is sold in each instance (*i.e.,* these are partial privatizations) it is necessary to move the full amount of subsidies out of Usinor and into GTS because after 1996, GTS is separate from Usinor. To follow the respondent's suggestion would understate the benefit to GTS.

Comment 13: Allocation Period

Should the Department continue to find that the 1995 privatization of Usinor did not extinguish previously bestowed benefits, the respondents argue that Usinor's company-specific calculation of its average useful life of assets (AUL) for the POI should be used to determine its allocation period. The respondents take issue with the decision in *French Stainless* where the Department for the first time rejected a verified, company-specific AUL in favor of one from another previous investigation. Following the *French Stainless* precedent is not justified in this case, argue the respondents, because the Preamble to the regulations governing this investigation (which differ from those governing *French Stainless*) require the Department to use a company's own AUL when it varies from that in the IRS tables by one year or more. See 19 CFR 351.524(d)(2)(iii).

The respondents also point out that the *French Stainless* decision is inconsistent with prior court rulings mandating the use of company-specific allocation periods based on record evidence which the Department has followed consistently until *French Stainless* (*see e.g.*, Italian Plate (64 FR at 15511); *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review,* 64 FR 44489, 44490 (August 16, 1999)). According to the respondents, there is no basis for using information that is decades old. Not only has the current data been verified as being accurate, the respondents claim that its privatization did not change Usinor's AUL nor has Usinor and it has not suffered a bankruptcy, instances that petitioners state may affect a company's AUL. As for the concern that changing the allocation period from one case to another may result in under- or over-countervailing a subsidy, the respondents state that this is simply not the case.

Finally, the respondents note that the Department has not hesitated to apply other parts of 19 CFR 351.524(d) (the section of the *CVD Regulations* specifying the AUL methodology) when they work to the detriment of the respondents, such as the use of a new policy for calculating discount rates. For example, the use of the new discount rates created entirely new benefit streams for Usinor's old subsides, state the respondents. The respondents point out that this stands in contrast to the rationale in *French Stainless* of applying an AUL from a prior case to previously countervailed subsidies in order to maintain consistency. According to the respondents, the Department cannot pick and choose which parts of the applicable regulations it will apply.

The petitioners cite to *French Stainless* as precedent for maintaining the allocation period for a particular subsidy benefit once it has been countervailed. To change the allocation period in a future segment or proceeding, argue the petitioners, would risk either over-countervailing or under-countervailing the subsidy. Such a practice, point out the petitioners, would also be at odds with the fact that the subsidies themselves have not changed.

The petitioners also point out that the 14-year period used in the *Preliminary Determination* was based on Usinor's own information and approved by the CIT during the Certain Steel litigation. See *British Steel plc.* versus *United States,* 929 F. Supp. 426 439 (CIT 1996). The petitioners note that while the regulations require a company-specific AUL, they do not mandate the period over which that AUL should be calculated. The petitioners' take issue with the information submitted by Usinor for the calculation of the allocation period noting that it covers only post-bestowal years—a period not ''appropriate'' within the meaning of section of the Preamble to the *CVD Regulations* pertaining to company-specific AULs (63 FR at 65397).

With respect to the respondents' complaint about the change in the discount rates affecting the benefit streams, the petitioners state that changing a discount rate differs from changing an allocation period in that the principal amount allocable to any particular year is not affected by a change in the discount rate, but would be when the allocation period changes.

Finally, should the Department contemplate using an allocation period other than 14 years, the petitioners maintain that, pursuant to 19 CFR 351.524(d)(2), it should look to the IRS tables as they are the default source for information on the useful life of assets when a respondent has not demonstrated a significantly different and non-aberrational average useful life of assets of its own.

Department Position: For this final determination, we are continuing to allocate subsidies countervailed in prior cases over the AUL established in those prior cases consistent with *French Stainless*. See, *e.g.*, *French Certain Steel*. In so doing, we maintain consistency across cases and predictability, and we attach the most relevant period possible to allocable subsidies.

Since the purpose of calculating an AUL is to determine the relevant period over which an allocable subsidy would provide benefits to a company, the year of most relevance is the year of receipt. In an ideal setting, we would calculate a company's AUL, in accordance with our methodology in the *CVD Regulations,* in each year that an allocable subsidy is provided and then allocate each subsidy based on the AUL of that year. This is what we do in administrative reviews when new allocable subsidies are received during a review period. See, *e.g., Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review,* 64 FR 2879, 2880 (January 19, 1999) (Israel IPA).

The question of what AUL to use becomes particularly acute in investigations where allocable subsidies have been received prior to the POI because AULs have not been calculated on an on-going basis. As a matter of convenience, we have elected as our practice to compute an AUL for the POI to determine how far back in time to capture allocable subsidies in our analysis. The alternative would be to have respondents calculate all of the AULs for years in which allocable subsidies were received in the past in the event the AUL for any of those prior years would happen to call for the allocation of the subsidies received in that year into the POI. This could be extremely burdensome for both respondents and the Department, and involve the use of very old information. Therefore, we find that calculating an AUL for the POI to be reasonable in that it uses information as close in time to the year of receipt of prior subsidies without posing a great burden on any party.

An exception occurs for allocable subsidies that have been countervailed in prior cases. Since the time period examined in any prior case will always be the same as, or earlier than, the POI for an on-going investigation, the information on the AUL for a company from a prior proceeding will always be as close or closer to the year of receipt for allocable subsidies being examined. Therefore, an AUL used to allocate a previously countervailed subsidy will be as accurate, or even more accurate, than an AUL calculated in an on-going investigation. If we were to attach different AULs to the same subsidy across proceedings, the possibility would arise of countervailing the same subsidy across different products by different amounts in any given period. Since a given subsidy intuitively should supply the same benefit to a company across all the relevant products during the same period of time, we find the method in *French Stainless* to be reasonable.

Based on the foregoing, we find that the use of an AUL from a prior investigation to allocate a previously countervailed subsidy to be reasonable and as accurate as possible without being burdensome. With respect to the respondents' argument regarding the application of the new discount policy described in 19 CFR 351.524, we disagree. The changes in the benefit stream brought about by application of a more realistic discount rate result in a better measure of the subsidy. For the reasons discussed above, using a more current AUL would not increase the accuracy of our benefit calculation.

Comment 14: 1991 Equity Infusion

The petitioners argue that the ''voluminous new evidence'' they submitted regarding the nature of and circumstances surrounding the GOF's infusion of equity into Usinor in 1991, which has not previously been considered by the Department, provides sufficient cause to believe that Usinor was unequityworthy and, therefore, that a countervailable subsidy had been conferred. The Department, the petitioners contend, has violated the statute by refusing to reinvestigate this equity infusion.

Department Position: The Department examined this program closely in *French Certain Steel* and found it to be non-countervailable. Faced with largely the same record evidence in *French Stainless,* the Department declined to reinvestigate this program in that proceeding. Likewise, we are not investigating this program in this proceeding. See Memorandum to Richard W. Moreland from Susan Kuhbach; Petitioners' Request for Initiation of 1991 Equity Infusion (July 16, 1999).

Comment 15: Shareholder Advances

The petitioners argue that the Department correctly found the 1982–86 shareholder advances to be countervailable subsidies. However, in the petitioners' view, the Department wrongly determined that these advances were grants in the years of bestowal (1982–86) rather than debts whose 1986 conversion to equity conferred a new subsidy in the year of conversion. While conceding that the Department's treatment of these advances in the *Preliminary Determination* is consistent with *French Certain Steel,* the petitioners contend that this approach results in an undervaluation of the benefit because the benefit stream has been pushed back farther in time. The correct approach, according to the petitioners, would be to treat the advances as loans in the year of bestowal, and then treat the conversion of these loans as a distinct, countervailable subsidy in the form of an equity infusion in 1986. The petitioners make the following points in support of their argument:

First, in *French Certain Steel* the Department characterized these advances as grants in part because there was no written agreement between the shareholders and Usinor at the time of the advances stipulating the terms of repayment. However, Usinor included these advances in the ''liabilities'' section of its audited financial statement, the same section in which PACs—which the Department found to be loans—where included. There is no such thing as a grant giving rise to a liability, and ''it is simply inconceivable that Usinor would have chosen to record (or that auditors would have permitted it to record) as liabilities funds for which it was not liable.''

Second, by reporting these advances as liabilities, Usinor clearly expected to have to make a repayment of some sort. In fact, in its questionnaire responses in *French Bismuth,* Usinor explicitly referred to these advances as ''loans'' which are ''. . . repayable on demand.'' Furthermore, in a Usinor-Sacilor condensed balance sheet submitted by the respondents in the *French Certain Steel* investigation, the shareholder advances are reported in the category ''long term debt.'' Also, Usinor issued the new stock to the GOF in 1986 to avoid taxation that would otherwise accompany the direct forgiveness of the shareholder advances.

Third, the Department cannot assume that because no formal repayment terms were written, no repayment was expected or required. Expert opinions from PriceWaterhouse and others indicate French accounting standards and French law clearly establish that where there is no written agreement regarding the terms of the repayment of a shareholder advance, the ''funds put at the disposal of a company by a shareholder cannot be recorded otherwise (sic) than as a liability of the company.'' The expert opinion further states that a French company may not ''register funds put at the disposal of a company as a grant without the written evidence of such intention from the provider.''

The respondents counter, first, by noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel.* See *Inland Steel Indus., Inc.*

versus *United States,* 188 F.3d 1349 (Fed. Cir. 1999). According to the respondents, these arguments include: (1) shareholder advances were accounted for by Usinor and Sacilor as loans; (2) the conversion of the advances into common stock to avoid taxation demonstrates that they were loans; and (3) French law and accounting practice required treating them as loans. The ''new evidence'' submitted in this proceeding by the petitioners, the respondents contend, in fact consists of no new information over that reviewed by the CAFC in upholding the Department's determination in *French Certain Steel*. Therefore, these facts cannot ''overcome the preclusive or, at a minimum, *stare decisis* effect'' of the CAFC's finding.

The respondents further argue that the petitioners arguments in this regard become moot if the Department adopts—as the respondents argue it should—Usinor's 11-year AUL to allocate subsidies. Under this 11-year allocation period, the benefits from the 1986 shareholder advances would fall outside the POI.

Department Position: We disagree that, for purposes of calculating the correct benefit stream for these subsidies, the Department should treat the 1986 conversion of the shareholder advances to equity as a separate subsidy event. The respondents are correct in noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel*. Although some additional information regarding this program is available on the record of this proceeding, this information does not include any substantive new facts that would merit a reevaluation of our findings in *French Certain Steel*.

In response to the petitioners' arguments, we start by noting the following excerpt from the Usinor Sacilor Verification Report in the *French Certain Steel* investigation (at 18).[4]

Officials stated that the French versions of the companies' *Annual Reports* show the outstanding amounts of the shareholders' advance in the liabilities account ''dotation d'actionnaire.'' Officials explained that prior to the shareholders'' advance designated for SODIs, shareholders' advances were called ''dotation,'' which when translated means ''grant,'' ''capital advance,'' ''grant of capital,'' or ''capital injection.''

We asked officials why the shareholders' advances received from 1982 through 1985 were reported under liabilities in the balance sheet. Officials explained that when the GOF paid shareholders' advances to Usinor and Sacilor, they were reported under liabilities because as cash was debited, the corresponding entry was a liability account. We also asked why the receipt of shareholders' advances was not originally reported as capital, given that they ultimately were converted to common stock. Officials explained that recording shareholders' advances under ''dotation d'actionnaire'' suggested, essentially, that the shareholders' advances were designated to become common stock rather than income. In 1986, when shareholders' advances were received to fund the SODIs, officials explained that they were placed under the account ''avance d'acctionnaire,'' indicating an ''advance of funds'' or ''loan.''

Several points are clear from the Usinor officials' above statements. First, at the time of receiving the shareholder advances, company officials expected that those funds would be converted into equity rather than repaid in cash or in some other more liquid form of reimbursement.

Second, Usinor officials perceived these shareholder advances as uniquely different from other sources of funds the company received, including shareholder advances for the SODIEs program, and signaled as much by including the advances in a specially designated category (''*dotation*'') indicating they were grants of capital. It is likewise telling that these shareholder advances are in a category entirely separate from the company's ''financial debts'' and ''operating debts.'' Contrary to the petitioners'' assertion, the ''PAC'' loans are included in the ''debts'' category of both Usinor and Sacilor's 1985 balance sheets, which is a distinctly separate category from shareholder advances.

Although the petitioners are correct that shareholder advances were reported under the heading ''long term debt'' in the Usinor-Sacilor condensed balance sheets, we do not find this information conclusive. The condensed balance sheet is clearly meant to be a summary of Usinor-Sacilor's combined asset and liability accounts, and its summary format does not supersede the more precise and specific breakout of accounts provided in the annual reports. We note, for example, that in the condensed statement, the PACs (*i.e.*, loans with special characteristics) comprise part of the ''total equity'' accounts whereas in the detailed balance sheets these loans are categorized as ''debts.''

Third, as Usinor officials implied, recording these advances as ''liabilities'' was necessitated by the basic tenets of double-entry bookkeeping. An infusion of cash into a company is recorded in an accounting system by means of two entries: one ''on the left side'' of the balance sheet (a debit to the cash account), and one ''on the right side'' of the balance sheet (in this case, a credit to shareholder advances). The petitioners are incorrect in their assertion that a grant cannot involve an entry in the ''liabilities'' category of the company's accounts. A cash infusion in the form of a grant to Usinor would increase the value of assets, which would have to be matched by a corresponding increase in the value of either the equityholders' or the debtholders' stake in the company. However, as evidenced by the very financial statements cited by the petitioners, both debt and equity in Usinor/Sacilor's financial statements are included in the ''*passif*'' (liabilities) category. A cash infusion in the form of a loan would have the same effect on the company's assets and ''liabilities'' accounts as a grant infusion. Therefore, the fact that the shareholder advances are recorded as a liability is irrelevant to the issue of whether an infusion is a grant or a loan.

With regard to the petitioners' expert opinion from PriceWaterhouse on French accounting and law, we note that the Price Waterhouse opinion states that a shareholder advance must ''become part of the company's liability and must be recorded as a debt.'' The evidence on the record, however, flatly refutes the later portion of this statement. In neither the Usinor or Sacilor balance sheets are these shareholder advances included in the debt category. And the Auditor's Report for these statements makes no indication that the reporting of these advances is incorrect or misleading.

Finally, our comments above notwithstanding, the meaning of shareholder advances according to French accounting standards is ultimately irrelevant to how we calculate the benefit from these subsidies in this instance. Under the Department's established methodology, this program is properly treated as a grant in the year of receipt because, for as long as these funds were considered to be shareholder advances, there was no expectation of a: (1) repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant, or (3) claim on any funds in case of company liquidation. See the GIA (58 FR at 37254).

[4] Memorandum to Susan H. Kuhbach, from Julie Anne Osgood and Susan Strumbel; Verification of the Responses of Usinor Sacilor in the Countervailing Duty Investigations of Certain Steel Products from France (April 9, 1993), Attached to Memorandum to Case File, Excerpts Regarding Shareholder advances from Certain Steel Usinor Verification Report (December 13, 1999).

Comment 16: SODIEs

In 1983, Usinor and Sacilor established regional development subsidiary companies, subsequently to be known as SODIEs, to promote the retraining of redundant steelworkers. From 1983 through the mid-1990s, Usinor provided funds to the subsidiary SODIEs which, in turn, loaned these funds to local enterprises providing the worker retraining. Starting in 1986, the GOF agreed to provide to the SODIEs (through Usinor) additional funds matching the amount of Usinor's contribution. In return, Usinor agreed to expand the coverage of its SODIEs into other depressed regions of France. In *French Certain Steel,* the Department determined that these GOF contributions were not countervailable because they represented the GOF's share of the SODIE program and were used only for GOF purposes, not to support Usinor's steel operations. We further found that the GOF's contributions did not relieve Usinor from any costs or obligations it would otherwise have been required to incur.

The petitioners argue that the Department should find the post-1991 payments from the GOF to Usinor in support of the SODIES to be countervailable subsidies. First, the petitioners argue, the Usinor Group (including the subsidiary SODIEs) was entitled to keep full repayment (both principal and interest) of the GOF's share of the loans that the SODIEs provided to the local entities. This entitlement to repayment of the GOF's funds constitutes a grant. Second, the petitioners claim that neither the GOF nor Usinor has established that the GOF's contributions did not relieve Usinor of certain obligations to retrain redundant steelworkers. Finally, with respect to the post-1991 advances, the petitioners state that the European Commission has conceded that the SODIE advances are a financial contribution which confers a benefit, as evidenced by the EC's notification of the SODIE program to the World Trade Organization (WTO).

The petitioners also object to the Department's decision not to reinvestigate the pre-1992 SODIE contributions by the GOF. (The pre-1992 contributions were found to be not countervailable in *French Certain Steel*.) According to the petitioners, the Department failed to consider whether the GOF's SODIE contributions were ultimately grants to Usinor. The petitioners also object to the Department's finding that Usinor was not relieved of any obligations by the GOF's SODIE contributions.

The respondents counter, to start, by noting that the Department has not reinitiated an investigation into the 1980s SODIE advances and, therefore, the petitioners' arguments that the Department should find these countervailable are not relevant. With regard to the post-1990 SODIE payments by the GOF, the respondents state that the petitioners have not shown how these are materially different from the 1980s SODIEs payments, which the Department has previously found to be not countervailable.[5] Although there is additional evidence on the record of this proceeding, none of it supports a different conclusion regarding the countervailability of the program.

Specifically with regard to the petitioners' argument that a benefit was conferred on Usinor because it was entitled to repayment by the SODIEs of funds provided by the GOF, the respondents state that the Department has already considered this fact with regard to the 1980s GOF payments and, nevertheless, found that the payments made by the GOF do not confer a benefit on Usinor. This is because upon repayment of the loan, the funds were simply loaned out again. The respondents also state that, in addition to passing the GOF's contributions on to the SODIEs, Usinor made its own contributions to the SODIEs that exceeded substantially the GOF's contributions.

Finally, the respondents contend, the EC notification of the SODIE program to the WTO does not represent a concession that the GOF's payments were a subsidy to Usinor. In fact, the notification states that the loans ''are not financed by the State funds but by the Usinor-Sacilor iron and steel group.'' Rather, the program was notified because the GOF was providing assistance to particular regions—unrelated to Usinor's assistance to steel producing regions—for which notification was appropriate.

Department's Position: On September 21, 1999, just prior to verification, the Department formally notified the respondents that it was initiating an investigation of the post-1991 GOF advances to Usinor under the SODIE program. The decision to initiate was based on questions raised by factual information submitted by the petitioners regarding the EC's notification of the SODIE program to the WTO, and the reporting of the SODIE funds in Usinor's financial statements.[6] On October 18, 1999, the Department sent a questionnaire soliciting information from the respondents and the GOF regarding this program.

The Department received questionnaire responses regarding the SODIE program from both the GOF and the respondents on November 3, 1999. In their respective questionnaire responses, both the GOF and the respondents stated that because the respondents did not apply, use, or benefit from the SODIE program during the POI, in accordance with the questionnaire instructions, no detailed response was required. Consequently, neither party provided complete details regarding the specificity of the program, or any financial contributions or benefits Usinor may have received under this program. The parties did, however, provide a general history of, and comments on, the SODIE program and the WTO's notification.

Notwithstanding these general responses to the Department's questionnaire, we find that we do not have sufficient information at this time to determine whether this program represents a countervailable subsidy. In particular, Usinor has claimed that it made contributions to SODIE that exceed the GOF's contributions and that Usinor loans to SODIE are reclassified as ''risk and losses.'' Without further questioning, we are not able to track these amounts in Usinor's financial statements. We note that we initiated our investigation of the post-1991 SODIE contributions because the data presented in Usinor's financial statements did not reflect our understanding of the program. Without a full understanding of the amounts contributed by the GOF and Usinor, we are not in a position to say whether the post-1991 advances should be viewed differently from the pre-1992.

Because an investigation of the post-1991 SODIE advances was not initiated in time to solicit adequate, verified information from all of the necessary respondents, we have no basis upon which to use adverse facts available with respect to this program. Accordingly, we are not making a determination on the countervailability of the SODIE program in this investigation. Should a countervailing duty order be put in place, however, we will solicit information on the post-1991 SODIE advances in a future

[5] This determination, the respondents note, was subsequently upheld by the CIT in *Inland Steel*, 967 F. Supp. at 1366–68.

[6] *See Memorandum to Richard Moreland from Susan Kuhbach; Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate* (September 21, 1999).

administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

We note, moreover, that based on the limited information the respondents have submitted, any potential benefits to Usinor during the POI from the SODIE program appear to be very small and, therefore, would likely have little or no impact on the overall *ad valorem* subsidy rate. See Memorandum to the file, Calculations for Final Determination, December 13, 1999.

Comment 17: Foreign Ownership

The petitioners argue that 19 CFR 351.525(b)(7) makes clear that subsidies are allocable to all domestic production regardless of the nationality of the owner of that production where it states:

> If the firm that received the subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

Therefore, state the petitioners, any subsidies allocated to DHS will be tied to DHS' French production only. The petitioners point out that if the Department were to adopt a policy of reducing the level of past subsidies in any way in response to a purchase of a company by a foreign entity, then governments could shield against countervailing duties by selling shares in domestic producers to foreign entities.

Department's Position: We agree with the petitioners that it is not the nationality of the owner of the productive unit that matters; rather, it is the nationality of the productive unit, itself, that is of consequence. If a unit is cross-owned by a company that receives untied subsidies and both are in the same country, we would attribute the subsidy benefits to both. For a subsidy to be considered trans-national and, therefore, not countervailable, it would have to be given by a government in one country to a company in a different country. The owners of the subsidy recipient are of no consequence in making transnational determinations.

Comment 18: Discount Rates

The petitioners state that in calculating benchmark interest rates, the new regulations require the Department to use as a base rate a long-term interest rate that would be paid by a creditworthy company. The petitioners state that there are a number of possible creditworthy rates on the current record and that, of those rates, the Department should choose the OECD-published ''Medium Term Credit to Enterprises, 3–7 years'' (MTCE) rates which are rates that are both long-term and rates which would be paid by a creditworthy company.

The respondents take issue with the petitioners' attempt to increase the creditworthy interest rate used in the Department's uncreditworthy interest rate calculation. The respondents argue that the bond rates selected by the Department in the *Preliminary Determination* are the most appropriate rates to use to match to default rates of corporate bond issuers as contemplated by section 351.505(a)(3)(iii) of the *CVD Regulations*. The respondents point out that the MTCE rates recommended by the petitioners are not appropriate because these rates apply to credit that is for a much shorter period of time than is typical of private sector bonds. Furthermore, respondents believe that the MTCE rates recommended by the petitioners do not match with either the bond default rates currently used or with the Department's AUL-determined benefit stream. With respect to the IMF rates, the respondents point out that they have been previously rejected by the Department as unrepresentative of long-term corporate borrowing (*see French Certain Steel*).

Department's Position: We agree with the petitioners that the Department has a variety of creditworthy interest rates on the record to select from. In calculating a creditworthy benchmark rate for use in years in which Usinor was creditworthy, but did not have a company-specific interest rate, and for use in constructing uncreditworthy benchmark rates for years in which it was not creditworthy, we applied the methodology as described in section 351.505(a)(3) of the *CVD Regulations*. This methodology requires the use of a long-term interest rate that would be paid by a creditworthy company.

On the record of the instant proceeding, there are several interest rates that could serve as the long-term interest rates that would be paid by a creditworthy company, *i.e.,* MTCE and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. With respect to the equipment loan rates, the cost of credit rates, and the private sector bond rates, the Department determined in prior cases that these rates are indicative of a creditworthy company's long-term cost of borrowing, *see French Certain Steel* (58 FR at 37314) and *French Stainless* (64 FR at 30790). Although the Department has not previously used the MTCE rates, there is no record information indicating that they would be not indicative of a creditworthy company's long-term cost of borrowing. In addition, there is no evidence on the record of this proceeding indicating that any of these rates is more appropriate than the others for purposes of constructing a creditworthy benchmark rate. Therefore, for this final determination, we are using an average of these creditworthy long-term interest rates to calculate a non-company-specific creditworthy benchmark rate.

Contrary to the respondents' argument, the Department's regulations require the use of a long-term interest rate, not an interest rate that equals the term of a company's AUL or matches the term of the other interest rates being used. We did not include the IMF-published line 60p ''lending rates'' because the Department has determined that these interest rates are unrepresentative of the cost of corporate long-term borrowing. *See French Certain Steel* (58 FR at 37315).

Comment 19: Sales Denominators

The petitioners state that the sales values used by Department in its preliminary determination were inflated because they included substantial transfers occurring between members of the Usinor Group. The petitioners argue that the 1998 Usinor net sales of 9.4 billion euros, as reported in its annual report, is a gross amount which includes intersegment sales occurring within the Usinor Group and that this figure does not represent the sales revenue derived by the Group from selling French merchandise to outside parties. Instead, the petitioners argue, the correct sales figure is 8.3 billion euros as reported in the annual report as total sales (or net sales minus intersegment sales).

The petitioners state that due to the manner in which GTS determines its sales revenues, it is impossible to judge whether the sales value reported by GTS is legitimate. However, the petitioners point out that there was an error in the company's calculations of its POI sales revenue as made clear by the GTS verification exhibit detailing this calculation.

The respondents take issue with the petitioners' claim that Usinor based its 1998 sales figure of French-produced merchandise on the wrong line item in its 1998 Annual Report. Respondents argue that the figure accepted by the Department includes sales of French-produced merchandise to members of the Usinor Group outside France. This is in accordance with Financial Accounting Standard 14 which requires

exclusion of intercompany sales within France in order to avoid double-counting of French production. Respondents argue that the line item entitled ''intersegment sales'' represents sales from one geographical segment to another geographical segment (e.g., from France to the United States) for which sales are reported.

The respondents argue that Usinor's use of the amount in the ''net revenue'' column is consistent with the calculation of the French-only sales denominator in *French Certain Steel.* The respondents point out that this methodology was also upheld in Court, *see Inland Steel Industries, Inc., et al,* v. *United States,* 967 F. Supp. 1338, 1368(CIT 1997) (Inland Steel). The respondents believe that the petitioners have no reason and cite no precedent for excluding intersegment sales within the Usinor Group. The respondents maintain that these sales are real sales carried out under arm's-length conditions. Lastly, the respondents argue that most of Usinor's U.S. sales are to affiliates and that the petitioners would never contend that any subsidies found should not be allocated to these intercompany sales.

Department Position: We disagree with the petitioners that the appropriate net sales amount for Usinor should be net of intersegment sales. According to the *Interpretation and Application of International Accounting Standard for 1998,*[7] ''intersegment sales'' are defined as ''transfers or products or services, similar to those sold to unaffiliated customers, between industry segments or geographic areas of the enterprise.'' Therefore, since Usinor's intersegment sales are similar to those sold to unaffiliated customers, and there is no regulatory or statutory requirements to exclude these sales, the Department will continue to include them in Usinor's net sales amount for the POI.

With respect to the petitioners' argument that it is impossible to judge whether the sales value reported by GTS is legitimate, we disagree. While the manner in which GTS records its sales value is unusual, we do not find it to be inherently distortional. Therefore, the verified sales value for GTS is appropriate to use in the calculations for the final determination. Although GTS made a slight error in calculating its reported POI sales value, it is not the error alluded to by the petitioners. The ''error'' referred to by the petitioners is not an error because the adjustment they said should have been done was made in a later stage of the calculation. For more information, see the GTS verification report.

Comment 20: FOB Calculation

The petitioners argue that Usinor's reported FOB adjustment is inconsistent with other publicly available data for plate imports from France. The petitioners maintain that Usinor understated the FOB port adjustment by only including ocean freight in its shipping expenses. The petitioners argue that there are other costs such as insurance which should have been deducted which Usinor failed to account for in its calculations. The petitioners argue that the Department only verified that there were no discrepancies with Usinor's reported shipping costs, but it did not verify that there were other expenses such as insurance which should also be included in the FOB adjustment. The petitioners urge the Department to apply a more meaningful and realistic FOB port adjustment to Usinor's sales for the final determination.

Additionally, the petitioners argue that the same FOB adjustment was used to adjust GTS' French merchandise sales value with no indication of whether: (1) GTS was more or less export-intensive than the Usinor Group as a whole or (2) GTS' costs for shipping, insurance and other items were higher or lower than those of the Usinor Group as a whole. Furthermore, the petitioners point out that the Department did not verify GTS' FOB adjustment and whether it should be identical to that of the Usinor Group.

The respondents take issue with the petitioners' complaint that Usinor's FOB sales adjustment is too small because it does not include insurance and other non-shipping costs. The respondents point out that the FOB adjustment made by Usinor in this investigation was verified and is precisely the same methodology used in *French Certain Steel* and *French Stainless.* The respondents assert that the petitioners also made this same argument on appeal from *French Certain Steel,* and that the Court rejected those challenges, *see Inland Steel,* 967 F. Supp. at 1368–69.

Department Position: We agree with the respondents. Usinor has indicated that it does not maintain FOB (port) value information, as requested in the Department's questionnaire, in the regular course of business. Therefore, Usinor reported an FOB adjustment based on the methodology that was used and verified in the *French Stainless.* This methodology derived Usinor's estimated FOB value by calculating a shipping expense based on the expenses of a sample of Usinor Group companies (including ocean freight, loading and port/terminal fees) and dividing the shipping expenses by the 1998 net sales of the sampled companies to derive the ratio of shipping costs to net sales. At verification we found no reason to suspect that this methodology was distortional, rather, we found it to be a reasonable methodology for deriving Usinor's sales value on an FOB (port) basis.

With respect to the petitioners' argument that the Department accepted the same FOB adjustment for GTS without verifying whether or not it should be the same, there is no record information indicating that it would not be an inappropriate estimate. Furthermore, the Department has consistently recognized that given the vast amount of information provided during the course of an investigation and the strict time constraints imposed on the proceeding and particularly, verification, it is simply not possible to examine each and every piece of information provided by the respondents. The Department has taken the position that by testing the validity and integrity of a significant amount of relevant information, the small portion of the remaining information not examined cannot be considered inaccurate or incomplete.

In this instance, the responding companies had reported a single FOB adjustment to be applied to the sales of the Usinor Group and GTS. As discussed in Usinor's verification report, see Memorandum to the File dated November 4, 1999 regarding ''Results of Verification of Usinor,'' this adjustment was derived by calculating the total shipping expenses of four companies within the Usinor Group: Sollac, Ugine, Unimetal and Ascometal. Although this adjustment does not include the shipping costs of GTS or CLI (also a producer of subject merchandise), we consider it to be a more reasonable estimate of shipping costs incurred by GTS than the use of the difference between the customs value and the landed value as suggested by the petitioners since the landed value could include other expenses which are not representative of the respondents' shipping costs. Nevertheless, we acknowledge that the respondents' calculation of the FOB adjustment did not include amounts for insurance. Should a countervailing duty order be put in place, we will examine this issue further in an administrative review, if one is requested.

Therefore, for the purposes of this final determination, we have continued to use the FOB adjustment reported by the responding companies and verified

[7] Excerpts are found attached to the Memorandum to the file on International Accounting Standards of December 1, 1999.

by the Department. We note, however, that in the event a countervailing duty order is put in place and an administrative review of GTS occurs, GTS will be required, as a separate entity, to report its own sales values on an FOB basis.

Comment 21: Mid-Year Grant Allocation Assumption

The petitioners take issue with the Department's allocation methodology for non-recurring benefits codified as 19 CFR 351.503(c)(4)(i). According to the petitioners, this methodology is biased in favor of respondents in the following respects:

First, the methodology assumes that the benefit was received on the first day of the first year instead of, on average, midway through the year, the petitioners claim. In so doing, claim the petitioners, it reduces the remaining, unallocated portion of the benefit that goes into subsequent years. Since it is on this unallocated portion that the time value of money calculation is attached, the petitioners argue that the benefits in subsequent years are artificially reduced.

Second, the Department's methodology provides that the yearly portion of the benefit that is amortized in subsequent years is also credited as of the first of the year, *i.e.,* no time value of money calculation is made for that portion during that year, according to the petitioners. In reality, argue the petitioners, the yearly portion of the benefit would be expended over the course of the year and another time value of money calculation would be appropriate on that yearly portion. As a result of the yearly portion being credited as of the first of the year, state the petitioners, the remaining unallocated amount of the benefit that gets moved to future years is artificially reduced at the beginning of the year instead of across the span of the year. Accordingly, point out the petitioners, the calculation of the time value of money attached to the remaining unallocated amount is also artificially reduced.

The petitioners propose adopting the assumption that benefits are received mid-year in order to neutralize the bias in the Department's methodology. To this end, the petitioners provide calculation methodologies.

The respondents note that the petitioners made these same arguments during the Department's recent countervailing duty rulemaking proceedings and that the Department rejected them. According to the respondents, the petitioners must either challenge the particular regulation that embodies the Department's grant allocation formula as unlawful or seek a new rulemaking proceeding.

Department 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)(1) of the Act, except as noted above, we verified the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor (including CLI and Sollac) and GTS, the sole manufacturers of the subject merchandise. We determine that the total estimated net subsidy rate is 5.56 percent *ad valorem* for Usinor and 6.86 percent *ad valorem* for GTS. The All Others rate is 6.80 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of carbon-quality plate from France, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act 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 LaRussa,

Assistant Secretary for Import Administration.

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