individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States. The all-others rate does not include zero or *de minimis* rates.

In accordance with section 703(d)(5) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire rod from Germany, except those of BES and WHG, which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company	Ad valorem rate
Saarstahl	17.67
IHSW	5.61
All others	11.08

Since the estimated net subsidy rate for BES and WHG is *de minimis*, these companies are not subject to the suspension of liquidation and will be excluded from any countervailing duty order.

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 nonproprietary information relating 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 Acting Deputy Assistant Secretary for AD/CVD Enforcement, 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 directing Customs officers to assess countervailing duties on steel wire rod from Germany.

Verification

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

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27985 Filed 10–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–803]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago

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

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Hansen, Vincent Kane, or Sally Hastings, Office of Antidumping/Countervailing Duty Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1276, 482–2815, or 482–3464, respectively.

Final Determination

The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to Caribbean Ispat Limited (''CIL''), a producer and exporter of steel wire rod from Trinidad and Tobago. 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 Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Case History

Since our preliminary determination on July 28, 1997 (62 FR 41927, August 4, 1997), the following events have occurred:

We conducted verification in Trinidad and Tobago of the questionnaire responses of the Government of Trinidad and Tobago (''GOTT'') and of CIL from August 18 through August 26, 1997. Petitioners and respondents filed case and rebuttal briefs on September 12 and September 17, 1997, respectively. A public hearing was held on September 19, 1997. On September 16, 1997, the GOTT and the U.S. Government initialed a proposed suspension agreement, whereby the GOTT agreed not to provide any new or additional export subsidies on the subject merchandise and to restrict the volume of direct and indirect exports of subject merchandise to the United States. On October 14, 1997, the U.S. Government and the GOTT signed a suspension agreement (*see, Notice of Suspension of Countervailing Duty Investigation: Steel Wire Rod from Trinidad and Tobago* which is being published concurrently with this notice). Based on a request from petitioners on October 14, 1997, the Department and the International Trade Commission (''ITC'') are continuing this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by

weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''Tire Cord Wire Rod.''

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as ''Valve Spring Quality Wire Rod.''

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act''). All references to the Department's regulations at 19 CFR 355.34 refer to the edition of the Department's regulations published April 1, 1997.

Injury Test

Because Trinidad and Tobago is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of wire rod from Trinidad and Tobago materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination 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 Trinidad and Tobago of the subject merchandise (62 FR 23485).

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the ''POI'') is calendar year 1996.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (''IRS'') on the industry-specific average useful life of assets in determining the allocation period for nonrecurring subsidies. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993) (''*General Issues Appendix*''). However, in *British Steel plc.* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (''*British Steel*''), the U.S. Court of International Trade (the ''Court'') ruled against this methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel.* Therefore, for purposes of this determination, the Department has calculated a company-specific AUL. Based on information provided by respondents, the Department has determined that the appropriate allocation period for CIL is 15 years.

Equityworthiness: In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in world markets for the product under consideration.

In start-up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from those used in the analysis of an established enterprise.

For a more detailed discussion of the Department's equityworthiness criteria see the *General Issues Appendix* at 37244 and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (''*Steel from France*'').

In our preliminary determination, we determined that the Iron and Steel Company of Trinidad and Tobago (''ISCOTT'') was unequityworthy for the period 1986–1994. Additional information and documents gathered at verification have given us cause to review our preliminary determination. As discussed below, we determine that ISCOTT was unequityworthy from June 13, 1984 to December 31, 1991. For a discussion of this determination, see the section of this notice on ''Equity Infusions.''

Equity Methodology: In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. (*See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain,* 58 FR 37374, 37376 (July 9, 1993).)

In this investigation, where a market benchmark does not exist, the Department is following the methodology described in the *General Issues Appendix* at 37239. Under this methodology, equity infusions made into an unequityworthy firm are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness: When the Department examines whether a

company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts;
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

In start-up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from those used in the analysis of an established enterprise. For a more detailed discussion of the Department's creditworthiness criteria, see, *e.g., Steel from France* at 37304, and *Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393, 37395 (July 9, 1993) (''*Certain Steel from the U.K.*'').

In our preliminary determination, we determined that ISCOTT was uncreditworthy for the period 1986–1994. Additional information and documents gathered at verification have given us cause to review our preliminary determination. As discussed below, we determine that ISCOTT was uncreditworthy during the period June 13, 1984 to December 31, 1994. ISCOTT did not show a profit for any year during this period and continued to rely upon support from the GOTT to meet fixed payments. The company's gross profit ratio was consistently negative in each of the years in which it had sales. Additionally, the company's operating profit (net income before depreciation, amortization, interest and financing charges) was consistently negative. The firm continued to show an operating loss in each year it was in production, and was never able to cover its variable costs.

Regarding the period prior to June 13, 1984, and after December 31, 1994, we did not examine ISCOTT's creditworthiness because ISCOTT did not receive any countervailable loans, equity infusions, or nonrecurring grants during those periods.

Discount Rates: We have calculated the long-term uncreditworthy discount rates for the period 1984 through 1994, to be used in calculating the countervailable benefit from nonrecurring grants and equity infusions, using the same methodology described in our preliminary determination. Specifically, consistent with our practice (described in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357, 18358 (April 18, 1994) (''*GOES*'')), we took the highest prime term loan rate available in Trinidad and Tobago in each year as listed in the *Central Bank of Trinidad and Tobago: Handbook of Key Economic Statistics* and added to this a risk premium of 12% of the median prime lending rate.

Privatization Methodology: In the *General Issues Appendix* at 37259, we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a company (privatization).

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 (in this case 1982 for CIL) 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.

In the current investigation, we are analyzing the privatization of ISCOTT in 1994.

Based upon our analysis of the petition and responses to our questionnaires, we determine the following:

I. Programs Determined To Be Countervailable

A. Export Allowance Under Act No. 14

Under the provisions of Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, companies in Trinidad and Tobago with export sales may deduct an export allowance in calculating their corporate income tax. The allowance is equal to the ratio of export sales over total sales multiplied by net income. Export sales to certain Caricom countries are not eligible for the export allowance and are excluded from the amount of export sales for purposes of calculating the export allowance.

A countervailable subsidy exists within the meaning of section 771(5) of the Act where there is a financial contribution from the government which confers a benefit and is specific within the meaning of section 771(5A) of the Act.

We have determined that the export allowance is a countervailable subsidy within the meaning of section 771(5) of the Act. The export allowance provides a financial contribution because in granting it the GOTT forgoes revenue that it is otherwise due. The export allowance is specific, under section 771(5A)(B), because its receipt is contingent upon export performance.

We verified that CIL made a deduction for the export allowance on its 1995 income tax return, which was filed during the POI. Because the export allowance is claimed and realized on an annual basis in the course of filing the corporate income tax return, we have determined that the benefit from this program is recurring. To calculate the countervailable subsidy from the export allowance, we divided CIL's tax savings during the POI by the total value of its export sales which were eligible for the export allowance during the POI. On this basis, we determine the countervailable subsidy from this program to be 3.72 percent *ad valorem*.

B. Equity Infusions

In 1978, ISCOTT and the GOTT entered into a Completion and Cash Deficiency Agreement (''CCDA'') with several private commercial banks in order to obtain a part of the financing needed for construction of ISCOTT's plant. Under the terms of the CCDA, the GOTT was obligated to provide certain equity financing toward completion of construction of ISCOTT's plant, to cover loan payments to the extent not paid by ISCOTT, and to provide cash as necessary to enable ISCOTT to meet its current liabilities.

In *Carbon Steel Wire Rod from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 480 (January 4, 1984) (''*Wire Rod I*''), the Department determined that payments or advances made by the GOTT to ISCOTT during its start-up years were not countervailable. In making this determination, the Department took into consideration the fact that it is not unusual for a large, capital intensive project to have losses during the start-up years, the fact that several independent studies forecast a favorable outcome for ISCOTT, and the fact that ISCOTT enjoyed several important natural advantages. On these bases, advances to ISCOTT through April of 1983, the end of the original POI, were found to be not countervailable.

Given the Department's decision in *Wire Rod I* that the GOTT's initial decision to invest in ISCOTT and its additional investments through the first quarter of 1983 were consistent with commercial considerations, the issue presented in this investigation is whether and at what point the GOTT ceased to behave as a reasonable private investor. During the period from 1983 to 1989, a period of continuing losses, ISCOTT and the GOTT commissioned several studies to determine the financially preferable course of action for the company. The information contained in these studies is business proprietary, and is discussed further in a memorandum dated October 14, 1997, from Team to Richard W. Moreland, Acting Deputy Assistant Secretary for AD/CVD Enforcement (''*Equity Memorandum*''), a public version of which is available in the public file for this investigation located in the Central Records Unit, Department of Commerce, HCHB Room B–099 (''Public File''). Based on information contained in the studies and our review of the results of ISCOTT's operations over the period under consideration, we determine that the GOTT's investments made after June 13, 1984, were no longer consistent with the practice of a reasonable private investor. ISCOTT continued to be unable to cover its variable costs, yet the GOTT continued to provide funding to ISCOTT. Despite ISCOTT's continued losses and no reason to believe that under the conditions in place at that time there was any hope of improvement, the GOTT did not make further investment contingent upon actions that would have been required by a reasonable private investor.

In 1988, P.T. Ispat Indo (''Ispat''), a company affiliated with CIL, came forward and expressed an interest in leasing the plant. On April 8, 1989, the GOTT and Ispat reached agreement on a 10-year lease agreement with an option for Ispat to purchase the assets after five years. The first few years of the lease were marked by the GOTT learning to assume the role of a lessor and the management of CIL working to become familiar with the operations of ISCOTT and to develop relations with the former ISCOTT employees. Our review of internal documents, financial projections and historical financial data indicate that after December 31, 1991, the operations of the ISCOTT plant under CIL and ISCOTT's financial condition improved such that we determine that investments in ISCOTT after this date were consistent with the practice of a reasonable private investor. *See, Equity Memorandum* for further discussion of the information used in making this determination.

We have determined that the GOTT equity infusions into ISCOTT during the period from June 13, 1984 through December 31, 1991 constitute countervailable subsidies in accordance with section 771(5) of the Act. We determine that these equity infusions confer a benefit under 771(5)(E)(i) of the Act because these investments were not consistent with the usual investment practice of private investors. Also, they are specific within the meaning of section 771(5A) because they were limited to one company, ISCOTT.

To calculate the benefit, we followed the ''Equity Methodology'' described above. The benefit allocated to the POI was adjusted according to the ''Privatization Methodology'' described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we calculated a countervailable subsidy rate of 11.12 percent *ad valorem*.

C. Benefits Associated With the 1994 Sale of ISCOTT's Assets to CIL

In December 1994, CIL, the company created by Ispat to lease and operate the plant, exercised the purchase option in the plant lease and purchased the assets of ISCOTT. After the sale of its assets, ISCOTT was nothing but a shell company with liabilities exceeding its assets. CIL, on the other hand, had purchased most of ISCOTT's assets without being burdened by ISCOTT's liabilities.

The liabilities remaining with ISCOTT after the sale of productive assets to CIL had to be repaid, assumed, or forgiven. In 1995, the National Gas Company of Trinidad and Tobago Limited (''NGC''), which was owned by the GOTT, and the National Energy Corporation of Trinidad and Tobago Limited (''NEC''), a wholly owned subsidiary of NGC, wrote off loans owed to them by ISCOTT totaling TT $77,225,775. Similarly, Trinidad and Tobago National Oil Company Limited (''TRINTOC''), also owned by the GOTT, wrote off debts owed by ISCOTT totaling TT $10,492,830 as bad debt. While no specific government act eliminated this debt, CIL (and consequently the subject merchandise) received a benefit as a result of this debt being left behind in ISCOTT.

We have determined that this debt forgiveness constitutes a countervailable subsidy in accordance with section 771(5) of the Act because it represents a direct transfer of funds. Also, it is specific within the meaning of section 771(5A) because it was limited to one company.

In this case, to calculate the benefit during the POI, we used our standard grant methodology and applied an uncreditworthy discount rate. The debt outstanding after the December 1994 sale of assets to CIL (adjusted as described below) was treated as grants received at the time of the sale of the assets.

After the 1994 sale of assets, certain non-operating assets (*e.g.*, cash and accounts receivable) remained with ISCOTT. These assets were used to fund repayment of ISCOTT's remaining accounts payable. In order to account for the fact that certain assets, including cash, were left behind in ISCOTT, we have subtracted this amount from the liabilities outstanding after the 1994 sale of assets.

The benefit allocated to the POI was adjusted according to the ''Privatization Methodology'' described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we determine the net subsidy to be 1.17 percent *ad valorem*.

D. Provision of Electricity

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service

> * * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Particular problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In this situation, there may be no alternative market prices available in the country (*e.g.*, private prices,

competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to electricity, some of the options may be to examine whether the government has followed a consistent rate making policy, whether it has covered its costs, whether it has earned a reasonable rate of return in setting its rates, and/or whether it applied market principles in determining its rates. Such an approach is warranted where it is only the government that provides electricity within a country or where electricity cannot be sold across service jurisdictions within a country and there are divergent consumption and generation patterns within the service jurisdictions.

The Trinidad and Tobago Electric Commission (''TTEC''), which is wholly-owned by the GOTT, is the sole supplier of electric power in Trinidad and Tobago. For billing purposes, TTEC classifies electricity consumers into one of the following categories: residential, commercial, industrial, and street lighting. Industrial users are further classified into one of four categories depending on the voltage at which they take power and the size of the load taken. CIL is the sole user in the very large load category taking its power at 132 kV for loads over 25,000 KVA. Other large industrial users take power at 33 kV, 66 kV or 132 kV at loads from 230 Volts up to 25,000 KVA.

TTEC's rates and tariffs for the sale of electricity are set by the Public Utilities Commission (''PUC''), an independent authority. In setting electricity rates, the PUC takes into account cost of service studies done by TTEC. These studies are submitted to the PUC, where they are reviewed by teams of economists, statisticians, and auditors. Public hearings are held and views expressed orally and in writing. After considering all of the views and studies submitted, the PUC issues detailed orders with the new rates and explanations of how they were calculated. In establishing these rates, the PUC is required by section 32 of its regulations to ensure that the new rates will cover costs and expenses and allow for a return.

The electricity rates in effect during the POI were based on cost of service studies for 1987 and 1991. Based on these studies and staff audit reports, the PUC in 1992 issued Order Number 80 with the new electricity rates and a lengthy explanation of the bases for these rates. The order allowed for a specified return to TTEC on its sales of electricity. In 1993 and 1994, the first two years following the order, TTEC was profitable for the first time in years. However, TTEC had large losses in 1995 and losses in 1996 of about half the 1995 losses.

As noted above, TTEC is the only supplier in Trinidad and Tobago of electricity. Consequently, there are no competitively-set, private benchmark prices in Trinidad and Tobago to use in determining whether TTEC is receiving adequate remuneration within the meaning of section 771(5)(E) of the Act. Lacking such benchmarks, the only bases we have for determining what constitutes adequate remuneration are TTEC's costs and revenues.

Despite PUC's mandate to set rates that will cover the costs of providing electricity plus an adequate return, past history indicates that this directive has seldom been met. In addition, evidence in the cost of service studies, including the most recent cost of service study prepared in 1997, indicates that TTEC did not receive adequate remuneration on its sales of electricity to CIL. This evidence is proprietary and is discussed in the October 14, 1997 proprietary memorandum entitled *Adequate Remuneration for Electricity*. Consequently, we determine that the GOTT is bestowing a benefit on CIL through TTEC's provision of electricity. We further determine that this benefit is specific because CIL is the only user in its customer category and, hence, the only company paying fees and tariffs at that rate.

Adequacy of remuneration is a new statutory provision which replaced ''preferentiality'' as the standard for determining whether the government's provision of a good or service constitutes a countervailable subsidy. The Department has had no experience administering section 771(5)(E) and Congress has provided no guidance as to how the Department should interpret this provision. This case and the other concurrent wire rod cases, mark the first instances in which we are applying the new standard. We anticipate that our policy in this area will continue to be refined as we address similar issues in the future.

We calculated the benefit for electricity by comparing CIL's actual electricity rate in 1996 with the rate that would have yielded an adequate return to TTEC, as calculated in its 1996 cost of service study. (We used the cost of service study to calculate the benefit as there was no suitable market-based benchmarks for electricity in Trinidad and Tobago.) We divided the total shortfall based on CIL's POI electricity consumption by CIL's total sales of all products during the POI. On this basis, we calculated a countervailable subsidy rate of 1.46 percent *ad valorem*.

II. Programs Determined to Be Not Countervailable

A. Import Duty Concessions under Section 56 of the Customs Act

Section 56 of the Customs Act of 1983 provides for full or partial relief from import duties on certain machinery, equipment, and raw materials used in an approved industry. The approved industries that may benefit from this relief are listed in the Third Schedule to Section 56. In all, 76 industries are eligible to qualify for relief under Section 56.

Companies in these industries that are seeking import duty concessions apply by letter to the Tourism and Industries Development Company, which reviews the application and forwards it with a recommendation to the Ministry of Trade and Industry. If the Ministry of Trade and Industry approves the application, the applicant receives a Duty Relief License, which specifies the particular items for which import duty concessions have been authorized. CIL received import duty exemptions under Section 56 of the Customs Act during the POI.

In its June 30, 1997, supplemental response, the GOTT provided a breakdown by industry of the number of licenses issued during the first six months of the POI. During the POI, the Ministry of Trade and Industry issued a large number of licenses to a wide cross-section of industries. Some of the licenses were new issuances and others were renewals of licenses previously issued. The breakdown of licenses by industry indicated that the recipients of the exemption were not limited to a specific industry or group of industries. The breakdown also indicated that the steel industry was not a predominant user of the subsidy nor did it receive a disproportionate share of benefits under this program. For these reasons, we determine that import duty concessions under Section 56 of the Customs Act are not limited to a specific industry or group of industries and, hence, are not countervailable.

B. Point Lisas Industrial Estate Lease

As noted above in the *Provision of Electricity* section of this notice, particular problems can arise in applying the standard for adequate remuneration when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. With respect to the leasing of land, some of the options to consider in determining whether the good has been provided for less than adequate remuneration may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return, and/or whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has provided (leased) the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same market factors that a private lessor would use in setting lease rates for a tenant.

The Point Lisas Industrial Port Development Company (''PLIPDECO'') owns and operates Point Lisas Industrial Estate. Prior to 1994, PLIPDECO was 98 percent government-owned. Since then, PLIPDECO's issued share capital has been held 43 percent by the government, eight percent by Caroni Limited, a wholly-owned government entity, and 49 percent by 2,500 individual and corporate shareholders whose shares are publicly traded on the Trinidad and Tobago Stock Exchange. We were unable to find any privately-owned industrial estates in Trinidad and Tobago to provide competitively-set, private, benchmark rates to determine the adequacy of PLIPDECO's lease rates.

ISCOTT, the predecessor company to CIL, entered into a 30-year lease contract for a site at Point Lisas in 1983, retroactive to 1978. The 1983 lease rate was revised in 1988. In 1989, the site was subleased to CIL at the revised rental fee. In 1994, ISCOTT and PLIPDECO signed a novation of the lease whereby ISCOTT's name was replaced on the lease by CIL's. During the POI, CIL paid the 1988 revised rental fee for the site.

Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia,* confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good or service provided in the country of exportation.

In establishing lease rates for sites in the industrial estate, PLIPDECO uses a standard schedule of lease rates as a starting point for negotiating with prospective tenants. The standard lease rates reflect PLIPDECO's evaluation of the market value of land in the estate. Individual rates are negotiated based on a variety of factors, such as the size of the lot, the type of lease, the type of business, the attractiveness of the tenant, and the date on which the lease contract was signed. Because rates are negotiated individually with each tenant, the rate paid by CIL (and other tenants) is specific.

The site leased by ISCOTT in 1983 and now occupied by CIL is the largest site in the Point Lisas Industrial Estate with an overall area that is considerably more than double the size of the next largest site. After CIL's site and the next largest, the size of the remaining sites drops significantly. At verification, we examined leases of other sites in the estate and found only one site with a 30-year lease that was signed contemporaneously with CIL's lease. The remaining leases examined had terms of 99 years, or 30-year leases that were signed much later than CIL's. The method of calculating the lease rate on a 99-year lease is fundamentally different from the calculation on a 30-year lease, because tenants with 99-year leases effectively purchased the land at the start of the lease, making only token annual lease payments thereafter.

Tenants with 30-year leases make substantial annual lease payments throughout the lease but no large initial payment. Therefore, we decided not to compare a 99-year lease rate to CIL's 30-year lease rate. Eliminating the 99-year leases left only one lease with a site that was somewhat comparable in size to CIL's site. CIL's lease fee per square meter was in line with the lease fee for the next most comparable site.

Aside from the lease contract on the next most comparable site, we have no other readily available benchmark or guideline to determine whether the lease rate paid by CIL provides adequate remuneration to PLIPDECO. The standard lease cannot serve as an appropriate benchmark because it is used as the starting point for negotiations. All of the leases examined at verification had rates below the standard rate. Aside from the next largest site, the leases for other sites in the estate were also found to be unsuitable. The disparity in both the sizes of these leases and the years in which they were signed when compared with CIL's site and lease rendered their use inappropriate. Further, we found no privately owned industrial estates in Trinidad and Tobago. Therefore, in addition to a direct comparison of CIL's lease rate with that of the next most similar site, we also considered other factors in determining whether PLIPDECO received adequate remuneration.

PLIPDECO considered ISCOTT to be the anchor tenant in the estate because it was the first company to locate in the estate, and because of its size and its role as the first steel producer in Trinidad and Tobago. Further, ISCOTT's annual lease payments provided a considerable cash flow to PLIPDECO, especially in the early years of the estate when PLIPDECO was in need of funds for continued development. In addition, ISCOTT was expected to draw other companies into the estate. As we found at verification, PLIPDECO's expectations that ISCOTT would draw other companies into the estate were, in fact, realized. Although a precise dollar value cannot be placed on these factors, PLIPDECO took them into consideration when establishing ISCOTT's lease rate. That PLIPDECO took these factors into consideration is an indication that its negotiations were intended to assure adequate remuneration on its lease to CIL.

During the years for which we have information, 1992 through 1995, PLIPDECO has been consistently profitable. In addition, PLIPDECO's successful public stock offering of 49 percent of its shares in 1994 demonstrates that investors viewed the company as a good investment.

All of these facts support our determination that PLIPDECO is a company that has succeeded in achieving adequate remuneration in its dealings with CIL and with other tenants in the estate. Therefore, we determine that CIL's lease rates have provided adequate remuneration for its site in the Point Lisas Industrial Estate.

C. Provision of Natural Gas

As noted above in the *Provision of Electricity* section of this notice, particular problems can arise in applying the standard for adequate remuneration when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. With respect to the provision of natural gas, some of the options may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return, and/or whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference

prices to use in determining whether the government has provided natural gas for less than adequate remuneration. As such, we have examined whether the government earned a reasonable rate of return and whether the government applied market principles in determining its prices.

NGC is the sole supplier of natural gas to industrial and commercial users in Trinidad and Tobago. NGC provides gas pursuant to individual contracts with each of its customers. Natural gas prices to small consumers are fixed prices with an annual escalator. Prices to large consumers are negotiated individually based on annual volume, contract duration, payment terms, use made of the gas, any take or pay requirement in the contract, NGC's liability for damages, and whether new pipeline is required. Prices must be approved by NGC's Board of Directors. Although NGC is 100 percent government-owned, the GOTT indicates that none of the current members of the board is a government official nor do any government laws or regulations regulate the pricing of natural gas.

The price paid by CIL for natural gas during the POI was established in a January 1, 1989 contract between ISCOTT and NGC that ISCOTT assigned to CIL on April 28, 1989. Average price data submitted by the GOTT for large industrial users of natural gas indicate that the price paid by CIL during the POI was in line with the average price paid by large industrial users overall.

At verification, NGC officials explained that the company operates on a strictly commercial basis, purchasing natural gas at the lowest prices it can negotiate and selling and distributing the gas at prices that assure the company's profitability. The years for which we have information on NGC's profitability, 1992 to 1995, demonstrate that the company has been consistently profitable.

Clearly, in its contract negotiations and its overall operations, NGC has demonstrated that it realizes an adequate return on its sales and distribution of natural gas to CIL and its other customers. For this reason, we have determined that the prices paid by CIL, which are in line with those paid by other large consumers, provide adequate remuneration to NGC for the natural gas supplied to CIL. Therefore, we have determined that NGC's provision of natural gas to CIL is not a countervailable subsidy under section 771(5) of the Act.

IV. Programs Determined To Be Not Used

A. Export Promotion Allowance

B. Corporate Tax Exemption

V. Program Determined Not To Exist

A. Loan Guarantee From the Trinidad and Tobago Electricity Commission

By 1988, ISCOTT had accumulated TT $19,086,000 in unpaid electricity bills owed to TTEC. To manage this debt, TTEC obtained a loan from the Royal Bank of Trinidad and Tobago which enabled TTEC to more readily carry the receivable due from ISCOTT. By 1991, ISCOTT extinguished its debt to TTEC.

At no time during this period did TTEC provide a guarantee to ISCOTT which enabled ISCOTT to secure a loan to settle the outstanding balance on its account. The financing obtained by TTEC from the Royal Bank benefitted TTEC rather than ISCOTT because it allowed TTEC to have immediate use of funds that otherwise would not have been available to it. On this basis, we determine that TTEC did not provide a loan guarantee to ISCOTT for purposes of securing a loan to settle the outstanding balance owed to TTEC. Therefore, we determine that this program did not exist.

Interested Party Comments

Comment 1: Treatment of shareholder advances: Petitioners claim that GOTT advances to ISCOTT should be treated as grants rather than as equity. In petitioners' view, these advances had none of the characteristics of debt or equity, such as provisions for repayment, dividends, or any additional claim on funds in the event of liquidation. Petitioners cite to *Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France,* 58 FR 6221 (January 27, 1993) (''*Leaded Bar from France*''), where the Department treated shareholder advances as grants because no shares were distributed when the advances were made, despite the fact that shares were issued at a later date. Petitioners point out that the GOTT received no shares at the time of its advances to ISCOTT.

Respondents claim that the advances should be treated as equity. Respondents note that ISCOTT's annual reports consistently state that it was the practice for advances to be capitalized as equity, and that in fact, ISCOTT issued shares for nearly all advances through 1987. In addition, according to respondents, the CCDA states that pending the issuance of any shares, any payment from the GOTT shall constitute paid-up share capital. Respondents further note that *Wire Rod I,* the Department characterized GOTT funding as equity contributions. Respondents cite to *Certain Steel from the U.K.* at 37395, where the Department stated that despite the fact that the U.K. government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC under Section 18(1) since it already owned 100 percent of the company, such advances to BSC were treated as equity.

Department's Position: We agree with respondents and have continued to treat advances from the GOTT as equity at the time of receipt. In *Certain Steel from the U.K.,* as in this case, requests for funding from the government were examined on a case-by-case basis. This treatment is consistent with our treatment of advances in *Wire Rod I* and our preliminary determination in this proceeding. Further, similar to *Certain Steel from the U.K.,* ISCOTT issued additional shares to the GOTT on several occasions to reduce the balance of the shareholder advances, whereas in *Leaded Bar from France* there was no understanding that shareholder advances were to be converted to equity, and conversion occurred only as part of a government-sponsored debt restructuring.

Comment 2: Equityworthiness: Petitioners claim that if the Department treats the stockholder advances as equity, ISCOTT's financial statements and information gathered at verification demonstrate that ISCOTT was unequityworthy after March 1983, and the Department should view the provision of equity as inconsistent with the practice of a reasonable private investor. Petitioners note that ISCOTT had losses in every year from 1982 through 1994. Petitioners argue that ISCOTT's inability to cover its variable costs while operating the steel plant demonstrates that the company should have been shut down. Petitioners urge the Department to follow its practice of placing greater reliance on past indicators rather than on flawed studies projecting dubious future expectations, which respondents have pointed to as evidence of ISCOTT's equityworthiness. Petitioners cite to the 1983 *Report of the Committee Appointed by Cabinet to Consider the Future of ISCOTT* (''*Committee Report*''), where under any of the options considered, ISCOTT was projected to show a loss, as further evidence that ISCOTT was unequityworthy.

Respondents claim that the financial ratios in this case must be interpreted in the context of a start-up enterprise.

Respondents contend that a venture capitalist would recognize that a start-up enterprise will incur losses for several years. Second, respondents point out that while the *Committee Report* cited by petitioners predicted an overall loss over the next five years, the trend was decidedly positive, with increasing profits projected for the last two years included in the study, 1986 and 1987.

Department's Position: We agree with petitioners, in part. At some point, a reasonable private investor would have come to question ISCOTT's continued inability to achieve forecasted operating results, and would have made future funding contingent on timely, fundamental changes in the company's operations, shutting down the plant, or privatizing ISCOTT. As discussed above in the *Equity Infusions* section of this notice, we are including advances from the GOTT to ISCOTT during the period June 13, 1984 through December 31, 1991, in our calculation of CIL's countervailable subsidy rate.

Comment 3: Loan guarantees under the CCDA: Respondents claim that the GOTT's principal and interest payments on ISCOTT's behalf made pursuant to loan guarantees under the CCDA are not countervailable. In the 1984 final, the Department found that the GOTT's loan guarantees under the CCDA were on terms consistent with commercial considerations. Therefore, payments which the GOTT made on these loans pursuant to the guarantees should also be considered consistent with commercial considerations. In *Carbon Steel Wire Rod from Saudi Arabia,* 51 FR 4206 (February 3, 1986), the Department determined that funding in 1983 made pursuant to a prior agreement, which was on terms consistent with commercial considerations, was not countervailable, even though funds provided pursuant to a new investment decision in 1983 were countervailable because the company was no longer equityworthy. Similarly, in *Final Affirmative Countervailing Duty Determination: Certain Corrosion resistant Carbon Steel Flat Products from New Zealand,* 58 FR 37366, 37368 (July 9, 1993), the Department confirmed that a government's payment of loans under a guarantee agreement is not countervailable if the underlying guarantee was commercially reasonable.

Respondents also seek to clarify that even if the GOTT had liquidated ISCOTT, the GOTT could not have avoided its payment obligations. As of 1983, all funding under the loans covered by the CCDA had been drawn down, and were subject to guarantees by the GOTT.

Petitioners argue that when the Department determined in 1984 that the GOTT's decision to enter into the CCDA was rational, it was not at that time determining that any and all future payments under the CCDA would necessarily be consistent with the private investor standard. Petitioners contend that if the GOTT had acted as a reasonable private investor, it would have shut ISCOTT down and stopped the financial hemorrhaging. Instead, petitioners argue, both ISCOTT and the GOTT were too preoccupied with non-commercial considerations to consider the reasonable course of action.

Department's Position: We disagree with respondents that the GOTT was inexorably committed to make continued payments on ISCOTT's behalf as a result of the loan guarantees contained in the CCDA. Had the GOTT's actions been consistent with those of a reasonable private investor, as a controlling shareholder in ISCOTT, the GOTT would have sought to minimize losses. Shutting down the plant would have been less expensive than continuing to operate the plant in such a manner that no projection was ever achieved and variable costs were never covered by revenues. The GOTT constructed the ISCOTT plant because it had studies indicating the plant was a viable investment. When CIL leased the ISCOTT plant, it demonstrated that ISCOTT was viable. The GOTT could have pursued less costly alternatives than continued funding of ISCOTT's operations with no requirement that timely and demonstrable actions, including consideration of shutting down the plant, be taken to reduce or eliminate the amount needed to fulfill all of its obligations under the CCDA.

Comment 4: Countervailability of cash deficiency payments under the CCDA: Respondents claim that the CCDA imposed a further legal obligation on the GOTT that was distinct from its commitment to meet ISCOTT's CCDA debt service obligations. Specifically, the CCDA required the GOTT to provide funds to ISCOTT to cover any other cash deficiency, such as an operating loss. Respondents argue that both external and internal studies demonstrate that GOTT's decisions to cover these cash deficiencies were consistent with those of a reasonable private investor.

Petitioners reply that the Department's prior determination that the GOTT's decision to enter into the CCDA was rational has no bearing on whether or not subsequent decisions to fund money-losing operations was rational. Petitioners contend that the rationality of guarantee payments must be evaluated anew each time, and that the GOTT should have realized that shutting down the ISCOTT plant would have been the least cost available alternative.

Department's Position: We agree with petitioners that our 1984 decision regarding the CCDA did not give the GOTT license to provide continued funding to ISCOTT immune from potential countervailability under U.S. law. A reasonable private investor acting on a guarantee would pursue the least-cost alternative, and would ensure that the amount of funding under such a guarantee is truly necessary. We are not persuaded that the GOTT's actions were consistent with those of a reasonable private investor, as discussed above in the *Equity Infusions* section of this notice.

Comment 5: Post-lease funding of ISCOTT: Respondents claim that after ISCOTT's assets were leased to CIL in May 1989, any funds provided to ISCOTT by the GOTT did not provide a subsidy to CIL's 1996 production. Respondents note that CIL has always been a separate and distinct company, with no ownership interest in, or other affiliation with, ISCOTT. Therefore, according to respondents, there is no basis for attribution of ISCOTT's subsidies to CIL. Respondents note that as discussed in *Final Affirmative Countervailing Duty Determination; Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6237 (January 27, 1993) (''*Leaded Bar from the U.K.*''), the Department did not attribute any subsidies received by BSC after it had spun off its Special Steels Division into a joint venture, United Engineering Steels Limited (''UES''). In that case the Department did not attribute any subsidies received by BSC after the spin off to the joint venture, stating that there was ''no evidence of any mechanisms for passing through subsidies from British Steel plc to UES (*e.g.*, cash infusions) after the formation of the joint venture. Therefore we determine that any benefits received by BSC after the formation of the joint venture do not pass through to UES.'' Respondents contend that, similarly, in this case there is no evidence that subsidies received by ISCOTT after CIL took control of the steel-making facilities continued to benefit CIL.

Respondents further contend that any past subsidies found to have been received by ISCOTT cannot be found to have conferred a benefit on CIL's production of wire rod in 1996, as required by section 771(5)(E) of the Act. Respondent's argue that CIL never received any of the advances provided to ISCOTT, and note that CIL remained

a completely separate company from ISCOTT after purchasing ISCOTT's plant in an arm's length transaction. Respondents argue that the Department did not articulate how CIL received a benefit from financial contributions to ISCOTT, as required by the Subsidies and Countervailing Measures Agreement.

Petitioners claim that the Department has consistently found that past subsidies are not extinguished by an arm's length sale of a company that had received the subsidies. Petitioners cite to *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review,* 61 FR 58377, (November 14, 1996) (*''Leaded Bar from the U.K. Review''*), where the Department found that a portion of the subsidies traveled with BSC's Special Steel Business assets when, in 1986, the government-owned BSC exchanged its Special Steels Business for shares in UES. Petitioners note that In *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 30288, (June 14, 1996) (*''Pasta from Italy''*), the Department made a similar finding. Petitioners contend that in these cases, the Department views subsidy payments to a company as a benefit to the entire company and all of its productive assets, and, for this reason, the sale of the company or a part of it does not extinguish the prior subsidies. Section 771(5)(F) of the Act makes it very clear that the Department has the discretion to find prior subsidies countervailable despite an arm's length sale of company or assets.

Department's Position: We disagree with respondents, and have allocated a portion of the nonrecurring subsidies received by ISCOTT prior to the sale of the steel plant to CIL. In *Leaded Bar from the U.K.,* the Department found that subsidies received by BSC after the spin-off did not pass through to UES. We note that in this case the sale of ISCOTT's assets to CIL occurred after the lease period, providing a mechanism for pass-through of subsidies received by ISCOTT to CIL. Consistent with the Department's past practice in *Pasta from Italy* and several pre-URAA cases, we determine that a portion of the subsidies received by ISCOTT, including subsidies received during the lease period, traveled with the assets sold to CIL.

Comment 6: Repayment of subsidies upon sale of assets: Petitioners claim that the sale of ISCOTT's assets at a fair value did not offset the distortion caused by the GOTT's original bestowal of subsidies. Moreover, according to petitioners, the countervailing duty statute establishes a presumption that a change in ownership of the productive assets of a foreign enterprise does not render past countervailable subsidies non-countervailable. Petitioners contend that once subsidies are allocated to a productive unit, they should travel with that unit upon sale or privatization. Therefore, petitioners argue that the Department should not recognize a partial repayment of the subsidy benefit stream at the time ISCOTT assets were sold.

Department's position: We disagree with petitioners and have continued to allocate a portion of the sales price of ISCOTT's assets to the previously bestowed subsidies. This is consistent with the URAA and the Department's past practice (*see, e.g., Leaded Bar from the U.K. Review*). Section 771(5)(F) of the Act reads:

> Change in Ownership.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The language of section 771(5)(F) of the Act purposely leaves discretion to the Department with regard to the impact of a change in ownership on the countervailability of past subsidies. Rather than mandating that a subsidy automatically transfer with a productive unit that is sold, as petitioners argue, the language in the statute clearly gives the Department flexibility in this area. Specifically, the Department is left with the discretion to determine, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. Moreover, the SAA states that ''Commerce retain[s] the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies* * *'' SAA at 928.

In this case, we have determined that when ISCOTT's assets were sold, a portion of the sales price reflected past subsidies. To account for that, we treated a portion of the sales price as repaying those past subsidies to the GOTT.

Comment 7: Calculation of amount of subsidies remaining with the seller of a productive unit: Respondents argue that the Department's methodology for calculating the amount of subsidies that pass through in a change of ownership transaction is inconsistent with the rest of the Department's practice with regard to nonrecurring subsidies because the Department does not provide for any amortization when calculating the percentage of the purchase price that is attributable to past subsidies. Respondents claim that if the Department continues to conclude that subsidies may survive privatization, it must revise its methodology for calculating the percentage of the purchase price that is attributed to previously bestowed subsidies to take into account the fact that subsidies received prior to privatization must be amortized from the time of receipt until the time of privatization. Respondents propose that the Department determine the amount of the purchase price attributable to previously bestowed subsidies as the ratio of the amount of subsidies remaining in the company to the company's net worth at the time of privatization.

Petitioners claim the ratio calculated under the Department's current methodology, commonly referred to as ''gamma,'' is intended to measure the share of the purchase price attributable to past subsidies, not the value of past subsidies at the time of privatization. Petitioners argue that the methodology proposed by respondents will yield anomalous results. Petitioners claim that the sale of a thinly-capitalized, heavily-subsidized company would result in 100 percent of the purchase price being allocated to previously bestowed subsidies, while all of the assets of the company benefitted from the past subsidies. According to petitioners, a similarly situated company with equity financing instead of debt would have a small amount of the purchase price allocated to previously bestowed subsidies using respondents' proposed methodology.

Department's position: In accordance with our past practice and policy, we have continued to calculate the portion of the purchase price attributable to past subsidies using historical subsidy and net worth data (*see, e.g., General Issues Appendix* at 37263). Because this methodology relies on several years' data, as opposed to data from just a single year, it offers a more reliable representation of the contribution that subsidies have made to the net worth of the productive unit being sold. We take into account the amortization of previously bestowed subsidies in our pass-through calculation as we apply gamma to the amount of the remaining, unamortized countervailable subsidy benefits to calculate the amount that remains with the seller.

Comment 8: Benefits associated with the 1994 sale of ISCOTT's assets to CIL: Respondents claim that the write-off of

ISCOTT's debts after the sale of the plant to CIL is not a countervailable subsidy to CIL. Typically, companies acquiring the assets of other companies do not also acquire the debt of these companies. In contrast, when companies acquire the stock of other companies, they would normally be expected to assume the debt of the acquired company. Respondents argue that the Department incorrectly relied on *GOES* as precedent, because the circumstances in that case were very different from the circumstances in the case of ISCOTT. Respondents note that in *GOES*, the Government of Italy liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. Respondents argue that the movement of assets and liabilities between two government-owned companies, as was the case in *GOES*, is very different from the arm's length nature of the sale of ISCOTT's assets to CIL. Respondents claim that the purchase price paid in an arm's length transaction, such as the sale of ISCOTT's assets to CIL, reflects the fact that the purchaser is not also assuming the liabilities of the seller.

Petitioners claim that the Department has precedent for its decision to countervail loans to ISCOTT, which were not transferred to CIL when CIL purchased ISCOTT's assets. Petitioners note that in *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37217, 37221 (July 9, 1993), the Department found that losses incurred by a government-owned steelmaker, which were not transferred to new companies upon their purchase of the steelmaker's assets, conferred a subsidy to the new companies. *Department's Position:* We have continued to treat the amount of ISCOTT's remaining liabilities in excess of the amount of remaining assets after the sale of ISCOTT's assets to CIL as a subsidy to ISCOTT at the time of the sale. In *Leaded Bar from the U.K.*, we explained why we allocate subsidies to productive units, stating:

> In the end, a ''bubble'' of subsidies would remain with a virtually empty corporate shell which would not be affected by any countervailing duties because it did not produce or export the countervailed merchandise to the United States.

Here, the ''empty corporate shell'' was ISCOTT, with no productive operations, no source of future earnings, and debts exceeding its assets. Under such circumstances, it was inevitable that ISCOTT would be unable to pay the balance owing on the notes payable, and, in fact, the notes were forgiven by the lenders in 1995. When a government funds an entity through loans which are later forgiven, the Department includes in its calculation of the countervailing duty rate for that entity an amount for debt forgiveness. In this situation, we determine that the debt forgiveness, which for all intents and purposes occurred at the time of the sale of ISCOTT's assets, is a countervailable subsidy.

While the purchase price may have been lower if CIL had assumed the responsibility for the notes payable in the purchase transaction, the result would be that less of any pre-existing subsidies would be repaid.

Comment 9: Calculation of net present value of unamortized subsidies: Petitioners claim that the Department appears to have improperly discounted the 1994 subsidy amount in calculating the net present value of subsidies to which the gamma calculation is applied.

Respondents claim that because the Department begins allocating subsidies in the year of receipt, the net present value amount for the 1994 subsidies should reflect one year of amortization.

Department's Position: We agree with petitioners that our preliminary calculation of the net present value of previously bestowed subsidies was not consistent with the Department's past practice in this regard, and we have corrected this error in our final calculations.

Comment 10: Amortization of nonrecurring subsidies: Respondents claim that in amortizing advances to ISCOTT, the Department began amortizing in the year after the year of receipt, without allocating any amount to the year of receipt.

Department's Position: We agree with respondents and have corrected our calculations.

Comment 11: Adequacy of remuneration for electricity: Respondents claim that CIL does not benefit from the provision of electricity for less than adequate remuneration because Section 32 of the PUC's regulations requires the Commission to set rates that will cover costs and earn a reasonable profit. In 1992, when setting the electricity rates in effect during the POI, the PUC set rates for each customer class based on cost of service studies for 1987 and 1991. These rates were calculated to cover costs and expenses plus yield a reasonable return. In addition, they were published rates that applied to all customers within each of the rate classes.

Further, respondents argue that the electricity rates set by the PUC in 1992 provided adequate remuneration because the PUC made upward adjustments to the rates that had been proposed by TTEC. For example, the PUC adopted a flat rate structure rather than the declining block structure. As high volume users, CIL and other large industrial users paid more under the flat rate structure than they would have under the declining block structure. The declining block structure would have allowed for a rate reduction as usage increased over the billing period.

Petitioners claim that TTEC did not receive adequate remuneration during the POI, nor did it receive an adequate return in two of the four preceding years, despite the assertions by PUC and TTEC officials that the utility is expected to cover costs and expenses and show a return. Further, TTEC intends to file a cost of service study based on 1996 operating costs and request a rate increase. Petitioners argue that this demonstrates that TTEC's current revenues are not adequate to cover costs. Petitioners urge the Department to calculate CIL's benefit from its electricity rates as a recurring grant valued as the difference between CIL's payment at the current rate and the amount it would pay if it were in the next largest rate class on which a profit was realized.

Department's Position: We agree with petitioners that CIL's rate did not provide adequate remuneration. Although the PUC's regulations may require it to set rates that cover costs plus a return, history demonstrates that the PUC has seldom achieved this. The rates in place in the year preceding the POI and during the POI resulted in losses for TTEC. Although a different rate structure such as declining block rates might have led to other results, particularly for CIL, we have no basis to depart from the structure that was actually adopted by the PUC.

We disagree, however, with the calculation methodology proposed by petitioners. Instead, we have relied upon the most recent cost of service study by TTEC which establishes a rate for CIL that will cover the cost of supplying electricity to CIL plus a reasonable return. This provides a better measure of adequate remuneration for a very large customer like CIL than applying the rate for smaller customers, as proposed by petitioners.

Comment 12: Adequacy of remuneration for lease: Petitioners claim that CIL's lease rate is less than the standard lease rate. In *Wire Rod I* (at 482), the Department found this lease rate to result in a subsidy of 2.246 percent. Further, the record in this investigation has information on only

four other leases. This limited information does not allow for a meaningful comparison with the lease rate paid by CIL. Even these four leases, however, suggest that CIL's lease does not provide adequate remuneration. For these reasons, CIL's lease rate should be found countervailable.

Respondents maintain that the rate CIL pays for its 105.7 hectares provides adequate remuneration to PLIPDECO. At verification, the Department attempted to find a suitable benchmark for CIL's lease and found only two companies with 30-year leases on sites of 10 hectares or more. Other companies with sites of 10 hectares or more had 99-year leases. These 99-year leases are structured much differently and cannot be compared to a 30-year lease. Of the two sites with 30-year leases, the first was the second largest site in the estate, and the lease for the property was signed at about the same time as CIL's. The second was a small site with a lease signed years after CIL's lease. Comparing the most comparable lease to CIL's reveals that CIL was paying a higher rate.

Department's Position: PLIPDECO officials informed us at verification that the standard lease rate is used as a starting point for negotiation and indicated that only very small sites would pay this rate. The lease rates of the four leases examined during verification were all less than the standard rate. Therefore, we concluded that the standard rate was not used as the lease rate in all cases and was not an appropriate benchmark for CIL's lease rate.

Moreover, neither the GOTT nor PLIPDECO limited the verification team's access to leases during verification. The team selected the leases to be reviewed on the basis of their similarity to CIL's lease. First, the team selected leases with sites of 10 hectares or more. Of these, only two had leases with the same 30-year term as CIL's. The others were 99-year leases. The team then selected two leases with sites of less than 10 hectares to review the lease terms on these smaller sites. Because CIL's site was 105.7 hectares, the team did not make further selections from the leases with sites under 10 hectares.

Although we did find that the 1983 lease conferred a subsidy in *Wire Rod I*, we note that CIL's lease rate increased significantly in 1988. In addition, the Department used the standard lease rate as its benchmark in *Wire Rod I*. However, as discussed above, our review in this proceeding showed that several leases had rates below the standard rate. Therefore, we have concluded that the standard rate is not an appropriate benchmark.

Comment 13: Export allowance program: Respondents argue that in computing the subsidy attributable to the export allowance program (''EAP'') for the POI, the Department should use CIL's income tax return for fiscal year 1996 rather than CIL's 1995 income tax return. In respondents' view, this would be consistent with the Department's established cash flow methodology as described in the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23384 (May 31, 1989) (''*1989 Proposed Regulations*'') at section 355.48(a). Under that policy, the Department will ordinarily deem a countervailable benefit to be received at the time that there is a cash flow effect on the firm receiving the benefit. Respondents assert that CIL experienced the cash flow effect of the EAP throughout 1996, when CIL paid its quarterly installments of the Business Levy.

Respondents also argue that use of the 1995 tax return distorts the countervailable subsidy by attributing to CIL the export allowance benefit earned in 1995, when both exports and total sales were greater than in 1996. Respondents contend that the Department's regulations give it the discretion to use the 1996 tax return and that the Department should use that discretion to avoid this distortion.

Petitioners agree with the Department's approach used in the preliminary determination and urge the Department to continue using the benefits reported in the 1995 tax return which was filed during the POI in calculating the amount of benefit received by CIL. Petitioners state that this approach is consistent with the Department's prior determinations and policy as well as section 351.508(2)(b) of the *Proposed Countervailing Duty Regulations*, 62 FR 8818, 8880 (February 26, 1997) (''*1997 Proposed Regulations*''). Petitioners also cite section 355.48(b)(4) of the *1989 Proposed Regulations*, which states that in the case of a direct tax benefit a firm can normally calculate the amount of the benefit when the firm files its tax return. Petitioners argue that CIL realized the benefit on October 29, 1996, the date when it filed its 1995 tax return, and that CIL did not realize benefits on its 1996 exports until it filed its 1996 tax return on August 25, 1997, after the POI. Petitioners dismiss respondents' arguments about cash flow methodology and estimated tax payment as meritless. Petitioners assert that CIL only claimed benefits from the export allowance when it filed its corporate tax return. Moreover, petitioners state that the filing of the formal income tax return is the earliest date upon which the Department can determine whether the EAP had been used.

Department's Position: We agree with petitioners that CIL received the benefit of the tax savings attributable to the EAP when it filed its corporate tax return. Consequently, we have continued to value this benefit based on the tax return filed during the POI.

In Trinidad and Tobago, a company pays either the corporation tax or Business Levy, whichever is higher. The corporation tax is calculated on the company's profits, and the Business Levy is calculated as a straight percentage of gross sales or receipts.

The Department's long-established practice in treating income tax benefits has been to recognize the benefit of income tax programs at the time the income tax return is actually filed, usually in the year following the tax year for which the benefit is claimed (*see, e.g., Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil*, 51 FR 21961, 21967 (June 17, 1986)). It is at that time that the recipient normally realizes a difference in cash flow between the income tax paid with the benefit of the program and the tax that would have been paid absent the program. Even when companies make estimated quarterly income tax payments during the tax year, the Department has delayed recognition of the benefit until the tax return is filed and the amount of the benefit is definitively established.

In this case, CIL acknowledges that the 1996 EAP was not claimed until it filed its 1996 tax return in 1997. Nevertheless, CIL claims that because of the export allowance, it does not pay the corporate income tax. Instead, because it must pay the higher of the Business Levy or the corporate income tax, CIL typically pays the Business Levy. Moreover, because CIL makes quarterly deposits of its estimated Business Levy, the company claims the cash flow effect of the EAP occurs when these quarterly deposits are made.

Although we agree that CIL has typically paid the Business Levy rather than the corporate income tax as a result of the EAP, we do not agree that this should lead us to countervail the benefits arising from the EAP as if they were connected with the Business Levy.

First, CIL will only be certain that it will pay the Business Levy when the income tax is computed and the export allowance is claimed. Second, the amount of the benefit is not calculable prior to the filing of the corporate tax

return. An income tax benefit can potentially have numerous cash flow effects. The Department's practice is to single out the cash flow effect most directly associated with the tax benefit; in this case, the actual savings which arise when the taxes are due.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which in the Public File for this investigation.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an *ad valorem* subsidy rate of 17.47 percent for CIL, the one company under investigation. We are also applying CIL's rate to any companies not investigated or any new companies exporting the subject merchandise.

We have concluded a suspension agreement with the GOTT which eliminates the injurious effects of imports from Trinidad and Tobago (*see, Notice of Suspension of Investigation: Steel Wire Rod from Trinidad and Tobago* being published concurrently with this notice). As indicated in the notice announcing the suspension agreement, pursuant to section 704(h)(3) of the Act, we are directing the U.S. Customs Service to continue suspension of liquidation. This suspension will terminate 20 days after publication of the suspension agreement or, if a review is requested pursuant to section 704(h)(1) of the Act, at the completion of that review. Pursuant to section 704(f)(2)(B) of the Act, however, we are not applying the final determination rate to entries of subject merchandise from Trinidad and Tobago; rather, we have adjusted the rate to zero to reflect the effect of the agreement.

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 nonproprietary information relating 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 Acting Deputy Assistant Secretary for AD/CVD Enforcement, Import Administration.

If the ITC's injury determination is negative, the suspension agreement will have no force or effect, this investigation will be terminated, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see,* section 704(f)(3)(A) of the Act). If the ITC's injury determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see,* section 704(f)(3)(B) of the Act). This notice is issued pursuant to section 704(g) of the Act.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27984 Filed 10–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–307–814]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela

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

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, Robert Copyak, or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to CVG-Siderurgica del Orinoco (SIDOR), the producer and exporter of steel wire rod from Venezuela. 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 Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Case History

Since our preliminary determination on July 28, 1997 (62 FR 41439, August 4, 1997), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from August 27, 1997 through September 9, 1997. Petitioners and SIDOR (respondent) filed case briefs on September 23, 1997, and rebuttal briefs on September 26, 1997. A public hearing was held on October 1, 1997.

On September 12, 1997, the GOV and the U.S. Government initialed a proposed suspension agreement. On October 14, 1997, the U.S. Government and the GOV signed a suspension agreement (*see Notice of Suspension of Countervailing Duty Investigation: Steel Wire Rod from Venezuela*) which is being published concurrently with this notice in the **Federal Register**. On October 14, 1997, the petitioners also requested that the Department and the International Trade Commission (''ITC'') continue this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4