any cash deposit required under section 733(e)(2) of the Act with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to October 10, 1996.

This notice constitutes the antidumping duty order with respect to rebar from Turkey. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: April 11, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9968 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Tennessee, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–142. *Applicant:* University of Tennessee, Knoxville, Knoxville, TN 37996–1200. *Instrument:* Energy Analyzer and Power Supply, Model SES–200. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* See notice at 62 FR 5619, February 6, 1997. *Reasons:* The foreign instrument provides an energy resolution of 5 meV (Xe gas phase) using a Gammadata VUV-source and nine predefined pass energies of 2, 5, 10, 20, 40, 75, 150, 300 and 500 eV. *Advice received from:* A domestic manufacturer of electron analyzers, March 27, 1997.

Docket Number: 96–143. *Applicant:* University of Alabama, Tuscaloosa, AL 35487–0209. *Instrument:* Auger XPS Spectrometer. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* See notice at 62 FR 5620, February 6, 1997. *Reasons:* The foreign instrument provides: (1) A combination of magnetic and electrostatic lenses providing a peak sensitivity of 500 000 cps at 10–9 A beam current, (2) charge neutralization and (3) digital control of transfer optics, analyzer, and other instrument functions. *Advice received from:* A U.S. Department of Energy laboratory, March 19, 1997.

Docket Number: 96–145. *Applicant:* Georgia Institute of Technology, Atlanta, GA 30322–0834. *Instrument:* Ion-Assisted Deposition System, Model APS 1104. *Manufacturer:* Leybold AG, Germany. *Intended Use:* See notice at 62 FR 6215, February 11, 1997. *Reasons:* The foreign instrument provides: (1) A proprietary plasma source for ion-assisted deposition, (2) uniform deposition over an area as large as one meter in diameter and (3) ability to operate with lower substrate temperatures than conventional electron beam deposition systems. *Advice received from:* Brookhaven National Laboratory, March 14, 1997.

A domestic manufacturer of electron analyzers, a U.S. Department of Energy laboratory and Brookhaven National Laboratory advise that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–9964 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Washington University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–136. *Applicant:* Washington University, St. Louis, MO 63130–4899. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 62 FR 5619, February 6, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Automated preparation and isotopic analysis of carbonate, CO_2 and O_2 microsamples, (2) an ion collection system with 460 mm deflection radius and (3) mass range of 1–150 at 10 kV. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–9965 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Final Results of the Third (1994) Countervailing Duty Administrative Reviews

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

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On October 7, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1994 through December 31, 1994 (see *Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews (Preliminary Results),* 61 FR 52435. We have completed these reviews and determine the net subsidy to be 4.48 percent *ad valorem* for Norsk Hydro Canada, Inc. (NHCI) and all other producers/exporters except Timminco Limited, which has been excluded from these orders. We will instruct the U.S.

Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Steven Harris, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; tel. (202) 482–4087 and (202) 482–2239, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), these reviews cover only those producers or exporters of the subject merchandise for which reviews were specifically requested. Accordingly, these reviews cover only NHCI, a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period.

On October 7, 1996, the Department published in the **Federal Register** the *Preliminary Results* of its administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada (61 FR 52435). We invited interested parties to comment on the *Preliminary Results.* On November 6 and 13, 1997, case briefs and rebuttals were submitted by NHCI, the Government of Québec (GOQ), and the Magnesium Corporation of America (petitioner). At the request of respondents, the Department held a public hearing on December 4, 1996.

These reviews cover the period January 1, 1994 through December 31, 1994. The reviews involve one company (NHCI) and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute

Unless otherwise indicated, all citations to the statute are in reference to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scopes of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included in the scope of the orders. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from Canada* (57 FR 6094, February 20, 1992).

Analysis of Programs

Based upon our analysis of our questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	0.65

B. Article 7 Grants from the Québec Industrial Development Corporation

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	3.83

II. Programs Found Not to be Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Development Program.
- Program for Export Market Development.
- Export Development Corporation.
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.
- Opportunities to Stimulate Technology Programs.
- Development Assistance Program.
- Industrial Feasibility Study Assistance Program.
- Export Promotion Assistance Program.
- Creation of Scientific Jobs in Industries.
- Business Investment Assistance Program.
- Business Financing Program.
- Research and Innovation Activities Program.
- Export Assistance Program.
- Energy Technologies Development Program.
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1: Countervailability of the Exemption from Payment of Water Bills

Respondents argue that NHCI's contract with its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), was inextricably linked with the credit it received from the GOQ to offset its water bills. If the water credit had not been received, respondents state that a different billing arrangement would

have been made. Therefore, in determining the amount of the benefit conferred by the credit, the Department should look to what NHCI would have paid absent the water credit and the contract compared to what it paid with the credit and the contract. To calculate what NHCI would have paid absent the credit and the contract, respondents argue that the closest approximation is the amount NHCI would have paid under its present contract based on actual water consumption rather than forecasted consumption.

Petitioner states that in these reviews and previous ones the Department has thoroughly analyzed the relevant issues with respect to NHCI's contract with the Industrial Park and has correctly calculated the countervailable benefit in the *Preliminary Results.*

DOC Response

We disagree with respondents that we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into to measure the benefit conferred by the credit. The position put forward by NHCI is analogous to a situation where a company received a low-interest loan from a government and argues to the Department that because of the low interest rate, it borrowed more than it otherwise would have. Therefore, the company would contend, to calculate the benefit conferred by the low-interest loan, the Department should compare the actual amount of interest paid on the low-interest loan with the amount of interest the company would have paid on a smaller loan at a higher benchmark interest rate. In this loan situation, we would not enter into a hypothetical calculation of what amount the company would have borrowed absent the low-interest loan. Instead, consistent with section 771(5)(A)(II)(c) of the Act, we would simply countervail the difference in the two interest rates without regard to what effect the interest rate has on the other terms of the loan, *i.e.*, the amount borrowed.

In these reviews, the terms of the contract between NHCI and the Industrial Park unambiguously state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent the GOQ's provision of the credit relieved NHCI from paying its water bills, a countervailable benefit existed without regard to whether NHCI would have received different terms under an alternative arrangement. Therefore, we determine that the benefit is the full amount of the credit.

Comment 2: Article 7 Assistance under the SDI Act

Respondents argue that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to respondents, because NHCI knew it would receive interest rebates from SDI prior to taking out loans, the Department should calculate the benefit using its loan methodology and reduce the interest rate charged by the amount of the interest rebated. Respondents state that this would be consistent with the Department's methodology, citing a number of cases (e.g., *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom (UK Steel)*, 58 FR 37393, 37397 (July 9, 1993)).

Respondents further contend that the *Preliminary Results* were based on significant errors of fact regarding the interest rebates received by NHCI. First, respondents argue that the relationship between the interest rebates and the underlying loans was not indirect. Second, the interest rebates received by NHCI reduced NHCI's costs of borrowing for the construction of its plant, not its costs of purchasing environmental equipment.

With respect to the first point, respondents argue that the Department was incorrect in its assertion that the Article 7 assistance was more closely linked to the acquisition of certain assets than the accumulation of interest costs. Moreover, respondents maintain that the SDI assistance was not intended solely for the purchase of environmental protection equipment, but was also intended to facilitate the construction of NHCI's facility in Québec. The fact that the Article 7 assistance was intended to achieve more than one objective does not distinguish the Article 7 assistance from other interest rebate programs which the Department has treated under its loan methodology, according to respondents.

With respect to the second point, respondents argue that since the Department wrongly assumed that the Article 7 assistance was provided solely for the purchase of environmental equipment, the Department was able to conclude that the interest rebates exceeded the interest that would be in connection with the purchase of the environmental equipment. Hence, the Department concluded that the Article 7 assistance should not be treated as an interest rebate. However, because the Article 7 assistance was intended to reduce the cost of financing for the project as a whole, the assistance was not excessive in the sense described by the Department.

Petitioner agrees with the Department's treatment of the Article 7 benefits received by NHCI and emphasizes that in these reviews and in prior reviews the Department has addressed the germane issues regarding the Article 7 benefits.

DOC Position

The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology *(Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, (Belgium Steel)* 58 FR 37273, 37276, July 9, 1993). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In their brief, respondents argue that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, respondents conclude, the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, (See, e.g., *Belgium Steel*), we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel

cases was never intended to dictate that the Department should apply the loan methodology in every situation in which a government makes contributions toward a company's interest obligations. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, *inter alia,* on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of the Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the *General Issues Appendix* (GIA) appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37063, 37226, July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Reexamination of Specificity of the Article 7 Assistance

In the event the Department continues to treat the Article 7 assistance as a non-recurring grant, respondents state that the Department is obliged to make a finding that the Article 7 assistance conferred a subsidy to NHCI during the POR. The Department may not, as it has here, rely on a factual finding of disproportionality during a different time period and different amounts of assistance. Respondents state that a finding of *de facto* specificity requires a case-by-case analysis, citing *PPG Industries, Inc.* v. *United States* (928 F.2d 1568, 1577 (Fed.Cir. 1991)), *Geneva Steel* v. *United States* (914 F.Supp. 563, 598 (CIT 1996)), and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil* (58 FR 37295, 37303 (July 9, 1993)) to support their reasoning. Respondents also cite the sixth administrative review of *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (*Live Swine*) (59 FR 12243 (March 16, 1994)) as an example where the Department reexamined the countervailability of benefits found to be *de facto* specific in prior reviews.

Respondents maintain that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original period of investigation. To this end, the GOQ provided information on the Article 7 assistance extended up to, and including, the POR in a submission dated April 4, 1996. The GOQ also provided information on assistance provided under Article 9 of the SDI Act in that same submission. According to the GOQ, assistance under Article 9 should be included in the Article 7 specificity analysis because Article 9 was the predecessor of Article 7 and the provisions of Article 9 functioned basically the same as those of Article 7.

Respondents then present a methodology they believe should be employed whereby the Department would compare the portion of NHCI's original grant allocated to the POR, based on the Department's standard allocation methodology, and the portions of benefits allocated to the POR for all assistance bestowed to all other enterprises receiving SDI assistance under Articles 7 and 9 to determine whether NHCI received a disproportionate share of benefits.

Petitioner concurs with the Department's decisions on this issue in these reviews and in prior segments of the proceedings.

DOC Position

It is the Department's policy not to revisit specificity determinations absent the presentation of new facts or evidence (see, e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order,* 59 FR 58814, November 15, 1994). In these reviews, no new facts or evidence have

been presented which would lead us to question that determination. We address respondents' arguments in favor of making a POR-specific determination and the relevance of the information submitted for consideration below.

POR-Specific Determinations Re: *De Facto* Specificity

Respondents refer to the various reviews of the countervailing duty order on live swine from Canada as demonstrating that the Department has, as a matter of course, revisited its *de facto* specificity determinations from one segment of a proceeding to another. While distinct *de facto* specificity determinations were made with respect to the Tripartite program in the fourth, fifth and sixth reviews of the order on live swine from Canada, these were not done as a matter of course. The Department reexamined specificity in these reviews of live swine only as a result of an adverse decision by the Binational Panel. Because the Binational Panel overturned the Department's finding of specificity regarding the Tripartite program in the fourth review of live swine for lack of evidence (and eventually rejected its analysis regarding specificity in the fifth review but upheld its decision), the Department continued to collect information in the sixth review, which was running concurrently with the Binational proceedings. In explaining its actions in the sixth review, the Department recognized that it does not routinely revisit specificity determinations, as respondents would have us believe, in stating the following:

> Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada.

(See *Live Swine*.) As can be seen from the foregoing, the facts surrounding the live swine reviews do not correspond to the situation presented here. In particular, the issue of specificity had not been conclusively settled in the live swine reviews and was in the process of litigation, and different information was available; unlike this case in which a definitive specificity determination had already been established.

As for respondents' arguments that *de facto* specificity determinations should be done on a case-by-case basis, we agree. However, we disagree with respondents as to what ''case-by-case'' means. In each of the citations respondents refer to, ''case'' referred not to a separate segment of the same proceeding (e.g., the first review of an order distinct from the second review), but to a separate investigation or review of different products (e.g., an investigation of carbon black from Mexico as opposed to an investigation of steel products from Brazil). It is this latter definition of ''case'' we find to be the proper basis for examination of *de facto* specificity determinations. Since a separate *de facto* specificity determination was made in the investigations of pure and alloy magnesium, we find that the analysis was properly conducted.

In proposing that the Department base a POR-specific *de facto* specificity finding on the portions of non-recurring grants allocated to the POR, the respondents appear to be confusing the initial specificity determination based on the action of the granting authority at the time of bestowal with the allocation of the benefit over time. These are two separate processes. The portions of grants allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal.

Relevance Of Submitted Information

As stated in the preceding section, the proper time period for a specificity determination is the time of bestowal. Therefore, information submitted by the GOQ on assistance provided subsequent to the time of bestowal of the assistance granted to NHCI under Article 7 of the SDI Act is not relevant to the specificity determination. The remaining information presented by the GOQ on the Article 7 assistance granted prior to and including the time of bestowal of NHCI's Article 7 benefits is nearly identical to that utilized by the Department in its original specificity determination. Differences between the updated information on Article 7 provided by the GOQ and information used in the original specificity determination are sufficiently small so as not to compromise the original specificity determination.

As for the GOQ's argument that assistance under Article 9 should also be included in the specificity analysis, we note that the GOQ neither alleged that Articles 7 and 9 are integrally linked nor provided information which would allow us to make a determination on integral linkage. Information on the record in these proceedings with respect to Article 9 consists only of the following statement by the GOQ in its original response to the questionnaire:

> Article 7 replaced Article 9 of the SDI Act in 1986. Article 9 operated almost identically to Article 7. Article 9 assistance, like Article 7, required authorization by the Gouvernement du Québec.

In order for the Department to treat two programs as one for purposes of its specificity analysis, it must be demonstrated that the two programs are integrally linked. When examining the issue of integral linkage, it has been the Department's practice to examine, among other things, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation and the manner of funding the program (*see Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring From Canada* 62 FR 5201, 5210 (February 4, 1997)). As can be seen from the foregoing, the GOQ has failed to provide any evidence supporting its implicit claim that Articles 7 and 9 should be treated as one program. Since Articles 7 and 9 are separate programs, information submitted on Article 9 assistance does not call into question the original specificity determination regarding Article 7.

Based on all of the arguments above, we find that the GOQ has not provided new information which would cause us to revisit our original specificity determination. As a result, the bases of the original specificity determination and the conclusions of that determination are still valid. We, therefore, maintain that assistance provided to NHCI under Article 7 of the SDI Act is specific and, therefore, countervailable.

Comment 4: Appropriate Denominator

Respondents state that in the *Preliminary Results* the Department deviated from its standard practice in determining the denominator for companies with multinational production facilities that fail to rebut the presumption that subsidies are domestically tied. In particular, respondents argue that it is the Department's policy to tie such subsidies to domestic operations, by allocating benefits to sales by the domestic company regardless of country of manufacture, as opposed to tying to domestic production, as was done in the *Preliminary Results*. Respondents additionally state that the Department both failed to explain its basis for presuming that the subsidies were tied to Canadian production and to respond to NHCI's arguments in favor of allocating the subsidies over sales by NHCI of subject merchandise regardless of country of manufacture. In so doing,

respondents claim the Department denied NHCI due process by preventing it from rebutting the presumption and from responding to the rationale the Department used to support its decision to tie the subsidies to domestic production. In support of their assertion that the subsidies NHCI received are tied to its domestic operations, respondents state that any funds received benefited all employment-related activities in Canada (*e.g.*, sales of all products) and that these activities are related to both domestic and foreign production. Respondents elaborate further that the denominator policy used by the Department in this case is a deviation from the fungibility of money principle.

Respondents also cite *British Steel plc* v. *United States (British Steel)* (479 F. Supp. 1254, 1371) in which the Court reversed and remanded the Department's determinations because it found that the Department should have given plaintiffs due notice of its decision to apply the rebuttable presumption that the subsidies at issue were tied to domestic production in order to allow plaintiffs the opportunity to rebut the Department's presumption.

Petitioner agrees with the Department's decisions and analyses of this issue in these reviews and in prior segments of these proceedings.

DOC Response:

Respondents cite *British Steel* in an attempt to imply that the Department must inform parties early during the course of each proceeding of its intent to use the rebuttable presumption that subsidies to companies with foreign manufacturing operations are tied to domestic production. However, the facts involved in British Steel are readily distinguishable. Therefore, the holding in that case does not apply to the present situation.

In *British Steel*, the Court was examining the Department's policy of using the rebuttable presumption articulated in the GIA. In particular, the Court took issue with the introduction of the new policy in the final-determination stage of the investigation, because the timing prevented parties from both commenting on the methodology and from presenting evidence rebutting the presumption. It is important to note that the Department's remand determination, as affirmed by the Court, upheld the appropriateness of using the rebuttable presumption. The Department has continued to use the rebuttal presumption and this policy has become accepted Department practice. Unlike *British Steel*, we are not dealing with the introduction of a new policy late into the course of a proceeding in this case. Therefore, the Department was not required to forewarn respondents of the use of the rebuttable presumption.

We also note that the use of a denominator based only on domestically produced merchandise did not come as a surprise to respondents. To begin, in the original investigations of these cases (which pre-dated the rebuttable presumption) the Department used a denominator based only on sales of domestically produced merchandise (*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada*, 57 FR 30946 (July 13, 1992)). Since the investigations in these cases, there has been a changed circumstances review (57 FR 54047 (November 16, 1992)) and a Binational Panel proceeding. In all of the proceedings, the denominators have included only domestically produced merchandise and in no case have respondents objected to those denominators. In addition, the questionnaire for these reviews requested information on sales denominators based on domestically produced merchandise. NHCI provided the requested sales denominator information along with denominators based on total sales by NHCI and arguments why those based on total sales should be used. Moreover, sales of domestically produced merchandise were used as the denominator in the *Preliminary Results.* As can be seen from the foregoing, respondents were aware as to the possible use of a denominator based on domestically produced merchandise and did indeed have an opportunity to attempt to rebut the presumption.

Respondents also argue that the Department must explain the basis of its presumption. However, the idea behind the use of a rebuttable presumption is that the fact presumed—in this case that subsidies bestowed on companies with foreign manufacturing operations are tied to domestic production—becomes the default position and does not have to be explained in each case. As the Department stated in the GIA, ''Thus, under the Department's refined ''tied'' analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production'' (GIA at 37231). It follows that the Department will find that subsidies are tied to domestic production in the absence of evidence to the contrary.

As for respondents' complaint that the Department failed to address its arguments that the subsidies received by NHCI benefited all of the company's operations, not just its manufacturing activities, we note that in the GIA it states, ''A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production . . .'' The phrase, ''tending to show'' means that the party attempting to rebut the presumption must provide enough evidence to convince a reasonable fact-finder of the non-existence of the presumed fact—that subsidies are tied to the recipient firm's domestic production (Results of Redetermination Pursuant to Court Remand on General Issue of Sales Denominator: *British Steel plc* v. *United States*, Consol. Ct. No. 93–09–00550-CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) at 17). The mere absence of evidence limiting the government's intended scope of the benefit to domestic production is not sufficient. In this case, respondents' arguments have not risen to the level of evidence that would convince us that the GOQ intended that the subsidies it bestowed on NHCI were to benefit more than just domestic production. Therefore, respondents have failed to rebut the presumption that the subsidies received by NHCI were tied to domestic production.

The Department's methodology for determining what to include in the denominator when a company has foreign manufacturing operations is explained in the GIA: ''If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise'' [emphasis added] (GIA at 37231). This quotation makes it clear that sales of foreign-produced merchandise by a respondent company would not be included in the denominator. Even if we were to consider tying the subsidies at issue to domestic operations, using respondents' suggestion of a sales denominator based on total NHCI sales would be improper since such a figure would include sales of foreign-produced merchandise by NHCI and, therefore, value-added from operations in other countries. Based on the foregoing arguments, we have continued to allocate subsidies received by NHCI to the company's merchandise produced in Canada.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1994 through December 31, 1994, we determine the net subsidy for

NHCI to be 4.48 percent *ad valorem*. This rate adjusts the rate of 4.01 percent found in the *Preliminary Results* to a f.o.b. basis (*see* the GIA at 37237). We will instruct the U.S. Customs Service to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of subject merchandise from reviewed companies, except from Timminco Limited (which was excluded from the order in the original investigations), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company, except from Timminco Limited (which was excluded from the order in the original investigations). Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Pure and Alloy Magnesium from Canada: Final Results of the First (1992) Countervailing Duty Administrative Reviews* (62 FR 13857 (March 24, 1997)). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 1994, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration (Acting).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040997B]

RIN 0648–XX28

New Bedford Harbor Trustee Council, Draft Restoration Plan and Environmental Impact Statement (RP/EIS)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of draft restoration plan and environmental impact statement (RP/EIS).

SUMMARY: NMFS, acting as Administrative Trustee, announces the availability of the New Bedford Harbor Trustee Council's (Council) draft RP/EIS for the restoration of natural resources that have been injured by releases of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor Environment. Written comments are requested on the draft RP/EIS.

DATES: Written comments are requested by June 2, 1997.

ADDRESSES: Written comments on the draft RP/EIS, requests for inclusion on the draft RP/EIS mailing list, and requests for copies of any documents associated with the draft RP/EIS should be directed to: New Bedford Harbor Trustee Council, c/o NMFS, F/NEO2, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 508–281–9136.

SUPPLEMENTARY INFORMATION: A Notice of Availability will be mailed to all agencies, organizations, and individuals who participated in the scoping process or were identified during the RP/EIS process. Copies of the RP/EIS have been sent to all participants who have already requested copies.

A. Background

New Bedford Harbor is located in southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. Adjacent to the harbor are the communities of Acushnet, Dartmouth, Fairhaven, and New Bedford. New Bedford Harbor is contaminated with high levels of hazardous substances, including PCBs, and is therefore on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List, as well as being identified as a priority Superfund site by the Commonwealth of Massachusetts. Hazardous materials containing PCBs were discharged directly into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system into the same bodies of water. The sources of these discharges were electronics manufacturers who were major users of PCBs from the time that their operations commenced in the late 1940s until 1977, when EPA banned the use and manufacture of PCBs.

B. Cooperating Agencies

There are three natural resource trustees on the Council representing the Department of Commerce, the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated trustee responsibility to NOAA, with NMFS having responsibility for restoration. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Executive Office of Environmental Affairs.