Department's Position: We agree with Lafarge and have made the necessary changes in the computer program.

Comment 3: Lafarge maintains that the Department erred in its calculation of profit in the computer program when it failed to use the information submitted by Lafarge on the total cost of manufacturing (COM). In addition, Lafarge points out that the computer program does not reflect the Department's intent, as stated in its notice of preliminary results, to deduct the cost of goods sold, along with selling and movement expenses, from total revenue in its calculation of profit.

Department's Position: We did use the COM information as submitted by Lafarge in short tons, not metric tons. To calculate profit for these final results we converted the total home market costs to total cost in short tons before adding it to the U.S. total cost which Lafarge reported in short tons.

We agree with Lafarge that the cost of goods sold, along with selling and movement expenses, should be deducted from total revenue to calculate constructed export price profit. We have made this correction in our final results.

Comment 4: Lafarge states that the Department should continue to remove two zero quantity U.S. sales from the data base because these observations represent billing corrections and not actual sales.

Department's Position: We agree with Lafarge and have not used these two zero quantity U.S. sales in these final results.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/Exporter	Period of review	Margin (percent)
Lafarge Fondu Inter'l Inc.	06/15/94–05/31/95	31.04

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of calcium aluminate flux from France within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 37.93 percent, the ''all others'' rate established in the LTFV investigation, 59 FR 5994, (February 9, 1994) shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification of Interested Parties

This notice also 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 353.34(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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2714 Filed 2–3–97; 8:45 am]1q01

BILLING CODE 3510–25–M

[C–122–825]

Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) From Canada

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

EFFECTIVE DATE: February 4, 1997.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, AD/CVD Enforcement, Office I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4198 and 482–1778, respectively.

FINAL DETERMINATION: The Department determines that countervailable subsidies are not being provided to manufacturers, producers, or exporters of LHF in Canada.

Case History

Since the publication of the preliminary negative determination (Preliminary Determination) in the Federal Register (61 FR 59079, November 20, 1996), the following events have occurred.

Verification of the responses of the Government of Canada (GOC), the Government of Quebec (GOQ), Nilus Leclerc, Inc. and Industries Leclerc, Inc., Erie Flooring and Wood Products (Erie), Industrial Hardwoods Products, Ltd. (IHP), and Milner Rigsby Co., Ltd. (Milner) was conducted between November 13 and 27, 1996.

Petitioner and respondents filed case and rebuttal briefs on December 17, 1996, and December 23, 1996, respectively. The hearing was held on January 7, 1997.

Scope of Investigation

The scope of this investigation consists of certain edge-glued hardwood flooring made of oak, maple, or other hardwood lumber. Edge-glued hardwood flooring is customized for specific dimensions and is provided to the consumer in ''kits,'' or pre-sorted bundles of component pieces generally ranging in size from 6'' to 14'' x 48' to 57' x 1'' to 1(1/2)'' for trailer flooring, from 6'' to 13'' x 12' to 28' x 1(1/8)'' to 1(1/2)'' for vans and truck bodies, from 9'' to 12(1/2)'' x 8' to 10' x 1(7/8)'' to 2(1/2)'' for rail cars, and from 6'' to 14'' x 19' to 48' x 1(1/8)'' to 1(3/8)'' for containers.

The merchandise under investigation is currently classified, in addition to various other hardwood products, under subheading 4421.90.98.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Edge-glued hardwood flooring is commonly referred to as ''laminated'' hardwood flooring by buyers and sellers of subject merchandise. Edge-glued hardwood flooring, however, is not a hardwood laminate for purposes of classification under HTSUS 4412.14. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding 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). References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Petitioner

The petition in this investigation was filed by the Ad Hoc Committee on Laminated Hardwood Trailer Flooring, which is composed of the Anderson-Tully Company, Havco Wood Products Inc., Industrial Hardwoods Products Inc., Lewisohn Sales Company Inc., and Cloud Corporation.

Period of Investigation (POI)

The period for which we are measuring subsidies is calendar year 1995.

Ontario Companies

We have determined that three producers of the subject merchandise have received zero or *de minimis* subsidies. Erie and IHP formally requested that they be excluded from any potential countervailing duty order. Milner responded to our questionnaire.

IHP certified that the only subsidy it received during the POI was consulting services pursuant to the *Industrial Research Assistance Program* (IRAP). The GOC and Government of Ontario also certified and we verified that this was the only benefit IHP received. Even assuming this assistance constituted a countervailable subsidy, the benefit would be *de minimis.*

Erie certified that it received no countervailable subsidies. The GOC and the Government of Ontario also certified this. We verified that Erie received no countervailable subsidies. Finally, we verified that Milner did not receive benefits during the POI.

The remainder of this notice deals exclusively with Nilus Leclerc, Inc. and Industries Leclerc, Inc.

Related Parties

In the present investigation, we have examined affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company with a single, combined countervailing duty rate. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, where such companies produce the subject merchandise or where such companies have engaged in certain financial transactions with the company producing the subject merchandise, the affiliated parties are required to respond to our questionnaire.

Nilus Leclerc Inc. was identified in the petition as an exporter of LHF from Canada. Nilus Leclerc Inc. is part of a consolidated group, Groupe Bois Leclerc (GBL). Nilus Leclerc, Inc. and Industries Leclerc, Inc. are the only companies in the group directly engaged in the production of LHF. Because of the extent of common ownership, we have found it appropriate to treat these two LHF producers as a single company (Leclerc). As a consequence, we are calculating a single countervailing duty rate for both companies by dividing their combined subsidies by their combined sales.

In addition, certain separately incorporated companies in the group received subsidies. Where those subsidies were tied to the production of a corporation that is not directly involved in the production of LHF, we have not included those subsidies in our calculations. Where the subsidies benefitted the production of LHF and other merchandise, we included those subsidies in our calculations using the sales of the relevant products in the denominator of the *ad valorem* subsidy rate calculations.

Export Subsidy Issue

Petitioner has alleged that the loans provided by the Canada-Quebec Subsidiary Agreement on Industrial Development (Subsidiary Agreement) and the *Expansion and Modernization Program* sponsored by the Societe de Developpement Industriel du Quebec (SDI) are *de facto* export subsidies. Petitioner argues that the programs should be deemed to be export subsidies because the approval of government financing was ''in fact contingent'' on exports to the United States. According to petitioner, Leclerc's project and the government approval of the project were entirely based on Leclerc's plan to export the vast majority of the anticipated increased production to the United States. Petitioner asserts that due to the limited growth potential of the LHF market in Canada, the U.S. export market was the only viable market for Leclerc's expanded capacity. Without the U.S. market, petitioner argues, there would have been no need for expansion or financing and thus, the government approval of Leclerc's project was, and could only have been, ''contingent'' on exports.

In rebuttal, respondents maintain that the approval of government financing was not ''contingent'' on exports and that Leclerc's export potential was merely one aspect of the government officials' overall assessment of the commercial viability of the expansion project. According to respondents, the absence of provisions in the loan agreements which condition the receipt of the loan on exports or consider the failure to achieve a particular level of export performance as a default of the loan demonstrate that the programs were not ''contingent'' upon export performance. Furthermore, respondents invoke the second sentence of note 4 of Article 3.1(a) of the SCM which states: ''The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of (Article 3.1(a)).'' Respondents contend that this provision makes it clear that the mere fact that Leclerc exported to the United States or projected future exports should not transform the government financing into an export subsidy.

While we have closely analyzed this issue, as discussed below, when we examine the programs as domestic subsidies, the rate for these programs is *de minimis.* Our analysis also shows that, even if we were to find these programs to be export subsidies, the total countervailing duty rate calculated for Leclerc during the POI would be *de minimis.* Therefore, we have not addressed the issue of whether these two programs are export subsidies.

Creditworthiness

In our *Preliminary Determination,* we treated Leclerc as ''creditworthy'' in 1993, 1994, and 1995. This decision was based on information provided by Leclerc indicating that it had received commercial financing or that commercial banks had agreed to provide it with long-term financing in each of those years. For this final determination, we are continuing to treat Leclerc as creditworthy in 1993 and 1994 because it received comparable loans from commercial banks in those years. (For a further discussion of the comparability issue, see *''Comparability'' of Commercial Loans Received* section below.) However, based on further information gathered at verification regarding 1995, we have determined that the case-specific circumstances surrounding the commercial financing agreed to and actually received in that year indicate that this financing is not dispositive evidence of Leclerc's creditworthiness. Accordingly, we have analyzed Leclerc's financial condition and prospects in 1995 to determine whether the company was creditworthy in that year. Based on our analysis, we have determined that Leclerc was uncreditworthy in 1995 (see January 24, 1997 memorandum from David R. Boyland, Import Compliance Specialist, AD/CVD Enforcement, Office 1, to Susan H. Kuhbach, Acting Deputy Assistant Secretary, AD/CVD Enforcement, Group 1).

''Comparability'' of Commercial Loans Received

In 1993 and 1994, Leclerc obtained commercial loans. The receipt of such loans must be considered both in the context of the uncreditworthiness allegation and selection of the appropriate benchmark to use in measuring the countervailable benefit from the government loans received. In 1995, Leclerc reached an agreement with a commercial source to receive long-term financing. The circumstances surrounding the 1995 financing are such that we have disregarded this financing as dispositive evidence of creditworthiness or as a possible benchmark. We now turn to the receipt by Leclerc of commercial loans in 1993 and 1994.

Section 355.44(b)(6)(i) of the *Proposed Regulations* states that the receipt of comparable long-term financing is normally dispositive evidence that a company is creditworthy. Section 775(5)(E)(ii) of the Act—a new provision added by the URAA—requires that when selecting a benchmark loan to compare to the government loan for purposes of measuring the potential benefit, the Department must select a loan comparable to one the company could obtain commercially. We have determined that the commercial loans received by Leclerc are sufficiently comparable to the government loans to constitute dispositive evidence that the company was creditworthy in 1993 and 1994. However, we have determined that the commercial loans received are not sufficiently comparable to measure accurately any countervailable benefits received from the government loans.

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing. The analysis of whether a company is creditworthy examines whether the company received comparable commercial loans and, if necessary, the overall financial health and future prospects of the company. Such an analysis is ''often highly complex'' (see the preamble to the *Proposed Regulations* at 23370, citing the Subsidies Appendix at 18019.) The fundamental question however, is a general one; namely: was the company's financial health such that it did not have meaningful access to long-term commercial loans?

Given the difficult question posed by a creditworthy inquiry and our policy of seeking guidance from the judgments of the commercial markets, the Department has historically relied heavily upon the receipt of comparable commercial loans as dispositive evidence that the company at issue is creditworthy. The ''comparability'' of any commercial loans received has essentially been determined by examining whether long-term loans (not guaranteed by the government) were received from commercial sources in the same year as the government loans. (See for example, *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* 58 FR 37327, 37329 (July 9, 1993) and *Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Austria* 50 FR 33369, 33372 (August 9, 1985).) If the commercial loans received were judged comparable on this basis, the receipt of such loans has been considered dispositive evidence that the company was creditworthy. Based on our traditional interpretation of ''comparable'' in the creditworthy context, the commercial loans received by Leclerc were comparable to the government loans it received.

We see no reason to change the policy of relying on commercial loans or defining comparability as outlined above, because it answers the general question posed by an uncreditworthiness allegation. Specifically, it provides the most direct evidence that a company could obtain loans from commercial sources. If a company is able to obtain such financing, the marketplace has judged that the company at issue is creditworthy. As noted above, in such instances, the Department will normally defer to the decision of the market. The fact that the commercial loans received may differ from the government loans with respect to certain terms such as the level of security does not necessarily speak directly to the question of whether the company was creditworthy.

Because of the facts of this particular case, specifically the presence of the private sector in the financing of Leclerc's expansion, and the otherwise general nature of the creditworthy analysis as outlined above, we do not believe that the differences in other terms between Leclerc's commercial loans and its government loans are great enough to warrant a departure from the Department's normal practice of finding the receipt of commercial loans to be dispositive evidence that a company is creditworthy. Therefore, we determine that Leclerc was creditworthy in 1993 and 1994.

In contrast, we do not believe that Leclerc's commercial loans are appropriate for use as benchmarks for purposes of the more exacting exercise of measuring the benefit from the government loans received by Leclerc. As noted above, the statute, as recently amended by the URAA, requires that when selecting a benchmark interest rate to compare to the government interest rate for purposes of measuring the potential benefit, the Department must select a commercial loan comparable to one the company could actually obtain on the market. The selection of the benchmark interest rate under the new statute seeks to answer a very specific question; namely: what is the benefit provided by the specific government loans in question? In this context, the Department must take into account, to the extent possible, differences in terms between the government loans and the commercial loans offered for comparison purposes which may substantially affect the accuracy of the benefit calculated.

When comparing the terms of the SDI and Subsidiary Agreement loans with Leclerc's commercial loans, differences emerge with respect to the level of security. Because we believe that the level of security can significantly affect the interest rate charged by a commercial lender, selection of benchmark financing with markedly different levels of security may distort the measurement of the countervailable benefit.

Although the specific terms of Leclerc's loans are proprietary, we learned on verification that SDI takes on more risk than commercial banks and that there are significant differences with respect to the extent to which commercial and SDI loan values could be recovered in the event of Leclerc's default. Because of the differences between the commercial loans and the SDI and Subsidiary Agreement loans, we have chosen a benchmark interest rate which generally reflects the level of security exhibited by the government loans.

Although we have chosen a benchmark which generally reflects the significant terms of the government-provided loans, we have not adjusted for minor differences in terms or any differences which cannot be reasonably be quantified because such an analysis is not practicable and would not have a meaningful impact on our analysis. We consider such adjustments to be appropriate only to the extent that they reflect significant differences in terms and the record provides a reasonable, practicable basis for doing so.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: We have calculated the long-term benchmark interest and discount rate in 1993, 1994, and 1995 based on company-specific debt received by Leclerc. We used this debt to estimate the appropriate benchmark interest rate in 1993–1995. For 1995, we added a risk premium, as described in section 355.44(b)(6)(D)(iv) of the *Proposed Regulations* to establish the uncreditworthy benchmark interest and discount rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets to determine the allocation period for nonrecurring subsidies (see *General Issues Appendix (GIA)* attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37226; July 9, 1993). 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 allocation 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. See *British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In this case, the Department has determined that it is reasonable and practicable to allocate all nonrecurring subsidies received prior to, or during, the POI using Leclerc's AUL of 18 years.

FOB/CIF Adjustment

The Department has deducted costs associated directly with the transportation of subject merchandise from Leclerc's U.S. sales to determine the correct FOB value for denominator purposes (see GIA at 37236, 37237). While the majority of these costs were originally reported by respondents, additional information obtained at verification has been incorporated where appropriate.

Based upon the responses to our questionnaires and the results of verification, we determine the following:

I. Analysis of Direct Subsidies

A. Programs Determined to Be Countervailable

1. Canada-Quebec Subsidiary Agreement on Industrial Development

This Subsidiary Agreement, which spans five years, was jointly funded by the GOC and GOQ on March 27, 1992. Under this agreement, the GOC and GOQ established a program to improve the competitiveness and vitality of the Quebec economy by providing financial assistance, through the initial joint funding of the agreement, to companies for major industrial projects. The following four types of activities are eligible for contributions: (1) capital investment projects, (2) product or process development projects involving a major investment or leading to a capital investment, (3) studies required to assess the feasibility of an investment project, and (4) municipal infrastructure required for a major capital investment project.

Leclerc received a long-term interest-free loan under the Subsidiary Agreement. Although the Subsidiary Agreement was jointly funded, the loan received by Leclerc was provided by the GOC from its portion of the joint funding.

We have determined that the loan received by Leclerc constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOC providing a benefit in the amount of the difference between the benchmark interest rate and the zero interest rate paid by Leclerc.

We analyzed whether the Subsidiary Agreement is specific ''in law or in fact,'' within the meaning of section 771(5A) of the Act. Funds paid out by the GOC under this program are limited to companies in a particular region of Canada (*i.e.*, the Province of Quebec) and, hence, regionally specific under section 771(5A)(D)(iv) of the Act.

To calculate the countervailable benefit conferred on Leclerc, we used the 1995 uncreditworthy benchmark interest rate described above and followed our fixed-rate, long-term loan methodology (see January 24, 1997, Memorandum from Team to Susan H. Kuhbach, Acting Deputy Assistant Secretary, AD/CVD Enforcement, Group 1). We then divided the benefit attributable to the POI by Leclerc's LHF sales in the POI. (See Comment 12.) On this basis, we determine the countervailable subsidy for this program to be 0.29 percent *ad valorem* for Leclerc.

2. Industrial and Regional Development Program (IRDP)

The IRDP was created by the Industrial and Regional Development Act and Regulations in 1983 and was administered by the Canadian Department of Regional Industrial Expansion. It was terminated on June 30, 1988. No new applications for IRDP projects were accepted after that date.

The goals of IRDP were to achieve economic development in all regions of Canada, promote economic development in those regions in which opportunities for productive employment are exceptionally inadequate, and improve the overall economy in Canada. To accomplish these objectives, financial support in the form of grants, contributions and loans were provided to companies for four major purposes: (1) establishing, expanding, modernizing production; (2) promoting the marketing of products or services; (3) developing new or improved products or production processes, or carrying on research in respect thereof; and (4) restructuring so as to continue on a commercially viable basis.

Under this program, all of Canada's 260 census districts were classified into one of four tiers on the basis of the economic development of the region. The most economically disadvantaged regions comprised Tier IV; the most advanced regions were classified as Tier I.

Those districts classified as Tiers III and IV were authorized to receive the highest share of assistance under IRDP (as a percentage of assistance per approved project); those in Tiers I and II received the lowest. For example, a grant toward the eligible costs of modernizing or significantly increasing the production of companies in Tiers I and II could not exceed 17.5 percent of the capital costs of the project, while in Tiers III and IV grants could cover up to 25 percent of eligible costs.

Nilus Leclerc Inc. was located in a Tier III district when it received three grants under this program. We have determined that the grants received by Leclerc constitute a countervailable subsidy within the meaning of section 771(5) of the Act. The grants are direct transfers of funds from the GOC and confer a benefit in the amount of the portion of the grant that is in excess of the most favorable, nonspecific level of benefits (i.e., Tiers I and II). (See section 355.44(n) of the Department's *Proposed Regulations* regarding programs with varying levels of benefits.) Also, IRDP grants are regionally specific within the meaning of section 771(5A) of the Act because the preferential levels of benefits (i.e., contributions to Tiers III and IV) are limited to companies in particular regions of Canada. This is consistent with our prior determination in the *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada,* 51 FR 10041, 10045 (March 24, 1986).

We have treated these grants as ''non-recurring'' subsidies based on the analysis set forth in the Allocation section of the *GIA* at 37226. In accordance with our past practice, we have allocated over time those grants which exceeded 0.5 percent of the company's sales in the year of receipt.

To calculate the countervailable subsidy, we used our standard grant methodology. For those grants which were tied to the production of both LHF and residential flooring, we divided the benefit attributable to the POI by the total sales of Leclerc and Planchers Leclerc (the company in the Leclerc group that produces residential flooring) during the same period. Otherwise, for those grants which benefited only the production of LHF, we divided the benefit attributable to the POI by Leclerc's LHF sales during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.04 percent *ad valorem* for Leclerc.

3. SDI: Expansion and Modernization Program

Firms in Quebec can participate in the *Expansion and Modernization Program* by meeting a requirement that ''the project (for which financing is requested) is aimed at markets outside Quebec.'' An alternative requirement for receiving assistance is that the market in Quebec is inadequately served by businesses in Quebec and that the supported production is expected to replace imported goods into Quebec. Under either requirement, the market for the products to be supported must have an expected growth rate that is above the average for the manufacturing sector in Canada. In addition to these requirements, which are contained in the regulations governing *Expansion and Modernization Program,* the GOQ has stated that firms receiving SDI loans must also receive financing from commercial sources.

Loans under this program can be provided to companies involved in: manufacturing, recycling, computer services, software or software package design and publishing, contaminated soils remediation, the operation of a research laboratory, and the production of technical services for clients outside of Quebec. The regulations for this program further indicate that businesses in other categories may be considered ''in exceptional cases.'' The assistance may be used to cover the following types of expenditures: (1) capital investments; (2) the purchase and introduction of a new technology; (3) the acquisition of information production or management equipment; (4) investments for project-related training; and (5) other training investments related to project start-up. Leclerc obtained loans under SDI's *Expansion and Modernization Program* in 1993, 1994, and 1995. (For further information regarding how we treated the 1995 loan, see Comment 17.) These loans were part of a larger package of commercial and government financing used to increase Leclerc's productive capacity.

We have determined that the 1993 and 1994 loans received by Leclerc constitute countervailable subsidies within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOQ providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by Leclerc.

Based on our review of the eligibility criteria, we determine that the program is not *de jure* specific. However, as in our *Preliminary Determination,* we have concluded that this program is in fact specific.

Although loans were given to a large number and wide variety of users under this program, the level of financing obtained by the wood products industries group and by Leclerc was disproportionate. In 1993 and 1994, the wood products industries group was consistently among the largest beneficiaries under the program. Leclerc's share of financing as a percentage of total authorized financing was also large relative to the shares received by other users. Taken together, these facts support a determination that the assistance received by Leclerc was disproportionate in 1993 and 1994.

In order to calculate the benefit from long-term variable rate loans, the Department normally calculates the difference during the POI between the amount of interest paid on the subsidized loan and the amount of interest that would have been paid on a comparable commercial loan. However, in this case, the loans given under the *Expansion and Modernization Program* include premia payments by Leclerc and stock options for SDI. In addition, the SDI loans have variable repayment schedules. Therefore, our normal methodology for long-term loans which focuses only on differences in interest rates would not provide an accurate measure of the benefit received by Leclerc. In order to account for the value of the premia and the variable repayment schedule, we have estimated a repayment schedule for the SDI loan and compared the amount Leclerc would repay under that schedule with the amount Leclerc would repay under a comparable commercial loan. Because of the difficulty of assigning a value to the stock options, we have not included them in our calculations. We note that if we were to include the stock options, the amount of the benefit conferred by these loans would be even less. Given that we have reached a negative countervailing duty determination, it is not important that our subsidy calculation reflects the lower benefit amount.

We next determined the grant equivalent of these loans, i.e., the present value of the difference between what would be paid under the commercial loan and the SDI loan, using the discount rates described in the *Subsidies Valuation Information* section above. We used the life of the SDI loan as the allocation period because of the variable repayment schedule on the SDI loans. The benefit allocated to the POI was then divided by Leclerc's total sales of subject merchandise during the POI. Using this methodology, we determine the countervailable subsidy from the *Expansion and Modernization Program* to be 0.24 percent *ad valorem.*

4. Export Promotion Assistance Program (APEX)

Under the APEX program, the GOQ shares certain costs incurred by a Quebec company in the penetration of new foreign markets. Such costs include missions to develop new markets or negotiate ''industrial agreements,'' participate in trade fairs outside of Canada, adapt products to new export markets, prepare bids with the assistance of consultants, prepare marketing studies as well as strategies to enter foreign markets, and hire an international marketing expert to develop the firm's export sales (see *Preliminary Countervailing Duty Determinations: Pure and Alloy Magnesium From Canada* 56 FR 63927, 63931 (December 6, 1991)).

At the *Preliminary Determination*, the Department considered APEX to be a non-used program based on the questionnaire responses received. Prior to the start of verification, however, the GOQ stated, and we confirmed, that Leclerc in fact used this program (see December 10, 1996 GOQ Verification Report at 12.)

Because receipt of benefits under this program is contingent upon export performance, we determine that it is an export subsidy within the meaning of 771(5A)(B) of the Act. We have also determined that the grants received by Leclerc constitute a countervailable subsidy within the meaning of section 771(5) of the Act because they are direct transfers of funds from the GOQ and confer a benefit to Leclerc in the amount of the face value of the grant. We have treated the grant as a ''non-recurring'' subsidy based on the analysis set forth in the Allocation section of the *GIA* at 37226. We have allocated the benefit over the AUL of Leclerc's non-renewable physical assets using the grant allocation formula outlined in section 355.49 (b)(4)(3) of the Department's *Proposed Regulations.* The benefit allocated to the POI was then divided by Leclerc's total export sales during the POI. Using this methodology, we determine the countervailable subsidy from the APEX program to be 0.00 percent *ad valorem*.

B. Program Determined To Be Not Countervailable, But Which Was Not Considered At The Preliminary Determination

Program for the Development of Human Resources (PDHR) of the Societe Quebecoise de Developpement de la Main-d'Oeuvre (SQDM)

Prior to the start of verification, the GOQ reported that Leclerc received assistance under the Program for the Development of Human Resources (PDHR) which is administered by SQDM. PDHR was created in 1992 for the purpose of assisting businesses to develop or adapt their human resource programs to protect and maintain existing jobs and to support the creation of new jobs. The program is available to all commercial enterprises, workers' unions, other groups of workers and nonprofit organizations located in Quebec. The only eligibility criterion is that a company is conducting business, or in the process of establishing a business, in Quebec or is in the process of doing so. The program focuses on assisting small and medium-size businesses: (1) with human resources management and development needs; (2) facing a difficult employment situation; and (3) active in priority economic sectors at the local, regional and provincial levels.

The financial assistance generally covers 50 percent of the costs of the company's human resource projects with a maximum cap of $200,000 per year for up to three years. In general, funds may be used for: ''hiring an expert responsible for analyzing the manpower situation at the company; paying the wages of employees involved in human resource activities; other expenses related to training activities for human resource development and/or hiring a training coordinator or a human resource manager.'' We verified that Leclerc received a grant under this program during the POI.

We analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D)(i) and (iii) of the Act. Based upon our review of the eligibility criteria for the program, we determine that this program is not *de jure* specific.

We next examined whether the program is *de facto* specific. During the POI, we verified that assistance under the program was distributed over a large number and wide variety of users representing virtually every industry and commercial sector found in Quebec. Based on this information, we have determined that the program is not specific based on the number of users. We also examined evidence regarding the usage of the program and found that neither Leclerc nor the wood products industry was a dominant user or received a disproportionate share of benefits distributed under this program. Because the number of users is large and there is no dominant or disproportionate use of the program by Leclerc, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, we conclude that this program is not specific and has not conferred a countervailable subsidy on Leclerc.

C. Programs Determined To Be Not Countervailable Which Were Considered At The Preliminary Determination

Based on verification, we continue to find these programs not countervailable for the same reasons identified in the preliminarily determination.

1. *''Programme d'appui a la reprise'' (PREP) program*
2. *Decentralized Fund for Job Creation Program of SQDM*
3. *Export Development Corporation (EDC)*
4. *Hydro-Quebec Electrotechnology Implementation Program*
5. *Societe de placement dans l'enterprise quebecoise (SPEQ)*

D. Programs Determined to Be Not Used

Based on the information provided in the responses and the results of verification, we determine that the following programs were not used:

1. *Capital Gains Exemptions*
2. *Regional Investment Tax Credits*
3. *Performance Security Services through the Export Development Corporation*
4. *Working Capital for Growth from the Business Development Bank of Canada (BDC)*
5. *St. Lawrence Environmental Technology Development Program (ETDP)*
6. *Program for Export Market Development*
7. *Canada-Quebec Subsidiary Agreement on the Economic Development of Quebec*
8. *Quebec Stumpage Program*
9. *Programs Provided by the Industrial Development Corporation (SDI)*
   Article 7 Assistance
   Export Assistance Program
   Business Financing Program
   Research and Innovation Activities Program
10. *Private Forest Development Program (PFDP)*

II. Analysis of Upstream Subsidies

The petitioner alleged that Leclerc receives upstream subsidies through its purchase of lumber from suppliers which harvest stumpage from Quebec's public forest (''allegedly subsidized'' suppliers). Section 771A(a) of the Act, defines upstream subsidies as follows:

The term ''upstream subsidy'' means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an ''input product'') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, we determine that a competitive benefit is not bestowed on Leclerc through its purchases of allegedly subsidized lumber. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

* * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The Department's *Proposed Regulations* offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) a world market price for the input product.

In this instance, Leclerc purchases the input product, lumber, from numerous unsubsidized (i.e., suppliers which do not harvest stumpage from Quebec's public forest), unrelated suppliers in Canada. Therefore, we have used the prices charged to Leclerc by these suppliers as the benchmark.

We compared the prices paid by Leclerc to its ''allegedly subsidized'' suppliers with the prices paid to unsubsidized suppliers on a product-by-product and aggregate basis (see October 10, 1996, November 6, 1996 and January 24, 1997, Memoranda from Team to Susan H. Kuhbach, Acting Deputy Assistant Secretary, Group 1, AD/CVD Enforcement). Based on our comparison of these prices, we found that the price of ''allegedly subsidized'' lumber was generally equal to or exceeded the price of unsubsidized lumber. Therefore, we have determined that Leclerc did not receive an upstream subsidy.

Critical Circumstances

The petitioner alleged that critical circumstances exist with respect to imports of subject merchandise. Because we have reached a negative final determination, this issue is moot.

Interested Party Comments

Comment 1 (1995 Commercial Financing)

Petitioner disagrees with the Department's use of a 1995 financing arrangement between Leclerc and a commercial entity as a benchmark, as well as dispositive evidence of Leclerc's creditworthiness. Petitioner bases its claim on the fact that Leclerc did not actually receive the loan in 1995, nor did it meet the preconditions for receiving financing under the arrangement. Petitioner points out that section 355.44(b)(6)(i) of the Department's *Proposed Regulations* requires the *receipt* of a comparable long-term commercial loan for dispositive evidence of creditworthiness.

Leclerc states that it received and accepted a loan offer from a commercial source in 1995 and that the agreement was binding on both parties. Leclerc notes that the Department's November 13, 1996 Creditworthy Analysis Memorandum emphasized the fact that the Department's primary interest in considering the presence of commercial financing in the context of a creditworthiness inquiry is whether a company had access to such financing. According to Leclerc, the 1995 financing arrangement shows that the company had access to long-term funds from commercial sources.

Finally, regarding use of the 1995 financing arrangement as a benchmark, Leclerc and the GOQ state that the statute focuses on a ''comparable commercial loan that the recipient *could* actually obtain on the market'' (emphasis added). Because the 1995 financing arrangement reflects financing that Leclerc could have obtained, the circumstances surrounding the agreement should not disqualify it as a benchmark.

DOC Position

We disagree with respondents. As described in the December 10, 1996 Leclerc Verification Report, the circumstances surrounding the 1995 financing arrangement do not support the argument that this financing arrangement should be considered dispositive evidence of Leclerc's creditworthiness. These circumstances also indicate that the 1995 financing arrangement does not reflect an appropriate benchmark interest rate. (Note: The details of the 1995 financing arrangement are business proprietary (see January 24, 1997 memorandum from David R. Boyland, Import Compliance Specialist, AD/CVD Enforcement, Office 1, to Susan H. Kuhbach, Acting Deputy Assistant Secretary, Group 1, AD/CVD Enforcement).)

Comment 2 (Creditworthiness)

In addition to arguing that the commercial and government loans are not comparable for purposes of determining Leclerc's creditworthiness, petitioner asserts that other evidence indicates that Leclerc was not creditworthy when it received the government financing under investigation. Petitioner argues that Leclerc's financial ratios during 1993, 1994, and 1995 would have been clearly unacceptable to a private lender. Petitioner further asserts that the Department must consider the expanded repayment obligations of the enlarged Leclerc operation, as opposed to simply determining whether the company historically met its financial obligations. Petitioner argues that, in addition to being unable to meet its future financing costs with its cash flow, specific aspects of Leclerc's financial position in 1995 indicate that the company was not meeting its financial obligations in that year. According to petitioner, other factors such as Leclerc's decision to abandon several of its LHF production lines in 1995 also indicate that the company was not in a position to cover its financial obligations.

Citing the *Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway*, 51 FR 10041 (March 24, 1986) and section 355.44(b)(6)(i) of the Department's *Proposed Regulations,* Leclerc argues that creditworthiness cannot be judged retrospectively and that the Department can only consider creditworthiness at the time the loans were actually made. Leclerc cites positive information from its balance sheet and income statements, the ITC preliminary determination in this case (*Certain Laminated Hardwood Flooring from Canada*, Inv. No. 701–TA–367), and a study of Leclerc's 1995 business plan by an outside consulting firm, to support its position that lenders in Canada had every reason to loan it money throughout the 1993–1995 period.

Leclerc states that the approach in the Department's October 9, 1996 creditworthiness memorandum (i.e., in which a company can only be considered uncreditworthy if it did not have sufficient revenues or resources in the past to meet its costs and fixed financial obligations) is consistent with the preamble to the Department's *Proposed Regulations* and past cases. Because it did have sufficient resources to meet its costs and fixed financial obligations, Leclerc asserts that no creditworthiness inquiry should be conducted.

With respect to petitioner's criticism of the company's financial ratios, Leclerc argues that the Department must examine the individual circumstances of the company. According to Leclerc, when the financial ratios are considered in context, they do not reflect financial instability nor do they indicate that the company was unable to cover its costs and fixed financial obligations out of its revenue.

DOC Position

As noted above, we believe that the commercial loans received by Leclerc in 1993 and 1994 are comparable to the government-provided loans in those years. Hence, we have determined that the company was creditworthy in those years.

We agree with petitioner that a number of aspects related to Leclerc's financial position in 1995 would have troubled a commercial lender and that Leclerc's financial position in 1995 reflected certain imbalances (see January 24, 1997 memorandum from David R. Boyland, Import Compliance Specialist, AD/CVD Enforcement, Office 1, to Susan H. Kuhbach, Acting Deputy Assistant Secretary, Group 1, AD/CVD Enforcement). Additionally, circumstances surrounding Leclerc's 1995 financing arrangements strongly suggest that Leclerc would not have been able to obtain long-term commercial financing in that year (see December 10, 1996 Leclerc Verification Report). It is on this basis that we have determined Leclerc to be uncreditworthy in 1995.

Regarding Leclerc's argument that the Department should not have investigated the company's creditworthiness since it had sufficient resources in the past to cover its costs and fixed financial obligations, we disagree. As noted in our *Preliminary Determination* (61 FR 59080, 59079 (November 20, 1996)), while past indicators can provide useful information about a company's future prospects, they should not cause the Department to disregard information contemporaneous with the granting of the loan that is relevant to the company's ability to meet its future financial obligations.

Comment 3 (Disproportionality—Determining Specificity Based on POI Benefits.)

The GOQ argues that the Department incorrectly found that SDI loans were *de facto* specific on the grounds that there was disproportionate use. The GOQ maintains that the amount of benefits approved in any one year should not be the basis upon which the Department makes a disproportionality determination. Instead, the GOQ argues that the Department should make its disproportionality determination for the POI based on the SDI benefits allocated to the POI. In other words, all benefits bestowed over the life of the SDI program should be allocated over time, and the Department's specificity analysis should be based on the distribution of allocated benefits in the POI. To support this argument, the GOQ cites the *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada* (*Live Swine from Canada*) 56 FR 28531, 28534 (June 21, 1991) which states ''[i]n analyzing *de facto* specificity, the Department looks at the actual number of commodities covered during the particular period under review.''

Petitioner argues that the GOQ has offered no support in the law or in past case precedent showing that a disproportionality finding requires a specificity analysis based on a POI-allocated benefit analysis. Furthermore, according to petitioner, the GOQ approach is not feasible.

DOC Position

We disagree with the GOQ's assertion that the Department's disproportionality analysis must focus solely on the benefits allocated to the POI. Such an approach confuses the initial specificity determination, which is based on the action of the granting authority at the time of bestowal, with the allocation of the benefit over time. Because these are two separate processes, the portions of grants allocated to further periods of time using the Department's standard allocation methodology is not relevant in determining the actual distribution of assistance at the time of bestowal.

As regards *Live Swine from Canada* cited by Leclerc, the benefits analyzed in that proceeding are recurring subsidies. Hence, in performing its review period-by-review period analysis, the Department is looking at separate and distinct disbursals each year, and not at subsidies which have been allocated over time.

Comment 4 (Disproportionality—Aggregation)

The GOQ argues that the Department's reference to the wood products industries is inconsistent with the law because the Department should first consider whether the enterprise itself has received a disproportionate share, and then whether the industry similarly benefitted. The GOQ also argues that the Department should compare the benefit received by the hardwood trailer flooring industry—of which Leclerc is the sole member—to the total value of SDI loans.

Petitioner argues that requiring the Department to compare benefits received by the hardwood trailer flooring industry to other such industries at the same level of aggregation is impractical and is directly contrary to section 771(5A) of the Act and section 355.43(b) of the *Proposed Regulations* which allows the Department to choose from various levels of aggregation for comparison purposes.

DOC Position

We disagree with the GOQ that the Department considered the wrong industry level when analyzing disproportionality. In its May 20, 1996 questionnaire, the Department requested that the GOQ provide the annual ''industry distribution'' of authorized benefits under the *Investment Assistance Program* for both *Expansion and Modernization Program* and *PREP.* Our determination of disproportionality was based, in part, on an analysis of the industry distribution maintained by the GOQ and reported in their questionnaire response. Although other GOQ organizations such as SQDM provided information at a more detailed level, the Department presumed that the information provided for SDI's *Investment Assistance Program* represented the most detailed information available to the GOQ. Moreover, we did not perceive the information to be incorrect.

In our disproportionality analysis, we determined, for both Leclerc and the wood products industry, the percentage of total annual authorized financing. We examined how these percentages compared to the average transaction by industry, as well as the percentage of total assistance accounted for by the other industry participants identified by the GOQ. While the ''wood products industry'', as originally reported by the GOQ in its supplemental questionnaire response, can be broken down into more discrete units, we do not agree that we are precluded from examining disproportionality at the level of detail originally provided by the GOQ. As the GOQ acknowledged in the hearing, ''the statute * * * confers upon [the Department] discretion to determine what is the appropriate level of aggregation'' (see page 70 of January 7, 1996 hearing transcript). In this case, the Department relied on information provided by the GOQ to compare the distribution of benefits to Leclerc and the group of wood product industries to other groups of industries that received assistance under this program. Based on this comparison, we determined that Leclerc received a disproportionate amount of assistance under this program.

Comment 5 (Disproportionality—Considering Only Disbursed Financing)

The GOQ asserts that for purposes of determining disproportionality the Department should look at loans that were actually disbursed rather than loans that were authorized. According to the GOQ, if the Department considers the amount actually disbursed in 1995, the share of SDI financing accounted for by the wood products industries in that year is less than that received by the plastics and rubber industries and is ''on par'' with disbursements to the chemical and metal products industries.

Petitioner disagrees with the GOQ's argument that the Department should base its disproportionality analysis on loans actually disbursed, as opposed to loans authorized. According to petitioner, the level of authorized financing reflects the GOQ's intent during a particular period and is, therefore, an appropriate measure for determining disproportionality. Petitioner also notes that the only record evidence in this case regarding industry-by-industry assistance under the *Expansion and Modernization Program* is based on SDI authorized loans.

DOC Position

We disagree with the GOQ that authorized SDI financing cannot be used in the Department's disproportionality analysis. The only data we have on shares received by industries/enterprises other than Leclerc is derived from authorized amounts. To use the amount disbursed for Leclerc and the amounts authorized for other industries/enterprises to calculate their relative shares would be inappropriate given the inconsistency inherent in comparing such data. (See also Comment 17.)

Comment 6 (Disproportionality—Magnitude)

The GOQ argues that the Department has never found disproportionality in a case with facts resembling the facts here. In the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil* 58 FR 37295 (July 9, 1993)), the steel producers received more than 50 percent of the ''benefits'' under the examined program, two-and-a-half times more than the second largest recipient industry. The GOQ also cites *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy* 59 FR 18357 (April 18, 1994) and *Final Results of Countervailing Duty Administrative Review: Live Swine from Canada* 59 FR 12243 (March 16, 1994) as examples in which the Department found disproportionality based on large industry usage of a program. While the Department determined 16.9 percent to be disproportionate in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium (Certain Steel Products From Belgium)* 58 FR 37273 (July 9, 1993)), the GOQ alleges that the Department was examining a single industry (the steel industry), as opposed to a group of industries. The GOQ also cites *Final Results of Countervailing Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearing) (AFBs) from Singapore* 60 FR 52377 (October 6, 1995) in which the group of industries in which AFBs belongs received a large percentage of assistance, while AFBs themselves received a small percentage.

Petitioner states that the Department analyzed specificity at both an industry and company-specific level and reasonably found that there was disproportionate use. Although petitioner agrees that the cases cited by the GOQ indicate that greater levels of usage have been the basis for a finding of disproportionality in some instances, petitioner asserts that this does not mean the Department's disproportionality analysis in the instant case is unreasonable or faulty.

DOC Position

We agree with petitioners. Disproportionality is fact-specific and determined on a case-by-case basis. The shares found to be disproportionate in previous cases do not represent a floor below which the Department cannot determine disproportionality to exist. Our determination in this case was based both on usage by the group of industries to which Leclerc belongs *and* usage by Leclerc. As discussed above, the wood products industries were among the top of users of the *Expansion and Modernization Program* and Leclerc, as an individual enterprise within this group, also received a relatively large percentage of financing under this program. On this basis, we determined that Leclerc received disproportionate amounts under this program.

Comment 7 (Disproportionality—Addressing GDP)

The GOQ argues that the CIT has determined that the Department cannot rely on a mechanical, per se test for disproportionality and that it has a further obligation to address the reasons that may explain why an industry has received a relatively large share (see *British Steel* at 1326). In addition to comparing the industry's share of government benefits over time to the industry's share of gross domestic product (GDP), the GOQ also argues that the CIT has stated that the receipt of large benefits may also be explained by the fact that the industry was expanding, or that there was an increased demand for capital investment. According to the GOQ, when the Department considers GDP, it must request and consider other evidence which the Department did not do in this case.

The GOQ states that information provided to the Department at verification demonstrated that the share of loans received by the wood products industries is virtually identical to their share of total shipments of manufactured goods in Quebec. Additionally, the GOQ notes that during the 1993–1995 period, North America was emerging from a recession. In this economic environment, the laminated hardwood trailer flooring industry, along with other wood products industries, was experiencing sustained growth and, thus, was in need of capital.

Petitioner disagrees that the Department should use a GDP analysis in this case because the GDP figures relied upon by the GOQ are based on manufacturing GDP. Therefore, they do not represent Canada's GDP and they do not match the scope of SDI's lending authority which goes beyond the manufacturing sector. Petitioner also rejects the GOQ's argument that the CIT decision in *British Steel* stands for the proposition that the Department must perform a GDP analysis and examine factors explaining why an industry received a relatively large share of assistance under a particular program. According to petitioner, *British Steel* requires the Department to examine the above-referenced information only when it relies on indirect factors to determine disproportionality. Since the indicators used in the instant case were directly related, as opposed to indirectly related, petitioner argues that the CIT's finding in *British Steel* is irrelevant.

DOC Position

We disagree with the GOQ that a finding of disproportionality requires the Department to examine reasons that may explain why the industry at issue received a disproportionate share of the benefits. The statute does not require the Department to determine the cause of any *de facto* specificity that occurs as a result of the government action. To the contrary, the statute provides that the Department may impose a countervailing duty if it determines that a benefit provided by a government action is conferred upon a specific industry. No intent or purposeful government action is required to show that a specific industry is receiving the benefit, as acknowledged by the Court in *British Steel.* See also, *Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada,* 57 FR 22570, 22580–81 (1992).

In response to the Court's remand instructions in *British Steel,* the Department stated that it is not required to analyze the causal relationship between the benefit conferred and the specificity of the benefit. Furthermore, ''imposing the requirement of an affirmative showing that *de facto* specificity is the result of particular government actions is contrary to the statute, the intent of Congress, and past judicial precedent.'' See *Final Results of Redetermination Pursuant to Remand British Steel Plc.* v. *United States* (February 9, 1995) at 12. The Department's redetermination was upheld by the Court (see *British Steel PLC* v. *United States* 941 F. Supp. 119, 128, (CIT 1996)).

The same point is made in the Uruguay Round Trade Agreements Statement of Administrative Action (SAA) at 262. The SAA states that evidence of government intent to target or otherwise limit benefits is irrelevant in *de facto* specificity analysis.

Comment 8 (Disproportionality—Considering SDI as Only One Program)

The GOQ argues that the Department incorrectly limited its examination of funds received by Leclerc and the wood products industries to the *Expansion and Modernization Program,* as opposed to total loans received under all SDI programs. The GOQ states that the latter approach is correct because all SDI loans come from the same pool of monies, they are disbursed under different ''programs'' only for administrative purposes, and that program distinctions make no difference in the loan criteria, terms, essential eligibility, or participation. Also, they are administered by the same loan officers and the customized terms for all SDI loans and loan guarantees are essentially the same. This information indicates that the hardwood trailer flooring industry received only a fraction of all SDI loans between 1993 and 1995.

DOC Position

We do not agree that all SDI programs should, in effect, be considered integrally linked and, therefore, a single program for purposes of determining specificity. Section 355.43(b)(6) of the Department's *Proposed Regulations* states that in determining whether two or more programs are integrally linked ''the Secretary will examine, among other factors, 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 programs.'' In the *Final Affirmative Countervailing Duty Determination: Pure Magnesium and Alloy Magnesium From Canada* 57 FR 30946 (July 13, 1992) *(Magnesium from Canada),* the Department applied this standard when it found that SDI Article 7 assistance was not integrally linked to ''general SDI programs.'' In making this determination, the Department noted that ''[t]he * * * programs offer different types of assistance and have been established for different purposes.'

Each SDI program under investigation in this case (e.g., *Expansion and Modernization Program* and *PREP*) operates under separate regulations and directives. Each program is also different with respect to objective and level of benefit. For example, *PREP* was a temporary program established to alleviate cash flow problems experienced by Quebec companies during the recession of the early 1990s. Under *PREP,* SDI guaranteed a percentage of loans that could range between CD$100,000 and CD$1,000,000. The *Expansion and Modernization Program,* on the other hand, was a long-term program which provided businesses with loans for the establishment or expansion of facilities. Although the floor for assistance under *Expansion and Modernization Program* is also CD$100,000, there is no stated cap.

While we acknowledge the overlap that the GOQ refers to with respect to the administration of its programs, these programs are not integrally linked because they are separated for legal purposes by different regulations. They also have different objectives and benefit levels. For these reasons, we have continued to examine these programs individually for the final determination.

Comment 9 (Subsidiary Agreement: Including Amount not Disbursed in POI to Determine Benefit)

Petitioner claims that the Department's preliminary ad valorem calculation regarding the Subsidiary Agreement was understated because the Department failed to include funds disbursed to Leclerc after the POI.

The GOQ contends that petitioner's argument ignores the legal requirement that the Department determine whether countervailable benefits were provided during the POI. According to the GOQ, events occurring after the POI can have no relevance to the Department's determination of whether benefits were received during the POI.

Leclerc notes that the Department correctly treated the Subsidiary Agreement assistance as a variable rate, long-term loan. Thus, in accordance with section 355.49(d)(1) of the *Proposed Regulations,* Leclerc argues that the Department must determine the amount of the benefit attributable to a particular year under a variable rate, long-term loan by calculating the difference between what the firm paid during the year under the government loan and what the firm would have paid during the year under the benchmark loan.

DOC Position

We disagree with petitioner. In accordance with section 355.48 of the *Proposed Regulations,* a countervailable benefit is deemed to have been received at the time that there is a cash flow effect on the firm receiving the benefit. In the case of a loan, the cash flow effect is normally deemed to have occurred at the time a firm is due to make a payment on the benchmark loan. Therefore, because Leclerc would not have been required to make a payment during the POI on the benchmark loan for the disbursement in question, that disbursement could not have conferred a benefit on the firm during the POI.

Comment 10 (Benchmark Interest Rate Based on Adverse Facts Available)

Petitioner argues that the benchmark interest rate for the loan under the Subsidiary Agreement should be 20 percent, based on adverse facts available. Petitioner contends that the use of adverse facts available is warranted because the GOC did not provide the verification team with certain documents.

The GOC argues that the requested analysis/approval documents were provided to the verification team (see GOC Verification Report at page 2). Accordingly, no grounds exist for the Department to consider the punitive measures petitioner proposes.

DOC Position

We agree with the GOC that application of adverse facts available is not warranted with respect to the Subsidiary Agreement loan. As noted in the GOC verification report, while the GOC initially could not provide the analysis/approval documents because of concerns regarding the proprietary nature of the documents, the GOC made available certain approval documents to the verification team on November 28, 1996. Thus, no grounds exist for the Department to consider the use of adverse facts available.

Comment 11 (Upstream Subsidy)

Petitioner states that the Department's verification of Leclerc's lumber purchasing records incidentally confirmed that Leclerc paid widely varying prices for the same species and grade purchased at the same time, that it paid higher prices for lower quality lumber purchased at the same time, and that it was able to buy lumber, a commodity product, at prices below what other buyers were willing to pay. Thus, petitioner contends that because the Department failed to address the issues regarding the credibility of Leclerc's lumber purchasing records, the Department must disregard Leclerc's prices.

Both the GOQ and Leclerc note that the factual record in this case fully supports the Department's *Preliminary Determination* that no competitive benefit was bestowed on Leclerc through its purchases of allegedly subsidized lumber. Respondents note that the Department twice verified the actual prices paid by Leclerc for purchases of lumber and the sources of Leclerc's lumber. Moreover, respondents state that the Department's verification reports confirm that Leclerc and the GOQ accurately reported all the relevant competitive benefit data. Respondents add that the Department analyzed the verified data and correctly concluded that no competitive benefit was bestowed upon Leclerc.

DOC Position

We agree with respondents. We thoroughly examined and verified Leclerc's lumber purchasing records for the POI, as well as GOQ records which confirmed the sources from which Leclerc's suppliers obtained timber (see August 26, 1996 Verification Reports of Leclerc and the GOQ and December 10, 1996 Verification Reports of Leclerc and the GOQ). Moreover, many concerns raised by petitioner prior to verification were addressed at verification. This verified record information was then analyzed using several approaches. Based on our analysis, we have determined that the company did not receive a competitive benefit through its lumber purchases from allegedly subsidized suppliers.

Comment 12 (Denominator Issue: Subsidiary Agreement and SDI)

Leclerc contends that the financing received under the Subsidiary Agreement and SDI benefited the company's total production and, therefore, the denominator used to calculate the *ad valorem* subsidy rate should be total sales. Leclerc adds that the Department's verification reports of Leclerc and the GOC further confirm that the assistance benefited total sales, not just subject merchandise.

Petitioner contends that Leclerc's argument is misplaced because the GOC and GOQ provided the assistance solely to support the production of LHF. Petitioner notes that the financing received through SDI and the Subsidiary Agreement was received by the two companies in the Leclerc group of companies which produce LHF, and that other members of the group which produce other items did not receive this financing. Finally, petitioner claims that Leclerc has failed to produce documentation showing that the governments intended their financing to go beyond LHF production at the time it was granted.

DOC Position

We agree with petitioner that the assistance provided to Leclerc under these programs was ''tied'' to the production of subject merchandise. Consistent with the Department's traditional tying analysis, we have determined that our inquiry should focus on the subsidy givers'' (i.e., the GOC and GOQ) intended use for the subsidies prior to or at the point of bestowal. Namely, a subsidy is considered to be tied to a particular product when the intended use is acknowledged prior to or concurrent with the bestowal of the subsidy (see *GIA* at 37232). With respect to the financing in question, all available documentary record evidence generated by the GOC, GOQ and Leclerc prior to the point of bestowal (e.g., applications, analysis reports, recommendation documents, and contracts) demonstrate that the governments only considered the expansion and/or creation of LHF facilities as the project for which the assistance was provided.

Additionally, as noted by petitioner, the Department verified that the financing in question was provided to Nilus Leclerc, Inc. and Industries Leclerc, Inc., the LHF producers in the Leclerc group of companies. Members of the Leclerc group of companies which produce non-subject merchandise were not considered in the above-referenced government documents as beneficiaries of the financing in question. Therefore, we have determined that the financing received under the Subsidiary Agreement and SDI solely benefited the production of LHF.

Comment 13 (SDI: Calculation Errors)

The GOQ and Leclerc contend that the Department erred in calculating the net present value of the 1995 and 1994 SDI loans by incorrectly calculating the present value of some cash flows. The GOQ and Leclerc assert that when these errors are corrected, there is no benefit from the SDI loans during the POI.

DOC Position

We agree with the GOQ and Leclerc that errors were made in calculating the present value interest factor for the SDI loans. These errors have been corrected.

Comment 14 (The Department Must First Find a Benefit)

According to the GOQ, the statute requires the Department to find first that a payment is a subsidy, and only subsequently can it analyze whether the subsidy is countervailable. The GOQ and Leclerc assert that if the Department had not erred when it determined that the SDI loans conferred a benefit, it would never have analyzed the specificity of the SDI loans.

DOC Position

We disagree with the assertion that the Department first must find a benefit from a particular program that is used in order to analyze the specificity of such program. Programs can be found to be specific on different grounds, which in turn dictate the method for calculating the benefit. For example, if a program is found to be an export subsidy, rather than a specific domestic subsidy, the denominator used to calculate the benefit is export sales rather than total sales, which can affect the finding of a benefit. Additionally, because the Department cumulates the benefit from all countervailable programs in order to determine if the aggregate benefit is greater than *de minimis*, the Department must assess the countervailability of any program where the benefit may be greater than zero.

Comment 15 (Using 1996 Information to Calculate the Benefit)

According to the GOQ, were we to consider events subsequent to the POI, there would be no benefit to Leclerc from any of the loans. However, both the GOQ and Leclerc also argue that information concerning events subsequent to the POI cannot be used retrospectively to determine a countervailable benefit.

Petitioner claims that the Department did not verify important elements of these events and, therefore, cannot rely on them to calculate a benefit. In rebuttal, Leclerc argues that the events are on the record and verified.

DOC Position

We disagree with respondents that our calculation of the benefit conferred by a long-term loan during the POI cannot reflect events subsequent to the POI. For example, if we learn during verification that scheduled payments on the loan were missed during the year following the POI, it is appropriate to reflect those missed payments in our calculation. This is because when we are calculating the grant equivalent of a long-term loan we necessarily include information about expected payments under the loan. Where actual payments differ from expected payments, we reflect the actual payments to increase the accuracy of our calculation.

Our examination of the post-POI information was sufficient to determine that the information provided is generally consistent with information submitted in Leclerc's questionnaire, as well as other information provided by the GOQ, which was fully verified. Therefore, as facts available, we have decided to use the post-POI information to achieve accurate calculations of the benefits conferred by these loans.

Comment 16 (The Department Should Use its Long-term, Variable-rate Methodology for SDI Loans)

Leclerc maintains that the Department's approach to calculating the benefit under the SDI and Subsidiary Agreement programs is internally inconsistent, and that the variable rate methodology could be used for the SDI loans. While Leclerc notes that we changed our methodology in order to account for the premia, they state that the underlying loans are actually variable rate loans. Furthermore, Leclerc notes that the first option in the Department's long-term, variable-rate benchmark hierarchy is to use the interest rate on a variable-rate, long-term benchmark loan.

The GOQ notes that the Department prudently deviated from its traditional methodology to account for the full costs to the borrower. However, the GOQ notes that the Department might choose to revert to its traditional methodology.

Petitioner contends that the SDI loans cannot be treated as variable rate loans because of events subsequent to the POI that preclude the use of the Department's long-term, variable-rate methodology.

DOC Position

We disagree with Leclerc that the Department should revert to using its long-term, variable-rate methodology. As we explained in our *Preliminary Determination,* there are several features of these loans that lead us to conclude that our variable-rate loan methodology is not capable of measuring the benefits conferred by these loans. Therefore, we have continued to apply our long-term, fixed-rate loan methodology.

Comment 17 (Extent to Which the 1995 SDI Loan Provided a 1995 Benefit to Leclerc)

The GOQ and Leclerc argue that the authorized portion of the 1995 SDI loan disbursed during the POI should not have been countervailed because no payments were due or would have been due under comparable financing during the POI. The GOQ and Leclerc state that the Department's *Proposed Regulations* and prior practice dictate that it countervail a benefit ''at the time a firm is due to make a payment on the loan.'' (See *Proposed Regulations,* 355.48(a), (b)(3)). Leclerc cites, among others, *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Casings From India,* 61 FR 64687 (December 6, 1996) in which the Department calculated the benefit as having been received when the first interest payment was made, despite the fact that interest had accrued in the prior year.

If the Department continues to assign a benefit to 1995 from the 1995 SDI loan, the GOQ and Leclerc argue that the Department should not include amounts that were authorized, but not disbursed during 1995. Including the amounts that were not disbursed would violate Article 19 of the *Uruguay Round Agreement on Subsidies and Countervailing Measures* because, Leclerc argues, it could not have benefited during the POI from funds that were not disbursed.

Petitioner claims that the Department was consistent with its regulations in finding a benefit from the 1995 SDI loan because it calculated the loan's grant equivalent. Petitioner notes that section 355.48(b) of the Department's *Proposed Regulations* state that ''{the benefit} occur{s} in the case of a grant * * * at the time a firm receives the grant or equity infusion.'' Thus the benefit on the 1995 loan occurred at the time of receipt (i.e., during the POI). Petitioner further argues that the cases cited by the GOQ and Leclerc do not apply to the loan in question because in all the cited cases the loans in question are short-term loans, in which the Department does not calculate a grant equivalent. Moreover, Petitioner contends that the methodology proposed by the GOQ and Leclerc is not consistent with economic logic because it would preclude the Department from finding a benefit on a loan with lengthy payment deferrals if the recipient could show that it obtained a similar loan from commercial lenders.

DOC Position

We agree with respondents. While we have calculated a grant equivalent for the SDI loans, the underlying instrument continues to be a loan. If there is no effect on the recipient's cash flow during the POI (i.e., no payment would have been made on the benchmark loan during the POI), there is no benefit attributable to the POI. (See *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) and *Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France,* 52 FR 1218, 1221 (January 12, 1987).)

Furthermore, based on the Department's practice of calculating a benefit at the time a payment is due on the benchmark loan, we have found, in this instance, that the benefit conferred by the SDI loans should be attributed to the year subsequent to disbursement because no payments were due on the benchmark loans until that time.

Because we have decided that a benefit should not be calculated for the 1995 SDI loan, we do not reach the countervailability of the undisbursed amount.

Comment 18 (SDI Loans Should be Treated as Grants or the Methodology Should be Revised)

As adverse facts available, petitioner asserts that the SDI loans should be treated as grants offset only by verified payments. If the Department does not treat the SDI loans as grants, it should: (1) use only verified payments in the repayment stream; (2) consider principal outstanding at the end of the loan term to be forgiven; (3) use a benchmark interest rate of 20 percent; (4) assume there will be no extension of due dates; (5) assume any shares of Leclerc that SDI might acquire will have no value; and (6) treat the SDI loans as export subsidies.

Such measures are justified, according to petitioner, because Leclerc failed to provide the Department with pertinent information about the SDI loans prior to verification. This omission constitutes a serious material misrepresentation, in petitioner's view. Despite being requested by the Department in the questionnaire to provide such information, Leclerc failed to do so. Petitioner asserts that it is Department practice to use facts available when a party "withholds information that has been requested" (see 776(a) of the Act). Additionally, because the SDI regulations state that it can enter into agreements with distressed borrowers, any SDI loan terms are suspect and, thus, cannot be used for benefit calculations.

Leclerc argues that petitioner's insistence on the use of adverse facts available is without merit because Leclerc has cooperated fully with the Department. The Department has conducted two successful verifications with the GOQ, the GOC and Leclerc. Leclerc claims that its voluntary submission of minor additional information discovered during the course of preparing for verification substantiates its cooperation. Specifically, Leclerc states that the Department's standard questionnaire simply asks that parties report differences between what the loan agreement requires and what a party actually paid.

Additionally, Leclerc claims that there is no legal precedent or argument that would justify treating the SDI loans as grants, and that there is no evidence on the record that the loans are grants. Thus, the Department should continue to analyze the SDI financing as loans. Leclerc and the GOQ argue that Leclerc continues to have a legal obligation to repay its SDI loans, thus no forgiveness has occurred. Moreover, section 355.44(k) of the *Proposed Regulations* requires the Department to recognize loan forgiveness as a grant "at the time of the assumption or forgiveness." Leclerc asserts that petitioner's other methodological suggestions are groundless. The events subsequent to the POI affecting the SDI loans are indeed on the record and verified, but these events are irrelevant because they occurred after the POI.

DOC Position

In this instance, we do not believe that Leclerc's late submission of information concerning events subsequent to the POI requires that the Department use adverse facts available. While we have included the post-POI information in our calculations to make them more accurate, our investigation has clearly focussed on information from years prior to and including the POI.

Further, we agree with Leclerc and the GOQ that the *Proposed Regulations* state that a benefit from loan forgiveness usually occurs when the loan is forgiven. We disagree with petitioner that the loans should be treated as grants simply because SDI can renegotiate loan terms with its clients. Commercial lenders also typically have the freedom to change the terms when dealing with a distressed borrower.

Regarding treating the SDI financing as a grant, the Department's GIA at 37255 sets out the standard for determining whether an instrument should be considered a grant:

> We have distinguished grants from both debt and equity by defining grants as funds provided without expectation of a: (1) Repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant, or (3) claim on any funds in case of company liquidation. (parenthesis omitted)

Based on the above, the SDI loans should not be considered grants because the SDI financing does not meet any of the three criteria. Moreover, in distinguishing between equity and loans, the *GIA* at 37255 states:

> Loans typically have a specified date on which the last remaining payments will be made and the obligation of the company to the creditor is fulfilled. Even if the instrument has no pre-set repayment date, but a repayment obligation exists when the instrument is provided, the instrument has characteristics more in line with loans than equity.

While certain aspects of repayment under the SDI loans are more flexible than that of a standard commercial bank loan, as reflected in its financial statements, Leclerc had a repayment obligation to SDI during the POI. Thus, we find no basis on which to consider the SDI loans to be a grant.

Summary

Based on the four countervailable programs described above, the aggregate *ad valorem* rate is 0.57 percent. This rate is *de minimis*, pursuant to 703(b)(4) of the Act. Therefore, we determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters of LHF in Canada.

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: January 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2715 Filed 2–3–97; 8:45 am]

BILLING CODE 3510–DS–P

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the