accordance with section 734(l)(2) of the Act, the Department must resort to section 734(i)(1)(B), which directs us to resume the Investigation as if our preliminary determination had been issued on January 11, 1999. In accordance with section 735(a) of the Act, the Department will issue a final determination within 75 days of January 11, 1999, unless Kazakhstan requests an extension of time under 19 CFR 353.20(b).

Since Kazakhstan may not have had a full opportunity to respond to the original antidumping duty questionnaire, in making its final determination in the Investigation, the Department shall issue a supplemental questionnaire for the original POI.

International Trade Commission

In accordance with section 733(f) of the Act, the Department has notified the International Trade Commission (''ITC'') of the termination of the Suspension Agreement and resumption of the Investigation. If the Department's final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the United States uranium industry. The ITC shall make this determination before the latter of: (1) 120 days after the effective date of this notice; or, (2) 45 days after publication of the Department's final determination.

Termination of Administrative Review

On October 30, 1998, the Ad Hoc Committee of Domestic Uranium Producers, one of the Petitioners, requested that the Department conduct an administrative review of the Suspension Agreement for the period October 1, 1997 to September 30, 1998. On December 23, 1998, the Department initiated an administrative review of the Suspension Agreement for the requested period. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 63 FR 71091 (December 23, 1998). Because the underlying Suspension Agreement is terminated, the administrative review is being terminated as well.

Denial of Request for Hearing

On October 21, 1998, USEC, an interested party to the proceeding, requested that the Department conduct a hearing related to the issues raised in the administration of the Suspension Agreement for the period October 1, 1997 to September 29, 1998. USEC was joined in its request by Petitioners. Kazakhstan also expressed its interest in participating if a hearing was held on said issues. Because the underlying Suspension Agreement is terminated, the Department will not hold the requested hearing.

Verification

As provided for in section 776(b) of the Act, the Department will verify all the non-BIA (best information available) material used in reaching its final determination.

Suspension of Liquidation

In accordance with § 734(i)(1)(A) of the Act, the Department is not aware of any sale within the last 90 days that was in violation of the Suspension Agreement or did not meet the requirements of the Suspension Agreement. Therefore, the Department is instructing the United States Customs Service (''U.S. Customs'') to suspend liquidation of all unliquidated entries of uranium, as defined in the Scope of the Investigation section of this notice, that are entered or withdrawn from warehouse for consumption on or after the effective date of the termination of the Suspension Agreement, which is January 11, 1999. U.S. Customs shall require a cash deposit or bond equal to 115.82 percent *ad valorem* (the original preliminary determination duty rate), the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers, and exporters of uranium from Kazakhstan. These suspension of liquidation instructions will remain in effect until further notice.

APO Access

Any party wishing to access business proprietary information in the resumed Investigation must apply for APO access, regardless of whether such APO access was previously granted in the original Investigation or Suspension Agreement.

Public Comment

In accordance with 19 CFR 353.38, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination on March 12, 1999, at 10 a.m. at the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, United States Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than March 1, 1999. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 8, 1999. An interested party may make an affirmative presentation only on arguments raised in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Department's regulations and will be considered if received within the time limits specified above.

This determination is issued and published in accordance with section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: January 11, 1999.

Robert S. LaRussa,

Assistant Secretary Import Administration.

[FR Doc. 99–1117 Filed 1–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results and Partial Recission of Countervailing Duty Administrative Review.

SUMMARY: On September 9, 1998, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid (IPA) from Israel for the period January 1, 1996 through December 31, 1996 (63 FR 48193). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the Final Results of Review section of this notice. We will

instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem). Haifa Chemicals Ltd. (Haifa) did not export the subject merchandise during the period of review (POR). Therefore, in accordance with section 351.213(d)(3) of the Department of Commerce's (the Department) regulations, we rescinded the review with respect to Haifa. The review also covers nine programs.

Since the publication of the preliminary results on September 9, 1998 (63 FR 48193), the following events have occurred. We invited interested parties to comment on the preliminary results. On October 9, 1998, a case brief was submitted by counsel for FMC Corporation and Albright & Wilson Americas Inc. (petitioners). On October 13, 1998, a case brief was submitted by the Government of Israel (GOI) and Rotem, producer/exporter of IPA to the United States during the review period (respondents). On October 14, 1998, rebuttal briefs were submitted by respondents and petitioners.

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 (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1996.

Allocation Period

In *British Steel plc.* v. United States, 879 F.Supp. 1254 (February 9, 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, as it was articulated in the *General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. *British Steel,* 929 F.Supp 426, 439 (CIT 1996). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed.

Rotem submitted an AUL calculation based on depreciation expenses and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding the sum of average gross book value of depreciable fixed assets for ten years and dividing these assets by the total depreciation charges for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an average useful life of 23 years, which we have used as the allocation period for non-recurring subsidies received during the POR.

For non-recurring subsidies received prior to the POR and already countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-or under-countervailing the actual benefit. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. *See, e.g., Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997). For further discussion, see the Department's position on Comment 3 (*Allocation of Grants Over AUL*), below.

Privatization

The Department has previously determined that the partial privatizations of Israel Chemicals Limited (ICL), Rotem's parent company, represents a partial privatization of Rotem. Further, the Department found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA,* 58 FR at 37262, and *Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel,* 63 FR 13627 (March 20, 1998) (*1995 Final*).

In prior reviews, to calculate the portion of the purchase price representing repayment of prior subsidies through partial privatizations in 1992, 1993 and 1995, the Department converted the net worth figures for Rotem from new Israeli shekels (NIS) to U.S. dollars, based on exchange rate information on the record. In this review, Rotem submitted U.S. dollar denominated audited financial statements for 1983 through 1989. The notes to the financial statements indicate that the company maintains its accounts in NIS and in U.S. dollars. Amounts originating from transactions denominated in, or linked to, the dollar are stated at their original amounts. Amounts not originating from such transactions are determined on the basis of the exchange rate prevailing at the time of the transaction. As a result, we have recalculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies using the U.S. dollar denominated net worth figures provided in Rotem's financial statements.

Analysis of Programs

Based upon the responses to our questionnaires and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *Encouragement of Capital Investments Law (ECIL).* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our findings from the preliminary results for this program. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	5.58

2. *Encouragement of Industrial Research and Development Grants (EIRD).* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.02

B. New Programs Determined to Confer Subsidies

1. *Environmental Grant Program.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.11

2. *Infrastructure Grant Program.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.18

II. Programs Found to be Not Used

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

1. Reduced Tax Rates under ECIL
2. ECIL Section 24 Loans
3. Dividends and Interest Tax Benefits under Section 46 of the ECIL
4. ECIL Preferential Accelerated Depreciation
5. Exchange Rate Risk Insurance Scheme
6. Labor Training Grants
7. Long-Term Industrial Development Loans

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Denominator for ECIL Grants

Rotem argues that the Department incorrectly calculated the denominator for ''grants allocable to all sales other than direct sales of phosphate rock,'' because the sales figure from the ''others'' category, as reported in respondents December 15, 1997, questionnaire response, was excluded.

Petitioners counter that because the product listing provided by respondents did not provide a breakdown of products in the ''others'' category, the Department could not assume that these other products benefitted from ECIL grants, and therefore, was correct to exclude these sales from its subsidy calculations.

Department's Position

We attribute ECIL grants to a particular facility to the sales of the products produced by that facility plus sales of all products into which that product may be incorporated. To do so, it is necessary that all products to which the grants are being attributed are identified. Respondents did not indicate what products are included in the ''others'' category or any indication that the ECIL grants should appropriately be attributed to those ''other'' sales. Therefore, it would have been improper to attribute ECIL grants to those unidentified products.

Comment 2: IPA as an Input to Fertilizers

Petitioners argue that the Department expanded the attribution of certain ECIL grants to include sales of fertilizers, based on respondents' claim, unsupported by documentation, that IPA may be and has been an input into fertilizers other than MKP. In this regard, petitioners cite to the Department's 1995 verification report, which does not indicate that IPA was found to be an input to any fertilizer product other than MKP. Thus, petitioners assert that the Department erroneously included sales of all fertilizers in its denominator. Petitioners further argue that unless Rotem demonstrates that IPA is an input to a specific fertilizer product, the Department should not include that fertilizer product in the attribution denominator.

Respondents agree with petitioners that only those products that use IPA as an input should be included in the attribution denominator. However, respondents argue that the Department has rejected this approach and includes a product in its attribution calculation if the product can be used as an input into IPA, irrespective of whether it has actually been used. Further, respondents argue that if petitioners want the Department to include only products actually receiving IPA inputs in a given review in the attribution calculation, then the Department must also exclude those products that are not used in a given review.

Department's Position

In the 1995 administrative review of this case, we attributed ECIL grants tied to a particular unit to the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. Accordingly, in that review, we attributed ECIL grants to the IPA facility to sales of IPA and sales of MKP, a

downstream fertilizer. In this administrative review, respondents have stated that IPA can also ''be and has been used by Rotem as an input into other fertilizers,'' that is other than MKP. Therefore, consistent with our approach in the 1995 proceeding, we included the sales of fertilizers in the denominator for ECIL grants to the IPA facility.

Petitioners' argument that the Department must ''limit attribution to specific products that actually are inputs'' is incorrect. In fact, if this were the case, the Department would not have altered its original attribution approach followed through the 1993 administrative review, a change supported by petitioners. In the 1995 review, we stated that the attribution of ECIL grants to the sales of the units that received the grants and sales of all downstream products is ''consistent with the Department's attribution principles concerning subsidies to inputs where the same corporate entity produces the inputs and the subject merchandise, as well as other downstream products.'' 63 FR at 13629. Of further note is that this approach has been codified in the Department's final countervailing duty regulations at 19 CFR § 351.525(b)(5)(ii). Therefore, for these final results, in calculating the benefit from ECIL grants to Rotem's IPA facility, we have included the sales of fertilizers in the denominator.

Comment 3: Allocation of Grants Over AUL

Respondents agree that the Department used the appropriate AUL during the POR, but disagree with the Department's application of the company-specific AUL only to grants that were not previously allocated over ten years. They state that for the initial determination in 1987 and all subsequent reviews, the Department used a ten-year AUL, which does not reflect the company's actual situation. According to respondents, the Department's failure to apply the actual AUL to all grants is contrary to the Court of International Trade's ruling in *British Steel,* because the Court invalidated the use of the Internal Revenue Service (IRS) tables and instructed the Department to use ''a method of allocating the benefits on non-recurring subsidies that reasonably reflect the commercial and competitive advantages enjoyed by the firms receiving'' the subsidies. Respondents note that the Department chose the company-specific AUL to allocate non-recurring subsidies and the Court has endorsed it. Therefore, they argue that the Department's allocation of some of Rotem's grants according to the company's actual AUL, while allocating others according to an invalidated IRS proxy, which has no relevance to Rotem's actual situation, is clearly contrary to *British Steel,* and overstates the non-recurring subsidies.

Respondents also argue that the Department's rationale for not changing its AUL methodology is flawed. Respondents claim that reallocation is a very simple exercise, which can be accomplished by the Department taking the remaining balance during the POR and allocating that amount over the number of years left in the 23-year AUL benefit stream that begins in the year the grant was received. Respondents also argue that this approach takes into account the fact that countervailable subsidies have been fully paid for in all prior years up to the POR, and such an approach would not result in over- or under-countervailing the actual benefit since the entire actual benefit will be fully countervailed over the 23-year period.

Petitioners counter that while the Court in *British Steel* instructed the Department to use an allocation method that reasonably reflects the commercial and competitive advantages created by a subsidy, it does not require the Department to use the AUL method. Petitioners also counter that the Department chose not to recalculate the AUL because such a change could result in an allocation that distorts the allocation of the actual benefits Rotem received from the non-recurring subsidies, and this decision is fair and in keeping with the mandate of *British Steel.*

Department's Position

The arguments presented by respondents are for the most part identical to those made in the 1995 administrative review of this case. The Department fully addressed those arguments in that review (*see* 63 FR at 13632), and nothing argued by respondents in this review would lead us to change our prior determination with respect to this issue. It is our continued view that not disturbing allocation periods established in prior proceedings is reasonable and is not in conflict with the CIT's decision in *British Steel,* which does not require the Department to allocate non-recurring subsidies over a company's AUL.

However, we would like to further address additional implications of the approach advocated by respondents which would pose significant additional burdens on the Department. First, it is the Department's practice to calculate a benefit for all countervailable subsidies that are allocable through the POR. In the original investigation of this case, the Department determined, based on the IRS tables, that the appropriate allocation period is ten years. The period of investigation was 1987. Accordingly, the Department countervailed all non-recurring subsidies still benefitting the company in 1987, *i.e.*, subsidies received by Rotem from 1978 through 1987. While we determined in the 1995 review that Rotem's company-specific AUL was 24 years, we did not countervail non-recurring subsidies received by Rotem for the entire 24 year period. Rather, because the ten year allocation period had been previously established, we did not disturb the allocation period for those prior subsidies and also did not reach back to countervail non-recurring subsidies not previously examined. Thus, we applied the company-specific AUL only to those new subsidies received during 1995. However, were the Department to reallocate previously allocated subsidies, it would also be appropriate, at that time, to investigate all subsidies received by the company during the entire company-specific allocation period, including those not previously examined by the Department. This approach would be consistent with respondents' argument that the company-specific AUL is representative of Rotem's actual experience.

Respondents have also stated that since the Department has found that the 23 years company-specific period is the appropriate period, the ten-year period is invalidated, and both periods cannot at the same time be representative of Rotem's actual experience. If this were the case, then the 24 year period calculated by the Department in the 1995 review is also invalidated. Respondents have not contended, however, that the Department should now also recalculate the benefit stream for the 1995 non-recurring subsidies. It becomes clear, therefore, that respondents' proposed approach would require the Department to reallocate a company's subsidies each time the company-specific AUL has changed. This may occur, as is the case here, from one administrative review to the next. While such an approach may not seem to be overly burdensome in one case, in the context of all countervailing duty cases that burden is clearly significant.

As noted above, respondents have not provided any new information that would warrant a reconsideration of the Department's AUL methodology. For this reason, and for the additional concerns outlined above, we have not altered the allocation period for

previously allocated non-recurring subsidies, including those that were allocated using a company-specific AUL.

Comment 4: Rotem's AUL Calculation

Petitioners state that the Department, consistent with its normal practice, has accepted Rotem's audited financial statements at face value. However, they argue that there is no consistency between Rotem's AUL calculated for countervailing duty purposes and the actual useful life of assets as reflected in the firm's depreciation schedule used in its financial statements. Therefore, according to petitioners, the Department should either reject Rotem's AUL for inconsistency with its audited financial statements or make the appropriate adjustment in the gamma ratio, which is itself a function of a company's total assets, that would subsequently reduce the past subsidies previously calculated as having been extinguished by partial privatizations. Petitioners argue that if the Department continues to use the AUL as calculated by Rotem, then the productive assets that Rotem excluded from its AUL calculation (*i.e.*, furniture, vehicles and office equipment) should be included, and assets that are no longer in service should be excluded.

Respondents counter that there is no conflict between the calculated AUL and Rotem's depreciation schedules. The AUL was calculated in conformity with the Department's instructions and was taken directly from Rotem's audited financial statements. Respondents further argue that the length of Rotem's AUL stems from the merger between Rotem and Negev Phosphates Ltd., the latter of which had a longer AUL therefore increasing the overall AUL of the newly formed company, Rotem Amfert Negev Ltd. Respondents state that petitioners, in fact, recognize that the AUL is correct because they argue that if the Department accepts the AUL, then the gamma ratio must be adjusted to increase Rotem's net worth. According to respondents, there is no basis for making such an adjustment because the gamma denominator, which represents the net worth of the company, is taken directly from the audited annual reports and that figure was relied upon by the purchasers of ICL when the privatizations took place.

Respondents also counter that the assets that petitioners argue should be included in the AUL calculation are not productive assets. Moreover, the grants at issue are not given for such assets; they are given only for production facilities. Therefore, it was correct not to include these assets in the AUL calculation.

Department's Position

We disagree with petitioners' contention that the Department should reject Rotem's AUL information because it is inconsistent with the company's audited financial statements. Rotem complied with the Department's request and submitted information from its audited financial statements for use in the Department's company-specific AUL calculations. In the same submission, Rotem noted that the surge in asset values between 1990 and 1991 was due to the merger of Rotem and Negev Phosphate Ltd. We note that the verification reports from the previous proceeding, which were submitted on the record of the current review, discuss the issue of the Rotem/Negev merger and its effect on the newly formed company's AUL components. The information discussed in these reports is consistent with the information that Rotem submitted during the current review. Therefore, because respondent submitted its AUL information in the manner that the Department requested and because Rotem sufficiently explained the changes that occurred in its depreciable productive assets and regular depreciation expenses during the ten-year period examined by the Department, we find no reason to change the calculation of Rotem's AUL for the final results. For the same reasons, we also reject petitioners' contention that the Department should adjust Rotem's gamma ratio in order to account for the alleged inconsistencies between the company's AUL calculations and its audited financial statements.

In addition, we reject petitioners' contention that the Department should ''satisfy itself'' that all of Rotem's reported productive assets are actually in service. The Department's questionnaire specifically asks that companies exclude any fully depreciated productive assets which are no longer in use. We also note that Rotem's financial statements are audited and that the Department conducted a verification of Rotem's questionnaire responses during the 1995 administrative period of review. Given that Rotem's financial statements are audited and inspected annually and that they have been verified previously, we find no reason to doubt the integrity of the company's financial statements.

Petitioners' contention that the Department erroneously omitted some of Rotem's assets (furniture, office equipment, etc.) in calculating the company-specific AUL may warrant further consideration. However, we do not have the information on the record for these assets in prior years to recalculate the AUL. Therefore, we will review this issue in the next administrative review.

Comment 5: The Privatization Calculation

Respondents argue that the numerator of the ''gamma'' calculation does not include the face value of all subsidies received by Rotem over the years. They claim that the face value does not include subsidies given for projects 12 and 13, which were fully countervailed prior to this review. They also claim that the grants to project 8 were not included; presumably, because these grants did not benefit IPA. Respondents argue that to obtain a true picture of the relationship of the subsidies to the net worth, all subsidies must be included in the numerator, regardless of whether or not they benefit the subject merchandise.

Respondents also argue that because Rotem's net worth, the denominator of the gamma calculation, is an accumulated figure, the subsidies received, the numerator, should also be calculated based on an accumulated figure. According to respondents, the Department's position in the *1995 Final*, that the value of subsidies erodes over time, ignores the fact that the net worth also erodes over time. While a subsidy received in 1986 does not have the same relative value as a subsidy received in 1994, it still has some value; otherwise, they argue that the Department would not allocate non-recurring subsidies over time.

Respondents claim that the Department rejected the Coopers & Lybrand analysis in the 1995 review because the Department did not understand the analysis. They argue that the Department's current gamma methodology incorrectly assumes that the grants disappear at the end of the year because the gamma numerator does not recognize the cumulative effect of the subsidies. Instead, Rotem received grants, which do not disappear at the end of the year of receipt, but continue as part of equity, and the company's net worth is a direct result of these grants. In addition, they argue that the Department's privatization calculation methodology is internally inconsistent because the Department does not accumulate the subsidies to calculate the gamma, but does so to calculate the percent of subsidies repaid.

Petitioners counter that respondents have attempted to rehabilitate a fundamentally flawed argument that the Department previously rejected. Therefore, the Department should dismiss respondents' effort to reargue

matters that have already been decided. Petitioners also counter that respondents' argument that the Department should include grants to project 8 would require the Department to investigate all subsidies, whether or not countervailable, in order to make an appropriate privatization calculation, which is absurd. According to petitioners, respondents' argument, regarding projects 12 and 13, is flawed because these grants were countervailed prior to the current review.

Department's Position

Respondents' argument that the Department should include subsidies that have been fully countervailed and subsidies that do not benefit the subject merchandise is without merit. As a preliminary matter, the Department does not determine the benefit from subsidies for programs that are determined not to benefit the subject merchandise. Further, the Department's methodology determines the portion of the purchase price that goes towards the repayment of the subsidies which were found to be countervailable. That portion of the purchase price is deducted from the net present value of the remaining benefit stream of all non-recurring subsidies that are being countervailed. This performs the appropriate calculation: deducting from the net present value of all countervailable subsidies in the year of privatization the portion of the purchase price representing repayment of those countervailable subsidies.

We also reject respondents' argument that because Rotem's net worth, the denominator of the gamma calculation, is an accumulated figure, the subsidies received, the numerator, should also be calculated based on an accumulated figure. Because the grants were received at different time periods and the benefit streams are different, we cannot accumulate the grants as respondents have suggested. The privatization methodology attempts to estimate that portion of the purchase price that is attributable to remaining subsidies from the time of bestowal until the date of the privatization by calculating the gamma. The gamma calculation serves as a reasonable historic surrogate for the percentage of subsidies that constitute the overall value (i.e., net worth of the company) at a given point in time. *See, GIA*, 58 FR at 37263, and *1995 Final*, 63 FR at 13635, 13636; *see also Inland Steel Bar Co.*, v. *United Engineering Steels, Ltd.*, 155 F.3d 1370, 1374–75 (Fed. Cir. 1998) (the Court affirmed the Department's methodology for determining the amount of a subsidy that is repaid). Thus, the relative value of an earlier subsidy is not ''totally ignored'' in the Department's calculation, as argued by respondents. The value of that subsidy is appropriately being compared to the net worth of the firm in the year that it was received. This comparison thus fully captures the weight of that subsidy in the gamma calculation.

Respondents' claim that the Department's position in the 1995 review, that the ''depreciation of assets offsets any of the erosion of subsidies,'' is also flawed. We do not dispute that the company's net worth increased, in part, as a result of subsidies. However, respondents' comparison of the value of the company's accumulated subsidies in the year before privatization to the company's net worth in that year is misplaced, because it assumes that the company's net worth increased in direct proportion to the value of the subsidies received by the firm. It is simply not reasonable to assume that there is a direct relationship between additional capital infusion by the government and increases in the equity of the firm. Accordingly, it is equally unreasonable to assume that the accumulated face value of all of Rotem's subsidies received in each year can be appropriately compared to the company's net worth in the year prior to privatization. Such a comparison overstates the value of the subsidies in relationship to the company's net worth because it assumes that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. However, this is not the case, as those values are depreciating from year to year.

Comment 6: Program Denominator for Grants Allocable to IPA, MKP, and Fertilizers

Respondents argue that although IPA is an input into downstream products, such as phosphate salts and food additives, the Department did not include the sales values of these products in the denominator of the countervailing duty calculations, nor did the Department provide an explanation. Respondents claim that although the Department's preliminary results state that the ECIL grants were attributed to a particular facility over the sales of the product produced by that facility plus sales of all products into which that product may be incorporated, this statement is not entirely correct. They argue that since the products produced by Rotem were also incorporated into the phosphate salts and food additives produced by Rotem's subsidiary, the Department should have attributed the ECIL grants to these products as well.

Respondents also argue that because Rotem sells IPA as an end product and as an input into downstream products that are produced in another country by its subsidiary, these sales should be included in the denominator of the calculation for grants that are allocable to IPA, MKP, and fertilizers. In support of its argument, respondents point to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 62 FR 8818, 8856 *(1997 Proposed Rules)*, which states that where a firm has ''production facilities in two or more countries,'' the Department will generally attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy.

Petitioners counter that respondents' argument ignores the fact that IPA is the class or kind of merchandise, and while the inputs into the production of IPA may be relevant for subsidy calculations purposes, what happens to IPA after it is produced is irrelevant. There is no precedent or support for the Department to go beyond a finding that grants have been provided for the production of IPA and make the further determination that such grants also benefitted the subsequent production of non-subject merchandise. Petitioners also counter that for the Department to apply respondents' methodology would be adoption of the so-called competitive-benefits-conferred interpretation of a countervailable subsidy which has been rejected by the Department and the Court of Appeals for the Federal Circuit in the privatization context.

Furthermore, petitioners counter that the downstream products are not produced in Israel. The Department's policy in circumstances where the firm that received a subsidy has production facilities in two or more countries is to attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy. Since the ECIL grants are designed to promote economic development in Israel, it is appropriate to countervail the benefits in that country. Therefore, petitioners argue that the respondents' arguments should be rejected.

Department's Position

We reject respondents' contention that the Department should add to the denominator of the countervailing duty calculations for grants allocable to IPA, MKP, and fertilizer the sales of downstream products produced from IPA. We reject respondents' argument on this matter on the basis that the

downstream products referred to by respondents are not manufactured in Israel. Rather, they are produced by a subsidiary of Rotem in Germany. It has been the Department's position that domestic subsidies benefit domestic production. This practice has been well-established since the *Certain Steel* investigations and has been upheld by the CIT. *See GIA*, 58 FR at 37231; *see also British Steel plc* v. *United States*, 929 F. Supp. 426, 453–55 (CIT 1996), *appeal pending sub nom. Inland Steel Industries, Inc.* v. *United States*, Nos. 98–1230, 1259 (Fed. Cir.).

Comment 7: The Environmental Grants

Respondents argue that the Department incorrectly focused solely on the ''general availability'' issue without first addressing whether the subsidy even benefitted IPA. According to respondents, whether the environmental grants are specific or general is irrelevant because they are not tied to IPA, and, hence did not benefit IPA. Respondents claim that the grants were given for the purpose of reducing dust pollution at the Ashdod port and because IPA, which is a liquid and does not produce dust, could not have benefitted from these grants.

Respondents also argue that it is inappropriate for the Department to use adverse ''facts available'' when a party indicates that information requested is not available, and in such an instance, the Department must use other information on the record. Respondents claim that this other information was provided by the Ministry of Environment, which clearly indicates that the grants are available to all industries regardless of the region.

Petitioners counter that the environmental grants benefitted the entire company, and whether IPA itself was the cause of any pollution at the port is of no consequence. The countervailing duty law is not concerned with causation, but rather with benefit. Thus, the issue is whether IPA and other Rotem products benefitted from the improved conditions at the port made possible by the grants. Petitioners also counter that respondents' argument regarding use of other information on the record to determine specificity is not persuasive because the ''other information'' did not address the issue of *de facto* specificity.

Department's Position

We disagree with respondents. According to the December 15, 1997, questionnaire response at II–16, financial assistance is provided to industrial plants for the adaptation of the facility to meet new environmental requirements, which include other hazards besides dust. The provision of these grants by the GOI relieves the company of an obligation that it otherwise would have incurred. Although IPA may not produce dust, as stated by respondents, the company did utilize the Ashdod port for IPA shipments. Therefore, the environmental grants are untied benefits that are bestowed to the entire company.

We also disagree with respondents' argument regarding the Department's use of adverse facts available for this program. On two occasions, the Department requested information from the GOI to enable us to conduct a *de facto* specificity analysis of the Environment Grant Program. On April 7, 1998 and on April 24, 1998, the Department requested information from the GOI regarding eligibility for and actual use of the benefits provided under this program. The GOI provided information regarding the total number of applicants that applied for or received grants, and the total amount of the grants given under the program. However, the GOI did not attempt to extrapolate the required information from its aggregate data, nor did they explain why such information could not be provided. In accordance with section 776(a)(2) of the Act, the Department used facts available because the GOI withheld information that had been requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Because the GOI did not comply with the Department's request for information, and they did not give an explanation as to why they could not provide the information, they did not act to the best of their ability. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the environmental grants are specific. For further discussion, *see Preliminary Results*, 63 FR at 48195.

Comment 8: Grants to Project 15

Respondents argue that grants to project 15 are not countervailable because the green acid produced in this facility was not used as an input into IPA. Although the green acid from project 15 could be used chemically for IPA, it is not economically suitable for IPA; therefore, it cannot be viewed as a viable input. Respondents also argue that under the Department's practice of tying subsidies, where a subsidy is tied to a product other than the product under investigation, the Department will not allocate the subsidy to the product under investigation. Respondents argue that the Department's rationale in the 1995 review for countervailing these grants because the products produced from project 15 could be incorporated into IPA, does not comport with the Department's tying requirement. While there may be a potential benefit, there is, in fact, no actual benefit, and the countervailing duty law deals with actualities, not potentialities. The *1997 Proposed Rules* refer to an input into a downstream product and not a potential input product; it refers to actual inputs. Therefore, they argue that the product produced from project 15 was not used in the downstream production of IPA, even if it could have been used, and as such, it does not fall within the definition of an input.

Petitioners agree with the Department's finding, and counter that there is no reason for the Department to reconsider its previous decision.

Department's Position

The Department fully addressed respondents' argument in the 1995 administrative review. As previously stated, green acid can be used in the production of all downstream products, including IPA. The ECIL subsidies are provided to inputs that are also incorporated into other downstream products produced by the same integrated company. Therefore, to the extent that ECIL grants are tied to green acid, they are also tied to the sales of all other merchandise incorporating those inputs. *See*, the *1995 Final*, 63 FR at 13630.

The Department's practice is to countervail the value of the subsidies at the time they are provided to the company without regard to their actual use by that same company or their effect on its subsequent performance. As stated in the *GIA*, ''nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.'' Specifically, section 771(5)(C) of the Act states that the Department ''is not required to consider the effect of the subsidy in determining whether a subsidy exists.'' *See GIA*, 58 FR at 37260, and the *1995 Final* 63 FR at 13631. Because neither the statute nor the Department's regulations permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for Rotem to be 5.89 percent *ad valorem*.

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See 1992/93 Final Results*, 61 FR 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

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

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(i)(7)).

Dated: January 7, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1116 Filed 1–15–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011199F]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Information & Education Committee, Tilefish Committee, Surfclam and Ocean Quahog Committee, Executive Committee, Comprehensive Management Committee, and Habitat Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, February 2, 1999 to Thursday, February 4, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the New York Marriott, 3 World Trade Center, New York, NY; telephone: 212–938–9100.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, February 2, the Information & Education (I&E) Committee will meet from 1:00–2:00 p.m. The Tilefish Committee will meet from 2:00–3:00 p.m. The Surfclam and Ocean Quahog Committee will meet from 3:00–5:00 p.m. On Wednesday, February 3, there will be a tour of the Fulton Fish Market from 5:30–8:00 a.m. The Executive Committee will meet from 9:00–10:00 a.m. The Comprehensive Management Committee will meet from 10:00 a.m. until noon. The Habitat Committee will meet from 1:00–2:00 p.m. The Council will meet from 2:00–5:00 p.m. to address scallop management and possible dogfish actions. On Thursday, February 4, the Council will meet at 9:00 a.m. and adjourn at approximately noon.

Agenda items for these meetings are: Review the 1999 schedule for I & E activities; review progress on Tilefish fishery management plan (FMP) development; possible selection of tilefish advisors; discuss Delmarva surfclam issue and future economic modeling; discuss comprehensive management activities for 1999; possible development of recommendations to reduce bycatch of scup; discuss scallop management issues; discuss 1999 schedule Habitat Committee; review New England Council action on dogfish FMP and develop recommendations on interim and/or emergency actions for spiny dogfish management measure implementation; possible discussion of commercial and recreational management measures for other Mid-Atlantic species, discussion and possible adoption of management measures for species managed by the New England and South Atlantic Councils; and other fishery management matters.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues