the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
AST	11.17
All Others	11.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated:May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13676 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells, or Annika O'Hara, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, 482–6309, or 482–3798, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

The Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as ''the petitioners'').

Case History

Since the publication of the preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France,* 63 FR 63876 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and France of the questionnaire responses submitted by the European Commission (EC), the Government of France (GOF), and Usinor (the only respondent company in this investigation) from November 11 through November 24, 1998. On November 24 and December 8, 1998, we received allegations of certain clerical errors in the *Preliminary Determination*. We corrected these errors in a January 20, 1999, memorandum to Laurie Parkhill, Acting Deputy Assistant Secretary (*see* ''Clerical Error Allegations in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from France'' (''Clerical Errors Memo'') which is on file in the Central Records Unit of the Department). On February 18, 1999, we postponed the final determination of this investigation until May 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea: Notice of Extension of Time Limit for Final Determinations,* 64 FR 9476 (February 26, 1999)). The petitioners and Usinor/GOF filed case and rebuttal briefs on March 3 and March 10, 1999. A public hearing was held on March 12, 1999.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives). [4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Corporate History

As stated in the *Preliminary Determination*, the GOF identified the Ugine Division of Usinor as the only producer of the subject merchandise that exported to the United States during the POI.

In the early 1980s, Ugine (then called Ugine Aciers) was one of several producers of stainless steel in France. In 1982, the French steel company Sacilor acquired a controlling interest in Ugine. In the following year, Sacilor bought a majority of the shares in another stainless steel producer, Forges de Gueugnon, which was merged with one part of Ugine and renamed Ugine-Gueugnon. During the same time, Usinor was a separate steel company with one division called Usinor Châtillon producing stainless steel. In 1987, the GOF placed Usinor and Sacilor in a holding company named Usinor Sacilor. At the same time, Ugine-Gueugnon and Usinor Châtillon were combined into one company called Ugine Aciers de Châtillon et Gueugnon (Ugine ACG).

In 1991, Ugine ACG merged with Sacilor and became Ugine S.A., a subsidiary of the Usinor Sacilor holding company. In 1994, Usinor Sacilor sold approximately 40 percent of its equity in Ugine S.A. to the general public. However, in 1995, Usinor Sacilor bought back the shares in Ugine S.A. and obtained total control of the company. In late 1995, Ugine S.A. was converted into a division of Usinor Sacilor and became ''the Ugine Division,'' producing stainless steel and alloys. Finally, in 1997, Usinor Sacilor was renamed Usinor.

The GOF was the majority owner of both Usinor and Sacilor until the mid-1980s. In 1986, the GOF emerged as the sole owner of both companies after a capital restructuring. In 1987, the GOF created the Usinor Sacilor holding company. In 1991, Credit Lyonnais, a government-owned bank, bought 20 percent of the equity in the company.

In July 1995, the privatization of Usinor Sacilor began. At the same time, Usinor Sacilor offered additional shares for sale in the form of a capital increase. All shares were sold through a public offering of shares which consisted of a French public offering, an international public offering, and an employee offering. In accordance with the French privatization law, a certain portion of the shares were also sold to a group of so-called ''stable shareholders,'' some of which were government-owned banks and other entities. The privatization continued throughout the years 1996 and 1997. At the end of the privatization, the stable shareholders held approximately 14 percent of Usinor's total shares, 10 percent of which were held by government-owned or controlled entities.

Usinor purchased shares from the GOF in 1995 to sell to employees on an extended payment plan in 1996. In addition, the GOF sold shares to employees at the time of the 1995 privatization. Monies for these shares were received by the GOF in 1995, 1996, and 1997. In December 1995, Usinor Sacilor repurchased shares of Ugine which had been previously sold to the public, approximately 41 percent of Ugine's shares.

In early 1997, the GOF transferred (without remuneration) a small part of its stake in Usinor to individual French shareholders and company employees who had held their shares for at least 18 months following the July 1995 privatization. In October 1997, the GOF sold most of its remaining shares on the market, leaving it with less than one percent of total Usinor shares. These shares were to be given away without remuneration (for ''free'') in August 1998.

As noted in the February 19, 1999, Usinor Verification Report (Usinor Report), because the French steel industry was not thriving in the mid-1990's, Usinor made an effort to streamline its holdings and maintain ownership of only steel-producing divisions. This streamlining included the sale of the Richemont power plant in 1994, as well as the sale of assets to FOS-OXY in 1993 and Entreprise Jean LeFebvre in 1994.

Change in Ownership

In the *General Issues Appendix (GIA)*, attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we explained our current methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI (*i.e.*, in this case, 1984 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present

[5] 'GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, see *Preliminary Determination*, 63 FR at 63878, and the Clerical Errors Memo.

With respect to spin-offs, consistent with our position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sales price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price that can be viewed as payment for prior subsidies in accordance with the privatization methodology outlined above.

Usinor and the GOF have indicated their opposition to the Department's methodology in recalculating the amount of subsidies attributable to Usinor after the spin-off of the Richemont facility. (We did this recalculation to address a clerical error in the *Preliminary Determination*.) The GOF and Usinor do not agree that the subsidies attributable to Richemont should have been reallocated to Usinor as a result of the sale of Richemont. Instead, in their view, at least some of the subsidies originally attributable to Richemont's production should have been assigned to Richemont after its sale.

The petitioners support the corrections described in the Department's Clerical Errors Memo. They argue that, in making the changes, the Department has applied correctly the spin-off methodology upheld by the court in *British Steel plc* v. *United States*, 27 F. Supp. 2d 209 (CIT 1998). The petitioners maintain that there is not an extinguishment of subsidies in a spin-off, citing the Final Determination of Redetermination Pursuant to *Delverde SrL* v. *United States*, 989 F. Supp. 218 (CIT 1997).

We disagree with the GOF and Usinor, and we have continued to apply the methodology described in the Clerical Errors Memo regarding the sale of the Richemont facility. The revised calculation comports with the Department's methodology as described in the *GIA*, 58 FR at 37269. In this instance, application of our methodology leads to the conclusion that all subsidies potentially allocable to Richemont were, in fact, returned to the seller (Usinor) through the price paid for Richemont.

In addition, the petitioners have argued that, because the change in ownership of Ugine in 1994, as well as the privatization of Usinor in 1996 and 1997, did not result in changes in the control of these companies, the change-in-ownership methodology should not be applied. The petitioners cite to *Inland Steel Bar Co.* v. *United States*, 155 F.3d 1370, 1374 (Fed. Cir. 1998) (*Inland Steel*), in which the court stated that a purchaser's valuation of a company "will depend not only on the intrinsic value of the unit, but also on whether the purchaser opts to discharge the liability at purchase time rather than continuing to pay countervailing duties until the obligation expires."

According to the petitioners, the court's reasoning dictates that a purchaser must be able to value a company's assets and liabilities, assume the liabilities and opt to repay or reallocate the countervailing duty liability. In order to do this, the petitioners argue that a purchaser must take control of the company. The petitioners argue that where the purchasing company acquires only a minority share in the subsidized company, the liability remains with the current majority owners while the minority purchaser simply buys into the subsidized company.

In further support of their position, the petitioners cite to the *GIA*, 58 FR at 37273, where the Department stated that "a change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a *bona fide* spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position." The petitioners warn that application of the change-in-ownership methodology to small-share transactions that do not affect the control of a company would create a loophole in the countervailing duty law whereby each share transaction on the open market would constitute a change-in-ownership. In effect, point out the petitioners, the privatization of a company via stock issuance would result in the extinguishment of subsidies as each trade would result in a reallocation of those subsidies. The petitioners also state that continued application of the change-in-ownership methodology involving minority transfers of ownership could also provide an incentive for majority owners to manipulate share transactions so as to eliminate countervailing duty liability.

The GOF and Usinor contend that the Department has never linked application of its change-in-ownership methodology to a change in control of the company. The GOF and Usinor insist that the methodology should continue to be applied to the sale of shares in Ugine.

We have not adopted the position urged by the petitioners. In the Department's recent decision in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15510 (March 31, 1999) (*Italian Plate*), regarding the application of the change-in-ownership methodology, the Department stated:

> We were not persuaded by petitioners' argument that a transaction must involve a transfer of control in order for our methodology to be applicable. However, we are deeply concerned that application of our methodology to sales of private minority share interests such as these could lead us toward the application of our methodology to daily transactions on the open market for publicly traded companies—a clearly absurd result that must be prevented.

The specific facts presented in *Italian Plate* led the Department to conclude that it should not apply its methodology to certain changes in the ownership of a respondent, AST. However, the Department has applied its change-in-ownership methodology in other situations where there was no change in control. For example, the Department applied its change-in-ownership methodology to the partial privatizations of a respondent, SSAB, undertaken by the Government of Sweden. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Sweden*, 58 FR 37385, 37386 (July 9, 1993) (*Certain Steel from Sweden*). Similarly, in *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13627 (March 20, 1998) (*IPA from Israel 1995 Review*), the Department applied the change-in-ownership methodology to the partial privatization of a respondent, ICL. In that case, 24.9 percent of ICL's shares were sold.

Moreover, the Department has applied its change-in-ownership methodology to transactions involving changing levels of ownership over time. In *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367, 18368 (April 15, 1998) (*UK Lead Bar 1996 Review*), as well as *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty*

Administrative Review, 61 FR 58377, 58381 (November 14, 1996) (*UK Lead Bar 1994 Review*), the Department examined a situation where British Steel placed its special steel business into a joint venture, UES. In return, British Steel became partial owner of UES (and, consequently, partial owner of the business it formerly owned). The Department recognized this change and applied its change-in-ownership methodology to this ''spin-off.'' Later, when UES was repurchased (''spun-in'') by British Steel, the Department found that the subsidies that ''traveled'' with the UES should be ''rejoined'' with its parent company's pool of untied subsidies. Thus, the change-in-ownership methodology was also applied to this transaction. The UES spin-off demonstrates, that the Department does not require a change in control before it applies its change-in-ownership methodology. Moreover, where changes in the level of ownership occur over time, as was the case with British Steel and UES, we account for those changes through the change-in-ownership methodology.

There have also been situations where application of the change-in-ownership methodology was not appropriate. In *Italian Plate,* 64 FR at 15510, for example, the transactions at issue involved ''the sale of a relatively small amount of shares by minority owners of a holding company two levels removed from the production of the subject merchandise.'' Also, in *IPA from Israel 1995 Review,* 63 FR at 13627, the Department did not apply the change-in-ownership methodology to the sales by another party, Rotem, of less than 0.05 percent of ICL because the sale of shares had no impact on Rotem's overall net subsidy rate.

In light of these precedents and recognizing the flexibility afforded by the statute in recognizing changes in ownership, we have reexamined the circumstances surrounding the spin-off and spin-in of Ugine, as well as the 1996 and 1997 sales of Usinor's shares by the GOF for this final determination. We have continued to apply the change-in-ownership methodology to the spin-off of Ugine and the post-1995 sale of Usinor's shares by the GOF. Both sets of transactions involved sales by a government or government-owned company (Usinor) and a significant number of shares.

We have not, however, applied the change-in-ownership methodology to the spin-in of Ugine. The repurchase of shares consisted of numerous transactions between a predominately privately owned purchaser (Usinor) and individual minority shareholders. By contrast, when UES was reacquired by British Steel, the transaction involved only two parties, each holding fifty percent of the subsidized company. Reallocation of subsidies was appropriate in that case because the seller was a single company selling a significant interest. Application of the change-in-ownership methodology to the repurchase of Ugine shares in this case would essentially result in an allocation of Ugine's subsidies to individual investors who are trading Ugine shares on the market. As we indicated in *Italian Plate,* the change-in-ownership methodology was never intended to result in such an allocation. Therefore, the subsidies spun off in the 1994 sale of Ugine's shares were returned to Usinor in their entirety when Usinor repurchased Ugine in 1995.

Consequently, in this final determination, we have applied the change-in-ownership methodology to the following transactions: (1) the sale of Ugine shares in 1994; (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); (3) the privatization of Usinor which spans 1995, 1996, and 1997; (4) the spin-off of assets to Entreprise Jean LeFebvre in 1994; and (5) the spin-off of assets to FOS–OXY in 1993. *See also* our responses to Comment 2 concerning the spin-off of assets to FOS–OXY and Entreprise Jean LeFebvre, and Comment 3 concerning the privatization of Usinor during the years 1995, 1996, and 1997.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates: To calculate the countervailable benefit from loans and non-recurring grants received, we used Usinor's company-specific cost of long-term, fixed-rate loans where available. For years where a company-specific rate was not available, we used the rates for average yields on long-term private-sector bonds in France as published by the OECD. For years in which Usinor was determined to be uncreditworthy (*i.e.,* 1984 through 1988), we added a risk premium to the benchmark interest rate (*see* our response to Comment 10 below regarding the selection of this rate) in accordance with our practice described in § 355.44(b)(6)(iv) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*). While the *1989 Proposed Regulations* are not controlling in this case, they do represent the Department's practice with respect to this investigation.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA.* In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies for Usinor Sacilor based on the average useful life (AUL) of its non-renewable physical assets of 14 years. This remand determination was affirmed by the Court in *British Steel plc* v. *United States,* 929 F. Supp. 426 (CIT 1996) (*British Steel II*).

As discussed below, the current investigation includes untied, non-recurring subsidies that were found to be countervailable in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France*), *i.e.,* PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those previously investigated subsidies, we determine that it is appropriate to continue to allocate those subsidies over 14 years. *See* our response to Comment 1, below.

This investigation includes no other non-recurring subsidies that have been determined to provide countervailable benefits that should be allocated over time. Accordingly, we have not calculated a new company-specific allocation period for subsidies not previously investigated.

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

I. Programs Determined To Be Countervailable GOF Programs

A. Loans With Special Characteristics (PACS)

The steel restructuring plan of 1978 created a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. According to the 1978 plan, bonds issued previously on behalf of the steel companies and pre-1978 loans from Crédit National and Fonds de Développement Économique et Social (FDES) were converted into ''loans with special characteristics'' or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but they did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF 8.1 billion of new PACS. PACS in the amount of FF 13.8 billion, FF 12.6 billion, and FF 2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *Certain Steel from France* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead Bar from France*), the Department determined that the conversion of PACS to common stock in 1981 and 1986 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI of this investigation.

Consistent with our practice in *Certain Steel from France,* we have treated the equity infusion as a non-recurring grant received in 1986. Because Usinor was uncreditworthy in the year of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 1.22 percent *ad valorem*.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances during the period 1982 through 1986. The purpose of these advances was to finance the revenue-shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *Certain Steel from France* and *Lead Bar from France,* the Department determined that the shareholders' advances constituted countervailable grants at the time the advances were received because no shares were exchanged for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, subsidies dating back to 1984 continue to provide countervailable benefits during the POI of this case.

Consistent with our practice in *Certain Steel from France,* we have treated these advances as non-recurring grants. Because Usinor was uncreditworthy in the years of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each grant appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.97 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

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

In *Certain Steel from France* and *Lead Bar from France,* the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 and 1988 conversions of FIS bonds yield a benefit during our POI.

We have treated the equity infusions as non-recurring grants given in 1986 and 1988. Because Usinor was uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. Dividing this amount by Usinor's total sales during the POI, we determine the countervailable subsidy to be 3.09 percent *ad valorem*.

D. Investment and Operating Subsidies

During the period 1987 through 1997, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

At verification, the GOF provided information about the water program subsidies which indicated that Usinor received only a small portion of the total amount of funding provided by the regional water boards (les agences de l'eau) to reduce industrial pollution. For reasons outlined in our response to Comment 8 below, we determine that the water board subsidies are not specific to Usinor.

However, the GOF did not provide any information regarding the distribution of funds under the other investment and operating subsidy programs, citing the ''extreme burden'' of providing such information and also because, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was ''insignificant and would . . . be expensed.''

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide 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 party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' *See Industrial*

Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 64 FR 2879, 2885 (January 19, 1999) (*IPA from Israel 1996 Review*). Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards) are specific within the meaning of section 771(5A)(D) of the Act.

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

Because the investment and operating subsidies received in the years prior to the POI were less than 0.5 percent of Usinor's sales during the respective years of receipt, we have expensed these grants in the years of receipt. To calculate the *ad valorem* rate of the subsidy, we divided the subsidies received in 1997 by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.10 percent *ad valorem*.

E. Myosotis Project

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

To assist this project, the GOF, through the Ministry of Industry and L'Agence pour la Matrise de L'nergie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, covered a three-year period and established schedules for the initial and subsequent payments to Usinor. These payments were contingent upon the submission of progress reports including a statement of investment outlays. The final payment was contingent upon the submission of a final program report and a statement of total expenses. The three installments were paid in 1989, 1991, and 1993. The 1991 Agreement between Ugine and AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from AFME in 1991 and 1992. The 1995 agreement with Ugine provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

The GOF has claimed that assistance for the Myosotis project was provided under the Grands Projets Innovants (GPI) program which is available to all industrial sectors in France. The GOF also asserts that the program is a non-countervailable (*i.e.*, ''green-light'') research subsidy within the meaning of section 771(5B)(B) of the Act. At verification, we confirmed that the reimbursable advances were provided under the GPI program. However, the information provided was not sufficient to establish that the grants provided by the Ministry of Industry and AFME were connected to the GPI program.

Accordingly, we determine that the grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The amounts transferred are financial contributions in the form of direct transfers of funds from the GOF to Usinor and/or Ugine pursuant to section 771(5)(D)(i) of the Act. The GOF did not provide any information indicating that the grants were provided to other companies in France. Therefore, we determine that the grants provided to the Myosotis project are specific within the meaning of section 771(5A)(D) of the Act because they were provided exclusively to Usinor.

We determine the subsidies provided between 1989 and 1993 to be non-recurring grants based on the analysis set forth in the Allocation section of the *GIA*. Because the amounts received during these years were less than 0.5 percent of Usinor or Ugine's sales during their respective year of receipt, we are expensing these grants in the years of receipt.

With respect to the reimbursable advance received in 1997, we are treating this advance as a long-term interest-free loan. Information provided at verification indicates that Usinor makes all payments of interest on its long-term loans on an annual basis. According to information provided by private banks of France, we found that such a payment schedule would not be considered atypical of general banking practices in France. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of the Myosotis advance would not be due until 1998. Because there would be no effect on Usinor's cash flow during the POI (*i.e*, no payment would have been made on a benchmark loan during the POI), we determine that there is no benefit attributable to the POI. *See GIA*, 58 FR at 37228–29. Consequently, we have not addressed whether the reimbursable advance received under the GPI program in 1997 is countervailable. *See* our response to Comment 9 below.

F. Electric Arc Furnace

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts to improve and increase the efficiency of the melting process—the first stage in steel production. The first disbursement of funds occurred on July 17, 1998.

The Department deems benefits to have been received at the time that there is an effect on the recipient's cash flow. *See GIA*, 58 FR at 37228–29. Because Usinor did not receive any payments until 1998, there is no benefit during the POI of this investigation. Consequently, we have not addressed whether this program is countervailable.

G. GOF Conditional Advance

During our verification of Usinor, we learned that Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry in connection with a project aimed to develop a new type of steel used in the production of catalytic converters. Ugine, Sollac, and two unaffiliated companies participated in the project and each company received a portion of the total project funding provided by the GOF. Ugine received its first payment in 1992 and a second payment in 1995. According to the agreement between the GOF and the participating companies, repayment of the advance was contingent upon sales of the product resulting from this project exceeding a set amount. Because this condition has not been met, the entire amount of the advance received by Ugine remained outstanding during the POI.

We determine that this conditional advance constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. Because assistance was only provided to four companies, two of which are part of the Usinor group, the program is specific pursuant to section 771(5A)(D) of the Act. According to the Department's practice, as reflected in § 355.49(f) of the *1989 Proposed Regulations*, the Department normally treats an interest-free loan, for which the repayment obligation is contingent upon certain subsequent events, as an interest-free, short-term loan for the purpose of calculating the amount of benefit. *See also* § 351.505(d) of *Countervailing Duties; Final Rule*, 63 FR 65438, 65410 (November 25, 1998) (*Final CVD Regulations*). Accordingly, we have calculated the benefit from the advance by dividing the amount of interest that would be due using the benchmark rate by the value of Ugine's total sales. On this basis, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

H. Related-Party Grants

Usinor's financial statements identify ''grants from related parties'' in the years 1992 through1995. Information provided by Usinor demonstrates that these grants do not constitute a separate program from the Myosotis project and investment and operating subsidies discussed above. Specifically, a yearly breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Therefore, we have not treated ''Related Party Grants'' as a separate program. *See* ''Myosotis Project'' and ''Investment and Operating Subsidies'' sections of this notice.

I. 1991 Grant to Ugine

Ugine's 1991 financial statements indicate that Ugine received FF 26,318 thousand in subsidies and also note that FF 16,295 thousand of ''share'' in subsidies were posted to income. Information provided by Usinor indicates that these amounts reflect the funds received under the Myosotis project as well as investment and operating subsidies. Specifically, a breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Because we investigated Myosotis and investment and operating subsidies separately in this proceeding, we have not treated the ''1991 Grant to Ugine'' as a separate program. *See* ''Myosotis Project'' and ''Investment and Operating Subsidies'' sections of this notice.

EC Program

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

The member states are responsible for identifying and implementing the individual projects that are selected to receive ESF financing. The member states must also contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below). For Objective 1 projects, the ESF contributes a maximum of 75 percent of the project's total cost.

Like the other Structural Funds, the ESF contributes to the attainment of the five different objectives identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to combating long-term unemployment and creating jobs for young people and people excluded from the labor market, Objective 4 focuses on the adaptation of workers to industrial changes and changes in production systems, and Objective 5 pertains to rural development. Recently, the EC added a sixth objective under which assistance is provided to sparsely populated areas in northern Europe.

Ugine S.A. received an ESF grant for worker readaptation training in 1995. In the same year, the company also received an approximately equivalent amount from the GOF as cofinancing for the project. In 1997, the Ugine Division of Usinor received an ESF grant for training workers in a new production process at its cold-rolling mill in Isbergues. At verification, we found that the Ugine Division had also received a small ESF grant for its plant in Gueugnon in 1997. No GOF cofinancing for the 1997 ESF grants was received during the POI. All the ESF grants were provided under Objective 4.

The Department considers worker-assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30294 (June 14, 1996) (*Pasta From Italy*). While Usinor has stated that the ESF grants did not relieve it of any contractual or legal obligations, neither Usinor nor the GOF has provided any documentation to support this claim. Since companies normally incur the costs of training to enhance the job-related skills of their employees, we determine that the ESF grants relieved Usinor of an obligation it would have otherwise incurred.

Neither the EC nor the GOF has provided any documentation regarding the distribution of ESF grants in France. At verification GOF officials stated that, during the POI, Usinor did not receive a disproportionate amount of ESF assistance, but they did not provide any documentation in support of this statement.

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide information that we had requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' *See IPA from Israel 1996 Review.* Therefore, the Department determines it appropriate to use an adverse inference in concluding that the ESF grants are specific within the meaning of section 771(5A)(D) of the Act.

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

Normally, the Department considers the benefits from worker-training programs to be recurring. *See GIA*, 58 FR at 37255. However, consistent with our past practice and our understanding that ESF grants relate to specific, individual projects which require separate government approvals, we have treated these as non-recurring grants. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998) (*Wire Rod from Italy*), and *Pasta from Italy*, 61 FR at 30295. Because the value of the ESF grants and the accompanying GOF contribution were less than 0.5 percent of Ugine's total sales in 1995 and 1997, respectively, we expensed these grants in the years of receipt. We calculated the benefit for the POI by dividing the amount of the ESF grant received in 1997 by Ugine's total sales in that year. In this way, we determine the countervailable subsidy to be less than 0.005 percent *ad valorem* for this program.

II. Programs Determined To Be Not Countervailable

A. Purchase of Power Plant

In 1994, Usinor sold the shares of CSR to Électricité de France (EDF), a government-owned entity. CSR was set up to convert gas generated by steel plants in the Lorraine region into electricity for sale to l'Union Sidérurgique de L'Énergie (USE). USE, in turn, sold the electricity to steel producers in the region. At the time of the transaction, both CSR and USE were owned by Usinor and Usinor factories purchased their electricity from USE.

In addition to the physical assets of CSR (*i.e.*, land, buildings, plant and equipment), the 1994 transaction also provided EDF the exclusive right to supply electricity to USE for a 15-year period. Prior to the transaction, Usinor and EDF conducted independent valuations of the transaction based on detailed projections of future costs and revenues associated with the operation of CSR and sales of electricity to USE. The projected revenues were calculated using detailed estimates of yearly outputs, consumption, and rates. Similarly, projected costs were based on estimated costs for purchasing gas and operating expenses, as well as costs for developing an electric power system. After negotiations, Usinor and EDF agreed on a purchase price of FF 1 billion, which represented a compromise between the independent valuations of the transaction by Usinor and EDF.

We examined whether Usinor received more than a reasonable market price from the EDF in this transaction. We determine that, while FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price was based on independent valuation of the future sales of electricity by EDF to Usinor. These valuations were supported by reasonable estimates of projected costs and revenues. We found no evidence to indicate that the transaction was anything other than an arms-length transaction for full market value. Accordingly, we determine that this program does not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

B. Related-Party Loans

Usinor's 1992 and 1993 financial statements identify ''interest free loans to related parties'' in the amounts of FF 622 million in 1993 and FF 455 million in 1992. According to Usinor, these loans consist of interest-free advances *by* Usinor and other Usinor Group entities to non-consolidated entities within the Usinor Group. Information provided by Usinor indicates that the funds for these loans were provided out of Usinor's self-generated cash flow. Because there is no financial contribution as defined under section 771(5)(D) of the Act, we determine that these loans do not constitute a countervailable subsidy.

C. Work/Training Contracts

Employers who hire young people (16–25 years of age) through various government-administered work/training or apprenticeship contracts may receive grants and an exemption from social security contributions. The contracts also impose training requirements for those employees and establish minimum compensation set in proportion to the SMIC (the indexed minimum wage) according to the age of the young person and the duration of the contract. This program is administered by Délégation Générale à l'Emploi et à la Formation Professionnelle of the Ministére de l'Emploi et de la Solidarité at the national level and locally by the Directions Departementales du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP) (Departmental Labor, Employment and Professional Training Head Offices). The purpose of this program is to encourage the permanent employment of young people.

Usinor has entered into two types of such contracts: (1) apprenticeship contracts and (2) contracts of specific duration (including qualification agreements and adaptation agreements). Any employer can hire an apprentice and enter into an apprenticeship contract providing training for the apprentice. Qualification and adaptation agreements require approval by the DDTEFP. Approval is dependent upon (1) adoption of an agreement with an educational institution or training entity and (2) the company's approval of a standard agreement adopted by the GOF and an occupational organization. Usinor received lump-sum payments and exemptions from social security contributions as a result of these contracts.

We analyzed whether the benefits provided under this program are specific ''in law or fact'' within the meaning of section 771(5A) of the Act. We determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on the use of domestically-sourced goods over imported goods; nor are the benefits limited to an enterprise, industry or region.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 103–316 at 931 (1994)), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

Assistance under this program was distributed to a wide variety of industries in the majority of the regions of France. Therefore, the program is not limited based on the number of users. The evidence also indicates that the steel industry did not receive a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the steel industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we determine that this program is not specific and has not conferred countervailable subsidies within the meaning of section 771(5) of the Act.

III. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that Usinor did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Export Financing under Natexis Banque Programs*
B. *DATAR Regional Development Grants (PATs)*
C. *DATAR 50 Percent Taxing Scheme*
D. *DATAR Tax Exemption for Industrial Expansion*
E. *DATAR Tax Credit for Companies Located in Special Investment Zone*
F. *DATAR Tax Credits for Research*
G. *GOF Guarantees*
H. *Long-Term Loans from CFDI*

EC Programs

A. *Resider I and II Programs*
B. *Youthstart*
C. *ECSC Article 54 Loans*
D. *ECSC Article 56(2)(b) Redeployment/Readaptation Aid*
E. *Grants from the European Regional Development Fund (ERDF)*

IV. Program Determined Not To Exist

Forgiveness of Shareholders' Loans

Usinor's 1994 and 1995 financial statements indicate that the balance in the account identified as ''loans granted by the shareholders'' or ''borrowings granted by the shareholders'' was reduced from FF 2.161 billion in 1993 to FF 1.92 billion in 1994 (*i.e.*, a reduction in the amount of FF 241 million). At the end of 1995, the balance in the same account was zero. The petitioners alleged that the reduction in the loan balance represented a debt forgiveness by the GOF in order to make the company more attractive to investors prior to its privatization.

Information provided by Usinor and the GOF indicates that there was no loan forgiveness. Rather, the decreases of the loan balances in the financial statements represent a combination of loan payments by the company and the elimination of the disclosure requirement in accordance with international accounting standards due to a reduction in shareholdings. Specifically, the 1995 reduction reflects the elimination of disclosure requirements applicable to loans from Credit Lyonnais as the result of the reduction in Credit Lyonnais' ownership interest in Usinor from 20 percent to less than 10 percent at the time of Usinor's privatization. There were no disclosed shareholder loans at the end of 1995 because there were no shareholders with an interest of 10 percent or greater. International accounting standards require disclosure of transactions between a business entity and owners of more than 10 percent of shares. For 1994, the reduction is accounted for by repayments of certain outstanding loans during that year. On this basis, we determine that this program does not exist.

Interested Party Comments

Comment 1: Allocation Period

Usinor and the GOF argue that, in the *Preliminary Determination,* the Department applied the 14-year AUL period found in *Certain Steel from France* improperly to allocate the benefits of certain non-recurring subsidies found countervailable in that case. Usinor and the GOF urge the Department to apply instead a company-specific allocation period based on information submitted in the instant investigation.

Usinor and the GOF argue that the Department's use of the allocation period derived from a different proceeding is inconsistent with the applicable court decision and the Department's past practice. The respondents point out that, in *British Steel I,* the court rejected the Department's previous allocation methodology based on the IRS tables because the methodology was not based on substantial evidence on the record. Consequently, the respondents note, the Department formally abandoned the use of IRS tables and instead adopted the practice of determining a company-specific AUL based on record evidence. Usinor and the GOF state that this practice is reflected in the Department's countervailing duty questionnaires, as well as in the *1997 Proposed Regulations,* which direct a firm to calculate its average AUL over a period of ten years. By deviating from that practice, Usinor and the GOF contend that the Department's approach in the *Preliminary Determination* violated its court-ordered mandate to allocate subsidies in a manner supported by evidence on the record of the instant proceeding. Usinor and the GOF add that the Department's practice is tantamount to penalizing the company simply because it happens to have been the subject of a prior investigation. Usinor and the GOF contend that, absent the earlier investigation, the programs at issue—PACS, FIS and Shareholders'' Advances—would have been deemed outside the scope of the present investigation.

Usinor and the GOF argue that the 14-year AUL from a different investigation—involving different producers, different subject merchandise, and a different time period—is not a proper measure of benefit for the current investigation. According to the respondents, the AUL merely represents a reasonable period for allocation of benefits in a particular investigation rather than the actual duration of the benefit. Usinor and the GOF state that any given company-specific AUL in an investigation is a snapshot that can vary from year to year because it is based on the company's asset values and depreciation charges that inevitably vary from year to year. Therefore, the respondents contend, a decision not to revisit the allocation period in a subsequent investigation undermines the integrity of the later investigation by failing to allocate all subsidies found in accordance with the record of that investigation. Usinor and the GOF assert, the methodology of focusing on the POI and the preceding nine years is reasonable because it is linked to the time period for which alleged subsidies were received.

Usinor and the GOF point out that, although the Department has applied the same allocation period in different segments of the same proceeding, it has never before applied a previously determined AUL in an entirely separate proceeding. Citing *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549,16550 (April 7, 1997) (*Carbon Steel from Sweden*), Usinor and the GOF recognize the Department's rationale that revising an allocation period in subsequent segments of the same proceeding would create an entirely new benefit stream, thereby resulting in under-countervailing or over-countervailing the benefits in the review period. According to the respondents, however, this rationale does not apply when dealing with an entirely separate proceeding because the allocation period that was determined in one proceeding has no effect on the benefit stream in a separate proceeding. Usinor and the GOF also distinguish the current situation from *UK Lead Bar 1996 Review,* where the Department applied an 18-year company-specific AUL period found in separate proceeding (*see Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation: British Steel plc* v. *United States,* Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) (*UK Certain Steel*)) instead of the 15-year IRS table-based AUL used in the earlier segment of the same proceeding. In that case, Usinor and the GOF argue, the rejected allocation period—*i.e.*, the IRS tables-based allocation period—was one that was overruled by the *British Steel I* decision.

The petitioners counter that the Department should affirm its decision in the *Preliminary Determination* and continue to apply Usinor's 14-year AUL to the company's previously investigated subsidies. The petitioners argue that the application of Usinor's company-specific AUL is consistent with the Department's established allocation methodology. According to the petitioners, the Department has concluded in past cases, such as *Pasta from Italy* and *Carbon Steel from Sweden,* that previously countervailed subsidies based on an allocation period established in an earlier segment of the proceeding should not be reallocated over a different period of time. The petitioners contend that the principle underlying the Department's decision to use the same AUL across different segments of a single proceeding applies equally in the current investigation. According to the petitioners, the Department followed this reasoning recently in *UK Lead Bar* where it applied a single company-specific AUL to the same subsidies across different proceedings involving the same company to avoid ''significant inconsistencies.''

Citing to the *GIA,* the petitioners state further that the Department's practice in the *Preliminary Determination* was consistent with the statutory requirement that the amount of the countervailable subsidy, including the allocated subsidy stream, is not to be reevaluated based upon subsequent events. The petitioners contend that, because the 14-year AUL and the benefit stream of the previously investigated subsidies are based on data from the period when those subsidies were received, they represent a more accurate measurement of the duration of the benefit to the company. The petitioners note that, for subsidies that have not been previously investigated, the Department's current approach of requesting data for a time period linked to the POI is a reasonable and administrable method for allocating those subsidies. For previously investigated and allocated subsidies, in contrast, the petitioners contend that the established benefit streams should be maintained consistently in future investigations. The petitioners argue that using the new 11-year AUL would result in effectively revaluing the subsidies that were allocated over a 14-year AUL, thereby ignoring the continuing benefit to the company.

The petitioners contend that the fact that a company's AUL is bound to change from year to year should not affect the Department's prior AUL finding because, at the time Usinor received the subsidies in question, the Department determined that those subsidies benefitted Usinor for 14 years from the point of receipt. The changing value of the company's assets after the appropriate allocation period, according to the petitioners, is a subsequent event which should be considered irrelevant to the allocated subsidy stream. The petitioners emphasize that, despite the respondent's claims to the contrary, the present investigation involves the same untied subsidies, the same producer, and the same product. Specifically, the petitioners point out that, in *Certain Steel from France,* the subsidies in question—FIS, PACS and Shareholders' Advances—were found to benefit *all* products produced by the entire Usinor group.

The petitioners state that the Department routinely applies a determination from one proceeding to a separate proceeding despite the absence of evidence on the record of the new proceeding. The petitioners note that, for example, absent new evidence of changed circumstances, the Department does not revisit its determinations regarding a company's equityworthiness. Consistent with this standard, the petitioners argue that the AUL determination based on the record evidence in the prior proceeding should only be revisited if new information regarding the validity of the previous determination is presented. Because the respondents have not provided any such information, the petitioners maintain that the Department should continue to apply Usinor's 14-year AUL to the previously investigated subsidies.

Department's Position: For this final determination, we have continued to apply Usinor's company-specific AUL of 14 years found in *Certain Steel from France* to allocate the benefits of certain non-recurring subsidies found countervailable in that case.

We disagree with the respondents that our use of the 14-year AUL is inconsistent with the court decision in *British Steel I* and our practice. In *British Steel I,* the court emphasized that by using the IRS table-based allocation methodology, the Department did not allocate the benefits of the non-recurring subsidies in a manner reflecting the actual ''commercial and competitive benefits'' of the subsidies. *See British Steel I,* 879 F. Supp. at 1298. Following the court's remand order in that case, the Department calculated a Usinor-specific AUL of 14 years based on its company-specific information. The court upheld this methodology in *British Steel II,* stating that ''the AUL methodology using company-specific calculations is a reasonable method of allocating the commercial and competitive benefit of subsidy benefits.'' 929 F. Supp. at 438.

The most important factor in our decision is the fact that we are investigating the same respondent, Usinor, and the same untied subsidies. The AUL of 14 years, based on Usinor's company-specific information, was determined to be a reasonable reflection of the actual ''commercial and competitive benefits'' for the subsidies in question. As stated in *UK Lead Bar,* ''[d]ifferent allocation periods for the same subsidies in two different proceedings involving the same company generate significant inconsistencies.'' 63 FR at 18369.

Further, we disagree that applying the 14-year AUL amounts to penalizing Usinor for being the subject of an earlier investigation. The respondents were afforded ample opportunity in the earlier proceeding (and in the subsequent remands) to submit any factual information and comments related to the AUL calculation. The calculation, as affirmed by the court, was based on the company-specific facts Usinor submitted. As noted by the petitioners, it is well within the Department's practice to apply a determination from one proceeding to a separate proceeding absent evidence of changed circumstances. In the instant investigation, for example, we have applied the determination of creditworthiness from *Certain Steel from France* for certain years. We also applied our finding in *Certain Steel from France* that certain long-term loans issued by FDES were not countervailable to exclude those loans from the instant investigation. *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 37539, 37542 (July 13, 1998). A reconsideration of the Department's determination in one proceeding, regardless of the parties involved, would only be warranted if there is new evidence to indicate that the circumstances with respect to the initial decision have changed. Moreover, we find that the decision in *UK Lead Bar* to apply the allocation period determined in a separate proceeding is reflective of our current practice regarding the issue of allocation.

Comment 2: Information on Spin-Offs Presented at Verification

The GOF and Usinor contend that the Department should apply its change-in-ownership methodology as it relates to the spin-off of productive assets to the sale of its oxygen-generating unit to FOS–OXY, the sale of its lime-production division to Entreprise Jean LeFebvre, and its sale of J&L shares. The petitioners oppose the application of the Department's change-in-ownership methodology to these three transactions. Pointing out that the specific information regarding these transactions was provided to the Department at verification, the petitioners argue that verification was not an opportunity for Usinor to submit new information. According to the petitioners, the purpose of verification is to ensure that the information submitted by the respondent is complete and accurate. The petitioners cite *Tianjin Machinery Import and Export* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992) (*Tianjin*), and *Heavy Forged Hand Tools, Finished or Unfinished, with or without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 63 FR 16758, 16761 (April 6, 1998) (*Hand Tools*). The petitioners argue that the Department has stated that it will not allow the submission of new information that constitutes substantive information and not simply a clerical error. The petitioners contend that, because Usinor did not submit this information within the time requirements imposed by the statute, this information should not be considered for the final determination.

The petitioners also state that under no circumstances should the Department apply its change-in-ownership methodology to the sale of shares in J&L, Ugine's U.S. subsidiary. The petitioners point out that, according to the *GIA,* 58 FR at 37236, the Department found that Usinor's subsidies were ''tied to domestic production and, accordingly, . . . allocated the benefits of those subsidies to sales of Usinor Sacilor's domestically produced merchandise and excluded sales of Usinor Sacilor's foreign-produced merchandise.'' Since Usinor has not shown that any of the subsidies investigated are attributable to merchandise produced by J&L, the petitioners claim that the Department should not attribute any of Usinor's subsidies to J&L after the sale of Usinor's shares in J&L.

Department's Position: Regarding the J&L shares, we agree that no subsidies were attributable to J&L's production in this investigation. Therefore, it would not be appropriate to apply the change-of-ownership methodology to the sale of J&L shares.

With respect to the sale of productive assets to Entreprise Jean LeFebvre and FOS-OXY, we have applied the change-of-ownership methodology. Although we agree with the petitioners that the purpose of verification is to ascertain the accuracy of already-presented information, the special circumstances of this case have led us to use the verified data we have on these transactions. First, we note that we did not request information on spin-offs of productive assets in our questionnaire. Second, because verification followed directly on the issuance of the *Preliminary Determination* and, in fact, the calculations were disclosed to the respondents at verification, Usinor did not have any opportunity to submit data after learning of our methodology in the *Preliminary Determination* and before verification. In light of these circumstances, we believe it is appropriate to use the data obtained at verification and to apply the change-of-ownership methodology to these transactions.

Comment 3: Privatization and Prior Subsidies

The GOF and Usinor comment that the Department should find that Usinor's privatization extinguished prior subsidies. The GOF and Usinor cite section 771(5)(F) of the Act and the SAA at 928, stating that the Department is required to examine the circumstances of the privatization transaction to determine whether and to what extent subsidies pass through to the privatized entity and to what extent the privatization of a government-owned firm eliminated subsidies.

The GOF and Usinor continue their argument citing *Inland Steel,* 155 F.3d at 1376:

> When [a market] price is paid in an arms [sic] length transaction by a new owner, it is difficult to understand why future production by the new owner would carry the burden of prior subsidization.

Usinor and the GOF conclude that the full value of pre-existing subsidies was embodied in the purchase price, such that the purchasers of Usinor shares paid for any residual value added to the company by the subsidies found previously. Usinor and the GOF argue that the Department is required to make an explicit finding of this pass-through of prior subsidies for the final determination.

The petitioners cite to section 771(5)(F) of the Act where it states that a change-in-ownership does not require an automatic finding of no pass-through of subsidies, even if accomplished by an arm's-length transaction. In addition, the petitioners cite to the SAA at 928 which notes that the statutory provision is intended to ''correct and prevent such an extreme interpretation'' as the idea that subsidies are eliminated automatically in an arm's-length sale. Contrary to the respondents' claim that the Department has never really faced the issue of whether an arms-length sale extinguishes subsidies under the URAA, the petitioners mention *Wire Rod from Italy* in which the Department rejected the assertion that an arm's length privatization at market value extinguished prior subsidies. The petitioners also point out that the Department's repayment calculation has been upheld by the Court of International Trade in *Delverde.*

Department's Position: As we stated in *Italian Plate,* under our existing methodology, we neither presume automatic extinguishment nor automatic pass-through of prior subsidies in an arms-length transaction. Instead, our methodology recognizes that a change-in-ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the buyer. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to Usinor and Ugine. Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass-through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997), and *Delverde.*

The Department rejects Usinor's argument that an arms-length transaction at fair market value extinguishes any previously bestowed subsidies because no benefit was conferred. As explained in the *Final Determination of Redetermination Pursuant to Delverde. SrL* v. *United States,* 989 F. Supp. 218 (CIT 1997) (*Delverde Remand*), the countervailable subsidy amount is fixed at the time that the government bestows the subsidy. The sale of a company, *per se,* does not and cannot eliminate this potential countervailability because the countervailing duty statute ''does not permit the amount of the subsidy, including the allocated subsidy stream, to be revalued based upon subsequent events in the market place.'' *GIA,* 58 FR at 37263. The Court of Appeals for the Federal Circuit, in *Saarstahl II,* addressed the Department's privatization methodology and ''specifically stated that the Department does not need to demonstrate competitive benefit.''

The Department's methodology requires it to consider and rely upon several facts particular to the change of ownership at issue. In this investigation, these facts included the nature of the previously bestowed subsidies, the amounts of those subsidies, the time when those subsidies were bestowed, the appropriate period for allocating the subsidies, the net worth over time of the company sold, and the amount of the purchase price. Based on these facts, the Department determined the ultimate repayment of the prior subsidies to the GOF. In sum, the Department considered all of the factual evidence presented by Usinor and then followed its existing methodology properly. Furthermore, this methodology was upheld by the Federal Circuit in

Saarstahl II, British Steel, 78 F.3d 1471, and *Delverde.*

Comment 4: Sale of Shares in 1996 and 1997

The petitioners argue that the GOF's sales of its shares in Usinor in 1996 and 1997 did not transfer control of Usinor and the Department should, therefore, not apply the change-in-ownership methodology to the sales of these shares (as discussed in the change-in-ownership section above). The petitioners purport that, because there was not a change in control, these sales of shares do not constitute a ''bona-fide change-in-ownership.''

The GOF and Usinor state that the Department should apply the change-in-ownership methodology arguing that the sales of these shares were not ''post-privatization.'' The GOF and Usinor contend that the 1996 and 1997 transfer of shares were the last stages of the privatization rather than ''post-privatization'' transactions. The GOF and Usinor note that the Department has applied its change-in-ownership methodology to partial privatizations in *IPA from Israel 1995 Review,* 63 FR at 13627.

Department's Position: We agree with the GOF and Usinor that the application of the change-of-ownership methodology is appropriate in this situation. As explained above, it is not the Department's practice to require a change in control in order to apply the change-in-ownership methodology. As we noted at verification, the 1995 privatization continued through the years 1996 and 1997. Moreover, the sales of these shares in these years were sufficiently large. *Compare IPA from Israel 1995 Review,* 63 FR at 13627 (where the Department did not apply the change-of-ownership methodology to small sales of shares). Therefore, we have applied the change-in-ownership methodology to the sales of these shares in these years.

Comment 5: Purchase of Power Plant

The petitioners urge the Department to reconsider its preliminary determination that the purchase of CSR by EDF was not a countervailable subsidy. The petitioners note that, in their questionnaire responses and at verification, Usinor and the GOF focused exclusively on the valuation method used to determine the FF 1 billion sales price. According to the petitioners, however, the valuation methodology detailed in the verification reports does not address the decisive question of whether Usinor received a financial benefit from the transaction. The petitioners argue that evidence does not establish that the valuation methodology can serve as a benchmark for an arms-length, negotiated commercial transaction between two entities.

According to the petitioners, the facts demonstrate that the power plant had little, if any, commercial value and as such, could not have been sold on the open market. The petitioners point out that there were no other offers to purchase the plant and the only potential offer—from Générale de Chauffe—refers to a ''significantly lower price.'' The petitioners allege that the two parties recognized that the plant had very little commercial value and, thus, developed the ''future revenue stream'' approach to value the transaction. The petitioners add that, according to the GOF's description, Usinor was anxious to sell the plant prior to its privatization.

The petitioners argue further that there is no evidence that the valuation methodology used by Usinor and the EDF was one that would be used by a private purchaser of a power plant. The petitioners contend that, while a private investor may evaluate the potential revenue in deciding whether to purchase an asset, it would not form the basis for establishing market value to the private investor. Rather, the petitioners claim, the basis for value would include the book value and the market value of the assets, as well as the cost of building a similar facility. Accordingly, the petitioners conclude that the power plant was purchased for more than its worth, resulting in a countervailable benefit in the amount of the gain over the net book value of the assets.

Usinor and the GOF contend that the relevant issue is not whether Usinor received a financial benefit from the transaction; rather, the issue is whether EDF paid ''more than adequate remuneration'' for the sale. Usinor and the GOF assert that facts, as verified by the Department, demonstrate that no excess remuneration was paid by EDF and, thus, the transaction was not countervailable. With respect to the potential offer by Générale de Chauffe, Usinor and the GOF argue that Générale de Chauffe never made a formal offer and the terms of the deal contemplated by Générale de Chauffe were different from the terms between Usinor and EDF. According to the respondents, Générale de Chauffe's potential terms contemplated that Usinor was to retain ownership of the plant. In addition, the respondents point out that an independent review of the transaction by the Audit Office (a quasi-judicial tribunal) suggested that the EDF had negotiated a good deal for itself.

Department's Position: We disagree with the petitioners that Usinor received a countervailable benefit from its sale of CSR to the government-owned EDF. Evidence on the record, which we verified, demonstrates that the valuation of the transaction was based on reasonable projections of future costs and revenues associated with the operation of CSR and the sale of electricity produced by CSR. The resulting sales price for CSR represented the amount of money, in net present terms, that would be saved by Usinor if it were to continue producing electricity through its CSR facilities. Additionally, we found no evidence to indicate that the negotiations were not conducted on an arms-length basis.

Because the sales price was based entirely on the value of the right to produce electricity, the amount of gain in excess of the nominal book value of the physical assets of CSR is irrelevant. Both Usinor and EDF indicated that the book value of the assets was, in fact, never considered in the valuation process. The parties were only interested in obtaining the right to produce and sell electricity; the physical facility of CSR was only a means to secure that right. The value of a company is often based on more than its physical assets. Intangible assets, *e.g.,* goodwill, patents, and licenses, which are valued for the future revenue stream that they represent, may constitute an important part of a company's worth. In the present investigation, the exclusive right to produce electricity was the significant intangible asset, if not the only material asset, of CSR.

In addition, given the nature of the transaction, it is not possible to compare the sales price with that of a similar transaction between private parties. As noted by the respondents, the difference in the material terms, as well as its inconclusive nature, renders the potential offer by Générale de Chauffe unsuitable for comparison purposes. We have not found, and the petitioners have not presented, a price from a comparable transaction that demonstrates that the price paid by EDF exceeded the fair value of the transaction.

Comment 6: Capital Increase

The petitioners argue that, by authorizing a capital increase of FF 4,999,999,975 at the time of Usinor's 1995 privatization, the GOF conferred a benefit upon Usinor in the amount of the increased capital. The petitioners claim that, as the sole owner of Usinor prior to the 1995 privatization, the GOF was entitled to all the revenue from the sale of the company, whether the revenue resulted from the sale of new or existing shares. By transferring the proceeds from the sale of new shares to Usinor, the petitioners argue, the GOF was foregoing revenue otherwise due to it, acting in a non-commercial manner. According to the petitioners, the fact that the report by the Privatization Commission concluded that the issuance of new shares would not alter substantially the value of the shares does not establish that the transaction did not confer a countervailable benefit. The petitioners contend that the respondents have not provided ''any objective studies that evaluated the extent to which the new shares diminished the value of the GOF's existing shares.''

In the alternative, the petitioners argue that the capital increase is countervailable as an indirect subsidy because the GOF structured the privatization transaction in such a way that the private investors were entrusted to make an equity investment in Usinor. The petitioners state that the transaction was inconsistent with a typical government-equity transaction in that the GOF did not receive any form of remuneration in exchange for its investment. As such, the petitioners argue that the GOF conferred a benefit upon Usinor in the amount of the foregone revenue from the sale of the new shares that the company otherwise would not have received but for the GOF's actions.

Usinor and the GOF rebut that, because the FF 4,999,999,975 that Usinor received through the capital increase was not provided by the GOF, Usinor did not receive a countervailable benefit as defined by section 771(5)(B) of the Act. The respondents argue that, rather than giving up revenue, the GOF benefitted from the capital increase because the private capital infusion resulted in increasing the value of the company being sold by the GOF. The respondents explain:

> It simply cannot be the case that every time a company (whether government-owned or otherwise) raises capital by means of a stock increase, it is the beneficiary of a grant. A shareholder does not in such circumstances give away money to which it otherwise would be entitled. Instead, it participates in the growth in the value of the company attributable to the capital increase.

The respondents add that the findings at verification demonstrate that there was an objective finding by the private investment bankers that the price of the shares would be not affected by the capital increase. This finding, according to the respondents, undercuts the petitioners' argument further that the GOF gave up revenues.

Department's Position: As an initial matter, we note that the arguments set forth by the petitioners may constitute a subsidy allegation made in untimely manner. According to § 351.301(d)(4)(i)(A) of the Department's regulations, a subsidy allegation in an investigation is due no later than 40 days before the scheduled date of the preliminary determination. The record shows that the first instance on which the petitioners presented this particular argument was a submission dated October 29, 1998 (''pre-preliminary comments''), merely ten days before the scheduled date of the preliminary determination (November 9, 1998). Nevertheless, we have opted to address the substantive aspects of the petitioners' comment. In exercising our discretion, we considered the fact that the respondents did not express an objection to the petitioners' allegation with respect to its possible untimeliness.

Substantively, we disagree with the petitioners that Usinor received a subsidy by virtue of the capital increase. The petitioners argue first that revenue otherwise due to the GOF was foregone when the GOF authorized a capital increase in Usinor and the money earned from the sale of shares to effect the capital increase was paid directly to Usinor. According to the petitioners, all revenues received from the sale of Usinor's shares should have accrued to the GOF because the GOF was the sole owner at that time.

We do not agree that, in fact, revenue was foregone by the GOF in this situation. In 1995, the GOF decided to privatize Usinor by selling off the majority of the existing shares in the company. At the same time, the GOF authorized an increase in Usinor's share capital. This increase was funded through the sale of newly issued shares in Usinor. These new shares were sold as part of the privatization but, instead of the proceeds going to the GOF, they went to Usinor. Potential purchasers of shares in Usinor were aware that new shares were being issued and how the proceeds from the sale of those shares would be used.

Had the GOF sold its outstanding shares in Usinor without any capital increase, the GOF would have received an amount reflecting the value of Usinor as it existed without the new capital. With the increase in its capital, the value of Usinor increased. However, since the increase in value did not result from an infusion of GOF funds, the GOF did not have a direct or exclusive claim on the increased value. Instead, the increase in Usinor's value came from the purchasers of the new shares and all shareholders benefitted. Thus, petitioners are incorrect that the GOF should have claimed all the proceeds of the sale of Usinor's shares. The GOF received the return from the sale of its existing shares and did not forego revenue when the proceeds from the sale of new shares went to Usinor.

As a holder and seller of existing shares, the GOF did have an indirect claim on the increased value of Usinor resulting from the capital increase. Specifically, as the value of Usinor increased, the value of shares in Usinor should have increased. At the same time, however, because the capital increase was effected through a sale of new shares, the total number of shares increased. Thus, although the total value of Usinor increased, the concurrent increase in the number of shares would offset the increase in value per share. The Privatization Commission Report to which the petitioners refer makes this very point when it states in reference to the share increase that, ''on the basis of experts'' reports which have been submitted to it, the Commission believes that this transaction shall not substantially alter the value of shares, in as much as its diluting nature shall be offset by its beneficial effects upon the Group's financial structure.'' These statements support the conclusion that no value was forgone by the GOF in authorizing the capital increase for Usinor through the sale of new shares.

In the alternative, the petitioners have argued that the capital increase was an indirect subsidy because the GOF structured the privatization such that private investors were entrusted to make a countervailable equity infusion into Usinor. We do not need to reach the issue of whether private investors were ''entrusted'' to provide a subsidy because we find that there is no subsidy in this equity purchase. Under section 771(5)(E)(i) of the Act, a countervailable subsidy is conferred, in the case of an equity infusion, ''if the investment decision is inconsistent with the usual investment practice of private investors * * * in the country in which the equity infusion is made.'' The focus of the Department's inquiry into this allegation is whether the decision Usinor's investors made was consistent with the private-investor standard. The Department will determine that the equity infusion was inconsistent with usual investment practice of private investors if the company is determined to be unequityworthy or if the terms and the nature of the equity purchased otherwise indicates that the investment was inconsistent with the usual private investment practice. *See* § 351.507(3) of the *Final CVD Regulations*.

In the instant investigation, we have not found, and the petitioners have failed to provide, any evidence indicating that Usinor was unequityworthy or that the equity purchased by the investors was otherwise inconsistent with the usual investment practice of private investors. See also § 351.507(a)(7) of the *Final CVD Regulations* (stating that the Department will not investigate an equity infusion in a firm absent a specific allegation by the petitioner that the investment decision was inconsistent with the usual investment practice of private investors). Therefore, we determine that Usinor's investors acted in a manner consistent with the investment practices of private investors.

For the reasons discussed above, we determine that the 1995 capital increase in Usinor was not a countervailable subsidy.

Comment 7: European Social Fund Grants

Usinor and the GOF argue that the ESF grant the Ugine Division received in 1997 is not specific and, therefore, not countervailable. The respondents point to two factors in support of their position. First, they claim that the Department found at verification that the Ugine Division did not receive a disproportionate amount of the ESF funds provided to France in 1997. Second, the respondents maintain that the purpose of the grant was to train people at risk of unemployment pursuant to Objective 4. Because Objective 4 projects are funded throughout France, assistance provided to such projects is not regionally specific, the respondents argue.

The petitioners refute the respondents' arguments. First, they say, the verification report merely quotes statements by GOF officials to the effect that Usinor did not get a disproportionate amount of ESF assistance and that Usinor was the only steel company receiving such funds during the POI. The petitioners note that GOF officials did not provide any documentation in support of these statements. Second, they argue that while EU officials stated at verification that Objective 4 projects are funded throughout France, they did not provide any documentation supporting this assertion. The petitioners also point out that, according to the EU verification report, the EU does not maintain any records showing which individual companies receive ESF funding. Thus, there is no documentation to support the notion that ESF grants are not specific, according to the petitioners.

Department's Position: We agree with the petitioners. Because we do not have sufficient information on the record regarding the actual use of Objective 4 funds in France during the POI, we must use facts available (see discussion under the description of the ESF grants in Section I above). On this basis, we have determined that the ESF grants received by the Ugine Division are specific and, therefore, countervailable.

Comment 8: Investment and Operating Subsidies

Usinor and the GOF argue that the investment and operating subsidies Usinor received from the GOF are not specific and, therefore, should not be countervailed. With regard to the funds received from regional water boards for water protection, pollution control, and water rehabilitation projects, Usinor and the GOF contend that the Department verified that these funds were not limited to Usinor or to the steel industry. Based on the information submitted by the GOF at verification, Usinor and the GOF also maintain that the steel industry did not receive a disproportionate amount of the water board subsidies.

The petitioners contend that the Department should continue to treat the investment and operating subsidies as specific and that they, therefore, should be subject to countervailing duties. The petitioners assert that the Department's GOF verification report does not draw any conclusions with respect to the specificity of this program. Furthermore, the petitioners argue that information supporting a respondent's claim of non-specificity should be submitted with the original questionnaire response in order to ensure that the Department and the petitioners have ample time to evaluate and comment upon the factual evidence prior to verification. They state that verification should not be used as an opportunity to submit new, substantive information to supplement the original questionnaire response.

The petitioners finally contend that, even if the information GOF officials provided at verification had been submitted in a timely manner, it would not corroborate the respondents' claim of non-specificity. The petitioners argue that, although GOF officials maintained that this assistance was provided to any type of enterprise or industry, the documentation presented at verification did not demonstrate actual usage by type of industry.

Department's Position: In our *Preliminary Determination*, we found that the investment and operating subsidies, including the assistance from the regional water boards, provided a financial contribution in the form of a direct transfer of funds from the GOF to Usinor pursuant to section 771(5)(D)(i) of the Act. Prior to the *Preliminary Determination*, the GOF argued that the water board grants were not specific but did not provide any information to support this statement. Therefore, as facts available, we determined preliminarily that these subsidies were specific under section 771(5A)(D) of the Act.

However, at verification the GOF presented, and we verified, information showing that assistance under the program provided by the water boards was provided to a wide variety of water-related projects. We also found that the amount received by Usinor constituted a very small percentage of the total amount provided by the water boards to combat industrial pollution. In principle we agree with the petitioners that information supporting a respondent's claim of non-specificity, as well as other factual information, should be submitted with the questionnaire response, but we do not believe that the information presented to us at verification should be classified as entirely "new." We learned about the existence of the water program from Usinor's and the GOF's questionnaire responses in which the GOF also made a claim for non-specificity of this program. The Department has the discretion to accept new information at verification when "the information makes minor revisions to information already on the record or * * * the information corroborates, supports, or clarifies information already on the record." *See Final Results of Antidumping Administrative Review: Titanium Sponge from the Russian Federation*, 61 FR 58525 (November 15, 1996), and *Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 63 FR 32849, 32852 (June 16, 1998). In this instance, we believe that the information presented to us at verification merely clarified information already on the record. Although this information is not sufficient to determine that the water board program is not specific in general, we believe that it is enough to support a finding that the program is not specific to Usinor. Accordingly, we determine that the grants from the regional water boards are not specific to Usinor within the meaning of section 771(5A)(D)(iii) of the Act and, therefore, not countervailable.

However, due to the lack of information about their usage and distribution, as adverse facts available, we continue to find the other programs included in the category investment and operating subsidies to be countervailable (our reasons for using adverse facts available are explained in section I.D above).

Comment 9: Myosotis Project

Usinor and the GOF urge the Department to grant green-light status to the benefits received by Usinor for the Myosotis project. They argue that this project qualifies as industrial research as defined by section 771(5B)(B)(ii)(I) of the Act because its purpose is to develop ''new products, processes, or services'' or to bring about ''a significant improvement to existing products, processes, or services.'' The respondents state further that the level of assistance is far below the 75-percent maximum that the statute permits for industrial research and that the EU has found the project to be in concordance with its State Aids Code. Moreover, the respondents argue, the Myosotis project qualifies for green-light treatment because it is a pre-competitive development activity involving the development of a prototype that cannot be put to commercial use as described in section 771(5B)(B)(ii)(II) of the Act. According to the respondents, the level of assistance is well below the 50-percent maximum that the statute allows for pre-competitive development activities.

Usinor and the GOF argue that, if the Department should decide not to grant the Myosotis project green-light status, it should determine that the assistance for this project is not countervailable because it is not specific. The respondents state that the Myosotis assistance came from the GPI program which is administered by the Ministry of Industry. They contend that at verification the Department found that GPI funding is not limited by law to any particular industry and, also, that assistance from this fund is provided to a wide range of industries. Last, the respondents assert that the Department found at verification that the steel industry did not receive a disproportionate share of GPI funds in the years that Usinor received assistance for the Myosotis project.

The petitioners urge the Department to follow its decision in the *Preliminary Determination* and not address the respondents' green-light claim for the Myosotis project. First, the petitioners state, in the preliminary determination, the Department expensed the grants Usinor received between 1989 and 1993 for Myosotis because they were below 0.5 percent of the company's sales in the years of receipt and, with respect to the reimbursable advance received in 1997, the Department preliminarily determined that there was no benefit attributable to the POI. Accordingly, the petitioners observe, the countervailable subsidy rate for the Myosotis program was 0.00 percent *ad valorem* in the *Preliminary Determination*. The petitioners note that the new regulations state specifically that the Department will not consider a green-light claim for a subsidy that does not provide a benefit to the subject merchandise in the period of investigation or review. Therefore, they argue, the Department should not address the green-light claim advanced by Usinor and the GOF.

As a second argument for not making a green-light determination, the petitioners point to administrative efficiency. Citing *Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437 (June 9, 1998), *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990 (October 22, 1997), and *Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201 (February 4, 1997), the petitioners argue that a decision not to address Usinor's green-light claim would be consistent with the Department's practice, as established in these cases, of not analyzing a program that has no impact on the net countervailable subsidy rate.

Third, the petitioners argue that the Department should not make a green-light determination because the administrative record in this proceeding is incomplete. Specifically, the petitioners point to the GOF's refusal to make certain reports on the Myosotis project available to the Department at verification. The petitioners believe that the absence of these documents from the record is particularly relevant in light of the Department's ''commitment to interpret [the green-light] provisions strictly as required by the SAA.''

The petitioners recommend that the Department to postpone a green-light decision on the Myosotis project until the next administrative review to ensure (1) that a more complete administrative record can be developed, and (2) that there is a benefit to Usinor from the 1997 reimbursable advance.

Department's Position: We agree with the petitioners that there is no need for us to make a determination regarding green-light treatment of the assistance provided under the Myosotis project. As stated in the preamble to the Department's recently issued regulations:

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

See Final CVD Regulations, 63 FR at 65388. While these final regulations are not controlling in this case, they do reflect the Department's current practice. Therefore, we will not make a green-light determination when there is no countervailable benefit in the period of investigation or review, in accordance with our existing practice. We also consider a specificity determination to be unwarranted when there is no benefit in the POI. Instead, we intend to make determinations on green-light status and specificity in an administrative review, if this investigation results in a countervailing duty order.

Comment 10: Lending Rates

The petitioners argue that the Department should use the lending rates reported in Table 4.11 of the *Bulletin* of *Banque de France* as the benchmark lending rate for the years in which Usinor was found to be uncreditworthy. The petitioners assert that the statements made by private bank and GOF officials at verification indicate the lending rates in question represent an average cost of credit for companies in France which includes high- and low-risk financing. The petitioners argue that these interest rates provide a better indication of the rate at which Usinor could have actually obtained financing for those years in which Usinor was found to be uncreditworthy because they reflect some degree of greater risk.

Usinor and the GOF point out that the officials of the Banque de France indicated that the rates reported in Table 4.11 include variable rates. Usinor and the GOF argue that, as such, the Table 4.11 rates are inappropriate to use as benchmark rates because the Department's preference, as reflected in the *1989 Proposed Regulations*, is to use the average cost of long-term fixed-rate loans. Moreover, Usinor and the GOF point to the statement made by the GOF officials at verification asserting that the Table 4.11 rates ''do not reflect the cost of credit for a company as Usinor because the rates are surveys of rates applicable for companies of all sizes and types'' and that an average interest rate derived from a survey would, thus, not be an accurate indicator of the cost of credit for an individual company.

Department's Position: We agree with the petitioners that the rates reported in Table 4.11 of the *Bulletin* are more appropriate benchmark and discount rates for the years in which Usinor was found to be uncreditworthy and where the other benchmark interest rates are lower than the rates reported in Table 4.11. For this final determination, we have applied the methodology described in the *1989 Proposed Regulations* for calculating the benchmark and discount rates for the years in which Usinor was found uncreditworthy. Specifically, the *1989 Proposed Regulations* state that the long-term fixed benchmark rate for an uncreditworthy firm will be calculated by taking the sum of 12 percent of the prime interest rate in the country in question and, in order of preference: ''(1) the *highest* long-term fixed interest rate commonly available to firms in the country in question; (2) the *highest* long-term variable interest rate commonly available to firms in the country in question; or (3) the short-term benchmark interest rate determined in accordance with [the Department's methodology].'' § 355.44(b)(6)(iv)(A) of the *1989 Proposed Regulations* (emphasis added). Accordingly, we have applied the rates reported in Table 4.11 in our calculation where those rates represented the *highest* long-term interest rate among the various types of interest rates the respondents provided to us. Contrary to the respondents' assertion, an expressed ''preference'' for a fixed rate does not preclude us from using a rate that we find more appropriate, even if that rate happens to include variable rate loans. Further, we disagree with the respondents that the Table 4.11 rates are not appropriate because the rates are derived from surveys of rates applicable for companies of all sizes and types. While an average rate which by its very definition is derived from rates applicable to more than one company, may not represent the most *accurate* rate applicable to any single company, it nevertheless provides a reasonable indicator of rates ''commonly available to firms in the country in question.''

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 examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation. In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for Usinor. Because Usinor is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 5.38 percent *ad valorem* for Usinor and for all others.

In accordance with our *Preliminary Determination*, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between September 4, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification. In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information. In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13677 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico

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

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Martin Odenyo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5254, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from Mexico are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.