Enforcement to Deputy Assistant Secretary for Import Administration, on file on Room B–099 at the Department.

Accordingly, the deadline for issuing the preliminary results of this review is now not later than January 30, 1997. The deadline for issuing the final results will be 120 days after publication of the preliminary results. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 30, 1996.

Barbara Stafford,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–27463 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–557–806]

Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review

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

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

SUMMARY: On June 11, 1996, the Department of Commerce (''the Department'' published in the Federal Register its preliminary results of administrative review of the countervailing duty order on extruded rubber thread from Malaysia for the period January 1, 1994 through December 31, 1994 (61 FR 29534). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 355.22(a) of the Department's Interim Regulations, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim Regulations; request for comments,* 60 FR 25130, 25139 (May 11, 1995) (''*Interim Regulations*''). Accordingly, this review covers Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., Filati Elastofibre Sdn. Bhd. (Filati), and Rubfil Sdn. Bhd. Heveafil and Filmax are affiliated companies. This review also covers the period from January 1, 1994 to December 31, 1994 and 13 programs.

Since the publication of the preliminary results on June 11, 1996 (61 FR 29534), the following events have occurred: We invited interested parties to comment on the preliminary results. On July 11, 1996, case briefs were submitted by the Government of Malaysia (GOM) and Heveafil, Filmax, Rubberflex, Filati and Rubfil, producers of the subject merchandise which exported extruded rubber thread to the United States during the review period (respondents).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (''*Proposed Regulations*''), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. *See Advance Notice of Proposed Rulemaking and Request for Public Comments,* 60 FR 80 (January 3, 1995).

Scope of the Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural latex of any cross sectional shape; measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Such merchandise is classifiable under item number 4007.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description is dispositive.

Affiliated Parties or Trading Companies

Heveafil owns and controls Filmax and both companies produce subject merchandise. Therefore, we determine them to be affiliated companies under section 771(33) of the Act. As such, and consistent with prior reviews of this order, we have calculated only one rate for both of these companies. *See Extruded Rubber Thread From Malaysia; Preliminary Results of Countervailing Duty Administrative Review,* 59 FR 46392 (September 8, 1994). For further information, *see Memorandum to File from Judy Kornfeld Regarding Status as Affiliated Parties* dated May 22, 1996, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.

Verification

As provided in section 782(i) of the Act, we verified information provided by the Government of Malaysia, and Heveafil, Filmax, Rubberflex, Filati and Rubfil, producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting and original source documents. Our verification results are outlined in the public versions of the *Verification Reports,* which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

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

I. Programs Conferring Subsidies

Programs Previously Determined to Confer Subsidies

A. Export Credit Refinancing (ECR)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings in the preliminary results for this program. Accordingly, the net subsidies from pre-shipment loans are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.21

Manufacturer/exporter	Rate (percent)
Rubberflex	0.19
Filati	0.00
Rubfil	0.15

The net subsidies from post-shipment loans are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.00
Rubberflex	0.00
Filati	1.39
Rubfil	0.08

B. Pioneer Status

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.00
Rubberflex	0.00
Filati	0.00
Rubfil	0.15

C. Industrial Building Allowance

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	<0.005
Rubberflex	0.00
Filati	0.00
Rubfil	0.00

D. Double Deduction for Export Promotion Expenses

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.02
Rubberflex	0.00
Filati	0.00
Rubfil	0.00

II. Programs Found to be Not Used

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

- Investment Tax Allowance,
- Abatement of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales,
- Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area,
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies due to Capital Participation and Employment Policy Adherence,
- Double Deduction of Export Credit Insurance Payments,
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence, and
- Preferential Financing for Bumiputras.

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Respondents allege that the Department initiated the original investigation pursuant to Section 303(a)(2) of the Act, and, therefore, the Department can impose countervailing duties under this section only if there is an injury determination by the International Trade Commission (ITC). (The ITC discontinued its injury determination under Section 303(a)(2) because the duty-free status of rubber thread from Malaysia was terminated.) Respondents contend that without an injury determination, the Department had no authority to issue a countervailing duty order and to require the payment of cash deposits. Respondents further maintain that the Department cannot simply transfer the jurisdiction for an investigation from Section 303(a)(2) to Section 303(a)(1) without issuing a public notice that it intends to proceed with the investigation under a different statutory provision. *See, Certain Textile Mill Products and Apparel from Turkey* (50 FR 9817; March 12, 1987); *Certain Textile Mill Products and Apparel from the Philippines* (50 FR 1195; March 26, 1985) and *Certain Textile Mill Products and Apparel from Indonesia* (50 FR 9861; March 12, 1985). Furthermore, because there was no initiation notice or a preliminary determination under Section 303(a)(1), a final determination under that section was not appropriate. If the Department wanted to proceed with the investigation, it was required to reinitiate under the appropriate provision.

In addition, respondents argue that the Department's untimeliness theory in previous reviews is misplaced. They state that the Department has the power to modify its judgements or correct its errors and that *Ceramica Regiomontana* v. *United States,* 64 F.3d 1579 (Fed. Cir. 1995) (*Ceramica 1995*) confirmed the right to challenge the continuing validity of an order during a review proceeding.

Department's Position: As the Department pointed out in the previous reviews, respondents' challenge to the Department's authority to issue the order is untimely. Challenges to the issuance of an order must be filed within 30 days of the date the order is published. See 19 U.S.C. § 1516a(a)(2). The countervailing duty order on extruded rubber thread from Malaysia was published on August 25, 1992. Respondents voluntarily withdrew a timely-filed complaint challenging the order on these same grounds. Respondents' attempt to revive that challenge in this proceeding is untimely.

Contrary to respondents' assertions, there was no requirement that the Department reinitiate its investigation as a result of the decision by the United States to terminate the duty-free status of Malaysian rubber thread. Indeed, respondents' interpretation could create an impermissible gap in statutory coverage, which Congress did not intend. *See Techsnabexport, Ltd.* v. *United States,* 802 F. Supp. 469, 472 (CIT 1992). Nor do the administrative cases relied upon by respondents support their position. In those cases, the Department published notice that authority to continue the particular investigations was transferred from section 303 of the Tariff Act of 1930 to Title VII of the Act.

In the course of administrative reviews conducted under this order, respondents have misconstrued judicial precedent regarding the correction of ''jurisdictional defects.'' *Gilmore Steel Corp.* v. *United States,* 585 F. Supp. 670, 674 (CIT 1984) (*Gilmore*), involved a challenge to the termination of a pending investigation based upon information obtained in the course of that investigation. In particular, the petitioner contended that the

Department lacked the authority to rescind the investigation based upon insufficient industry support for the petition after the 20-day initiation period had elapsed. 585 F. Supp. at 673. In upholding the Department's determination, the court recognized that administrative officers have the authority to correct errors, such as ''jurisdictional defects,'' at anytime during the proceeding. *Id.* at 674–75. The court did not state or imply that the Department may reverse a decision to issue an antidumping duty order in the context of an administrative review under section 751 of the Act. Indeed, the case did not even involve an administrative review. The court simply held that the administering authority may, in the context of the original investigation, rescind an ongoing proceeding after expiration of the 20-day initiation period. In short, *Gilmore* says nothing to excuse respondents' failure to timely challenge the issuance of the order in this case.

Similarly, we disagree with respondents' reliance on *Ceramica 1995*. *Ceramica 1995* challenged the continued imposition of countervailing duties following Mexico's change in status to a ''country under the Agreement'' which entitled it to an injury test. Unlike respondents, *Ceramica 1995* did not challenge the validity of the original countervailing duty order, nor did the Federal Circuit determine that the issuance of the order was invalid. Consequently, *Ceramica 1995* is a similarly inappropriate basis to excuse respondents' failure to timely challenge the issuance of the order.

Comment 2: Respondents argue that the Department must liquidate entries during 1994 without regard to countervailing duties because the URAA does not provide an injury test for 1994 entries as required under the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). Citing Article 32.3 of the Subsidies Agreement, respondents argue that the Subsidies Agreement is applicable to all reviews, including the instant review, initiated pursuant to requests made after January 1, 1995. Respondents argue that the requirements of the Agreement include the application of an injury test to entries covered by such a review. According to respondents, however, the URAA did not provide a mechanism to implement this obligation; rather, the URAA only provides an injury test for merchandise entered on or after January 1, 1995. Therefore, respondents assert that assessment of countervailing duties on 1994 entries would violate U.S. obligations under the Subsidies Agreement.

Department's Position: Respondents have misinterpreted both U.S. law and the Subsidies Agreement. There is no legal basis under U.S. law for respondents' claim. Because Malaysia became a Subsidies Agreement country on January 1, 1995, only entries made on or after January 1, 1995 are entitled to the injury test. *See* section 753 of the Act; 19 U.S.C. § 1675b. Section 753(a)(4) makes this clear by suspending liquidation of entries of subject merchandise made ''on or after * * * the date on which the country * * * becomes a Subsidies Agreement country * * *'' *See, also, Ceramica Regiomontana, S.A.* v. *United States,* 64 F3d 1579 (Fed. Cir. 1995) (the right to an injury test is conferred at the time of importation (entry) in the United States). Therefore, countervailing duties may be assessed on Malaysian imports entered before January 1, 1995, without regard to an injury test.

Moreover, Article 32.3 of the Subsidies Agreement does not require an injury determination for merchandise entered prior to January 1, 1995. (*See, also, Footwear from Brazil* GATT Panel Decision confirming that liability for countervailing duties attaches at the time of importation, not assessment.) In sum, given that the subject merchandise was not entitled to an injury determination when it was entered in 1994, liability for countervailing duties attached at the time of entry. Therefore, there is no obligation under the Subsidies Agreement to supply an injury test to these 1994 entries.

Comment 3: Respondents argue that the Department improperly assigned company-specific rates without first determining whether the overall country-wide subsidy rate was above *de minimis*. They contend that the Department acted contrary to its established practice of applying its two-part test in measuring levels of subsidization. According to respondents, the Department should first calculate the net subsidy on a country-wide basis to determine whether the country-wide rate was above *de minimis,* in accordance with *Ceramica Regiomontana, S.A.* v. *United States,* 853 Supp. 431,439 (Ct. Int'l Trade 1994) (*Ceramica 1994*). If the country-wide benefit is *de minimis*, the overall subsidy level would be zero. Only if the country-wide rate was above *de minimis* would the Department proceed to the second step of its test to determine if individual rates would apply. Respondents cite *Certain Iron Metal Castings from India, Preliminary Results of Countervailing duty Administrative Review* (61 FR 25623; May 22, 1996); *Carbon Steel Butt-Welde Pipe Fittings from Thailand; Final Results of Countervailing Administrative Review* (61 FR 4959; Feb. 9, 1996); *Extruded Rubber Thread from Malaysia, Final Results of Countervailing Duty Administrative Review* (60 FR 51982, 51983; October 4, 1995), in which the Department applied its two-step test.

According to respondents, as a precondition to imposing countervailing duties, the statute requires subsidization to occur with respect to imports of the subject merchandise on an overall or aggregated basis. In addition, respondents contend that the URAA altered the assessment provision but not the requirement to determine whether subsidies were being provided on a country-wide basis.

Department's Position: There is no legal basis to support respondents' argument. Pursuant to the URAA, there is no longer a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The URAA replaced the former practice of calculating subsidies on a country-wide basis in favor of individual rates for reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. *See also* section 355.22 of the *Interim Regulations* (60 FR 25130; May 11, 1995). Section 777A(e) requires the calculation of an individual countervailable subsidy rate for each known producer/exporter of the subject merchandise, except where it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters or producers involved in the investigation or review. This exception was inapplicable in this review as there were only five known producers/exporters.

As a result, the judicial and administrative precedents relied upon by respondents are inappropriate as they refer to the requirements as they existed prior to the URAA. All of the reviews cited by respondents were requested and initiated prior to January 1, 1995, the effective date of the URAA. More pertinent citations would be to reviews conducted under the URAA. *See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review* (61 FR 20,238, 20,242; May 6, 1996), since that review was initiated pursuant to requests for administrative reviews filed after January 1, 1995.

Comment 4: Respondents argue that the Department cannot countervail

benefits under the ECR loan program or the Pioneer Industries program because neither involves a financial contribution by the GOM. The WTO Subsidies Agreement defined the term ''subsidy'' as one involving a ''financial contribution,'' therefore adding a new requirement to the pre-existing notion of a subsidy. Accordingly, a program cannot be a countervailable subsidy unless it involves a ''financial contribution.'' In the case of the ECR loans, they argue that there is no financial contribution because the funds that the GOM lends to exporters generate a profit—the funds are lent on a short-term basis at an interest rate higher than the cost of those funds. And in the case of the Pioneer Industries program, they argue that because the only company claiming the tax exemption would have paid the same amount of taxes without the exemption, the GOM did not forgo or fail to collect any revenues as a result of the program. Respondents believe that the Department's preliminary determination overlooks this new requirement.

Department's Position: We disagree with respondents that the Department overlooked the requirement of financial contribution. Under section 771(5)(D)(i) and (ii) of the Act, a financial contribution is defined as ''the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,'' or ''foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income.'' The ECR loan and Pioneer Industries tax programs clearly fall within these definitions. We also note that under Article 1.1(a)(1)(i) and (ii) of the Subsidies Agreement, a financial contribution is defined as ''where government practice involves a direct transfer of funds (e.g., grants, loans, and equity infusions), potential direct transfers of funds or liabilities (e.g., loan guarantees)'' or ''government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits).''

Respondents mistakenly focus on the ''financial contribution'' concept in terms of the cost to the Malaysian government. As explained in the previous reviews, the Department has a longstanding practice of valuing the benefit to the recipient rather than the cost to the government for the purpose of calculating countervailing duty rates. This practice is now reflected in section 771(5)(E) of the Act, which states that the subsidy benefit ''shall normally be treated as conferred where there is a benefit to the recipient.'' In addition, Article 14 of the Subsidies Agreement defines the method for calculating the amount of a subsidy in terms of the benefit to the recipient.

In the case of ECR loans, the funds that the GOM lends to the exporters are lent on a short-term basis at an interest rate below the commercial benchmark rate. In the case of the Pioneer Industries program, a company that has received pioneer status is allowed not to pay taxes otherwise due to the government. (Also, *see* Department's Position to Comment 10 on Pioneer Status.) Therefore, under both programs, financial contributions are provided to the recipients (the respondents) and the Department properly treated those benefits as countervailable subsidies.

Comment 5: Respondents contend that the Department overstated the benefit received under the ECR program in its administrative review because it used an inappropriate benchmark. They argue that the Department should rely on its past practice of using the bankers' acceptances (BA) rates because they are identical to ECR financing in terms of risk, maturity and purpose. Respondents further contend that the Department's use of the ''predominant source'' of financing as a benchmark is no longer authorized. Instead, the URAA requires that the calculation of any benefits be based upon ''the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan'' (citing 19 U.S.C. § 1677(E)(ii)). They assert that it makes no sense to compare trade financing to other financing such as short-term loans and overdrafts and that BAs are the most comparable form of financing.

Department's Position: We first note that the respondents are incorrect when they state that the Department should rely on its past practice of using BA rates as the benchmark. In each of the prior administrative reviews of this order, the Department has used the Base Lending Rate (BLR) as the commercial benchmark rather than the BA rate. However, we do agree with respondents that the benchmark should be comparable to the government loan in question. To the extent that the predominant source of financing is not comparable to the loans in question or could not actually be obtained by the exporter, then we agree that the predominant source of financing cannot be used as a benchmark under the new statute.

In Malaysia, ECR financing was provided in two different forms: it was provided as a line of credit based on the company's previous 12 months' export performance, and it was also provided based on the financing of the invoice, with the interest discounted. The maximum period for a loan based on invoice financing is 180 days. However, if the exporter receives early payment on the sale from its customer, then the exporter is required to repay the loan at that time rather than at the end of 180 days. The exporter also assumes the risk for late-payment or non-payment. With financing under the line of credit, the exporter is charged interest based on the outstanding balance and that interest must be paid on a monthly basis.

Based upon the information on the record, we have determined that BAs are a comparable form of alternative short-term financing available to respondents for post-shipment loans under the ECR program. Both BAs and post-shipment loans are short-term borrowing instruments used in trade financing of exports. Therefore, we have used the 1994 BA rates and commissions provided at verification (*see, Verification Report* for the Government of Malaysia, Exhibit 10) as the benchmark for ECR post-shipment loans and have recalculated the benefit conferred by these loans using this revised benchmark. However, we disagree that BAs are comparable to ECR pre-shipment loans. This is because pre-shipment financing used by the respondents is based on a line of credit, much like a general short-term loan in the Malaysian market. We are using the BLR because we have verified, based on meetings with commercial banks in Malaysia, that the BLR serves as the basis for determining the interest rates charged by commercial banks in Malaysia on short-term loans, which would include short-term borrowing using a line of credit.

Comment 6: Respondents argue that, if the Department does not use the BA benchmark, it should use the Average Lending Rate (ALR) provided in the *Bank Negara Statistical Bulletin* rather than the BLR plus an estimated spread. If the Department, nevertheless, uses this method, then the spread should be calculated by deducting the average BLR rate calculated by the Department from the ALR published in the *Bank Negara Statistical Bulletin.*

Department's Position: We disagree with respondents. The most appropriate benchmark for pre-shipment financing under the ECR program is based upon the BLR. During verification of the 1992 and 1994 administrative reviews, we found that ALR rates published in the *Bank Negara Statistical Bulletin* included both short-term and long-term rates, while the BLR rates are strictly based on short-term loans. (*See Memorandum to the File from Judy*

Kornfeld and Lorenza Olivas Regarding Extruded Rubber Thread from Malaysia; Benchmark Information (Public Document) dated August 15, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Therefore, we disagree with respondents that we should use the ALR rate because it would improperly include long-term rates. Finally, we disagree with respondents' argument that we should calculate the spread by deducting the average BLR rate from the average of the ALR rates because this would again improperly include long-term rates in the benchmark calculation and it does not reflect the spread that the commercial banks charge above the BLR rate on short-term loans. During verification, commercial banking officials stated that the BLR serves as the basis for determining the short-term interest rates charged by commercial banks in Malaysia. The commercial bank officials also stated that banks add a 1.00 to 2.00 percent spread to the BLR. (*See, Verification Report* of Commercial Bank.) Accordingly, we have determined that it is appropriate to continue to use the average of the commercial BLR rates published in *Bank Negara Statistical Bulletin,* plus an average 1.5 percent spread, as a benchmark.

Comment 7: Respondents contend that the Department should not have used a single annual average benchmark interest rate because it distorts the analysis in a year characterized by steadily decreasing interest rates. The Department previously used a semi-annual average benchmark interest rate in the 1987 and 1988 reviews of *Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews,* 56 FR 38118 (August 12, 1991) (*OCTG*). Respondents claim that because the loans in this review had a normal maturity of 180 days and the rates were fixed at the time of the loan initiation, they fit the same conditions as in *OCTG.*

Department's Position: We disagree with respondents. Our practice, as reflected in section 355.44(b)(3)(ii) of the *Proposed Regulations,* is that ''unless short-term interest rates in the country in question have fluctuated significantly during the year in question, the Secretary will calculate a single, annual average benchmark interest rate.'' In the *OCTG* case relied upon by respondents, there was significant hyperinflation and an average annual rate would therefore have been distorted by the compounding of very high monthly interest rates which varied widely from the first to the second half of the year of review. See *OCTG* at 38118. Respondents have not shown any comparable circumstances in Malaysia to warrant the use of semi-annual average rates.

Comment 8: Respondents argue that the Department overstated the net subsidy for the review period and for duty deposit purposes because in calculating eligibility for the pre-shipment export financing, the Department failed to take account of the exclusion by Heveafil and Filmax of U.S. exports from the calculation of eligibility for the pre-shipment export financing. In addition, respondents claim that the two companies did not use funds from exports to the United States to repay any of the pre-shipment loans. They claim that in a similar situation, the Department concluded that exports to the United States did not receive benefits from short-term financing. *See, Suspension of Countervailing Duty Investigation; Certain Forged Steel Crankshafts from Brazil* (52 FR 28177, 28179; July 28, 1987) (*Brazilian Crankshafts Suspension Agreement*). Although in the first administrative review, the Department rejected this method of eliminating the effect of a subsidy, respondents maintain that Heveafil and Filmax received no benefit with regard to U.S. shipments.

Respondents further assert that the Department found a subsidy in this case in part because there was no strict segregation of U.S. exports and the materials used in their manufacture from materials and exports to other markets financed with ECR loans. However, according to the respondents, the Department was presented with exactly the same issue in *Crankshafts from Brazil* and in that case the Department did not require that the exporters segregate raw materials purchased with export financing.

Department's Position: The GOM provides ECR financing based on export performance. The explicit purpose of this program is to promote the export of manufactured and approved agricultural products. Two types of ECR financing are available: pre-shipment and post-shipment financing. There is no evidence that the GOM limits these ECR loans to increase exports only to markets other than the United States, nor is there evidence of a provision that prevents exporters from receiving ECR loans for exports to the United States.

During the review period, both Heveafil and Filmax applied for and used pre-shipment financing based on certificates of performance (CP). Pre-shipment financing based on CPs is a line of credit based on previous exports and, when received, cannot be tied to specific sales in specific markets. Where a benefit is not tied to a particular product or market, it is the Department's practice to allocate the benefit to all products exported by a firm where the benefit is received pursuant to an export program. *See* 19 C.F.R. § 355.47(c) of the *Proposed Regulations* (54 FR 23375, May 31, 1989). Because pre-shipment loans were not shipment-specific, we included all loans in calculating the company-specific duty rate.

By excluding exports to the United States from their application for export financing, the companies merely reduced the amount of financing they received. Reducing the pool of funds available for total export financing does not eliminate financing to any particular market or for any particular product. Tying occurs in the provision of the subsidy, usually through government mandate requirements or in certain limited situations where the application for the subsidy can be isolated to specific shipments, e.g. post-shipment loans provided on a shipment-by-shipment basis where the company can demonstrate through source documentation that it did not apply for or receive loans on shipments to the U.S. *See Certain Iron Metal Castings from India; Preliminary Results of Countervailing Duty Administrative Review* (61 FR 25623; May, 22 1996). Hence, the companies did not eliminate financing for U.S. exports.

We disagree with respondents that in similar circumstances the Department has concluded that the exclusion of U.S. exports from applications in the manner described by respondents eliminates any countervailable subsidy that would otherwise be present. As stated in the last review, respondents' reliance on the *Crankshafts from Brazil* suspension agreement is misplaced. Suspension agreements are unusual, negotiated arrangements in which parties to a proceeding agree to renounce countervailable subsidies. As such, unlike final determinations, they do not serve as administrative precedent. Moreover, the *Crankshafts from Brazil* suspension agreement is consistent with our allocation practice, as described in the *Proposed Regulations.*

Comment 9: Respondents argue that the Department previously found the Pioneer Status Program not countervailable. *See, Carbon Steel Wire Rod from Malaysia; Final Results of Countervailing Duty Administrative Review;* 56 FR 14927 (April 12, 1991) (*Wire Rod*). Respondents assert that it is not countervailable because tax benefits under this program are not limited to

any sector or region of the Malaysian economy, nor is the program exclusively available to exporting companies. They contend that the Department confirmed in the first administrative review, both the *de jure* and *de facto* availability of this program to the entire Malaysian economy, and that the pioneer status tax benefits are not targeted to specific industries or companies in a discriminatory manner. Furthermore, the Department verified in the original investigation that the internal guidelines used to grant pioneer status are characterized by neutral criteria unrelated to exports, location or any other factors that could require a determination that the program is countervailable.

Respondents further argue that the Department verified in the first administrative review that the GOM does not require export commitments, or view them as preponderant, in evaluating applications; that export potential is merely one of 12 factors considered in granting status; and that a product will not be accepted based on export potential alone. Furthermore, respondents argue that the Department verified in the first administrative review that the GOM commonly approves companies that do not make export commitments as well as some that do make them. Therefore, export performance is not viewed as a preponderant factor, but as one of many neutral criteria.

Department's Position: We addressed this identical argument in the previous review. In *Wire Rod,* we concluded that benefits were not used by a specific industry or group of industries and that no industry or group of industries used the program disproportionately and found the program not to be countervailable. That determination, however, did not specifically address situations where companies had a specific export condition attached to their pioneer status approval. In the *Wire Rod* investigation, petitioner raised the issue of an export requirement. Although the requirement per se is not new, it was not at issue with the companies investigated in *Wire Rod*.

In this case, recipients of the tax benefits conferred by Pioneer Status can be divided into two categories: industries and activities that will find market opportunities in Malaysia and elsewhere, and those that face a saturated domestic market. At verification of the first administrative review, we established that an export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers. The extruded rubber thread industry is among these industries.

The combination of the necessary export orientation of the industry due to lack of domestic market opportunities and the explicit export condition attached to pioneer status approval in the rubber thread industry lead us to conclude that the Pioneer Status program constitutes an export subsidy to the rubber thread industry. Whether or not the commitment was voluntary, as respondents suggest, the company has obligated itself to export a very large portion of its production, and that commitment was a condition for approval of benefits.

Comment 10: Respondents argue that the Department overstated the benefit from the Pioneer Status program because it failed to deduct the normal capital allowances that would have been allowed if the program had not been used. Respondents claim that Rubfil, in fact, received no cash benefits from this program. Furthermore, they claim, the Department incorrectly allocated pioneer status tax benefits over only export sales even though pioneer status tax benefits are also applicable to profits on domestic sales. According to the respondents, this is inconsistent with the Department's practice to allocate benefits over total sales to which they are ''tied.''

Department's Position: We disagree with respondents. When a company receives pioneer status, it is allowed to accumulate the normal capital allowances for use in future years. Rubfil did not pay income taxes during the period of review because of its pioneer status. Therefore, a benefit has been conferred upon the company because it used its pioneer status to offset income. Rubfil is also able to accumulate capital allowances which can be used to offset taxable income in the future, after its pioneer status expires. Moreover, export sales should form the denominator because receipt of pioneer status tax benefits for the companies under review is contingent upon exportation. Accordingly, we have not overstated the benefit from the Pioneer Status Program. *See* section 355.47(a)(2) of the *Proposed Rules. See also Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil* (50 FR 34525; August 26, 1985) and *Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review* (60 FR 44839; August 29, 1995).

Comment 11: In calculating the benefit involving the industrial building allowance and double deduction for export promotion expenses, respondents claim that the Department used a different ''total export'' figure for Heveafil and Filmax than was used for calculating the benefit involving ECR financing. The second ''total export'' figure appears to be the result of a clerical error.

Department's Position: We agree with respondents. The second ''total export'' figure has been corrected in the final calculation.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we determine the *ad valorem* net subsidies to be:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Heveafil/Filmax	0.23
Rubberflex	0.19
Filati	1.39
Rubfil	0.38

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, for those producers/exporters no countervailing duties will be assessed or cash deposits required.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* section 355.22(a) of the *Interim Regulations.* Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate

previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 51982 (October 4, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This countervailing duty order was determined to be subject to section 753 of the Act (as amended by the Uruguay Round Agreements Act of 1994). *Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27,963 (May 26, 1995), amended 60 FR 32,942 (June 26, 1995). In accordance with section 753(a), domestic interested parties have requested an injury investigation with respect to this order with the International Trade Commission (ITC). Pursuant to section 753(a)(4), liquidation of entries of subject merchandise made on or after January 1, 1995, the date Malaysia joined the World Trade Organization, is suspended until the ITC issues a final injury determination. We will not issue assessment instructions for any entries made after January 1, 1995; however, we will instruct Customs to collect cash deposits in accordance with the final results of this administrative review.

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

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

Dated: October 9, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–27358 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 101896B]

North Pacific Fishery Management Council; Crab Team Teleconference

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

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Fishery Management Plan Team will meet by teleconference on November 12, 1996, beginning at 11:00 a.m., Alaska Time.

ADDRESSES: The teleconference will be held at the Council office, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Dave Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects.

1. Crab prohibited species catch management for groundfish pot fisheries.
2. Observer collection of crab bycatch data.
3. Crab Fishery Management Plan update.
4. Other crab-related issues which might arise.

Special Accommodations

This meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 18, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–27464 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed reinstatement of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR Part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting a reinstatement of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than December 24, 1996.

ADDRESSES: Written comments should be captioned ''Citizens Band Base Station Antennas'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed reinstatement of approval of the collection of information, or to obtain a copy of 16 CFR Part 1204, call or write Carl Blechschmidt, Action Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional