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 directing Customs officers to assess countervailing duties on steel wire rod from Canada.

*Return or Destruction of Proprietary Information*

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

**Robert LaRussa,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–428–823]**

## Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany

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

**EFFECTIVE DATE:** October 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Thirumalai or Daniel Lessard, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087 or 482–1778, respectively.

### Final Determination

The Department determines that countervailable subsidies are being provided to Saarstahl AG (''Saarstahl'') and Ispat Hamburger Stahlwerke GmbH (''IHSW''), producers and exporters of steel wire rod from Germany. We also determine that Walzdraht Hochfeld GmbH (''WHG'') and Brandenburger Elektrostahlwerke GmbH (''BES'') received *de minimis* subsidies.

### Case History

Since the publication of the preliminary affirmative determination (''*Preliminary Determination*'') in the **Federal Register**, 62 FR 41945 (August 4, 1997), the following events have occurred.

Verification of the responses of the Government of the Federal Republic of Germany (''GOG''), the Government of the Free and Hanseatic City of Hamburg (''GOH''), the Government of Saarland (''GOS''), the European Union (''EU''), Saarstahl, IHSW, WHG, and BES was conducted between August 20 and September 5, 1997.

Petitioners and respondents filed case and rebuttal briefs on September 19, 1997, and September 23, 1997, respectively. The hearing was held on September 24, 1997. Per the Department's request, post-hearing submissions were received from parties.

### Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.00 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''Tire Cord Wire Rod.''

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as ''Valve Spring Quality Wire Rod.''

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### 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 effective January 1, 1995 (the ''Act'').

### Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (''petitioners''), six U.S. producers of wire rod.

### Subsidies Valuation Information

*Period of Investigation:* The period for which we are measuring subsidies (the ''POI'') is calendar year 1996.

*Allocation Period:* Since benefits from nonrecurring subsidies are not confined to a single period of time, the Department must determine a reasonable period over which to allocate such benefits. In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets to determine the allocation period for nonrecurring subsidies (*see* General Issues Appendix appended to *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993) (''*GIA*'')). However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) (''*British Steel*''), the U.S. Court of International Trade (the ''Court'') ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (''AUL'') of renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in

*British Steel.* Therefore, for the purposes of this determination, the Department has calculated a company-specific AUL for IHSW. However, we did not rely on Saarstahl or BES's company-specific AULs for purposes of this final determination because the calculations were significantly distorted by the asset valuation methodologies employed by the companies in 1989 and 1992, respectively. This issue is addressed with respect to Saarstahl in Comment 11, below.

Based on information provided by IHSW regarding the company's depreciable assets, the Department has determined that the appropriate allocation period for IHSW is 10 years. With respect Saarstahl and BES, we based the companies' AUL on the depreciation schedule in Germany for Technical Machinery and Equipment (*i.e.*, 11 years). The calculation of an allocation period for WHG was unnecessary.

*Creditworthiness:* When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness methodology, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) or *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom,* 58 FR 37393 (July 9, 1993).

Petitioners have alleged that Saarstahl was uncreditworthy in 1989 and between 1993 and 1996. They further allege that HSW and IHSW were uncreditworthy in 1984 and 1994, respectively.

Because neither company received long-term financing in the relevant years, we examined other factors to determine the firms' creditworthiness. In making our determinations, we examined Saarstahl's and IHSW's current, quick, and interest/debt coverage ratios in addition to their net profit/loss for the three preceding years. Both Saarstahl and IHSW experienced operating losses in those years (except 1988 for Saarstahl), and the financial ratios demonstrate that both companies were in poor financial health. The current ratio (current assets divided by current liabilities) measures the margin of safety available to cover any drop in the value of current assets, while the quick ratio (current assets excluding inventory and prepaids divided by current liabilities) shows the company's ability to pay its short-term liabilities. For both companies, these ratios were very small, demonstrating the companies' difficulty in meeting their short-term liabilities and interest expenses. Furthermore, the interest/debt coverage ratios (net income plus interest expense plus taxes divided by interest expense) highlighted the firms' inability to meet existing interest obligations. We determine that Saarstahl was uncreditworthy in 1989 and IHSW was uncreditworthy in 1994.

Because Saarstahl did not receive any countervailable benefits in the form of loans, loan guarantees, or nonrecurring grants from the GOG or the GOS following its 1993 bankruptcy, we do not reach the question of Saarstahl's creditworthiness for this period. Moreover, because IHSW's allocation period is ten years, we are not examining subsidies received prior to 1987. Therefore, we do not need to analyze HSW's creditworthiness for that period.

*Discount Rates:* Information on the record indicates that German banks set interest rates for long-term, fixed rate commercial loans in reference to the yield earned on government bonds to which they normally add a margin, or spread, depending upon the borrower's creditworthiness. Because Saarstahl, IHSW, and BES did not provide company-specific discount rates, we used the German government bond rate plus a spread of 1.75 and 1.5 percent as the discount rate for Saarstahl in 1989 and IHSW in 1994, respectively. This rate represents the highest long-term interest rate which we could locate. As the discount rate for BES in 1994, we used the German government bond rate plus a spread of 1.15 percent (*i.e.*, the average of the spread between 0.8 and 1.5) because BES was not found to be uncreditworthy. We added a risk premium, as described in section 355.44(b)(6)(D)(iv) of the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366, 23374 (May 31, 1989) (''*Proposed Regulations*''), to establish the uncreditworthy discount rate for Saarstahl in 1989 and IHSW in 1994.

*Privatization:* In the *GIA,* we applied a new methodology with respect to the treatment of subsidies recestived prior to the sale of a 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 nonrecurring subsidies would be attributable to the POI (*i.e.*, in this case 1986 for Saarstahl and 1987 for IHSW) and ending one year prior to the privatization.

For Saarstahl, we modified this methodology pursuant to the *Remand Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany,* p. 4–5 (October 12, 1993). Specifically, we calculated the ratios in question by including in the calculation the assistance that Saarstahl received prior to privatization in the year the assistance was received. We did so even though we do not consider this prior assistance, at the time it was received, to be nonrecurring in nature and, thus, allocable over time. We followed a similar approach with respect to assistance received by IHSW in 1993.

We then take the simple average of the ratios of subsidies to net worth. This simple average of the ratios 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 value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive unit can be attributable to the repayment of 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 going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

In the current investigation, we are analyzing: (1) the privatization of Saarstahl in 1989 and subsequent spin-off in 1994 and (2) the privatization of IHSW in 1994. For BES we find it unnecessary to conduct a spin-off calculation because its potentially countervailable subsidies were received after BES was spun off.

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

**I. Programs Determined to Be Countervailable**

*A. Saarstahl*

1. Forgiveness of Saarstahl's Debt in 1989

During the period 1978 to 1989, Saarstahl and its predecessor companies received massive amounts of assistance from the GOS and GOG. Repayment of these funds eventually became contingent upon Saarstahl returning to profitability and earning a profit above and beyond the losses accumulated after 1978. This contingent repayment obligation was known as a Rückzahlungsverpflichtung (''RZV'').

In 1989, the GOS reached an agreement with Usinor-Sacilor to combine Saarstahl with AD der Dillinger Huttenwerke (''Dillinger'') under a holding company, DHS-Dillinger Hutte Saarstahl AG (''DHS''). Pursuant to the combination agreement and as a condition for sale, in 1989 the GOG and GOS entered into a debt forgiveness contract (Entschuldungsvertrag, or ''EV'') which effectively forgave all the outstanding repayment obligations owed by Saarstahl to the two Governments (*i.e.*, a total of DM 3.945 billion in debt was forgiven). The EV specified, however, that if Saarstahl went bankrupt, the GOG and GOS claims could be revived, but their claims would be subordinated to those of all other creditors.

After several years of unprofitable operation, Saarstahl filed for bankruptcy in 1993 under the German Bankruptcy Regulations (Konkursordnung). In 1994, the GOS bought Saarstahl back from Usinor Sacilor for DM 1. At the time of its bankruptcy, Saarstahl's liabilities exceeded its assets by a factor of four, not including its liabilities to the GOG and GOS. Both Governments filed claims against the Saarstahl bankruptcy estate based on the RZV debt that was conditionally forgiven in 1989. These EV-related claims were rejected by the bankruptcy trustee as invalid in 1995 on the grounds that they were so subordinated that the GOG and GOS would never be repaid. The GOG and GOS chose not to appeal the rejection of their bankruptcy claims, on the grounds that the subordination of their claims made the likelihood of recovery very small, and not worth the high cost of litigating the matter.

In the *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany*, 58 FR 6233, 6234 (January 27, 1993) (''*Lead and Bismuth*'') and the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Germany*, 58 FR 37315 (July 9, 1993) (''*Certain Steel*''), we found that Saarstahl's RZVs and similar related debt were forgiven by the 1989 EV, thus conferring a countervailable benefit on Saarstahl as of 1989. Respondents have argued that the attempt to revive the RZVs by the GOG and GOS disqualifies the signing of the 1989 EV as the countervailable event. However, as noted above, the EV-related bankruptcy claims of the GOG and GOS were rejected as invalid by the bankruptcy trustee. Thus, the 1993 bankruptcy proceeding left completely undisturbed the provisions of the 1989 EV agreement. Respondents further argue that the RZVs were worthless at the time of the EV. However, this argument was rejected in *Lead and Bismuth* at 6237, *Certain Steel* at 37323 and the attendant litigation (*see Saarstahl AG v. United States*, 967 F. Supp. 1311 (CIT 1997), and *British Steel plc v. United States*, 936 F. Supp. 1053, 1069–70 (CIT 1996).

Therefore, we determine that the debt forgiveness constitutes a financial contribution in 1989 within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOG and GOS providing a benefit in the amount of the debt forgiveness, DM 3.945 billion. Because it was a one time event, we consider it to be a nonrecurring grant. Additionally, we analyzed whether the debt forgiveness provided to Saarstahl was specific ''in law or in fact,'' within the meaning of section 771(5A) of the Act. Consistent with *Lead and Bismuth* at 6233 and *Certain Steel* at 37315, we find that the debt forgiveness provided to Saarstahl was limited to a specific enterprise or industry because it was provided to one company.

To calculate the countervailable subsidy, we used our standard declining balance grant methodology. The amount of the subsidy allocated to the POI was adjusted in accordance with our privatization methodology (described above) to reflect the privatization of Saarstahl in 1989 and the spin-off of Saarstahl from DHS 1994. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 16.62 percent *ad valorem* for Saarstahl.

2. Assurance of Liquidity Provided to Private Banks by the GOS

Toward the end of 1985, the GOS presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive loans in the amount of DM 350 million. In a February 20, 1986 letter from the banks to the GOS, the banks agreed to forgive DM 217.33 million of debt owed to them by Saarstahl (DM 216.82 of which was forgiven in 1989), if the GOG and GOS fulfilled certain prerequisites. Two of the prerequisites were that the Governments forgive all debt owed to them by Saarstahl and that the GOS secure the future liquidity of Saarstahl. In an April 4, 1986 letter from the Governor of Saarland responding to the banks, the GOS agreed to forgive all debts owed to it by Saarstahl and to secure the liquidity of Saarstahl as it had in the past.

We determine that in assuring the future liquidity of Saarstahl the GOS provided a financial contribution to Saarstahl. Specifically, this assurance granted a ''potential direct transfer of funds'' within the meaning of section 771(5). By assuring the future liquidity of Saarstahl, the GOS effectively guaranteed that Saarstahl would have the funds to satisfy its future obligations, which included the outstanding debt owed to the banks. This assurance was consistent with the GOS's long history of supporting Saarstahl. We also determine that the assurance was provided to a specific enterprise or industry, Saarstahl.

While the GOS's assurance of future liquidity resembled a loan guarantee, it differed in certain important aspects from loan guarantees typically examined by the Department. First, the GOS did not promise to take responsibility for payment of the debt owed to the banks if Saarstahl failed to perform. Rather, the GOS reached an agreement with the private banks whereby the GOS would maintain Saarstahl's liquidity (*i.e.*, Saarstahl's ability to service its outstanding debts). Additionally, other characteristics of a

typical loan guarantee which potentially confer a benefit were not manifested in the liquidity assurance (*e.g.*, lower borrowing costs in the form of fees and/or reduced interest rates). Because there is no information on the record of this investigation indicating that the liquidity assurance resulted in more favorable terms on the remaining loans, we do not find additional countervailable benefits conferred by this assurance. Rather, the consequence of the assurance was that Saarstahl received partial debt forgiveness from the banks. Because of this, we are not using our normal methodology with respect to loan guarantees. Instead, we are calculating the benefit conferred by the liquidity assurance as the amount of debt forgiven. (We note however, that the assurance of future liquidity could have led to a finding of additional countervailable benefits, if it had resulted in lowering Saarstahl's borrowing costs on the unforgiven portion of the company's debt.)

To calculate the countervailable subsidy, we followed the methodology described in the *Forgiveness of Saarstahl's Debt in 1989* section, above. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.91 percent *ad valorem* for Saarstahl.

3. ECSC Redeployment Aid Under Article 56(2)(b)

Under Article 56(2)(b) of the European Coal and Steel Community (''ECSC'') Treaty, persons employed in the iron, steel, and coal industries who lose their jobs may receive assistance for social adjustment. This assistance is provided to workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country make an equivalent contribution. Payments were made to Saarstahl, on behalf of its workers, under Article 56(2)(b).

Since the ECSC portion of payments under this program comes from the operational budget, which is funded by levies on the companies, we determine that this portion (*i.e.*, 50 percent of the amount received) is not countervailable. However, with respect to the portion funded by the GOG, we must decide whether the government payments have relieved Saarstahl of an obligation it would otherwise have.

In Germany, benefits for workers who retire or are laid off are subject to negotiations between labor and management. Those negotiations result in a social plan for each company. Following the policy explained in the Prepension Programs section of the GIA at 37257, we have determined that Saarstahl and its workers were aware when they negotiated their social plans that the German government would pay a portion of the costs. Therefore, unless it can be specifically documented that benefits under this program did not lower a company's social plan obligations, we have determined that one half of the amount paid by the government constitutes a countervailable subsidy.

We consider the benefits provided under this program to be recurring because a company can expect to receive the benefits on an ongoing basis. Therefore, we limited our analysis to funds received in the POI, 1996. In the case of Saarstahl, funds received by the company during the POI relate to five social plans, the last of which relates to Saarstahl's 1993 bankruptcy. We verified that this bankruptcy social plan provides the maximum allowable benefits to workers under German bankruptcy law; therefore, we determine that the knowledge of ECSC 56(2)(b) benefits did not affect the company's social plan obligations. Consequently, GOG payments that relate to this social plan are not countervailable. For the payments made pursuant to the pre-bankruptcy social plans, we first calculated the GOG portion of assistance by taking 50 percent of the funds received by Saarstahl in 1996. As noted above, half of this amount is countervailable. We divided this amount by Saarstahl's total sales during the POI. On this basis, we determine the net subsidy to Saarstahl for this program to be 0.14 percent *ad valorem*.

*B. IHSW*

1994 IHSW Debt Forgiveness

In 1984, Hamburgische Landesbank Girozentrale (''HLB''), a bank wholly owned by the GOH, provided HSW with a line of credit in the amount of DM 130 million. The line of credit was granted for a period of one year and was renewed every year until 1994. Pursuant to a Kreditauftrag between the GOH and HLB, in the event that HSW failed to service this debt, the GOH was obligated to compensate the HLB for 60 percent of the credit line (*i.e.*, DM 78 million). In 1992 and 1993, HSW suffered significant losses, and the HLB refused to extend the credit line. At that point, the GOH assumed responsibility for the total amount loaned to HSW under the line of credit pursuant to an agreement between the GOH and HLB that extended the Kreditauftrag. At the beginning of 1994, the line of credit totaled approximately DM 174 million (*see* Comment 12 below).

In 1994, HSW was sold to Venuda Investments B.V. (''Venuda''), IHSW's parent company. At the time of privatization, the line of credit totaled DM 154 million. Under the terms of the sale, Venuda paid DM 10 million for HSW. With respect to the line of credit, DM 154 million of the total was sold to Venuda for approximately DM 60 million according to a formula based on the net current asset value of HSW in 1994 (*i.e.*, the difference between current assets and liabilities (less the debt owed to HLB)). Although the sale of HSW was structured to have two components, the sale of shares for DM 10 million and the sale of debt for approximately DM 60 million, we have treated this as a single transaction and we consider the payments made by Venuda to represent the price paid for HSW (*see* Comment 13 below).

Based on our view of the sale of HSW, *i.e.*, that the proceeds from both the share and debt purchase comprise the sale price, we determine that in the year that HSW was sold the DM 154 million owed by HSW under the line of credit was forgiven. This debt forgiveness constitutes a financial contribution in the form of a direct transfer of funds from the GOH providing a benefit in the amount of DM 154 million in 1994. While the Department will not consider a loan provided by a government-owned bank to be a loan provided by the government, *per se*, the actions taken by the GOH during the period 1984 through 1994 regarding the provision of the credit line clearly demonstrate that although the debt was owed to HLB, HLB was acting on behalf of the GOH in this instance (*see* Comment 16 below). Moreover, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5)(A) of the Act. Since the debt forgiveness was only provided to one company, we determine that it is limited to a specific enterprise.

To calculate the countervailable subsidy, we used our standard grant methodology. The amount of the subsidy allocated to the POI was adjusted in accordance with our privatization methodology (described above) to reflect the privatization of IHSW in 1994. We then divided the portion of the benefit attributable to the POI by the total sales of IHSW during the same period. On this basis, we determine the countervailable subsidy

for this program to be 5.61 percent *ad valorem* for IHSW.

## II. Programs Determined to Be Not Countervailable

### *A. IHSW*

Provision of Land Lease

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service ''* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Particular problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to the leasing of land, some of the options may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has leased the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same market factors that a private lessor would use in determining whether to lease land to a company.

Pursuant to a 1986 lease agreement between HSW and the GOH, IHSW leases land located in the port of Hamburg from the GOH. The GOH owns approximately one-third of the commercial and industrial land in the port area and leases that land under approximately 450 different lease agreements. The GOH lease rates in the port area are established by the GOH Finance Deputation, an administrative authority established by the City Parliament of Hamburg consisting of government officials and civic members. The Finance Deputation sets the lease rates according to such factors as: (1) market value of property, (2) potential for use and facilities available in specific areas, (3) rentals for comparable areas being used, and (4) terms and conditions being paid in other Northern ports.

The GOH uses a standard lease for all enterprises in the port area. The lease has four rate categories which are based on the location of the property and other attributes (*e.g.*, land-locked, direct water access, railway access). Thus, IHSW's lease contains the same terms as all other similar lease agreements signed with enterprises in the port area.

We verified that there are a very large number of enterprises currently leasing land in the port from the GOH. These enterprises cover a wide variety of industries, such as container storage and shipping, oil tanks and refineries, shipyards, car importers, and coffee and grain mills and storage facilities. There are no special provisions made for different industries.

Because IHSW pays a standard rate charged by the GOH to all enterprises leasing land similar to IHSW's and because these prices are set in reference to market conditions, we determine that IHSW's lease rate is not countervailable.

Adequacy of remuneration is a new statutory provision which replaced ''preferentiality'' as the standard for determining whether the government's provision of a good or service constitutes a countervailable subsidy. The Department has had no experience administering section 771(5)(E) and Congress has provided no guidance as to how the Department should interpret this provision. This case and the other concurrent wire rod cases, mark the first instances in which we are applying the new standard. We anticipate that our policy in this area will continue to be refined as we address similar issues in the future.

### *B. BES*

FRG Backing of THA Loan Guarantees

The German Democratic Republic (''GDR'') created the Treuhandanstalt (''THA'') via the Trusteeship Act of June 17, 1990. THA became the owner and administrator of all non-private GDR enterprises. THA's long-term goal was to privatize these enterprises. Following the monetary union of the Federal Republic of Germany (''FRG'') and the GDR on July 1, 1990, THA issued a global loan guarantee to ensure the liquidity of GDR enterprises. THA guarantees were available to all GDR enterprises in need of them and were backed up by the FRG's commitment to fund THA's activities, pursuant to Article 17 of the *Treaty Between the Federal Republic of Germany and the German Democratic Republic Establishing a Monetary, Economic and Social Union* effective July 1, 1990.

Since THA had no independent sources of funds and the GDR economy was in disarray, the THA loan guarantees standing alone would have been worthless and, as such, would not have motivated private banks to lend to GDR enterprises. Rather, it was the secondary backing of the guarantees by the FRG that led private banks to lend to GDR enterprises. It follows that any financial benefit to GDR enterprises in the form of guaranteed loans flowed from the provision of the FRG guarantee.

BES's predecessor, Stahl- und Walzwerk Brandenburg (''SWB'') took out three THA-guaranteed loans before unification and one shortly after unification. A little over a year after unification, THA assumed SWB's guaranteed loans.

Prior to German Unification on October 3, 1990, the GDR was recognized by the United States as a sovereign country—separate from the FRG. Therefore, any provision of assistance by the FRG to former GDR enterprises is transnational assistance—assistance not provided by the government having jurisdiction over the enterprises. The preamble to the *Proposed Regulations* summarizes our practice with respect to transnational assistance:

> Occasionally, the Department has encountered programs which are funded through foreign aid, either on a bilateral or multilateral basis. In such instances, the Department (and Treasury before it) has determined such programs to be noncountervailable, to the extent that funds for the program are not provided by the government of the country in question.

Section 355.44(o)(1) of the *Proposed Regulations* elaborates on the above:

> [A] countervailable benefit does not exist to the extent the Secretary determines that funding for a benefit is provided by a government other than the government of the country in which the merchandise is produced or from which the merchandise is exported, or by an international lending or development institution.

Based on the foregoing, we find that the secondary backing by the FRG of THA loan guarantees on borrowings prior to Unification is transnational assistance and, therefore, not

countervailable. Moreover, when THA assumed the debt it was merely fulfilling the obligations it had taken on as guarantor prior to Unification. Since the guarantees upon which THA acted were non-countervailable in nature, the subsequent debt assumption did not give rise to a countervailable benefit.

As noted above, SWB took one loan under the THA global guarantee after Unification. However, even if we were to treat the entire amount of the loan principal as a grant, the amount of the benefit would be expensed in the year of receipt, which was prior to the POI. Since there is no benefit allocable to the POI, we have not analyzed whether FRG backing of THA loan guarantees post-Unification gives rise to a countervailable subsidy.

**III. Programs Determined to Be Not Used**

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

*A. Saarstahl*

Saarstahl's Bankruptcy Social Plan

In 1993, Saarstahl negotiated a new social plan in accordance with German bankruptcy law. This new plan provided two and one-half months salary to laid-off workers, the maximum allowable benefit under bankruptcy law. To ensure that laid-off workers did not have to wait for the bankruptcy proceeding to be settled before receiving their money, the GOS purchased the workers' claims against Saarstahl, paid off the workers and then filed a claim under its own name against Saarstahl in the bankruptcy proceeding. The claim filed by the GOS was in the same amount as a claim filed directly by the workers would have been and was accepted by the bankruptcy court in its full amount. Therefore, the potential liability against Saarstahl in respect of social plan benefits was unchanged by virtue of the GOS filing the claim instead of the workers. Since the action by the GOS in pre-paying the bankruptcy social plan benefits did not alter Saarstahl's potential liabilities under bankruptcy, the GOS has not assumed a legal obligation of Saarstahl. As a result, GOS payments to workers under Saarstahl's bankruptcy social plan do not confer a countervailable benefit.

*B. IHSW*

1984 Equity Infusion

In 1984, HSW emerged from bankruptcy proceedings and was taken over by a limited partnership called Protei Produktionsbeteiligungen GmbH & Co. KG (''Protei''). The vast majority of the equity Protei invested in the new HSW was provided via a DM 20 million loan by HLB. This DM 20 million financing was provided to HLB by the GOH. HSW used this capital to purchase the assets and business of Old HSW from its receiver.

According to the terms of the contract which provided these funds, repayment became due from the profits of Protei which, in turn, were derived from HSW's profits. The contract also provided that Protei could not liquidate HSW without the approval of HLB, and HLB reserved rights regarding the appointment of management and members of the supervisory committee. Between 1987 and 1988, DM 2.8 million in ''principal'' payments and DM 2.7 million in ''interest'' were paid by HSW, leaving an unpaid balance of DM 17.2 million.

We have determined that the DM 20 million ''loan'' to Protei should be treated as equity received in 1984 in light of the terms of the financing. Although the money was given in the form of a loan to Protei, the circumstances of the loan indicate that the funds were more in the nature of equity.

First, as noted above, payments on the loan were contingent on HSW being profitable: so, if the company never became profitable, there was no obligation for the loan to be repaid. Second, under the terms of the loan, Protei relinquished pro rata its share of profits from HSW based on the ratio between the DM 20 million loan and the total share capital of HSW. Hence, HLB's share of any future profits generated by HSW would be calculated as if the loan were paid-in capital. Third, although the loan was made to Protei, the particular structure of the partnership suggests that Protei served as a mechanism for the GOH to invest in HSW. Fourth, as noted above, the lender, HLB, imposed numerous conditions on Protei which served to insert HLB into important ownership/management decisions affecting HSW. Finally, when this loan was examined by the Commission of the European Communities (the ''Commission'') to determine whether it constituted state aid, the Commission determined that the loan should be considered as risk capital. Among the data developed by the Commission was a statement by the GOG that the GOH ''was exposed to financial risk fully comparable to the risk a shareholder injecting risk capital has to bear without becoming owner of the company.'' (The Commission's decision is printed in the *Official Journal of the European Communities*, No L 78, Vol 39, March 28, 1996, at pp. 31 ff.) While the Commission's characterization of this loan as equity is not dispositive, their reasoning in this instance is consistent with our analysis.

Given our determination that the DM 20 million financing in 1984 should be treated as equity and in light of HSW's AUL of 10 years, this 1984 equity infusion would not give rise to benefits in the POI even if the infusion were a countervailable subsidy. Therefore, we are treating this equity as well as two other programs as ''not used':

1. *1984 Steel Investment Allowance Grant*
2. *1984 Federal Ministry for Research and Technology (BMFT) Grant*

We have determined that subsidies received by IHSW under the following programs were also not used because they were repaid prior to the POI:

3. *Structural Improvement Assistance Grant*
4. *Loan Guarantee to HSW*

*C. BES*

Special Depreciation

The special depreciation program described in Section 4 of the Assisted Areas Act is the current manifestation of a 1990 GDR directive that allowed investors to claim special depreciation at an accelerated rate. This program was implemented in tandem with the Investment Allowance Act by the GDR to provide investment incentives to help enterprises in the former GDR (New States) transition into a market-based economy. After Unification, FRG lawmakers included an amended special depreciation provision, along with the Investment Allowance Act, in the June 24, 1991 Tax Modification Law (StAendG 1991). A 1996 FRG law forbids the special depreciation provision from being extended beyond the end of 1998.

The GOG has claimed that this program is not countervailable because it is a ''green light subsidy.'' We have not determined whether, in fact, this program meets the green light criteria within the meaning of section 771(5B)(C), of the Act, because any benefit would arise at the time of filing a tax return. Because BES did not file a tax return during the POI, we are treating this program as not used.

**IV. Other BES Programs Examined**

BES received assistance under two other programs for which the GOG has requested green light treatment: (1) Investment Grants Under the Regional Economies Act and (2) Investment Allowance Act Grants. BES received

grants under these programs in the years 1994 through 1996. However, regardless of whether we found the program to be countervailable, the combined net subsidy to BES does not rise above the *de minimis level.* Accordingly, we do not consider it necessary to address the issue of whether these programs are non-actionable as regional green light subsidies.

**Interested Party Comments**

*Saarstahl*

*Comment 1: Effect of Bankruptcy on Saarstahl's 1989 Debt Forgiveness:* Saarstahl argues that because the GOG and the GOS filed claims against it in the German bankruptcy court with respect to the RZVs, the 1989 debt forgiveness should be disregarded. Specifically, Saarstahl contends that the GOG and GOS did not forego revenue due to them under the RZVs in 1989, because the debts were revived in 1993. Moreover, when the bankruptcy claims were rejected from 1993 through 1996, Saarstahl's debt was forgiven under the non-specific German bankruptcy law and not under a specific relief action take by the Governments. Saarstahl claims that the Department may not disregard the revival of the Governments' rights to repayment just because the claim was later rejected by the bankruptcy trustees.

Petitioners state that the bankruptcy was an irrelevant subsequent event that does not affect the benefit stream from the countervailable 1989 forgiveness. Petitioners argue that the RZVs were not eliminated or restructured by the bankruptcy proceeding because the claims themselves were invalid. The revival contingency contained in the EV with respect to bankruptcy, according to petitioners, was structured in such a way as to make it meaningless. Because the claims were to be subordinated below all others, the EV made it impossible to collect on the RZVs. Thus, the EV effectively forgave the RZVs in 1989 because the revival contingency was structured not to be a real contingency at all.

*Department's Position:* We have continued to treat Saarstahl's RZVs and similar government debt as having been forgiven by the 1989 EV. We believe that the information in this case clearly supports this position. First, in its questionnaire response of June 30, 1997, Saarstahl states that if bankruptcy is initiated on grounds of insolvency, then subordinated claims do not have any asset value and, thus, cannot be considered a valid bankruptcy claim. Hence, as noted by petitioners, the revival contingency contained in the EV was structured in such a way as to make its possible application meaningless.

Second, Usinor Sacilor required that the RZVs be forgiven by the GOG and GOS prior to the combination of Saarstahl and Dillinger. This clear precondition to the combination of the two companies, which was accepted and fulfilled by the two Governments, demonstrates that from a commercial actor's perspective, the RVZs were a real liability. Moreover, the fact that Usinor Sacilor accepted the EV as the legal instrument by which Saarstahl's RZV debt was forgiven demonstrates the validity of the debt forgiveness element of the EV from a commercial perspective. Finally, information obtained at verification indicates that the GOG realized, prior to the filing of its claims, that the bankruptcy proceeding would not result in the reinstatement of the RZV debt obligation. Indeed, the GOG actions appeared to be largely perfunctory in nature reflecting other concerns, none of which included the realistic expectation that the claims would be recognized by the bankruptcy court (*see* GOG verification report at page 12). Therefore, we conclude that the debt obligations contained in the RZVs were relieved in 1989 and that the bankruptcy proceedings had no meaningful impact on the 1989 debt forgiveness agreement.

*Comment 2: The Nature and Timing of Saarstahl's Subsidies:* Saarstahl states that the Department erred by not allocating any portion of the assistance received by Saarstahl to the company's production in the years 1978 to 1988. Saarstahl asserts that the government assistance was a subsidy when it was first received because it did not comport with commercial considerations. In Saarstahl's view, the Department cannot delay the countervailable event until 1989 (when the debt forgiveness was agreed to), but rather must countervail the subsidies when they were first received.

Petitioners note that the Department has rejected most of these allocation arguments in the past, with the approval of the CIT. Petitioners argue that the Department should use the same analysis of the 1989 EV debt forgiveness as reflected in *Lead and Bismuth, Certain Steel,* and the *Preliminary Determination.* For petitioners, a contingent liability is different from the benefits allocated or capped by the Department's grant allocation formula. The recipient is able to use the full value of the subsidy upon receipt, but must repay all or part of the payment if the contingency occurs. Because of this repayment obligation, the face value of the contingent obligation is only treated as a benefit when forgiven, as occurred in 1989.

*Department's Position:* We verified that prior to 1989 Saarstahl did have a financial obligation to repay the RZVs. If the Department had examined Saarstahl's RZVs prior to 1989, it would have countervailed them as contingent liabilities and calculated the benefit by treating the outstanding face amount as an interest-free loan. This is consistent with the Department's long-standing policy with respect to contingent liabilities (*see e.g., Certain Steel from Sweden,* 58 FR 37385, 37388 (July 9, 1993)). Upon the forgiveness of such contingent liabilities, it is the Department's policy to treat the amount forgiven as a grant in the year of forgiveness (*see e.g., Certain Steel from Sweden* at 37392). We are not persuaded by Saarstahl that we should not apply our traditional methodology to the facts of this case.

*Comment 3: RZVs as Equity:* Saarstahl claims that the Department's decision to treat the 1989 forgiveness as the countervailable event rather than the receipt of the funds in 1978–1988 is inconsistent with the Department's treatment in this case of government assistance made to the owners of HSW. Saarstahl states that in the preliminary determination the Department treated a DM 20 million government loan to HSW as equity received in 1984. Saarstahl quotes the Department as saying, ''if the company never became profitable, there was no obligation for the loan to be repaid.'' (*Preliminary Determination* at 41950). Saarstahl states that the same situation is true for the monies received by Saarstahl; the economic effect of the RZVs was no different than equity. Saarstahl argues that the subsidies should be treated as equity capital because they served to offset massive losses that threatened the company's solvency. For Saarstahl, the equity capital nature of the assistance is even more clear in light of the fact that the GOG and GOS held a majority interest in Saarstahl during some of the time when the RZVs were in effect. Saarstahl asks that the Department treat the contingently repayable loans given to both Saarstahl and HSW in the same manner.

Petitioners state that the methodology used for IHSW's DM 20 million capital replacing loan is not an appropriate comparison to Saarstahl's situation. Petitioners argue that the forgiveness of the credit line in 1994 is a more appropriate comparison. While the credit line was first granted in 1984, petitioners note that the Department did not treat the principal as a benefit until

the loan was forgiven in 1994. Based on this comparison, petitioners find a consistent treatment of the two companies. Petitioners counter the RZVs-as-equity argument by referring to the hybrid instruments analysis from the GIA. Petitioners note that the hybrid instruments analysis' first test defines an instrument as debt if a repayment obligation exists when the payment is provided. Thus for petitioners, because the RZVs had a repayment obligation they cannot be treated as equity.

*Department's Position:* The terms of the assistance given to both IHSW and Saarstahl differ. Of particular note are the managerial and ownership rights conferred upon IHSW at the time the financing was provided. The terms of the RZVs did not confer similar rights to the GOS or GOG. While the GOS and GOG did become Saarstahl's majority shareholder in 1986, this was after an overwhelming majority of assistance had been disbursed and after all dispensation agreements had been put in place. While it is true that repayment in both agreements was contingent upon profitability, this contingency alone is not enough to transform a debt instrument to equity. As noted above in the program description, the repayment contingency for IHSW was just one of many terms that lead us to determine the assistance was equity.

*Comment 4: Forgiveness of Saarstahl's Debt by the Private Banks;* Saarstahl contends that the Department should treat the private bank loan forgiveness as non-countervailable. Saarstahl notes that for assistance to constitute a countervailable subsidy it must be provided, directly or indirectly, by a government or other public entity. According to Saarstahl, when the private banks forgave debt owed to them by Saarstahl the banks acted in their own economic self-interests and their actions cannot be attributed to the GOG and GOS.

Saarstahl notes that one of the lead negotiators on behalf of the banks confirmed at verification that the decision to forgive a portion of their loans to SVK was based entirely upon commercial considerations. The bank representative stated that the statement made by the GOS regarding the assurance of SVK's future liquidity had no effect upon the banks' decision to forgive the debt.

Saarstahl adds that if the Department were to treat the private bank loan forgiveness as a countervailable subsidy, the economic benefit accrued to SVK in 1986, not 1989. Saarstahl claims that while the bank loans were not legally forgiven until 1989, the banks treated the loans as if they were forgiven on January 1, 1986, as evidenced by the fact that they did not require SVK to make any principal or interest payments with respect to the portion of debt being forgiven after that date.

Petitioners argue that the evidence demonstrates that the assurance of liquidity played a crucial role with respect to the debt forgiveness by the private banks. Petitioners note that in the banks' February 20, 1986 letter to the GOS, the banks clearly set forth as a prerequisite for their debt forgiveness that the GOS secure the liquidity of Saarstahl. Petitioners state that in its April 4, 1986 response to that letter, the GOS stated that it would, as in the past, secure the liquidity of Saarstahl. Petitioners further note that the Department has already determined that the banks acted on the GOS's assurance of liquidity and that this determination was sustained by the CIT.

*Department's Position:* We agree with petitioners. The exchange of letters between the GOS and the banks demonstrates that the banks agreed to forgive a portion of SVK's (Saarstahl's predecessor) debt only on the condition that the GOS guarantee the liquidity of the company. In fact, the banks referred to the liquidity assurance as a ''prerequisite'' for their action. While the banks may have been acting in their own economic self-interests when they forgave the debt, the GOS's liquidity guarantee was a factor that made the debt forgiveness more commercially reasonable because the banks were assured that the GOS would maintain SVK's ability to service its remaining debts. Thus, the liquidity assurance provided the incentive necessary to ensure the banks' debt forgiveness.

With respect to the statements made by one of the banks' negotiators at verification, we have weighed the negotiator's claims against the written correspondence exchanged between the banks and the GOS. We have accorded greater weight to the written correspondence because it was contemporaneous with the events in question and reflects the position of all of the lenders as opposed to the views of a single official from a single bank.

Lastly, although SVK was not required to make principal or interest payments with respect to the portion of debt forgiven after January 1986, the loans were still recognized by the company as liabilities until they were forgiven in 1989. In accordance with the Department's standard practice for calculating the benefit from debt forgiveness, the benefit does not accrue to the company until the debt is actually forgiven. While Saarstahl may have enjoyed a benefit from not paying interest and principal as of 1986, the banks' decision not to collect interest and principal during that period represented a moratorium on debt payments until the forgiveness occurred in 1989.

*Comment 5: Effect of Saarstahl Privatization;* Saarstahl states that Congress revised the definition of subsidy, bringing countervailing duty law in accordance with the Uruguay Round, to say that a subsidy would only exist if a financial contribution is given to a person and that person thereby receives a countervailable benefit. With respect to this definition, Saarstahl argues that neither it, nor its parent company, DHS, received any countervailable benefit from the aid given to SVK (Saarstahl's predecessor company). Saarstahl notes that the government assistance to SVK was provided prior to privatization and that the buyers of SVK made a fair market payment in an arm's length transaction. Saarstahl further argues that the price paid for SVK constituted adequate remuneration and, thus, did not result in a subsidy being received. Hence Saarstahl concludes, assistance received by SVK prior to privatization should not be countervailed with respect to Saarstahl.

Petitioners cite the decision of the Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States,* (78 F.3d 1539, 1544 (Fed. Cir. 1996)) to counter respondent's argument. Petitioners claim that the issue is whether the subsidies paid to Saarstahl survived the privatization and that the Department's decision in its preliminary determination, that the subsidies did survive the privatization, is in accordance with the deference given to the Department by the courts in such matters.

*Department's Position:* Section 771(5)(F) of the Act makes clear that the sale of a company at arm's length does not automatically extinguish prior subsidies. As we stated in the *Final Affirmative Countervailing Duty Determination; Certain Pasta from Italy Pasta* 61 FR 30287, 30289 (June 14, 1996), the methodology applied by the Department in *Certain Steel* is consistent with the new law. In this investigation we have applied this methodology to the sale of Saarstahl to DHS and to the sale of Saarstahl to the GOS.

*Comment 6: Treatment of 1989 Repayment Amount;* Petitioners argue that because the GOS repurchased Saarstahl in 1994, the repayment of subsidies that occurred in 1989 with the privatization should be reversed. Petitioners argue that the Department

should add the subsidy repayment back to Saarstahl's total benefit. Petitioners cite *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 61 FR 20238 (May 6, 1996) (''*UK Lead and Bismuth*'') to support their argument. Petitioners claim that in that case, the Department decided to aggregate the benefits of a company and its previously spun-off subsidiary when the two were reunited. Petitioners state that the Department should follow the same methodology here because the GOS's purchase of Saarstahl in 1994 placed the company in the same position it occupied prior to the 1989 privatization. Petitioners fear that if the Department does not aggregate the subsidies, it will establish a precedent whereby governments can eliminate subsidies by privatizing an entity and then reacquiring it and, thus, avoid the application of the countervailing duty statute.

Saarstahl argues that the GOS's purchase of it in 1994 did not reverse the 1989 privatization and corresponding subsidy repayment. When Saarstahl was privatized in 1989, the GOS received stock in Saarstahl's holding company, DHS. The GOS still holds stock in DHS and, thus, it has retained the repayment received in the privatization transaction.

*Department's Position:* Petitioners' citing of *UK Lead and Bismuth* is misplaced. With respect to the ''spin-off'' and ''spin-in'' issues in *UK Lead and Bismuth,* the Department faced an issue of allocation of prior subsidies between business entities, not the repayment of prior subsidies to a government. In *UK Lead and Bismuth,* a subsidiary of one company was spun off, taking a portion of the benefit of subsidies with it. There is no repayment of subsidies under our methodology in such a transaction, but rather an allocation of the benefit from prior subsidies between a productive unit and a corporate entity. When the productive unit was reunited with the parent company, the formerly apportioned subsidies were reunited as well. The privatization and corresponding repayment to the GOS with respect to Saarstahl does not involve an issue of allocation. When the GOS privatized Saarstahl in 1989 it received stock in DHS, which represents partial repayment and, therefore, extinguishment of prior subsidies. Thus, we are not adding back the amount considered to be repaid in 1989.

*Comment 7: Creditworthiness of Saarstahl in 1989;* Saarstahl argues that the Department should consider financial information pertaining to 1989 when evaluating the creditworthiness of the firm in that year. Specifically, Saarstahl is interested in the Department taking into account the effects of privatization on its financial health and its increase in net worth.

Petitioners state that a creditworthy analysis does consider a company's future prospects, but only in the form of market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the loan agreement. The information present with respect to the privatization of Saarstahl is not sufficient for either the Department, or a commercial lender, to determine a company's creditworthiness.

*Department's Position:* While a company's future financial prospects can be a factor in a creditworthiness determination, we do not have on record any market studies, country or industry economic forecasts or any other information regarding the company's prospects after privatization. Although we do have an excerpt from an asset appraisal, the purpose of this appraisal was to value the assets of Dillinger and Saarstahl prior to their combination. The appraisal does not meaningfully address the future financial prospects of either Saarstahl or DHS.

Furthermore, the mere fact that the net worth of the company rose after privatization does not make the company creditworthy. Standing alone it does not provide sufficient evidence that Saarstahl was creditworthy, especially in light of the company's poor economic performance in previous years.

*Comment 8: Maximum Spread on Commercial Financing:* Saarstahl argues that the Department should use a spread of 1.75 percentage points above the yield on government bonds as opposed to a spread of two to construct the uncreditworthy discount rate. The 1.75 point spread is based on the Department's conversation with a German private bank official, as outlined in the Department's GOS verification report.

Petitioners state that the Department should reject any request to lower the discount rate. However, if the Department does use the information provided by the private bank, it should still add a risk premium.

*Department's Position:* In its May 27, 1997 response, Saarstahl reported that German banks base interest rates for long-term commercial loans on the government bonds yield, adding a spread of zero to two percent to account for the creditworthiness of the borrower. The bank representative we spoke to at verification confirmed this mechanism, but noted that in the years prior to 1990, the spread was from 0.8 to 1.75 percent. When determining a discount rate for uncreditworthy firms, the Department will use the highest long-term commercial loan rate commonly available and then add a risk premium in order to reflect the inability of a company to obtain commercial credit. In this case then, we are using the yield on government bonds, and adding the 1.75 percentage least-creditworthy margin and a risk premium.

*Comment 9: Purchase Price for Saarstahl:* Petitioners argue that the creation of DHS was a merger of Saarstahl and Dillinger. Each owner contributed its company and in return got an amount of shares in DHS that reflected the value of its contribution. Petitioners note that the GOS contributed shares and cash in the creation of DHS and received back shares worth an equal amount. Because of this, petitioners argue that the GOS did not receive any compensation in the 1989 transaction. Instead, it held on to what it already had and then bought a greater share of DHS. Based on this, petitioners see the real purchase price for Saarstahl as zero with the result that there should be no repayment of subsidies.

Saarstahl argues that the Department did not overstate its purchase price. Rather the Department properly established the price for the GOS's interest in Saarstahl as the appraised value of the DHS stock that it received in exchange for its cash and share contribution. Saarstahl states that it is the nature of any commercial transaction to give up a valuable in return for another valuable of equal or greater value. In this instance, the GOS gave stock and cash and in return received DHS stock. Thus, the value of the DHS stock was an appropriate mechanism to establish the purchase price.

*Department's Position:* We agree with Saarstahl. With the privatization of Saarstahl in 1989, the GOS did not retain what it already had (shares in Saarstahl) and then buy a little more (shares in DHS). The GOS held a majority interest in Saarstahl before the privatization and after the privatization held a minority share in DHS. While there is no denying that Saarstahl was a part of DHS, the GOS's interest in the company had changed. The value of DHS was determined by an independent auditor and the GOS's share in this company reflects the value it received and thus the value it paid for the company. Thus, the transaction serves as the basis for calculating the purchase price of Saarstahl.

*Comment 10: Penalizing Saarstahl Under Countervailing Duty Law and VRA.* Saarstahl argues that because its exports were limited under a voluntary restraint agreement (''VRA'') from November 1, 1982, to March 31, 1992, the Department's actions in this case are unjust. According to Saarstahl, under the VRA, the United States did not initiate any antidumping or countervailing duty investigations during the period of the agreement. Saarstahl argues that going after such subsidies now penalizes Saarstahl after already facing export restrictions.

Petitioners state that Saarstahl received benefits from 1978 to 1989 in the form of interest-free contingent liabilities and these benefits were not countervailed by the Department, regardless of the export restraints. Petitioners find the Department's treatment of the RZVs as contingent obligations, which were forgiven in 1989, to be reasonable.

*Department's Position:* The VRA agreements neither permitted the provision of countervailable subsidies during the time in which the agreements were in effect, nor provided recipients of countervailable subsidies immunity from the imposition of countervailing duties after their expiration.

*Comment 11: Asset Revaluations and Extraordinary Depreciation in Saarstahl's AUL:* Petitioners contend that Saarstahl's changes to its fixed asset valuation and depreciation practices in 1989 and 1993 distort the AUL calculation. With respect to the 1989 privatization, petitioners argue that the new owner valued the transferred assets at their net book value (*i.e.*, the gross value minus accumulated depreciation). The company then treated the 1989 net value as the gross value in subsequent years. Petitioners argue that consistent with its position in the *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 at 48 (June 30, 1995) (''*British Steel Remand*''), the Department should reject net book values in the AUL calculation because their use results in a calculation of the average remaining life of the assets, not the average useful life.

With respect to the extraordinary depreciation claimed by Saarstahl in 1993, petitioners note that the Department has stated in the *Notice of Proposed Rulemaking and Request for Public Comment,* 62 FR 8818, 8828 (February 26, 1997) that it may be necessary to make normalizing adjustments for factors that may distort the AUL calculation. The Department goes on to list extraordinary write-downs, as one situation that would require such an adjustment.

Further, petitioners dispute Saarstahl's claim that the value of the transferred assets should be viewed as the cost of acquiring those assets and, hence, treated as the gross book value of those assets after privatization. First, petitioners contend that the value of the assets transferred to Saarstahl from DHS (*i.e.*, at net book value) differed from the value of the same assets in the context of the privatization (*i.e.*, at ''modified book value''). Second, petitioners claim that the transfer of assets in this privatization was in the nature of a corporate restructuring and that the Department has determined that such restructuring does not constitute a ''sale.'' Lastly, petitioners contend that Saarstahl's compliance with Generally Accepted Accounting Principles should not affect the determination as to whether the company's AUL is valid. Because the calculation yields the average remaining useful life of the assets rather than an average useful life, it is distortive.

Saarstahl contends that the additional depreciation expenses taken by the company in 1989 and 1993 did not distort the AUL because these adjustments were necessary to bring the asset values reported in the company's financial records in line with the actual economic value of those assets. Citing the *British Steel Remand,* respondent claims that the Department routinely includes extraordinary depreciation expenses in its calculation of AUL because the inclusion of such expenses results in a calculation that better approximates a company's actual experience.

Saarstahl disagrees with petitioners' claim that the company used net book values in its AUL calculation. Instead, with the privatization in 1989, it used the cost of acquisition for the assets. In Saarstahl's view, this accounting treatment comports with the economic and commercial realities of the transfer. Saarstahl further argues that the 1989 privatization was not simply an internal corporate transfer as alleged by petitioners. In this privatization, the productive assets were transferred to a new owner.

Saarstahl adds that while the asset values listed in Saarstahl's balance sheet are different from those in the appraisal report related to the privatization transaction, this is explained by the fact that the values listed in the appraisal report and in the companies' financial statements were prepared for different purposes and include different items. Saarstahl notes, however, that these differences in no way led to an artificial suppression of Saarstahl's AUL. To the contrary, the amount recorded in the company's financial statements is actually higher than that suggested in the appraisal report.

*Department's Position:* We agree with petitioners' argument that Saarstahl's AUL calculation is distorted. In particular, given the change in the gross book value of Saarstahl's assets, the methodology employed in our preliminary determination yields what is essentially a mixture of the average useful life of the assets and the average remaining useful life in 1989. This is evident when we compare the AUL amounts calculated on an annual basis for years prior to 1989 and the amounts after the privatization and before Saarstahl's bankruptcy in 1993. This change in the gross book value had a significant impact upon the cumulative AUL calculated by the Department over a ten-year period (*i.e.*, 1987 through 1996). In this case, the impact was significant enough that the AUL could not be calculated from Saarstahl's own records. Thus, to approximate Saarstahl's AUL, we have used the depreciation schedule in Germany.

*IHSW*

*Comment 12: Forgiveness of the DM 154 million Credit Line Owed to HLB by HSW:* IHSW contends that the Department erred in preliminarily determining that the alleged forgiveness of the DM 154 million credit line owed to HLB by HSW constituted a countervailable subsidy. IHSW asserts that, pursuant to section 355.44(b)(9) of the *Proposed Regulations,* the Department will not consider a loan provided by a government-owned bank, *per se,* to be a loan from the government unless the government-owned bank: (1) Provided the loan at the direction of the government or with funds provided by the government, and (2) the terms of the loan were inconsistent with commercial considerations. IHSW argues that the HLB made prudent business decisions when it increased the credit line at the end of 1992 and 1993, because if the line of credit had not been extended, the company would have gone bankrupt, and the HLB's claims would have been worthless. Thus, according to IHSW, the increases were based on legitimate business considerations and were not at the direction of the GOH. With respect to the second factor considered by the Department, IHSW contends that the line of credit contained commercial loan terms (*e.g.*, interest rate, security) which were not inconsistent with commercial considerations.

Petitioners claim that IHSW's justification, or lack of justification, for

extension of the line of credit is by no means dispositive of whether the subsequent forgiveness of the debt under the line of credit was countervailable. Nonetheless, petitioners provide several arguments as to why the HLB acted under GOH compulsion and not in a commercially reasonable manner when it initially provided and subsequently increased the credit line to HSW. First, petitioners note that at the time of Old HSW's bankruptcy in 1983, the company owed DM 181 million to the GOH and the HLB. Petitioners argue that, given the history between HSW and the HLB as of 1984, it is completely illogical to suggest that a lender, after losing a significant amount of money on a debtor, would respond by loaning more funds to the same bad debtor.

Second, petitioners note that the line of credit was extended to HSW by the HLB pursuant to a 1984 *Kreditauftrag,* according to which the GOH was to compensate the HLB for 60 percent of the line of credit if HSW failed to service its debt. Petitioners state that GOH officials confirmed at verification that the *Kreditauftrag* was an exceptional occurrence.

Third, petitioners note that HSW's financial condition deteriorated in 1992 and 1993. Citing the EU decision concerning state aid granted by the GOH to HSW, petitioners contend that at the end of 1993 the HLB refused to prolong the credit line. At that point, according to petitioners, the GOH was forced to provide a *Kreditauftrag* covering 100 percent of the line of credit. Petitioners argue that the GOH's willingness to give a blanket guarantee to a company whose situation was steadily worsening eliminated any pretense that the extension of the line of credit was commercially reasonable.

Fourth, petitioners note that the EU concluded that ''no private investor, in the situation prevailing in December 1993, would have been prepared to inject new risk capital * * * {T}he behaviour of the {the city of Hamburg} could not be deemed to be behaviour of a normal investor in a market economy.'' Petitioners assert that the law on *kapitalersetzende Darlehen* (''KSD's''), a legal term that translates as ''capital-replacing loans,'' buttresses this conclusion. KSD's are treated as risk capital and are only repaid in insolvency proceedings if all other creditors receive full compensation. By the end of 1993, it was recognized that loans from the HLB or GOH would be subordinated to the claims of all other creditors in the case of bankruptcy. Thus, petitioners argue that no reasonable lender or investor would put further money in the company knowing that it would go to the pockets of other lenders who were less subordinated.

Lastly, petitioners contend that because the GOH refused to provide the Department with a report that explained the rationale for extending the line of credit, the Department should make an adverse inference that the HLB indeed refused to extend the line of credit and that it was acting under government compulsion. Petitioners add, however, that even without the use of adverse inferences, the evidence on the record shows that the HLB agreed to extend the credit line only if the GOH assumed full responsibility for the line of credit.

*Department's Position:* While we agree with IHSW's assertion that the Department will not consider a loan provided by a government-owned bank, *per se,* to be a loan from the government, the history of interaction among the GOH, the HLB, and HSW demonstrates that the HLB did not act in a commercially reasonable manner, but rather at the direction of the GOH, when it provided and subsequently extended the line of credit to HSW. Moreover, the credit line ceased to be consistent with commercial considerations when the HLB refused to extend the credit line in 1993.

The history of interaction among the GOH, HLB, and HSW demonstrates that the line of credit was clearly a loan provided at the direction of the GOH. In 1983, at the time of HSW's insolvency, the HLB held 49 percent of the company's shares and had claims totaling DM 181 million (DM 129 million of the claims was covered by the GOH). Also at that time, the bankruptcy trustee determined under German law that the funds loaned by the HLB did not qualify as claims against the insolvent estate because they were considered KSD's. Since the GOH (which had guaranteed a portion of the loans provided by the HLB) and the HLB had no chance of recovering their money if HSW was liquidated in insolvency, they jointly decided to restructure HSW to continue operations under a new company.

Also in 1984, the GOH provided HSW with DM 20 million in equity, through the HLB and Protei, so that the company could continue operations. This contribution contained strict contractual obligations, such that the EU determined that HSW was now a *de facto* public steel company. The EU noted that the ''entire contractual situation created in 1984 provided for the control of (GOH), through HLB, over HSW.''

It is against this background that the HLB opened a revolving credit line in the amount of DM 130 million in favor of HSW. However, even at that early date the HLB required that the GOH provide a guarantee (Kreditauftrag) for 60 percent of the credit line. In 1993, when the HLB refused to extend the credit line, the GOH was forced to provide an additional Kreditauftrag covering 100 percent of the credit line.

With respect to whether the loan was consistent with commercial considerations, the GOG, in response to the EC's investigation, indicated that the GOH and the HLB were aware that, in the event of HSW's bankruptcy, they would receive repayment from HSW only in a subordinated position in view of recent KSD precedent. Moreover, the HLB was not willing to extend the credit line absent the additional Kreditauftrag from the GOH covering 100 percent of the credit line. At that point, the provision of the credit line ceased to be consistent with commercial considerations. Rather, the HLB, acting as a reasonable commercial actor, refused to extend the line of credit, and the GOH was forced to accept full economic risk connected with the line of credit.

*Comment 13: Line of Credit Purchased for Full Commercial Value:* IHSW asserts that the line of credit was purchased from HLB by Venuda for commercial value in an arm's length transaction. Moreover, IHSW contends that the purchase of the loan was a separate and distinct transaction from the purchase of HSW's shares. Therefore, according to IHSW, there was no loan forgiveness and no countervailable benefit arising from Venuda's purchase of the loan. IHSW further claims that numerous forms of consideration given by Venuda for the assignment of the loan, and the fact that HSW may have been on the verge of bankruptcy, clearly show that Venuda purchased the loan in an arm's length transaction for commercial consideration. IHSW adds that numerous other factors (*e.g.,* restrictions from the GOH and lack of property ownership) further reduce the value of the company's assets significantly below the purchase price paid by Venuda. Thus, IHSW argues there was no loan forgiveness in the sale of HSW, and IHSW did not receive a financial contribution. IHSW adds that, even if the purchase of the line of credit is considered to be a part of the purchase of HSW, this would not change the fact that the loan to HSW was not forgiven because HLB received full commercial value for the loan.

IHSW further argues that if the credit line purchase by Venuda is viewed as a ''forgiveness,'' then the Department

should credit all payments and obligations assumed by IHSW pursuant to the loan purchase agreement against any alleged or implied benefit. IHSW adds that, at the very least, the DM 60 million paid by Venuda to HLB for the loan must be recognized as a repayment of part of the loan and any possible countervailable benefit curtailed by that amount.

Petitioners assert that the purchase of HSW's shares and the purchase of the credit line were clearly part of a single agreement by Venuda to purchase all of the government's interest in HSW, and cannot be separated. Petitioners note that during verification IHSW officials admitted that the purchase price of HSW included the approximately DM 60 million paid for the HLB loan. Petitioners add that large transactions, such as the sale of HSW, typically are complex and involve multiple parties and agreements. Thus, according to petitioners, treating the two transactions as the purchase price paid for HSW is consistent with commercial reality.

Petitioners further argue that IHSW's post-purchase investments and commitments do not constitute part of the purchase price. Petitioners contend that the payment for any good, service, or asset is the amount that is exchanged between the buyer and seller in exchange for the good, service, or asset. Petitioners assert that the only exchange between the buyer and seller in this case is the DM 10 million and DM 60 million that was paid to purchase the company. Petitioners add that IHSW's subsequent investments in the company, whether or not required by the purchase agreement, do not go to the seller. Therefore, according to petitioners, these payments do not warrant treatment as part of the purchase price for HSW or as a repayment of subsidies.

With respect to IHSW's claim that HSW owned too few of its assets and was encumbered with too many restrictions from the GOH to warrant the purchase price paid by Venuda, petitioners contend that there is absolutely no evidence that would permit the Department to evaluate IHSW's claim. Therefore, according to petitioners, IHSW's argument must fail.

*Department's Position:* We continue to view Venuda's purchase of HSW's loan and HSW's shares as a single transaction. At verification, IHSW officials explained that the purchase price paid for HSW's shares (*i.e.*, the DM 10 million) represented their valuation of HSW's non-current assets taking into consideration HSW's negative equity position, the company's remaining liabilities, and the obligations that the company was required to fulfill pursuant to various articles in the loan purchase agreement between HLB and Venuda. The DM 60 million payment represented Venuda's valuation and payment for HSW's net current assets at December 31, 1994 (*i.e.*, the difference between current assets and liabilities (less the debt owed to HLB)).

These verified facts demonstrate that it was not the HLB debt that was purchased for commercial value in an arm's length transaction—it was the company. Venuda valued and purchased a company that was free of all HLB debt. While part of the purchase price was structured to resemble a debt purchase, Venuda paid DM 60 million to purchase HSW's net current assets. Thus, forgiveness of the debt owed to HLB occurred separate and apart from the purchase of the company. Moreover, the debt forgiveness constitutes a financial contribution to HSW.

We also disagree with IHSW's argument that the Department should credit the post-purchase investments and commitments against any benefit from the alleged debt forgiveness. At verification, officials explained that the DM 10 million paid for the shares of HSW incorporated their valuation of HSW's remaining assets taking into consideration, *inter alia*, the obligations in question. Thus, the obligations in question related to the purchase of the company and not to the loan. Additionally, because we have determined that the debt forgiveness occurred separate from the sale of the company, the post-purchase investments and commitments do not affect the amount of debt forgiven.

*Comment 14: The Loan Payments to a Related Party:* IHSW contends that, in fact, the liability for the ''forgiven'' loan is still outstanding and payments on that loan are currently being made by IHSW's sister company, DSG, to an affiliated company, Picaro Limited. Thus, according to IHSW, inasmuch as the loan continues to be paid at the full amount there is no loan forgiveness and no countervailable benefit.

Petitioners argue that a loan cannot be said to have been repaid by the device of simply shifting funds around within a group of related companies. Petitioners add that the verification shows that the loan ''repayment'' actually returns to IHSW in the form of a shareholder contribution from Venuda.

*Department's Position:* The company under investigation, IHSW, does not carry the loan liability to Picaro Limited on its books. The debt in question is recorded in the books of an affiliated company, DSG. Thus, from the perspective of IHSW, the loan has been totally forgiven. The company is under no obligation to make payments on the loan—all loan payments are made by DSG.

Furthermore, we agree with petitioners that this loan cannot be considered outstanding with payments still occurring simply by shifting the liabilities within a group of related companies. Even if we were to examine this issue at the larger, corporate level, the loan payments are being made by DSG, a company which has no income other than the lease payments it receives from IHSW. These lease payments, which then become loan payments from DSG, are eventually reinvested into IHSW as shareholder contributions. Thus, even at this level of analysis the subject merchandise still benefits from the loan forgiveness because any payments that are made against the loan are reinvested to benefit production.

*Comment 15: IHSW's AUL calculation:* Petitioners contend that there is an error in IHSW's AUL calculation because the ending gross book value of productive assets in 1995 does not match the beginning gross book value in 1996. Petitioners argue that absent a change in methodology at the end of 1995, which IHSW has not reported, the closing asset value for one year should equal the opening asset value for the next.

IHSW asserts that its AUL calculation was correct and based on verified facts. IHSW notes that, as set forth in the 1996 annual audit reports for IHSW and HSW/DSG, a transfer of assets and liabilities occurred between DSG and IHSW. Moreover, respondents claims that the 1996 beginning gross book value was examined by the Department at verification in DSG's 1996 development of fixed assets.

*Department's Position:* We agree with IHSW that there is not an error in the company's AUL calculation. As noted by respondent, there was a transfer of assets between IHSW and HSW/DSG at the beginning of 1996. The transfer is documented on the record of this investigation (*see e.g.*, IHSW supplemental questionnaire response, July 3, 1997).

*Comment 16: F.O.B. Sales Value:* IHSW contends that basing the *ad valorem* subsidy rate calculation on an F.O.B. sales value is not in accordance with the universal commercial fact that freight costs, if born by the foreign producer, are included in the value of the merchandise supposedly benefitting from a subsidy or grant. IHSW further disputes the Department's rationale for this policy, *i.e.*, that customs valuation is performed on an F.O.B. basis. According to IHSW, most countries use

C.I.F. as the basis for customs valuation. Finally, respondent argues that the customs treatment has no relationship to the fact that the value of commercial transactions is the sum of all those factors embodied in the sale and evidenced by the sales price.

Petitioners contend that IHSW's argument that the denominator in the *ad valorem* calculation should be based on the C.I.F. value or ''sale price'' is mathematically invalid. Petitioners note that the Department allocates the countervailing duty margin over the customs value of sales because the U.S. Customs Service (''U.S. Customs'') will later multiply the resulting margin by the customs value to determine the total duty per entry. Petitioners assert that if the denominator uses any other measure of value, the duty calculation will be incorrect.

*Department's Position:* We agree with petitioners. Pursuant to section 402(2)(A) of the Act, U.S. Customs is directed to exclude from the customs value any expenses incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States. Thus, the Department requests sales data on an F.O.B basis so that the Department and Customs are consistent in the calculation and assessment of countervailing duties, respectively. *BES*

*Comment 17: Countervailability of Pre-Unification Assistance to the New States:* The GOG argues that loan guarantees issued by THA prior to Unification are not countervailable because they were available to all THA companies and hence, not specific to SWB. Both the GOG and BES point out that these guarantees were transnational in nature and are, therefore, not subject to the countervailing duty law (*see Georgetown Steel Corp. v. United States,* 801 F.2d 1308 (Fed. Cir. 1987)).

Petitioners argue that because the GDR eventually became part of the unified Germany and the ultimate beneficiary (*i.e.,* SWB/BES) likewise became a citizen of the same, any assistance provided to SWB/BES was not transnational in nature. In particular, petitioners point out that at the time that assistance was granted to SWB, both the FRG and the GDR had taken major steps in the direction of unification.

*Department's Position:* We agree with the GOG and BES that any financial benefit, received directly by SWB and/or indirectly by BES, through secondary FRG loan guarantees issued prior to Unification is not countervailable (*see* the section on FRG Backing of THA Loan Guarantees under Programs Determined Not To Be Countervailable above). As previously discussed, the GDR and the FRG were separate sovereign countries prior to Unification; therefore, the provision of FRG backing of THA loan guarantees to GDR enterprises constituted transnational assistance, notwithstanding the steps already taken toward Unification. That the two countries eventually were joined is not relevant because our analysis is focused on the nature of the benefit at the time it was bestowed.

*Comment 18: Non-Use of Special Depreciation by BES:* Petitioners acknowledge that the Department's normal practice is to recognize tax benefits when tax returns are filed. According to petitioners, this practice is justified in the context of recurring tax benefits (*see Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil,* 51 FR 40837, 40841 (November 10, 1986)) . Petitioners argue, however, that the Department should deviate from this practice here since BES did not file a tax return during the POI. By allowing BES to record no benefits in one year and then benefits from two tax years in another would result in changing two recurring benefits into a single nonrecurring benefit in the year of filing. In order to ensure continued treatment of Special Depreciation as a recurring benefit, petitioners argue that the Department should countervail the amount of Special Depreciation recorded in BES's books, regardless of the date of filing.

BES and the GOG argue that since BES did not file a tax return during the POI, it did not receive a financial benefit in the form of Special Depreciation.

*Department's Position:* We agree that with BES and the GOG that BES did not receive a financial benefit from Special Depreciation during the POI. This program provides a tax benefit. Therefore, under the Department's current practice, any financial contribution arising from Special Depreciation is realized when the ''cash flow'' effect occurs, *i.e.,* when the tax return is filed (*see Proposed Regulations*). In past cases where respondents did not file tax returns during the period in question, or had an operating loss or were otherwise unable to benefit from a tax concession, the Department has not altered its methodology to compensate for any unevenness of benefits over time (*see e.g., Certain Steel* at 37315 and *Ferrochrome From South Africa: Preliminary Results of the 1992 Review,* 61 FR 65546, 65547 (December 13, 1996)). A major reason for waiting until the tax return is filed is that only then can we be certain of the level of the benefit. In this case, we found at verification that BES did not file a tax return during the POI; accordingly, BES did not receive a benefit from the Special Depreciation program during the POI.

*Comment 19: Other Arguments Regarding Countervailability:* Interested parties made other arguments regarding the countervailability of assistance to BES. These arguments are now moot since we have found benefits pertaining to the FRG backing of THA loan guarantees to be not countervailable, special depreciation to be not used, and benefits from all other programs to be *de minimis,* assuming, *arguendo,* they are countervailable.

*Comment 20: Improper Inclusion of BES:* BES alleges that the Department did not have authority to initiate an investigation against it because petitioners did not allege that BES was receiving any countervailable subsidies and did not provide evidence of regional assistance programs targeted at the New States.

*Department's position:* The statute does not require company-specific allegations to initiate an investigation. A petitioner must only allege that the government of a country is providing countervailable subsidies with respect to the manufacture, production or export of a class or kind of merchandise imported or sold for exportation into the United States, and that such subsidies are causing injury to the U.S. industry. *See* section 701(a) and 702(a)(b)(1) of the Tariff Act. The petition met these requirements.

If sufficient allegations are made, the Department initiates a proceeding to determine whether the government of the country in question is providing subsidies to the subject industry. As an initial matter, the Department asks a petitioner to identify all the manufacturers or exporters of the subject merchandise. Normally, the Department sends all identified companies questionnaires, in addition to sending a complete set of questionnaires to the government involved. The Act requires the Department to attempt to determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. *See* section 777(e)(1). There is no authority to exclude a respondent from an investigation except through the determination that the company had an *ad valorem* subsidy rate of zero or *de minimis. See* 19 CFR Section 355.14.

*Suspension of Liquidation:* In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an

individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States. The all-others rate does not include zero or *de minimis* rates.

In accordance with section 703(d)(5) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire rod from Germany, except those of BES and WHG, which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

| Company | Ad valorem rate |
|---|---|
| Saarstahl | 17.67 |
| IHSW | 5.61 |
| All others | 11.08 |

Since the estimated net subsidy rate for BES and WHG is *de minimis*, these companies are not subject to the suspension of liquidation and will be excluded from any countervailing duty order.

**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 nonproprietary information relating 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 Acting Deputy Assistant Secretary for AD/CVD Enforcement, 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 directing Customs officers to assess countervailing duties on steel wire rod from Germany.

**Verification**

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

**Return or Destruction of Proprietary Information**

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–27985 Filed 10–21–97; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–274–803]**

### Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago

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

**EFFECTIVE DATE:** October 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Todd Hansen, Vincent Kane, or Sally Hastings, Office of Antidumping/Countervailing Duty Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1276, 482–2815, or 482–3464, respectively.

**Final Determination**

The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to Caribbean Ispat Limited (''CIL''), a producer and exporter of steel wire rod from Trinidad and Tobago. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

**Petitioners**

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

**Case History**

Since our preliminary determination on July 28, 1997 (62 FR 41927, August 4, 1997), the following events have occurred:

We conducted verification in Trinidad and Tobago of the questionnaire responses of the Government of Trinidad and Tobago (''GOTT'') and of CIL from August 18 through August 26, 1997. Petitioners and respondents filed case and rebuttal briefs on September 12 and September 17, 1997, respectively. A public hearing was held on September 19, 1997. On September 16, 1997, the GOTT and the U.S. Government initialed a proposed suspension agreement, whereby the GOTT agreed not to provide any new or additional export subsidies on the subject merchandise and to restrict the volume of direct and indirect exports of subject merchandise to the United States. On October 14, 1997, the U.S. Government and the GOTT signed a suspension agreement (*see, Notice of Suspension of Countervailing Duty Investigation: Steel Wire Rod from Trinidad and Tobago* which is being published concurrently with this notice). Based on a request from petitioners on October 14, 1997, the Department and the International Trade Commission (''ITC'') are continuing this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

**Scope of Investigation**

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by