of estimated antidumping duties; (2) the cash deposit rate for non-selected companies will be the weighted-average of the cash deposit rates for the individually examined companies; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will be the ''all other'' rate of 3.10 percent. This is the rate established during the LTFV investigation, as amended in litigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of AD duties occurred and the subsequent assessment of double AD duties.

This notice also 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 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27141 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Gray Portland Cement from Mexico

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

EFFECTIVE DATE: October 14, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review for the antidumping order on Gray Portland Cement from Mexico, pursuant to the Tariff Act of 1930, as amended by the Urguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: Kristen Smith, Kristen Stevens, or Steven Presing, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit.

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim publication date	Final due date*
Gray Portland Cement (A–201–802)	Mexico	8/1/95–7/31/96	9/17/96	9/10/97	3/09/98

*The Department shall issue the final determination 180 days after the publication of the preliminary determination.

Dated: October 6, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, for Enforcement III.

[FR Doc. 97–27140 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review

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

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

SUMMARY: On April 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products (lead bar) from the United Kingdom for the period January 1, 1995 through December 31, 1995 (62 FR 16555). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 14, 1997.

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

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers British Steel Engineering Steels Limited (BSES) (formerly United

Engineering Steels Limited (UES)), and British Steel plc (BS plc). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on April 7, 1997 (62 FR 16555), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1997, case briefs were submitted by BSES, which exported lead bar to the United States during the review period (respondent), and Inland Steel Bar Company (petitioner). On May 14, 1997, rebuttal briefs were submitted by petitioner and respondent. Pursuant to section 751(a)(3) of the Tariff Act of 1930, we extended the due date for the final results to no later than 180 days after the publication of the preliminary results. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review, 62 FR 39824 (July 24, 1997).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR 355.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the European Commission, the Government of the United Kingdom, British Steel plc, and British Steel Engineering Steels. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports (on file in the Central Records Unit, Room B–099 of the Department of Commerce).

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if ''an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title.'' The facts on the record show that British Steel plc received assistance during the period of review (POR) under the European Union BRITE/EuRAM program. The facts also show that this assistance was unreported in the questionnaire response, notwithstanding a specific question on this program in the Department's questionnaire. See the March 31, 1997, Memorandum for Acting Assistant Secretary, Re: Facts Available for New Subsidies Discovered at Verification (1995) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce).

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because respondents were aware of the requested information but did not comply with the Department's request for such information, we find that respondents failed to cooperate by not acting to the best of their ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference is a finding that the BRITE/EuRAM program is specific under section 771(5A) of the Act, and that the amount of each grant received by BS plc constitutes a financial contribution which benefits the recipient. As such, these grants are countervailable. This finding conforms with the Department's facts available determination in the Final Affirmative Countervailing Duty Determination; Certain Pasta From Turkey, 61 FR 30366, 30367 (June 14, 1996).

Change in Ownership

I. Background and Analysis

On March 21, 1995, British Steel plc (BS plc) acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels (UES), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, during the POR, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels (BSES).

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation (BSC), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of untied subsidies prior to the 1986 transfer of the Special Steels Business to UES. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, 58 FR 6237, 6243 (January 27, 1993) (Lead Bar). Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. Lead Bar at 6240.

In this review, we determine that BS plc's acquisition of GKN's shares in UES does not affect the countervailability of previously bestowed subsidies which were assigned to UES. However, we also determine that a portion of the purchase price paid by BS plc for UES is attributable to its prior subsidies. Therefore, we are reducing the amount of the subsidies that ''travel'' with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 16555, 16556 (April 7, 1997) (Preliminary Results).

To calculate the amount of UES's subsidies that travel to BS plc as a result of the March 21, 1995, acquisition, we are applying the methodology described in the ''Restructuring'' section of the *General Issues Appendix* (*GIA*) appended to Final Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37268–37269 (July 9, 1993) (*Austrian Steel*). This determination is in accordance with our change-in-ownership findings in Final Affirmative Countervailing Duty Determination; Certain Pasta From Italy, 61 FR 30288, 30289–30290 (June 14, 1996) (*Certain Pasta From Italy*), and with our finding in the 1994 administrative review of this case, in which we determined that ''[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix methodology or its findings in the Lead Bar Remand Determination.'' Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377, 58379 (November 14, 1996) (1994 UK Bar Final).

We further determine in this review that it is appropriate to attribute the current benefit from BS plc's untied, nonrecurring subsidies to BS plc's consolidated sales of domestically produced merchandise, including the sales of BSES, for purposes of calculating the countervailing duty rate for the subject merchandise. As a consolidated, wholly-owned subsidiary of BS plc, BSES now benefits from the remaining benefit stream of BS plc's untied nonrecurring subsidies. See Preliminary Results, 62 FR at 16556.

II. Assignment of Countervailing Duty Rates

As noted above, the acquisition of UES did not take place until March 21, 1995. Thus, until March 21, 1995, the subject merchandise was produced and exported by the independent joint-venture company, UES. Therefore, as discussed in the *Department's Position* under *Comment 6*, below, we are assigning a separate countervailing duty assessment rate for exports by UES for the period prior to BS plc's acquisition of GKN's shares in UES. This period is January 1, 1995 through March 20, 1995. For the period March 21, 1995 through December 31, 1995, after UES became a wholly-owned subsidiary of BS plc, we are assigning a countervailing duty assessment rate for BS plc/BSES/UES that reflects the attribution of BS plc's untied subsidies to its consolidated sales, including sales by BSES (formerly UES). (See the *Calculation Methodology* and *Final Results of Review* sections below.)

III. Calculation Methodology

As fully explained in the *Preliminary Results,* we have found it appropriate to make two changes to the methodology used to calculate the benefit from the nonrecurring subsidies. These changes involve (1) the calculation of the net present value used in calculating the subsidies which remain in subsequent periods after a change in ownership and (2) the period of allocation for nonrecurring subsidies. See *Preliminary Results,* 62 FR at 16557.

To determine the countervailing duty rate for the subject merchandise for the period January 1, 1995 through March 20, 1995, we used the methodology followed in prior segments of this proceeding with the modifications identified above. Further, in calculating the countervailing duty rate for the subject merchandise after March 21, 1995, we first determined BS plc's benefits in 1995, taking into account all spin-offs of productive units (including the Special Steels Business) and BSC's privatization in 1988. See Final Affirmative Countervailing Duty Determination; Certain Steels Products from the United Kingdom, 58 FR 37393 (July 9, 1993) (UK Steel). We then calculated the amount of UES's subsidies that ''rejoined'' BS plc after the March 21, 1995 acquisition, taking into account the reallocation of subsidies to GKN. As indicated above, in determining both these amounts, we followed the methodology outlined in the GIA. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total consolidated sales of domestically produced merchandise in 1995.

Analysis of Programs

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

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

The following programs were previously determined to bestow subsidies upon BSC/BS plc and UES:

1. Equity Infusions
2. Regional Development Grant Program
3. National Loan Fund (NLF) Loan Cancellation
4. European Loan and Steel Community (ECSC) Article 54 Loans and Interest Rebates

Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the total net subsidy for all of these programs for BS plc/BSES/UES is 7.35 percent *ad valorem* for the period March 21, 1995 to December 31, 1995. The total net subsidy for all of these programs for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995.

B. New Programs Determined To Confer Subsidies

In the preliminary results, we found that the following new program conferred countervailable benefits on the subject merchandise:

BRITE/EuRAM

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. UES did not benefit from this program. Accordingly, the net subsidies for this program for the period March 21, 1995 to December 31, 1995 are less than 0.005 percent *ad valorem*.

II. Programs Determined To Be Not Used

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

A. New Community Instrument Loans
B. ECSC Article 54 Loan Guarantees
C. NLF Loans
D. ECSC Conversion Loans
E. European Regional Development Fund Aid
F. Article 56 Rebates
G. Regional Selective Assistance
H. ECSC Article 56(b)(2) Redeployment Aid
I. Inner Urban Areas Act of 1978
J. LINK Initiative

K. Transportation Assistance

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

III. Programs Determined To Be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

Transportation Assistance

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

Analysis of Comments

Comment 1: Petitioner maintains that the Department's subsidy repayment methodology is inconsistent with the countervailing duty statute, which requires that duties be imposed upon all subsidies paid with respect to the production, manufacture or export of subject merchandise. Petitioner asserts that the change in ownership of a company conducted at fair market value does not offset the distortion caused by the government's bestowal of the subsidy, and the production of the merchandise continues to benefit from the subsidies. Therefore, according to petitioner, there can be no repayment.

Petitioner further contends that the statute and the SAA require the Department to determine the effect of a change in ownership on previously conferred subsidies on a case-by-case basis after careful consideration of the facts of each case. Petitioner interprets the SAA as meaning that absent affirmative evidence of repayment, the change in ownership of a company should not affect the benefit from prior subsidies. Therefore, because the Department has not factually shown that there was any repayment of subsidies to GKN as a result of BS plc's acquisition of UES, petitioner argues that the repayment methodology should not be applied in this case.

Moreover, petitioner argues that BS plc's purchase of GKN's shares in UES was not a privatization, and therefore the repayment methodology does not apply. This transaction, petitioner states, does not materially differ from the sales of shares traded daily on the stock market. Because the Department has never argued that repayment should be calculated for such transactions, petitioner contends that repayment should likewise not apply to the transaction between BS plc and GKN.

Petitioner claims that BSES is now in the same position as its precursor, the Special Steels Business, although BSES is now an incorporated subsidiary of BS plc instead of an unincorporated division. Therefore, petitioner argues that the allocation of subsidies should be the same as it was before the spin-off in 1985 and that all of UES's subsidies should travel back to BS plc. According to petitioner, the Department's recent Certain Pasta from Italy determination does not affect this result, because the facts in that case were significantly different. The pasta case involved several producers that received subsidies prior to being purchased by other producers, while the initial transaction is this case involved the formation of a joint-venture company (UES) with a partner (GKN) which had received no prior subsidies. Thus, the Department's repayment methodology has not yet been applied in a situation where a spun-off company is reacquired by its former parent.

Finally, petitioner asserts that the *GIA* methodology is not appropriate in this situation. Although the *GIA* addresses corporate restructuring, such as mergers, spin-offs, and acquisitions, it does not address the reacquisition of a spun-off entity. Accordingly, all of UES's subsidies should travel back to BS plc.

Respondent states that the Department's allocation of a portion of UES's subsidies to GKN does not conflict with the countervailing duty statute. With respect to the pre-URAA statute, respondent notes that the U.S. Court of Appeals of the Federal Circuit found the Department's credit methodology to be reasonable in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl*). Respondent further argues that this methodology is also consistent with the ''Changes in Ownership'' provision of the URAA-amended statute, because this provision does not preclude the Department from finding that changes in ownership have particular effects, such as the repayment of subsidies. According to respondent, the SAA provides the Department with further authority to apply a general methodology to the specific facts of cases involving changes in ownership.

Respondent also asserts that petitioner's argument that the record must show evidence of repayment misses the point of the Department's methodology, namely that ''the company's new owners are virtually certain to repay at least a portion of the subsidy as part of the purchase price.'' *GIA*, 58 FR at 37263.

With respect to petitioner's claim that the repayment methodology does not apply to transactions between private shareholders, respondent states that this is inconsistent with the Department's finding in Certain Pasta From Italy, where the methodology was applied to such transactions. According to respondent, the relevant fact here is not whether the government received any repayment, but, rather, whether the purchaser paid a price that reflected any past subsidies to the company being acquired. Respondent further notes that petitioner's argument that BSES is now in the same position as the Special Steels Business is inconsistent with the Department's determination in the investigation that UES and the Special Steels Business were separate entities. Finally, respondent states that it is immaterial whether GKN received any subsidies prior to the formation of UES, because the application of the reallocation/repayment methodology does not depend on whether the owner of a company has received any subsidies.

Department's Position: We disagree with petitioner. As we explained in 1994 UK Bar Final, the language of section 771(5)(F) of the Act gives the Department discretion to consider, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. Rather than mandating that a subsidy automatically transfer with a change-in-ownership transaction, as petitioner argues, the language in the statute gives the Department flexibility in this area. See 1994 UK Bar Final, 61 FR at 58380.

In this case, in accordance with the SAA, we have examined the facts of BS plc's acquisition of UES, and we determine that the March 21, 1995, change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable based on the methodology explained in the ''Privatization'' section of the *GIA*. *See GIA* 58 FR at 37262–37263. We also determine that a portion of the purchase price paid for UES may be reflective of its prior subsidies. Therefore, we have reduced the amount of the subsidies that ''travel'' with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: BS plc's March 1995 Acquisition of UES (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce) (Acquisition Memo).

As for petitioner's argument that the repayment methodology should not be applied because the Department has not factually shown that subsidies have

been repaid to GKN, we agree with respondent that petitioner misses the point of the Department's methodology. The Department has never required factual proof of repayment. Rather, as we stated in the GIA, ''to the extent that a portion of the price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.'' GIA, 58 FR at 37262–37263. Furthermore, the Department has already examined the question of whether the Department's change-in-ownership methodology can be applied to a transaction between private parties. In the *GIA*, the Department stated that the privatization methodology applies also to transactions between private parties. The Department explained that ''[u]nder these circumstances, the issue is not the repayment of subsidies, but rather their allocation.'' GIA, 58 FR at 37264. Thus, the Department properly applied the change-in-ownership methodology in this review.

Petitioner elevates form over substance by arguing that the GIA methodology does not apply to BS plc's acquisition of GKN's shares in UES because that acquisition somehow differs from the transactions discussed in the GIA. The mere fact that the Department did not elaborate on every type of potential change-in-ownership transaction in the ''Privatization'' and ''Restructuring'' sections of the GIA does not invalidate the application of these methodologies to transactions such as the reacquisition of formerly-owned companies or productive units. Furthermore, the fact that the unit producing the subject merchandise has now returned to its former owner also does not affect our determination that a portion of the purchase price paid by BS plc for GKN's shares of UES reflects past subsidies.

Petitioner claims that BSES is now in the same position as the Special Steels Business, and therefore, there is no reason to reallocate subsidies to GKN. We disagree. In the original investigation, we determined that the creation of UES was not simply a corporate restructuring; rather, UES was a joint-venture company that was a separate corporate entity independent from its parent companies. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Remand Determination (October 12, 1993) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). Contrary to petitioner's assertion, the Special Steels Business and BSES are distinguishable, because they are distinct entities with different ownership structures. Therefore, our finding in this review that a portion of the purchase price paid for GKN's shares in UES is reallocated to the seller because it reflects past subsidies is not in conflict with our change-in-ownership methodology explained in the GIA or with our determination in Certain Pasta from Italy.

Comment 2: According to petitioner, the Department correctly made the adverse inference that the BRITE/EuRAM program is specific and that the benefits received during the instant review are countervailable, because the Department discovered at verification that assistance under the BRITE/EuRAM program was provided to BS plc in 1995 and this assistance was not reported by BS plc or the European Commission in their questionnaire responses. However, petitioner contends that the Department should not have accepted information at verification that BS plc retained only a small portion of the BRITE/EuRAM assistance and disbursed most of it to third parties involved in the research project. Rather, the Department should have countervailed the full amount received by BS plc.

Respondent asserts that the Department has discretion to determine an appropriate adverse inference in response to an interested party's oversight. Respondent also points out that information regarding payments to third parties allowed BS plc to demonstrate the amount of assistance which BS plc actually received.

Department's Position: After discovering at verification that BS plc had received assistance under the BRITE/EuRAM program during the POR, we informed the company that they could provide information concerning the grant amounts and demonstrate whether the assistance was tied to production of non-subject merchandise. See the October 21, 1996 Memorandum To Barbara E. Tillman, Re: Verification of the British Steel plc Questionnaire Responses at 12 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce). We learned that BS plc received assistance under one BRITE/EuRAM contract during the POR; BS plc was not able to establish that the assistance under that program was tied to non-subject merchandise. We reviewed program documents indicating that as the project coordinator for the BRITE/EuRAM project in question, BS plc was required to provide most of the BRITE/EuRAM money to third parties also involved in the research project. Therefore, we appropriately countervailed only the amount of funding actually received by BS plc for its portion of the project.

Comment 3: According to respondent, the Department incorrectly determined in the *Preliminary Results* that BSES benefits from the subsidies given to BS plc. Respondent asserts that the Department's determination was based solely on the corporate relationship between the parent company (BS plc) and its subsidiary (BSES). Respondent claims to have reviewed the Department's practice and found no administrative case precedents in which the Department has imposed countervailing duties on a subsidiary solely on the basis of its relationship to the parent company and certainly not when a subsidiary was acquired after the subsidies were received. Respondent cites two court decisions and a number of cases in support of its argument that we have uniformly required other factors in addition to the corporate relationship to support the attribution of subsidies from parent to subsidiary, namely, that, (1) corporate machinations were used to evade countervailing duties, (2) the parent received subsidies in order to create the subsidiary, or (3) the parent served as a conduit for the subsidies. These cases are discussed in the *Department's Position* on the comment.

Respondent also argues that the GIA and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany, 58 FR 37315 (July 9, 1993) (*German Steel*), both cited in the *Preliminary Results*, do not permit the automatic attribution of subsidies from a parent company to its newly acquired subsidiary. Respondent asserts that the GIA does not state that the Department automatically treats the parent and its subsidiaries as one for the purpose of attributing subsidies. Rather, respondent points out that ''the Department *often* treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy (emphasis added).'' See GIA, 58 FR at 37262. According to respondent, this is sometimes true because additional facts in those cases have permitted the Department to attribute a parent company's subsidies to its subsidiary. Respondent contends that German Steel and the cases cited in the GIA, e.g., Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (Brass Sheet and Strip from France); Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987) (*SSHP from Sweden); Armco, Inc.* v. *U.S.*, 733 F. Supp. 1514 (CIT 1990)

(*Armco*); do not support the attribution of subsidies from a parent to a subsidiary based only on the corporate relationship because each of these cases involved additional factors.

Furthermore, respondent argues that the automatic attribution of subsidies between a parent and a subsidiary would not be permitted under the Department's proposed regulations. See Notice of Proposed Rulemaking and Request for Public Comment, 62 FR 8817, 8845, 8855 (February 26, 1997) (*Proposed Regulations*). Respondent asserts that under the proposed regulations, subsidies given to a parent company will be allocated to the subsidiary's production only if they produce the same product or if subsidies have been transferred from parent to subsidiary. Therefore, because neither of these conditions exists, according to respondent, the *Preliminary Results* are not consistent with the *Proposed Regulations*.

Respondent concedes that the Department may attribute subsidies to the production of a subsidiary which was part of the corporation when subsidies were received because the parent's use of subsidy funds benefits all operations. However, respondent argues that this reasoning does not apply to BSES, because BSES was not a subsidiary of BS plc at the time when BSC received subsidies. Therefore, respondent argues that BS plc's acquisition of GKN's shares of UES should not cause the Department to alter the way in which it determines the portion of BSC's subsidies which benefit the production of leaded bar by BSES.

According to petitioner, Department practice and the facts of this review support the attribution of BS plc's subsidies to BSES. Petitioner argues that judicial decisions and administrative practice give the Department great latitude to allocate a parent company's subsidies to a subsidiary. Petitioner argues that over the past 15 years, the Department has always permitted the attribution of subsidies from parent to subsidiaries, and actually has done so more and more frequently, especially where a substantial degree of control is present and business lines are related. According to petitioner, the Department now presumes that in most cases ''subsidies to one corporation may also benefit another corporation.'' *Proposed Regulations*, 62 FR at 8845. Therefore, petitioner contends, respondent's examples of the Department's refusal to allocate subsidies across corporate lines reflect the Department's previous but not its current practice. Petitioner cites *Brass Sheet and Strip from France* as an example of when the parent's ownership and control of its subsidiary were just as relevant to the Department's decision to attribute subsidies from parent to subsidiary as the fact that the parent served as a conduit for government funding. See Brass Sheet and Strip from France, 52 FR at 1218. Petitioner also cites SSHP from Sweden, where the parent's ownership and control of the subsidiary, in addition to the strong identity of interests between parent and subsidiary, led the Department to conclude that the subsidiary benefitted from the parent's subsidies and attribute those subsidies to the subsidiary. See SSHP from Sweden, 52 FR at 5798, 5800.

Petitioner further contends that three of the cases cited by respondent, Final Affirmative Countervailing Duty Determination: Operators for Jalousie and Awning Windows from El Salvador, 51 FR 41516 (November 17, 1986) (Operators for Jalousie and Awning Windows from El Salvador); Final Negative Countervailing Duty Determination: Low-Fuming Brazing Copper Rod and Wire from South Africa, 50 FR 31642 (August 5, 1985) (Copper Rod and Wire from South Africa); and Final Affirmative Countervailing Duty Determination: Carbon Steel Structural Shapes from Luxembourg, 47 FR 39364 (September 7, 1982) (Carbon Steel Structural Shapes from Luxembourg), do not support respondent's position. Petitioner points out that the Armco court noted that these cases did not involve situations where the parent had exercised substantial control over the operations of its wholly-owned subsidiary, and the court distinguished these three cases from situations involving parent companies and their wholly-owned subsidiaries. According to petitioner, since BSES is a wholly-owned subsidiary of BS plc, cases involving companies with different corporate relationships do not support respondent's position.

Petitioner also argues that the three conditions underlying Armco are relevant to the present case: the subsidiary is wholly-owned, the parent has total control of the subsidiary, and the threat of circumvention of countervailing duties exists. Therefore, Armco supports the Department's determination to attribute untied subsidies from BS plc to BSES.

Petitioner argues that subsequent decisions are consistent with Armco in that the Department has attributed the parent's subsidies to the subsidiary where there has been a strong identity of interests between parent and subsidiary. By contrast, the Department has been less likely to attribute parent company subsidies to the subsidiary where the subsidiary is not wholly owned by the parent or where the interests of parent and subsidiary diverge. Petitioner argues that in Ferrosilicon from Venezuela, the Department did not attribute the parent's subsidies to the subsidiary because the parent was a holding company and its interests were different from those of its subsidiary. See Final Affirmative Countervailing Duty Determination: Ferrosilicon from Venezuela, 58 FR 27539, 27541 (May 10, 1993) (Ferrosilicon from Venezuela). According to petitioners, in Certain Pasta from Italy, the Department attributed subsidies to affiliates in cases where both companies produced the subject merchandise, or where the affiliate played ''an integral role'' in the production process, but did not attribute subsidies when the affiliate did not produce the subject merchandise. See 61 FR at 30308. According to petitioner, because BSES is wholly owned and substantially controlled by BS plc and is engaged in a similar line of business, BSES benefits from the remaining benefit stream of BS plc's subsidies. Therefore, the Department has correctly attributed BS plc's subsidies to BSES.

Petitioner further argues that respondent elevates form over substance by arguing that BS plc's newly acquired subsidiary does not benefit from BS plc's subsidies. Even though BSES is now an incorporated subsidiary of BS plc, rather than the unincorporated division it was in 1985, the situation in 1995 is not materially different from the situation in 1985. Moreover, petitioner contends that if the Department did not allocate BS plc's subsidies to its newly acquired subsidiary even though it would have allocated them to the subsidiary's predecessor, the Special Steels Business, an unincorporated division, this would establish that corporate manipulations can determine countervailing duty rates, which is counter to the court's determination in Armco. According to petitioner, BC plc's subsidies should be attributed to BSES because BS plc and UES were closely associated prior to 1995 and are in the same line of business, and BS plc has substantial control over BSES today.

According to petitioner, respondent's argument regarding the Department's proposed countervailing duty regulations is based upon a highly selective reading of the proposed rules. Petitioner points out that the *Proposed Regulations* set forth general rules for the attribution of subsidies and do not illustrate every possible scenario.

Department's Position: In the *Preliminary Results*, the Department

appropriately attributed the benefits from nonrecurring untied subsidies received by BS plc that are allocable to the POR to that company's domestically produced, consolidated sales, including the sales of consolidated subsidiaries, such as BSES. This conforms with our past practice and judicial precedent. Where the Department finds that a company has received untied countervailable domestic subsidies, the Department follows a general attribution principle: if a benefit is not ''tied'' to specific merchandise produced by a company (or corporation), then the benefit is attributed to that company's total sales. The total sales that are reported on a company's financial statements normally include its own sales plus the sales of its consolidated subsidiaries. Thus, when a company is the parent of a consolidated group, untied domestic subsidies are normally attributed to the sales of the consolidated group of companies. This attribution is appropriate because a parent company exercises control over the capital structure and commercial activities of its consolidated subsidiaries. Moreover, when providing loans and equity, it is reasonable and prudent for lenders and investors to examine the financial condition of not only the parent company but also its significant subsidiaries because the subsidiaries are incorporated into the balance sheet and income statement of the consolidated group. We noted this general approach to attributing untied subsidies in the GIA, where we stated that we ''generally allocate subsidies received by parents over sales of their entire group of companies.'' 58 FR at 37262.

Contrary to respondent's assertion, the presence of additional factors is not required for the Department to attribute untied parent-company subsidies according to this general principle. For example, in Belgian Steel, untied subsidies to Sidmar, the parent company, were attributed to the ''total 1991 sales of the Sidmar Group.'' Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, 58 FR 37293, 37282 (July 9, 1993) (Belgian Steel). In Italian Steel, a subsidy determined to benefit all production activities was ''allocated over Falck's total consolidated sales.'' GIA, 58 FR at 37235. See also, Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 6223 (January 27, 1993) (France Bismuth); Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304 (July 9, 1993) (French Steel); Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy, 58 FR 37327 (July 9, 1993) (Italian Steel); and UK Steel. As these cases illustrate, respondent's claim that the Department has never attributed untied parent-company subsidies to its consolidated subsidiaries solely on the basis of the corporate relationship is incorrect.

Respondent concedes that attributing parent-company subsidies to wholly-owned subsidiaries is appropriate in certain circumstances, stating that under ''the Department's well-established practice of not tracing the use of subsidy funds, the Department may presume that a parent company uses subsidy funds to benefit its overall operations, including its subsidiary operations.'' Respondent's May 7, 1997, Case Brief at 18. However, respondent argues that this policy is apropos only when the subsidiary ''is part of the corporation at the time the subsidies are received * * * and continues to be a subsidiary through the POI.'' *See* Respondent's May 7, 1997 Case Brief at 18. Therefore, respondent claims that the Department should not attribute the current benefit from BS plc's untied subsidies to BSES because BSES did not become an incorporated subsidiary of BS plc until 1995, subsequent to BS plc's receipt of the untied subsidies at issue. This argument contradicts the very principle of not tracing the use of subsidy funds beyond the point of bestowal with which respondent agrees.

The Department has never made a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, and respondent has not cited any administrative or court precedent in support of this contention. In cases where the Department found that untied domestic subsidies were bestowed upon parent companies, prior to or during the period under examination, the Department has attributed these untied subsidies to the group's consolidated sales, without analyzing whether any of the subsidiaries had been acquired after subsidization had occurred. See, e.g., Belgian Steel, French Steel, Italian Steel, and UK Steel. In UK Steel, BS plc did not argue that the Department should analyze whether BS plc had acquired subsidiaries subsequent to receiving subsidies to determine whether the sales of those newly acquired subsidiaries should have been excluded from the denominator in calculating the subsidy rate. On the contrary, BS plc claimed at the time that ''untied equity infusions must be allocated to a company's total corporate output [including foreign operations] and not just to specific products or operations.'' GIA, 58 FR at 37236. BS plc further argued that this ''*longstanding Departmental precedent* applies to national and multinational corporations alike.'' *Id.* (emphasis added).

If the Department were to make a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, the Department would be required to abandon its ''well-established practice of not tracing the use of subsidy funds'' and to determine whether and to what extent subsidies ''passed through'' to newly-acquired companies. Such an analysis would also require a detailed examination of all changes in the structure of the company or group of companies over the entire allocation period. Further, the analysis required by respondent's distinction would assume that ''untied'' subsidies become ''tied'' to only the assets of the corporate group as it existed when the subsidy was bestowed. The Department has never advocated nor pursued such a policy. As stated in the *GIA*, ''nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * * nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.'' 58 FR at 37260; see also *British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 9 CIT 85, 95–96, 605 F. Supp. 286, 294–95 (1985) (''[I]t is unnecessary to trace the use'' of funds), citing *Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985).

The Department also does not agree that the cases cited in the Preliminary Results do not support the attribution of BS plc's subsidies to consolidated sales of domestically produced merchandise. As stated in the GIA, ''[w]e also generally allocate subsidies received by parents over sales of their entire group of companies.'' GIA, 58 FR at 37262. The cases cited in the GIA as examples of the Department's past attribution practices do not represent an exhaustive list of all of the different scenarios under which the Department has dealt with the issue of attribution. Moreover, nothing in the GIA indicates that the Department is required to determine

that there are factors in addition to the corporate relationship, such as the pass-through of subsidies, in order for the Department to attribute a parent company's untied subsidies to the parent company's total consolidated domestically produced sales.

According to respondent, the CIT's determinations in Armco and *Aimcor, Alabama Silicon, Inc.* v. *United States* 871 F. Supp. 447 (CIT 1994) (*Aimcor*) make clear the court's view that the Department should not attribute subsidies from a parent company to the production of a newly acquired subsidiary based solely on the corporate relationship. Respondent's reliance on these cases is misplaced. Contrary to respondent's views, we find that these cases do not undermine the Department's general principle of attributing untied parent-company subsidies to the parent company's consolidated sales.

As respondent correctly notes, the Armco court overturned the Department's determination in Carbon Steel Wire Rod from Malaysia and held that the parent company benefitted from the subsidies provided to its wholly-owned subsidiary. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia, 53 FR 13303 (April 22, 1988) (Carbon Steel Wire Rod from Malaysia). The Armco decision was based on several factors including the court's concern that the parent and subsidiary could potentially evade countervailing duties through intra-corporate machinations, the relationship between the parent and subsidiary, and the parent's extensive control over the subsidiary. See Armco, 733 F. Supp. at 1526. We agree with the court and the respondent that the possibility of circumvention can be a factor in the Department's attribution decisions. We further note that according to BS plc's questionnaire response in this review, BS plc did produce and sell the subject merchandise during the period of review. See the June 11, 1996, BS plc questionnaire response (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Therefore, the possibility of circumvention would exist if the Department did not attribute BS plc's untied subsidies to BS plc's total sales.

Nevertheless, respondent's reliance on Armco for the proposition that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales is not supportable. Respondent emphasizes that the Armco court supported the proposition that the bestowal of the subsidy on one company does not automatically benefit another company merely because the two are related. See *Armco,* 733 F. Supp. at 1521–1522. However, this general proposition merely recognized the possibility that different conclusions may be drawn from different scenarios involving various kinds of subsidies, tied and untied, and companies of varying degrees of relatedness. This proposition does not stand for respondent's argument that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales, and it does not undermine the Department's attribution of BS plc's untied subsidies in this review.

Respondent also claims that the *Armco* court rejected the notion that ''a subsidy, by its mere bestowal, necessarily affects every corner of the corporate relationship.'' *See Armco,* 733 F. Supp. at 1525. However, in referring to this proposition, the Armco court clarified that the scope of its holding was limited to the facts of the case. We do not interpret Armco as stating that the Department is required in all cases to find factors in addition to the corporate relationship in order to attribute subsidies from one company to another.

Respondent's reliance on *Aimcor* for the proposition that the Department may not impose duties on a company solely because it has been acquired by a company that has received subsidies is also misplaced. The facts in *Aimcor* are substantially different from those in the instant review. In Aimcor, the plaintiff alleged that a government-owned financial institution sold shares in Fesilven, the producer of the subject merchandise, to Corporacion Venezolana Guayana (CVG), a government-owned holding company, at less than eight percent of their par value. According to the plaintiff, because of the relationship between CVG and Fesilven, this transaction was a de facto share redemption which resulted in a subsidy to Fesilven. However, the court upheld the Department's determination that CVG and Fesilven could not be considered one entity and therefore the transaction was not a share redemption by Fesilven. Thus, the relationship between CVG and Fesilven was the critical factor in determining whether CVG's purchase of Fesilven's shares from a third party was a *de facto* share redemption by Fesilven which could have resulted in the bestowal of a subsidy on Fesilven. It is clear, therefore, that the issue in *Aimcor* was whether a subsidy had been bestowed at all. The issue was not whether countervailable subsidies that had been bestowed on a parent company were attributable to a wholly-owned subsidiary.

Respondent mistakenly cites the *Aimcor* court for support without first considering the particular facts at issue. For example, respondent points out that in *Aimcor,* plaintiffs argued that Brass Sheet and Strip from France required an automatic attribution of subsidies, but the *Aimcor* court stated that ''Commerce does more than simply look at the relationship between the parties. Instead, Brass Sheet and Strip from France demonstrates Commerce's consistent, statutorily mandated policy of tracing a bounty or grant to determine whether it reached the merchandise before Commerce imposes a duty.'' *Aimcor,* 871 F. Supp. at 452. However, the issue in Brass Sheet and Strip from France was whether a government-owned holding company had bestowed a subsidy on a subsidiary, and the *Aimcor* court's statement must therefore be interpreted in that context, because as indicated above, the statute does not require the Department to trace the uses or the effects of subsidies. Respondent also points to the court's statement that a benefit to the parent corporation ''does not necessarily make one of its assets, such as its subsidiary, more valuable.'' *Aimcor,* 871 F. Supp. at 452. However, the court went on to say that ''[a]bsent a showing that the subsidy reached the exported merchandise, this court will not disturb Commerce's determination.'' *Id.* Thus, as reflected by the court's opinion, our determination in Ferrosilicon from Venezuela dealt with the issue of whether a subsidy had been conferred on Fesilven through a transaction involving the government-owned holding company, which owned shares in Fesilven, and a government-owned financial institution. It did not deal with the attribution of previously bestowed untied parent company subsidies to a wholly-owned subsidiary.

In addition to *Armco* and *Aimcor,* respondent identified a number of other cases to support the proposition that the Department has uniformly required factors in addition to the corporate relationship in attributing a parent company's subsidies to a newly acquired subsidiary. According to respondent, the Department has only attributed a parent company's subsidies to a subsidiary when (1) corporate machinations could be used to evade countervailing duties, (2) the subsidies were provided to the parent to facilitate

the subsidiary's creation, or (3) the parent served as a conduit for subsidies to the subsidiary. We have examined the cases cited by respondent with respect to each factor, and we disagree with respondent's overall interpretation of the Department's past practice.

With respect to the first and second factors, we agree with respondent that in certain instances the Department's attribution decisions were influenced by (1) the possibility that intra-corporate machinations would be used to evade countervailing duties, or (2) the fact that subsidies were provided by the parent to facilitate the creation of a subsidiary. See *e.g.*, Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982) (*1982 UK Steel*), Carbon Steel Wire Rod from Malaysia, Armco, Belgian Steel, and SSHP from Sweden. See SSHP from Sweden, 52 FR at 5796. Nevertheless, the mere fact that we examined these factors does not negate the Department's general attribution principle discussed above, or require that these factors be present in all cases. We fail to see how these cases establish that ''additional'' factors *must* always be present for the Department to attribute untied parent-company subsidies to the parent company's total sales, including the sales of its consolidated subsidiaries.

The majority of the cases cited by respondent are concerned with the third factor, *i.e.*, that the parent company served as a conduit for subsidies to the subsidiary. However, this argument implies that in order to attribute untied nonrecurring domestic subsidies received by a parent company to the parent company's consolidated sales of domestically produced merchandise, the Department is required to analyze whether subsidies have ''passed through'' the parent to its subsidiary. This would amount to tracing the uses and effects of untied subsidies, which respondent acknowledges the Department is not required to do. Therefore, the Department is not required to conduct a ''pass-through'' analysis. Moreover, as explained above, the Department's general attribution practice supports the attribution of BS plc's untied subsidies to BS plc's domestically produced, consolidated sales. As such, we find that the cases cited by respondent in support of its ''pass-through'' proposition either can be distinguished from the fact pattern in the instant review, or actually can be found to support the Department's attribution approach in this case.

For example, respondent cites Grain-Oriented Electrical Steel from Italy, in which the Department countervailed only the subsidies ''specifically provided to the producer of the subject merchandise.'' Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy, 59 FR 18357, 18365 (April 18, 1994) (Grain-Oriented Electrical Steel from Italy). Nevertheless, respondent fails to mention that the Department's approach was driven by the unique circumstances of the case, in which the parent company was a government-owned company which, prior to the period of investigation, underwent a series of intricate restructurings during which debt was forgiven by the Italian Government. In fact, the Department acknowledged that there were two alternative approaches to addressing the debt forgiveness associated with the restructurings: (1) ''To analyze the restructuring of the entire Finsider group into ILVA and to examine all subsidies provided to Finsider by IRI and the government of Italy,'' or (2) ''measure the subsidies provided to the producer of the subject merchandise.'' See Grain-Oriented Electrical Steel from Italy, 59 FR at 18366. The Department chose the second approach, given ''the extremely complex restructuring which occurred at the Finsider group level'' because it would allow the Department to ''more accurately measure the benefits attributable to the producer of the subject merchandise''. See *Id*.

Thus, Grain-Oriented Electrical Steel from Italy does not support respondent's proposition that the Department always examines facts in addition to the corporate relationship when attributing untied parent-company subsidies to the parent company's total consolidated sales, including sales of consolidated subsidiaries. Rather, in Grain-Oriented Electrical Steel from Italy, the Department acknowledged the validity of analyzing subsidies at the parent company level in order to attribute them to the sales of the consolidated subsidiaries (59 FR at 18366), which supports the approach taken in the instant review.

In further support of its argument that in prior cases involving subsidy attribution, parent companies have served as conduits for subsidies to their subsidiaries, respondent cites a number of cases that involve parent companies which were government-owned holding companies. See, *e.g.*, Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany, 47 FR 39345 (September 7, 1982) (1982 German Steel); Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations, 49 FR 17988 (April 26, 1984) (Certain Carbon Steel Products from Brazil); Brass Sheet and Strip from France, and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain, 58 FR 37374 (July 9, 1993) (Spanish Steel). In these cases, the Department considered whether the government-owned holding company acted as the government in bestowing subsidies to the affiliated companies, *i.e.*, the subsidiaries. For example, in Brass Sheet and Strip from France, the parent company was an unequityworthy government-owned holding company which received equity infusions from the government and, in turn, provided equity infusions and other financial assistance to its unequityworthy subsidiary, the producer of the subject merchandise. The Department noted that since the parent was merely a holding company, the funds which were provided to it by the government benefitted its subsidiaries. *See* Brass Sheet and Strip from France, 52 FR at 1220. Thus, the Department considered that the holding company acted essentially as the government in bestowing the equity infusions to the subsidiary. Therefore, in that case the Department countervailed the benefit on the basis of the subsidiary's total sales.

Brass Sheet and Strip from France does not support respondent's argument that the Department is required to analyze whether subsidies provided to private or government-owned parent companies have ''passed through'' to their subsidiaries. As demonstrated above, even in cases involving government-owned companies, *e.g.*, the 1993 steel investigations, the Department's practice has been to attribute the benefit from untied domestic subsidies provided to a parent company based on its consolidated sales of domestically produced merchandise. See, *e.g.*, Belgian Steel, French Steel, Italian Steel, and UK Steel.

Respondent also cited Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea, 49 FR 35836 (September 12, 1984); Bicycle Tires and Tubes from Korea; Final Results of Administrative Review of Countervailing Duty Order, 48 FR 32205 (July 14, 1983); and Copper Rod and Wire from South Africa as cases in which the Department analyzed subsidy ''pass through.'' Nevertheless, these cases can be distinguished from the instant review because subsidy

bestowal, rather than subsidy attribution, was the key issue. Moreover, Bicycle Tires and Copper Rod from South Africa dealt with the issue of whether a privately-owned company had provided a subsidy to one of its related companies. In those cases, we stated that absent evidence of government involvement we would not examine whether a transaction between related private parties constituted a subsidy. In the instant case, we have already determined that the government of the United Kingdom bestowed untied nonrecurring subsidies on BSC/BS plc. The matter at issue here is whether the current benefit from those previously bestowed subsidies which have been allocated over time is attributable to only BS plc's operations or to its consolidated operations. As such, Bicycle Tires and Copper Rod from South Africa do not support respondent's contention.

In another example, respondent asserts that in Austrian Steel, the Department found that VAAG, a government-owned company, provided a subsidy to its new subsidiaries by not requiring them to assume a portion of its prior losses. However, Austrian Steel is distinguishable from the instant review. As part of a restructuring of a production company into a holding company, the newly-created holding company carried forward losses on its balance sheet, but did not assign a proportionate share of those losses to its newly-created subsidiaries. The Department determined that the holding company provided a subsidy to its subsidiaries by assuming losses that should have been assigned to the subsidiaries. See Austrian Steel, 58 FR at 37221. Thus, this aspect of Austrian Steel concerned the government-owned holding company's bestowal of a subsidy on its subsidiaries. This was not an issue of whether untied nonrecurring subsidies to a parent company benefit its consolidated sales.

Several of the cases cited by respondent in support of its pass-through argument can be distinguished from UK Lead Bar due to the nature of the corporate relationships and the fact that attribution of untied parent-company subsidies was not an issue. Operators for Jalousie and Awning Windows from El Salvador involved two private companies which had the same parent company. The subsidy in question was an income tax exemption from export earnings, and the law did not permit any transfer of these exemptions from the recipient to the other company, which had a different status under the Export Promotion Law. See Operators for Jalousie and Awning Windows from El Salvador, 51 FR at 41519 (1986). Thus, this was not a parent/subsidiary issue. The subsidies received by one company were not attributed to the other company, because the companies operated as distinct entities and had different status under the tax law. Respondent's example from Certain Pasta From Italy also involves two private companies with a common parent. Furthermore, the subsidies in that case were either subsidies to a privately-owned affiliated supplier or the subsidies were otherwise tied. Accordingly, the subsidies and the relationships in these cases are distinguishable from the instant review.

Respondent also cites Carbon Steel Structural Shapes from Luxembourg where the Department treated the parent company and its subsidiary separately because benefits were provided separately and ''are not allowed to pass through.'' Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982). Nevertheless, a key distinguishing factor is that Carbon Steel Structural Shapes from Luxembourg involved a parent company and a 40 percent-owned subsidiary, and the two companies had separate financial structures, *i.e.*, the subsidiary was not consolidated with the parent company. *See* Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982).

Even, assuming arguendo, that the Department were required to make a finding that the allocated benefit from untied subsidies to a parent company ''pass through'' to a subsidiary, the information on the record of this review would be sufficient to warrant the inclusion of BSES's sales in calculating the subsidy benefit from BS plc's untied subsidies. The Department's verification established that BS plc exercises considerable control over its consolidated subsidiary BSES. As the sole owner of BSES, BS plc has the authority to make all major decisions for BSES, including any decision to invest in BSES, change its operations, or close it down. Furthermore, BS plc performs a number of services, and even acts as a banker, for BSES and its other consolidated subsidiaries. See the October 21, 1996, Memorandum to Barbara E. Tillman, Re: Verification of the BS plc Questionnaire Responses in the 1995 Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom at 3–5 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

With respect to respondent's and petitioner's comments on the proposed countervailing duty regulations, we note that these have not yet been finalized, and thus, are not controlling in this review.

Comment 4: Respondent states that the Department will over-countervail BS plc's subsidies in the 1995 and subsequent reviews as a result of changing the allocation period for nonrecurring subsidies from 15 to 18 years. Respondent points out that the Department has recognized that double-counting subsidy benefits is ''inconsistent with both the statute and the subsidies code.'' See, *e.g.*, Certain Castor Oil Products from Brazil; Final Results of Review of Countervailing Duty Order, 49 FR 9921 (1984), Unprocessed Float Glass from Mexico; Suspension of Countervailing Duty Investigation, 49 FR 7264 (1984), and General Agreement on Tariffs and Trade 1994, Art. VI(3). In recognition of the problem of over-or-under-countervailing subsidy benefits when transitioning to company-specific allocation periods, the Department adopted a policy of using the allocation period first assigned to a subsidy countervailed in earlier proceedings. According to respondent, because the mandate against over-countervailing subsidies is a statutory matter and not one of administrative discretion, as the Department has recognized, the Department must adhere to the 15-year amortization methodology which it previously adopted in countervailing subsidies received by UES.

According to petitioner, the 18-year allocation period is consistent with BS plc's corporate practice and all determinations involving BS plc. Changing the allocation period from 15 to 18 years enables the Department to countervail at the proper rate. Petitioner points out that the Department does not have the option of acceding to respondent's request to continue with a 15-year allocation period for BSES, because the CIT decided that the statute requires company-specific allocation periods based on the average useful life of assets and approved an 18 year allocation period for British Steel. See *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*). Petitioner points out that British Steel's successful appeal of the Department's 15-year allocation period led to the establishment of an 18-year allocation period in the first place.

According to petitioner, respondent's allegation that the Department's methodology results in ''double-counting'' of subsidies is misleading because only a minor amount of double-counting occurs when the allocation period is lengthened after the subsidies

have already been calculated in previous reviews. Overall, BS plc is charged more over the longer allocation period mainly due to an increase in interest charges. Petitioner suggests that the minor amount of double-counting can be corrected if the Department requests a remand of its original determination and adopts an 18-year allocation period for the entire period of the investigation and all administrative reviews, *i.e.*, from 1992 forward.

Department's Position: The position adopted by the Department on the allocation period for BS plc's/BSES's subsidies is discussed in detail in the *Preliminary Results* and the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: Allocation Period for Nonrecurring Subsidies (Allocation Memorandum) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). In this review, we are determining that it is appropriate, due to the unique circumstances of this case, to change the allocation period for the subsidies which were previously bestowed on BSC/BS plc and which were attributable to UES/BSES, even though all of these subsidies were bestowed prior to the period of review and had established allocation periods in prior proceedings. See UK Steel, 58 FR 37396. The Department's acquiescence to the CIT's decision in *British Steel* resulted in different allocation periods between the *UK Steel* and *UK Lead Bar* proceedings (18 years versus 15 years). Significant inconsistencies would result from different allocation periods for the same subsidies in two proceedings involving the same company. Therefore, in this review, we have applied the company-specific 18-year allocation period to all nonrecurring subsidies in order to maintain a consistent allocation period across the *UK Steel* and *UK Lead Bar* proceedings, as well as the different segments of *UK Lead Bar.*

Since the countervailing duty rate in earlier segments of the proceeding was based on a certain allocation period and resulting benefit stream, redefining the allocation period in this segment of the proceeding entails the creation of a new benefit stream for the original grant amount. The Department recognizes that this practice may lead to an increase (or decrease) in the subsidy rate calculated. Thus, applying an 18-year allocation period in this review to nonrecurring subsidies which had been calculated based on 15-year periods in prior segments of the proceeding could possibly lead to a larger total countervailable benefit for the subsidies spun off with the creation of UES and rejoining BS plc's subsidies with BS plc's acquisition of GKN's shares of UES. However, because the *UK Lead Bar* investigation and subsequent reviews of the order up to the instant review are currently subject to judicial review, no actual countervailing duties have been collected from any of the review periods in which the 15-year allocation period was applied. Thus, the issue of whether there would be an over-countervailing or double-counting of the subsidy is moot because the change to 18-years can be dealt with in the pending litigation.

Comment 5: Respondent contends that the Department's ''gamma methodology'' understates the portion of subsidies which should have been considered repaid to the government in connection with the privatization of BS plc in 1988 because of the assumption that a subsidy given in one year is considered non-subsidy capital in the following year. Respondent claims that according to the Department's methodology, only a portion of the capital of unprofitable, heavily subsidized companies would be attributed to subsidies. As an example, respondent states that even though BSC allegedly received subsidies from 1977/1978 to 1985/1986 of more than six times its total capital at fiscal year end 1978, the Department attributed only 46 percent of BSC's capital to subsidies at the end of 1987/1988.

Respondent proposes an alternative methodology for calculating the gamma based on the idea that a firm's capital is comprised of subsidy funds and non-subsidy funds at the time of sale. In the alternative methodology, the proportion of the firm's capital which would be attributable to subsidies at the time of the firm's sale is represented by the ratio of all subsidy capital to all capital from all sources during the time period in which subsidies were examined.

According to petitioner, the only appropriate change to the gamma would be its elimination, but if the Department continues to assume that a portion of the purchase price of a subsidized state-owned company represents the repayment of subsidies, the Department's existing gamma methodology is the most reasonable valuation of repayment.

According to petitioner, respondent's argument that the Department's methodology distorts the percentage of capital attributable to subsidies is misplaced, because the administrative practice of disregarding the effects of subsidies on financial performance in creditworthiness and equityworthiness analysis requires the assumption that a subsidy given in one year becomes non-subsidy capital in the following year. Petitioner cites *Saarstahl AG* v. *United States* 78 F.3d 1539, 1543 (Fed. Cir. 1996), North American Free Trade Agreement Implementation Act, S. Rep. No. 189, 103d Cong. 1st Sess. 4 (1993), and the *Proposed Regulations* to demonstrate that Congress and the courts have long discouraged the practice of determining the actual impact of subsidies on the company's capital structure.

Petitioner argues that even if the Department's methodology resulted in the respondent's alleged distortions, respondent's alternative methodology would result in greater errors, because it provides an inaccurate measure of how subsidies affect capital formation by ignoring the company's ability to fund improvements from positive cash flow or profitability. Finally, petitioner asserts that respondent's methodology does not account for inflation, which would cause early capital investments to be worth more than later ones in constant currency terms. According to petitioner, the Department's existing gamma methodology avoids the problem of inflation by comparing subsidies to capital only in the year of receipt.

Department's Position: We disagree with respondent's proposal, which would require the Department to analyze the effects of subsidies on a company's financial structure. Such an exercise is not only highly speculative, it is also inconsistent with the Department's statutory mandate. See GIA, 58 FR at 37260; see also *British Steel,* 879 F. Supp. at 1298. Respondent's assumption that the opening balance of capital represents unsubsidized capital would not be realistic for companies which have received subsidies from the time they were established. In addition, it is not clear what ''non-subsidy capital infusions'' represent, particularly with respect to unequityworthy government-owned companies. We also agree with petitioner that respondent's methodology is inaccurate to the extent that it does not appear to include profits as a significant non-subsidy source of funds.

Comment 6: Respondent notes that BS plc acquired GKN's shares of UES on March 21, 1995 and that the Department based the *Preliminary Results* on that event. Nevertheless, it is not apparent how entries involving merchandise exported from the United Kingdom prior to the March 21, 1995 acquisition could have been affected by the transaction, according to respondent.

Department's Position: We agree. Pursuant to the change in ownership section of the Act (771(5)(F)), we have taken the unique circumstances of the change in ownership of United

Engineering Steels into consideration for purposes of determining the net subsidies attributable to the merchandise subject to this review period. Accordingly, we are assigning two net subsidy rates for the POR: one for UES which will apply to exports prior to March 21, 1995, and one for BS plc/BSES/UES which will apply to exports on or after March 21, 1995.

Final Results of Review

In accordance with 19 CFR 355.22(c)(7)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As explained in the ''Change in Ownership'' section of the notice, above, we have calculated two net subsidy rates for the merchandise subject to this period of review: one for UES which will apply for that part of the review period prior to the change in ownership of UES, and one for BS plc/BSES/UES which will apply for that part of the review period on and after the change in ownership when UES became a consolidated subsidiary of BS plc. Thus, the net subsidy for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995, and the net subsidy for British Steel plc/British Steel Engineering Steels/United Engineering Steels (BS plc/BSES/UES) is 7.35 percent *ad valorem* for the period March 21, 1995 through December 31, 1995.

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

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377 (November 14, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

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

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

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Advisory Panel and Standing and Special Mackerel Scientific and Statistical Committee (SSC).

DATES: The meetings are scheduled as follows: Mackerel Advisory Panel (AP) October 30, 1997, 8:00 a.m. - 12:00 noon; SSC October 29, 1997, 8:00 a.m. - 12:00 noon.

ADDRESSES: The meetings will be held at the at the Crowne Plaza Tampa Westshore, 700 North Westshore Boulevard, Tampa, Florida 33609; telephone 813–289–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815, extension 228.

SUPPLEMENTARY INFORMATION: The SSC and AP will be convened to review Draft Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Draft Amendment 9 includes:

1. Possible changes to the fishing year for Gulf group king mackerel - currently July 1.

2. Possible prohibitions of sale of mackerel caught under the recreational allocation.

3. Provisions for mandatory reporting requirements for commercial and for-hire vessels.

4. Reallocations of total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone (Florida east coast and Florida west coast) - currently 50/50 split.

5. Reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors - currently 68 percent and 32 percent, respectively.