specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review (''POR'') to the total value of subject merchandise entered during the POR. Mukand did not provide entered value for these export price sales. In order to estimate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. This importer-specific rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Mukand will be 5.53 percent; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 12.45 percent established in the final determination of sales at less than fair value (59 FR 66915, December 28, 1994).

These deposit requirements will 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 353.26 to file a certificate regarding the reimbursement of antidumping 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7351 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[C–508–605]

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

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

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

SUMMARY: On September 10, 1997, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1995 through December 31, 1995 (62 FR 47645). The Department of Commerce 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: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. 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 Rotem-Amfert Negev Ltd. (Rotem). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on September 10, 1997, (*Preliminary Results*), the following events have occurred. Pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, we extended the final results to no later than March 9, 1998. *See Industrial Phosphoric Acid From Israel; Extension of Time Limit for Countervailing Duty Administrative Review*, 63 FR 1441 (January 9, 1998). On October 10, 1997, a case brief was submitted by the Government of Israel (GOI) and Rotem, producer/exporter of industrial phosphoric acid (IPA) to the United States during the review period (respondents). On October 17, 1997, a rebuttal brief was submitted by counsel for the FMC Corporation and Albright & Wilson Americas Inc. (petitioners). On January 26, 1998, we provided petitioners and respondents the opportunity to address the grant calculation methodology followed in the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997) (*Wire Rod from Venezuela*). That methodology has direct relevance in this proceeding and the final determination in that case was published after the preliminary results in this proceeding were completed. Accordingly, on February 3, 1998, comments were submitted by respondents and petitioners. On February 6, 1996, rebuttal comments were submitted by respondents and petitioners.

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 of Commerce (the Department) is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff*

Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the GOI and Rotem. 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, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies (the POR) is calendar year 1995.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (February 9, 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (*GIA*). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each nonrecurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). For additional discussion of this issue, see *Department's Position* on ''*Comment 6:* Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should be Allocated Over Rotem's Actual AUL'', below.

For non-recurring subsidies received during the POR, Rotem submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding depreciation charges for ten years, and dividing these charges by the sum of average gross book value of depreciable fixed assets for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an AUL of 24 years, and we have used this calculated figure for the allocation period for non-recurring subsidies which have not been previously allocated.

Privatization

(I) Background

Israeli Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993 and 1994. In this administrative review, the GOI and Rotem reported that additional shares of ICL were sold in 1995. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Reviews; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) (*1994 Final Results*).

In this review and prior reviews of this order, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in the 1992 and 1993 reviews, we calculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies. In the 1994 review, respondents reported that the GOI sold less than 0.5 percent of its shares in ICL. Because this percentage of shares privatized was so small, the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Therefore, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1995 partial privatization of ICL during the POR because 24.9 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *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); and *Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288 (June 14, 1996).

(II) Modification of the Privatization Calculation Methodology

As noted above, in the 1992 and 1993 administrative reviews of this order, we determined that the partial privatization of ICL, Rotem's parent company, represented partial privatization of Rotem. Therefore, in each of those reviews, we calculated the portion of the purchase price paid for ICL's shares that was attributable to the repayment of prior subsidies. Under this methodology, to determine the amount of subsidies that are extinguished due to privatization, we calculate the net present value (NPV) of the remaining allocable subsidies at the time of privatization. For example, if the privatization took place in 1993, the NPV calculation for that transaction would be the remaining benefit from all unamortized subsidies in 1993. However, in past cases involving privatization or changes in ownership we recalculated the NPV in subsequent review periods by including only the remaining benefit from unamortized subsidies affecting that subsequent review period. For example, if we calculated the NPV for a privatization that took place in 1993, in the next administrative review, 1994, we would recalculate the NPV using only those subsidies still allocable to 1994, *i.e.*, the remaining unamortized subsidies still benefitting the company in 1994.

We revisited that methodology in the 1995 countervailing duty administrative review of lead and bismuth carbon steel products from the United Kingdom. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997). In that review, we determined that it is

not appropriate to modify the calculation of the NPV of the subsidies existing at the time of sale. The change in ownership of a company is a fixed event at a particular point in time. Thus, the percentage of subsidies that may be extinguished due to privatization or reallocated due to a change in ownership in a given year is also fixed at that same point in time and does not change. Therefore, the pass-through percentage will no longer be altered once it has initially been determined in an investigation or administrative review. We have modified the ICL privatization calculations in this administrative review to reflect the change outlined above.

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

1. *Encouragement of Capital Investments Law (ECIL) Grants.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. In particular, we followed the methodology set forth in *Wire Rod from Venezuela* to calculate the benefit from these non-recurring grants. Under this methodology, we converted the grant amount into U.S. dollars on the date of receipt of the grant. The benefit in the POR was then calculated using our standard grant allocation methodology. For a detailed discussion of the changes to the calculation methodology for this program, *see* the *Department's Position* on *''Comment 9: Inflation Adjustment for Non-Recurring Grants,''* below; *see also* the Calculation Memorandum to the File, dated March 9, 1998 (public version on file in the Central Records Unit of the Department of Commerce) (''Calculation Memo''). Accordingly, the net subsidies for this program have changed and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	8.85

2. *Long-term Industrial Development Loans.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	<0.005

3. *Encouragement of Industrial Research and Development Grants (EIRD).* In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	0.08

II. Programs Found To Be Not Used

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

A. Reduced Tax Rates under ECIL;

B. ECIL Section 24 loans;

C. Dividends and Interest Tax Benefits under Section 46 of the ECIL; and

D. ECIL Preferential Accelerated Depreciation.

E. Exchange Rate Risk Insurance Scheme.

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

Analysis of Comments

Comment 1: Denominator for ECIL Grants Allocable to IPA, MKP and Fertilizers

Respondents argue that the denominator used to calculate the *ad valorem* rate from ECIL grants allocable to IPA, monopotassium phosphate (MKP) and fertilizers is understated, because it does not include Rotem's direct sales of green acid, which is also a fertilizer. The correct denominator for these ECIL benefits should be taken from page two of Rotem's May 27, 1997, questionnaire response, and should include Rotem's sales of fertilizers, IPA, and MKP. The fertilizer sales amount includes direct sales of green acid.

Petitioners contend that the Department used the correct denominator in the benefit calculations. According to petitioners, the Department's preliminary calculation reflects commercial realities because green acid is sold and accounted for as green acid and not as fertilizer.

Department's Position. We agree with respondents. In the preliminary results, we incorrectly excluded direct sales of green acid from the *ad valorem* rate calculation for ECIL grants allocable to IPA, MKP and fertilizers. The funding for the grant projects in question, projects 9, 11, and 15, was for the expansion and debottlenecking of Rotem's green acid facilities. In the preliminary results, we determined that it was appropriate to attribute ECIL grants tied to a particular unit over the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. We also noted that green acid produced at plant 30 and 31 can be incorporated into the production of all of the company's downstream products. Therefore, in these final results, we have included sales of fertilizers, including direct sales of green acid, as well as sales of IPA and MKP, in calculating the *ad valorem* rate from ECIL grants 9, 11, and 15 .

Comment 2: Attribution of ECIL Grants to Inputs Used in the Production of IPA

Respondents contend that the Department should return to the attribution approach followed in the investigation of this case and in the five subsequent administrative reviews. According to respondents, departing from a long-standing methodology is unwarranted, in particular, as respondents claim here, when the earlier approach was more accurate. Under that earlier approach, ECIL grants to inputs, such as phosphate rock and green acid, were apportioned to IPA according to the consumption of each input product in IPA production. Respondents state that in the preliminary results, the Department incorrectly attributed these ECIL grants to the direct sales of the inputs and the sales of all downstream products that potentially incorporate the input.

Respondents assert that it is the Department's practice not to disturb established methodologies in the absence of any new evidence or without new and compelling arguments. For example, respondents note that in the certain steel investigations, the Department rejected an argument made

by parties in that case to change the long-standing grant amortization methodology, stating that ''before a change is made in established policy there should be evidence to show that the change is warranted.'' *GIA*, 58 FR at 37229. Further, in a 1996 antidumping proceeding, the Department refused to alter the existing model match methodology ''unless compelling reasons exist'' to do so. *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 37177, 35181 (July 5, 1996) *(Strip from ROK)*. Respondents also state that the U.S. Court of International Trade (CIT) has found that changes to long-standing methodologies, even if those changes result in greater accuracy, are not warranted because these methodologies become ''the law of these proceedings,'' and ''[p]rinciples of fairness prevent Commerce from changing its methodology.'' *Shikoko Chemicals Corp.* v. *United States*, 795 F. Supp. 417, 421–22 (CIT 1992) *(Shikoko)*.

Respondents acknowledge that the CIT has permitted the Department to depart from a verified methodology developed in an investigation if a ''different methodology permits a more accurate assessment of current margins.'' *Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 425 (CIT 1993) (*Hussey*). In this case, however, respondents contend that the Department acted contrary to law by opting for a methodology that provides a less accurate assessment than the one followed in all but the last two proceedings. For example, in *British Steel II*, 929 F. Supp. at 426, the CIT stated that ''Commerce is required to allocate subsidies over products that have benefitted from the subsidies * * * in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies.'' Moreover, respondents note that the *Hussey* Court required the Department to implement ''the basic purpose of the statute—determining current margins as accurately as possible.'' *Hussey*, 834 F. Supp. at 425, *citing Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

In light of this precedent, respondents argue that the Department should return to the original methodology, which allocates the grants as accurately as possible to the subject merchandise. Any other result is less accurate, contrary to law and punitive.

Petitioners argue that the Department has reasonably determined that this new methodology more precisely allocates the subsidy benefits. The change in the methodology, petitioners state, was clearly within the Department's legal authority. According to petitioners, having made this determination, the Department should not return to the discarded methodology advocated by respondents.

Department's Position. Contrary to respondents' assertions, the attribution approach for ECIL subsidies adopted in this administrative review, which departs from the approach followed until the final results in the 1993 administrative review of this case (61 FR 2884), accurately measures the benefit conferred from the countervailable ECIL grants and is consistent with the countervailing duty statute. Moreover, this approach is consistent with the Department's attribution principles concerning subsidies to inputs where the same corporate entity produces the inputs and the subject merchandise, as well as other downstream products.

As a preliminary matter, we disagree with respondents' contention that the Department is irrevocably tied to long-standing methodologies merely because those methodologies have become accepted practice in a proceeding. Under respondents' logic, the Department could never change a methodology it had applied in the past. This conclusion is not supported by the countervailing duty statute, or administrative and legal precedent. Rather, administrative precedent is rarely binding because agencies must be given the opportunity to develop agency law on a case-by-case basis over time; otherwise they would be hindered in clarifying unsettled law and from adapting their practice to new interpretations and factual situations. Not being able to do so would force them to maintain positions that were no longer relevant. *See NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 265–66 (1975) (''The use by an administrative agency of the evolutionary approach is particularly fitting.''). In fact, administrative agencies are given broad leeway to depart from prior administrative precedent, provided that such departure is adequately explained. *See Ipsco, Inc.* v. *United States*, 678 F. Supp. 633, 639 (CIT 1988) (agency needn't explain its rationale at length, as long as the ''path of ITA's reasoning is discernible from the record'').

Respondents' reliance on *Shikoku* for the proposition that changes in long-standing methodologies are not warranted is also not persuasive. Aside from having little precedential value, the facts in *Shikoku* are clearly distinguishable from those in this case. In *Shikoku*, the court found that the plaintiff, respondent Shikoku, had reasonably relied upon the Department's continued application of a case-specific antidumping calculation method applied in four previous reviews, and that by so doing, Shikoku was attempting to comply with U.S. antidumping law. However, the Department's departure from its past methodology resulted in a continuation of the antidumping order, which otherwise would have been revoked. This resulted in substantial harm to Shikoku. By contrast, in this case, Rotem has not demonstrated reliance upon the Department's prior methodology because such reliance could only be evidenced by refusing to accept subsidies.

Respondents also incorrectly imply that the Department changed its methodology without considering whether that change was warranted on the basis of new information or changes in Department policy. In fact, in the 1994 administrative review of this case we conformed our attribution approach to the methodology articulated in the countervailing duty investigation of pasta from Italy. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30304–305 (June 14, 1996) (*Pasta From Italy*). In *Pasta From Italy*, the Department reasoned that where subsidies for semolina production, a primary input into pasta, were provided to the same corporate entity that milled semolina and produced pasta, the production was sufficiently integrated that subsidies bestowed upon the production of semolina, which is an input into pasta, would necessarily flow down to the production of subject merchandise. In that circumstance, it was deemed unnecessary to conduct an upstream subsidy investigation to examine whether a competitive benefit had been bestowed on subject merchandise by the semolina subsidization. Therefore, the Department attributed subsidies provided to semolina to the company's total sales of pasta and semolina, including sales of the subject merchandise. The Department stated that ''for those companies where the mill is not incorporated separately from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculation.'' *Pasta From Italy*, 62 FR at 30289.

Respondents' complaint that the Department acted contrary to law by adopting a methodology that is not precise and accurate is also without merit. As a preliminary matter, the Department has broad discretion in

adopting specific methods to identify and value subsidies, the only requirement being that the method be reasonable and in accord with the law. *See Inland Steel Industries, Inc.* v. *United States*, Slip-Op. 97–71 (CIT 1997) (''so long as Commerce's methodology is a reasonable means to carry out the statute, it needn't be the most precise method''); *Chevron U.S.A.* v. *United States*, 467 U.S. 837, 844 (1984).

The attribution approach adopted in this review recognizes that the ECIL subsidies provided to the Arad, Zin and Oron mines, as well as to Rotem's green acid facilities, benefitted not only the inputs for which the subsidies were received, but also production of other downstream products, including IPA. Rotem officials confirmed this at verification, stating that ''every [phosphate] rock can be used in every product,'' and green acid from both green acid facilities could be used in all downstream products. *See* the August 22, 1997, Memorandum to Barbara E. Tillman, Verification of Rotem's Questionnaire Responses (public version on file in the Central Records Unit, Room B–099) (*Rotem VR*). Thus, by allocating the ECIL grants to inputs over sales of that input and sales of downstream products incorporating that input, the Department more accurately assessed the benefit attributable to IPA from the government's subsidization of inputs. The subsidized inputs (phosphate rock and green acid) benefit all of Rotem's downstream products. Moreover, as we established in prior reviews, phosphate rock inputs have in fact been incorporated into Rotem's downstream products, including IPA. Therefore, the Department appropriately attributed ECIL subsidies to inputs over Rotem's direct sales of these inputs and the sales of all downstream products, because those end products incorporate the inputs. Again, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Otherwise, the rate calculated will either over or understate the subsidy attributable to subject merchandise. The attribution method adopted in the preliminary results more accurately captures the apples-to-apples comparison outlined above. Accordingly, we have not altered that approach in these final results.

Comment 3: ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR

According to respondents, the Department exceeded its statutory authority when it attributed to IPA subsidies under ECIL projects 1, 3, 4, 7, and 15, because Department officials verified that inputs from the facilities that benefitted from these grants were not used in the production of IPA during the POR. Under such circumstances, respondents state, the Department's longstanding practice mandates that if a subsidy is not ''tied'' to the subject merchandise and the equipment or plant procured with the subsidy are not used to produce the subject merchandise, then the subsidy is not countervailable and cannot be attributable to the subject merchandise. Respondents state that the 1997 proposed rules reaffirm this approach, stating that ''subsidies should be attributed, to the extent possible, to those products for which costs are reduced (or revenues increased),'' and that ''if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.'' *1997 Proposed Rules*, 62 FR at 8845, 8855.

According to respondents, the fact that the input products could ''potentially'' be incorporated in all products produced by Rotem or that they ''may'' be incorporated into IPA, the Department's rationale for countervailing these grants, is not relevant. Respondents contend that the *1997 Proposed Rules* do not speak of ''potential'' input products, only ''actual'' inputs and that an input that merely ''could'' be an input does not fall within this provision. Similarly, respondents note that in *British Steel II*, the CIT observed that the Department must, after determining which products benefitted from countervailable subsidies, ''allocate countervailing duties over such products in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies.'' 929 F. Supp. at 453. Thus, respondents state that the Department should find no benefit from these subsidies in 1995.

According to petitioners, the Department acted correctly in calculating the benefit from ECIL projects to facilities that provided no inputs into the production of IPA during the POR (projects 1, 3, 4, 7, and 15). Petitioners state that the issue with respect to these indirect benefits is not whether the particular inputs were used to produce IPA during a limited time period, such as the POR, but whether they could have been used, or in fact have been used in the past for that purpose. Petitioners further argue that by enhancing the facilities that produce inputs necessary for IPA production, these ECIL grants indirectly benefitted IPA, because to the extent that inputs are fungible, it is logical to consider enhanced production capability as an indirect benefit to IPA. Such a determination is, petitioners state, consistent with the Department's approach to subsidies to input products provided to a single corporate entity.

Department's Position. Respondents' argument that ECIL subsidies under projects 1, 3, 4, 7, and 15 are ''tied'' to products other than the subject merchandise, and that these subsidies should therefore not be attributed to Rotem's sales of subject merchandise, is incorrect. In this review, we have correctly determined that, regardless of whether any of the inputs (phosphate rock and green acid) receiving subsidies were actually fed into IPA production during the POR, all of these products are inputs into IPA. We have thus departed from our past practice of attempting to determine the precise amount of inputs that were actually used in IPA production from each ECIL project during the relevant period and then apportioning the subsidies provided to those inputs accordingly. Consequently, we have fully brought our method of attributing ECIL grants into harmony with *Pasta From Italy*.

The record in this case establishes that ECIL grants received by Rotem for Projects 1, 3, 4, and 7 were for Rotem's Arad, Zin and Oron mines, and grants received for Project 15 were for Rotem's new green acid facility. The mines and green acid facility are not separately incorporated entities. The Arad, Zin and Oron mines each produce phosphate rock, the main input of IPA and Rotem's other downstream products. Green acid is also an input into the production of IPA and other end products produced by Rotem. However, respondents attempt to argue that because inputs benefiting from Projects 1, 3, 4, 7, and 15 have not been used in the production of IPA during the POR, these subsidies are 'tied' to products other than the subject merchandise.

Our position on the tying of benefits is that ''a subsidy is ''tied'' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.'' *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium*, 47

FR 39304 (September 7, 1982).[1] When we determine that a benefit is ''tied'' to a product, there is an implicit assumption that the benefit is intended to affect only that product. *See Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (January 9, 1987). In this case, however, respondents have failed to provide any evidence on the record demonstrating that ECIL grants 1, 3, 4, 7, and 15 were intended to affect only the inputs that received the subsidy, and only the end products that incorporated these inputs only during the POR. Rather, ECIL subsidies are provided to inputs that are also incorporated into other downstream products produced by the same integrated company. Therefore, to the extent that ECIL grants are tied to phosphate rock and green acid, they are also tied to the sales of all other merchandise incorporating those inputs.

It is also important to note that attribution is established at the point the subsidy is bestowed, not the point at which it is used. Otherwise, the subsidy is apportioned on a pro-rata basis in each administrative review. Such a pro-rata apportionment contravenes our policy of not examining the use of the subsidy to determine whether it is countervailable. 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*, 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). Such an interpretation is also supported by the statute, as amended by the URAA. Specifically, § 771(5)(C) of the Act states that the Department ''is not required to consider the effect of the subsidy in determining whether a subsidy exists.'' The SAA further elaborates, noting that the ''definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.'' SAA at 256; H.R. Rep. No. 826, 103d Cong., 2d Sess., vol. 1 at 926 (1994) (SAA). As such, adoption of the attribution approach set out in *Pasta From Italy* was reasonable because Rotem is also an integrated producer, as are the pasta producers who own semolina production facilities. In such cases, subsidies to inputs will be attributed to the inputs and the downstream products that incorporate the inputs.

Finally, we note that for subsidies ''tied'' to non-subject merchandise, *i.e.*, products that could not be inputs into IPA, such as grants tied to fertilizers under Project 13, we did not include that ECIL grant in calculating the subsidy rate. For the reasons set forth above, for the purposes of these final results, the Department will continue to allocate ECIL grants from Projects 1, 3, 4 and 7, and 15 over the sales of the inputs (phosphate rock and green acid) and the downstream products made by Rotem during the POR (IPA, MKP, and fertilizers).

Comment 4: ECIL Grants to Project 15

According to respondents, the input product produced by the Rotem II facility, the plant that benefited from ECIL grant project 15, was never intended as an input into IPA. Respondents claim that the Department countervailed grants from project 15 on the basis of statements by Rotem officials at verification that green acid from the plant could chemically be used for IPA. According to respondents, however, the relevant fact is that it is not economical to use this green acid in the production of IPA. Therefore, respondents state, the Department should find that grants to project 15 did not benefit IPA during the POR.

Respondents further note that because the plant that benefited from project 15 did not start operations until 1996, no benefit could possibly have accrued to IPA in 1995 from these grants. This is especially the case, since the grants to this facility were not intended to be used in IPA production. Rather, the inputs were to be directed to another product, not yet produced in 1995.

According to petitioners, respondents' argument that project 15 grants should not be countervailed because the facilities that benefited from the grants were not in operation in 1995 is irrelevant. Petitioners state that it is the potential use of the input that is important, and not its actual use.

Department's Position. We disagree with respondents. Rotem II produces green acid, which is an input into IPA as well as other downstream products produced by Rotem. Respondents do not dispute that green acid from Rotem II can be used in the production of all downstream products, including the subject merchandise. In fact, respondents confirmed that green acid from Rotem II could be incorporated into IPA and Rotem's other end products. *See Rotem VR*. Therefore, as explained in detail under in the *Department's Position* on ''*Comment 3*, ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR,'' above, consistent with our policy concerning corporate entities that produce both the inputs and the subject merchandise, we appropriately attributed the grants provided to Rotem II to the direct sales of green acid and all downstream products that can be produced from green acid. Such an attribution approach is consistent with the countervailing duty statute, and is in accordance with the attribution approach followed in *Pasta From Italy*.

Respondents' argument that the Rotem II facility was not operational in 1995 is also without merit. In light of our policy concerning integrated producers, this fact is irrelevant. Under the countervailing duty statute, the Department will find a countervailable subsidy when a financial contribution has been provided and that financial contribution has conferred a benefit upon the recipient. While respondents may assert that green acid from Rotem II was directed to another product not yet produced, there is no information on the record of this proceeding indicating that green acid from Rotem II cannot be an input into the production of IPA, or that the ECIL grants to that facility are ''tied'' to the production of specific downstream products. Therefore, we have appropriately attributed these grants to Rotem's sales of green acid and to the sales of the company's downstream products that incorporate green acid.

Comment 5: *Rate of Inflation and Interest Rate To Be Used for ECIL Grant Calculations for 1994 and 1995*

Respondents contend that the interest rate used by the Department to calculate the benefit during the POR from grants received in 1994 and 1995 under ECIL project 15 was incorrect. The interest rate in 1995 was calculated by adding the rate of inflation in 1994 to the real interest on CPI-indexed bonds in 1995. According to respondents, the rate of

[1] This position is also reflected in the Department's 1989 *Proposed Rules*, which define tied benefits as ''a benefit bestowed specifically to promote the production of a particular product.'' *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Rules*).

inflation in 1995, not 1994 should have been added to that bond rate.

Respondents further argue that the Department selected an incorrect inflation rate for 1995 from the Bank of Israel (BOI) Annual Report. The Department has consistently used the average change in the rate of inflation in its non-recurring grant benefit calculations. In 1995, this figure was 10.0 percent. According to respondents, this is not the actual rate of inflation during the year but the average change from the prior year. The actual change during the period, respondents state, was 8.1 percent, as noted in the BOI annual report.

Petitioners contend that the Department has consistently used the average CPI change for the year in calculating the interest rate to be used in the ECIL benefit calculations. Therefore, the Department should not use a different CPI statistic in this administrative review, merely because the new rate would be helpful to Rotem. Petitioners point out that in 1994, the CPI change during the period was 14.5 percent, while the average change was 12.3 percent. In that review, respondents did not argue that the Department modify the CPI.

Department's Position. As explained in the *Department's Position* on ''*Comment 9: Inflation Adjustment for Non-Recurring Grants,*'' below, we have modified the calculation methodology for ECIL grants. The new approach does not require the use of NIS linked interest rates or the Israeli CPI index. Therefore, this issue is now moot.

Comment 6: Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should Be Allocated Over Rotem's Actual AUL

Respondents argue that the Department correctly allocated non-recurring grants received by Rotem over the company's average useful life of assets (AUL) of 24 years. However, respondents note that the Department erred in not applying that allocation period to all of Rotem's non-recurring grants, including those received prior to the POR and which had been previously allocated according to the U.S. Internal Revenue Service depreciation schedules. According to respondents, the benefit from these earlier grants is, therefore, overstated, and will continue to be overstated if the allocation is not changed to reflect Rotem's AUL. Respondents state this correction can be achieved by taking the remaining balance in 1995 of previously allocated grants and reallocating that amount over the number of years left in a 24-year benefit stream that begins in the year the grant was received. This approach avoids the possibility of over-countervailing or under-countervailing the subsidy, because the entire benefit will be countervailed over the 24 year period. Respondents further note that if the Department found it reasonable to revise the ECIL grant calculations prior to the POR with respect to the inflation adjustment, it should also be reasonable and practicable to do so for the AUL correction.

Petitioners contend that the CIT's decision in *British Steel* does not require the Department to use a company-specific allocation period for all subsidies. Rather, petitioners state that the Department decided not to recalculate the AUL for subsidies received prior to the POR because such a change could distort the allocation of the actual benefits is fair and within the mandate of *British Steel.* Petitioners further argue that nothing in *British Steel* or in any other decision requires the Department to accept respondents' proposed method for recalculating the allocation period for earlier grants. In fact, petitioners note that the Department did not disturb previously established allocation periods in administrative reviews of other countervailing duty orders. *See, e.g., Certain Carbon Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16551, 16552 (April 7, 1997), and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549, 16550 (April 7, 1997). Accordingly, petitioners argue that the Department's allocation of prior subsidies should remain unchanged.

Department's Position. Petitioners correctly note that in prior cases we have not disturbed allocation periods established in prior proceedings. This approach is reasonable and, as noted by petitioners, is not in conflict with the CIT's decision in *British Steel,* which does not require the Department to allocate non-recurring subsidies over a company's AUL. Furthermore, maintaining established allocation periods is both fair and practical, and modifying the allocation stream for previously allocated subsidies can produce unfair results. For example, it is conceivable that a company-specific AUL would yield a shorter allocation period. In that case, it is possible that the subsidy may be under-countervailed, in particular for subsidies that have reached the point in the allocation stream beyond the total number of years in the company-specific AUL. For these reasons, Rotem's 24-year company-specific AUL will only be adopted for ECIL grants that have not been previously allocated.

Comment 7: Grants Not Previously Considered in Subsidy Calculations Should Be Allocated Over Rotem's Actual AUL

According to respondents, the Department has determined to countervail certain grants in this administrative review that have not been countervailed in prior reviews. Among these are grants received prior to the POR. For these grants, respondents argue that the Department should allocate these grants over Rotem's company-specific AUL of 24 years, because these grants have not already been allocated in past administrative reviews.

Department's Position. Grants from ECIL project 15, received in 1994, were not countervailed in the 1994 administrative review and therefore have not previously been allocated. Therefore, we concur with respondents that it is appropriate to allocate these grants over Rotem's company-specific 24-year allocation period. However, we disagree with respondents that there are ''numerous grants countervailed this time that have not been countervailed in the past.'' In the 1994 administrative review, the Department countervailed grants from projects that benefitted inputs that were not used in the production of IPA during 1994. Moreover, in past administrative reviews, ECIL grant projects to each of Rotem's phosphate rock and green acid facilities had been countervailed. This includes grants to the Arad and Zin mines, which Rotem claims in this review did not benefit production of IPA. Accordingly, the allocation period for these grants will not change in these final results.

Comment 8: The Denominator for Grants to Projects Not Tied Directly to IPA

Respondents contend that the Department should not deviate from the practice followed in the 1994 review of attributing grants not tied to IPA over Rotem's total sales. This approach was modified in the preliminary results of this review so that grants to Rotem's green acid facilities were attributed to Rotem's total sales minus direct sales of phosphate rock. (Grants tied to Rotem's phosphate rock facilities were attributed to the company's total sales.) According to respondents, this change is not justified by the Department's regulations.

Respondents state that the rationale for this change is found in the tying provision of the *1997 Proposed Rules.*

However, respondents note that these rules, while they provide guidance, are not controlling in this review and are therefore not applicable. Respondents further argue that this provision should only be invoked for grants to an input that is essential to the production of the downstream product. This is not the case with green acid, which, while it has been an input into IPA, is not required for IPA production.

Respondents further claim that under section 355.47 of the *1989 Proposed Rules*, the Department is directed to attribute subsidies either to total sales or to products to which the benefit is tied. Therefore, if a grant is tied to several products, the Department will allocate that grant over the sales of only those products. However, respondents contend that where the subsidy is given to an input into the subject merchandise, rather than directly to the subject merchandise or several products including the merchandise under investigation, the denominator should be the company's total sales. Therefore, respondents argue that in the final results, the Department should allocate all grants not tied directly to the subject merchandise over Rotem's total sales.

Petitioners state that the Department is permitted to change its methodologies and that the approach followed in this review is a refinement of the methodology adopted in the 1994 proceeding. The Department has determined that the approach with respect to ECIL subsidies to Rotem's green acid facilities is a more precise measurement of the benefit bestowed. According to petitioners, the Department reasonably determined that because green acid is not an input into phosphate rock, sales of phosphate rock cannot benefit from a subsidy provided to Rotem's green acid facilities. Therefore, petitioners argue, the Department's modification is a logical and reasonable refinement of the new ''single-corporate-entity-input'' methodology.

Department's Position. Our determination that ECIL subsidies provided to Rotem's green acid facilities are not attributable to direct sales of phosphate rock is, as petitioners note, a logical refinement of the attribution approach followed in the 1994 administrative review. During the course of this proceeding, we learned that Rotem's total sales statistics include direct sales of phosphate rock and direct sales of green acid. These are the principal inputs for Rotem's end products. Under the approach first adopted in the 1994 final results of this order, we determined that subsidies to inputs are appropriately attributable to the sales of the input and the sales of downstream products that can incorporate that input. Therefore, we excluded Rotem's direct sales of phosphate rock in calculating the subsidy rate from ECIL grants for the green acid facilities. This is logical given that phosphate rock is an input into green acid, but green acid is only a downstream product of phosphate rock, and, therefore, this approach accurately captures the universe of sales to which the benefit applies. Subsidies to green acid production cannot benefit the production of phosphate rock, and attributing such subsidies to phosphate rock will understate the subsidy to green acid and the end products that incorporate green acid.

Respondents' contention that the provision with respect to inputs in the *1997 Proposed Rules* should only be invoked for grants to an input that is ''essential to the production of the downstream product'' is incorrect. The plain language of the proposed rules states that ''a subsidy which is tied to the input product will be attributed to the input and downstream products produced by that corporation.'' *See 1997 Proposed Rules*, § 351.524(b)(5)(ii), 62 FR at 8855. Nothing in the 1997 proposed rules speaks of inputs that are ''essential to the production of the downstream product.'' Nor do respondents provide any justification for the rationale that subsidies tied to inputs that are not ''essential to the production of the downstream product,'' be attributed to a company's total production, including upstream products. Rather, as the plain language of the proposed rules suggests, such subsidies can *only* be attributed to production of the input and the downstream products. Attributing such subsidies to upstream products would, as noted above, understate the subsidy and attribute the subsidy to products that did not benefit from the subsidy.

Respondents' reliance on the *1989 Proposed Rules* for the proposition that the Department is directed to attribute subsidies either by total sales or by products to which the benefit is tied is misguided. As a preliminary matter, we fail to see how this argument reconciles with respondents' earlier claim that subsidies to Rotem's green acid facilities provide competitive benefits only to green acid and to downstream products, but only according to the exact proportion that they were used to produce the downstream products. If this were the case, respondents have failed to explain how these same subsidies to green acid may also benefit a firm's total production, including upstream production. Thus, respondents are incorrect on both accounts. As outlined above, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Accordingly, this approach will remain unchanged in these final results.

Comment 9: Inflation Adjustment for Non-Recurring Grants

Respondents argue that the inflation adjustment used by the Department in the preliminary results to calculate the benefit from non-recurring ECIL grants significantly overstates the benefit from these grants. According to respondents, the Department should ''dollarize'' the grants, which would have the same effect as indexing the grants for inflation. This approach would comport with Rotem's actual business practices because most of the company's financing is in U.S. dollars, and the company's financial statements are expressed in U.S. dollars. Respondents further claim that converting the grant amount into dollars would be consistent with the approach followed in *Wire Rod from Venezuela.* Respondents suggest that the Department use Rotem's long-term cost of U.S. dollar-denominated borrowing in 1995 to calculate the benefit from the ECIL grants converted into dollars.

Respondents state that if the Department chooses not to dollarize, then it should index the principal grant amounts and use a real interest rate in the benefit calculation. In the preliminary results, respondents argue, the Department incorrectly used a nominal interest rate. This approach double counts inflation, once by adjusting the principal by the inflation index, and again by accounting for inflation in the calculation of the interest component of the benefit. Short of making either of these adjustments, respondents contend the Department should return to the original methodology followed in the 1994 administrative review.

According to petitioners, the Department correctly followed the methodology adopted for the preliminary determination in *Wire Rod from Venezuela.* Petitioners also reject respondents' argument that because inflation was not as high as in Venezuela, the Department should return to its original methodology to account for inflation if it does not accept respondents' proposed methodology. Petitioners note that respondents' own analysis identifies Israel as a high

inflation country. Moreover, petitioners point out that Israeli companies have adjusted their financial statements throughout the allocation period.

With respect to the methodology adopted in *Wire Rod from Venezuela,* petitioners state that dollarization can be used in this case if the Department applies exchange rates and interest rates that correctly account for inflation. Accordingly, petitioners argue that the Department should use a long-term, dollar-denominated interest rate as a discount rate in the grant calculations. In particular, if the Department is unable to locate a long-term fixed rate dollar-denominated rate in Israel, petitioners contend that it is appropriate to use the average long-term variable rate in dollars available to ICL, Rotem's parent company, from private lenders during the POR. A long-term rate, petitioners claim, reflects the economic benefit that Rotem received from the subsidies. Petitioners reject respondents' argument that the Department should use Rotem's long-term cost of borrowing during the POR, because at least some of those loans are financed by ICL and may, therefore, reflect below market interest rates.

Department's Position. We have modified the calculation methodology for ECIL grants to conform with the approach followed in the final determination of *Wire Rod from Venezuela.* This approach aligns with respondents' proposed methodology to dollarize the grants at the time they were received.

With respect to the discount rate to be applied to the grants, we agree with petitioners that an interest rate reflecting the long-term, U.S. dollar-denominated cost of borrowing to Israeli firms is most appropriate. However, we have been unable to find such rates. While Rotem's 1995 financial statements show the company's long-term cost of borrowing in U.S. dollars, we are unable to segregate long-term interest charged by Rotem's parent company, ICL, from the long-term interest rate charged by financial institutions. As such, we have turned to ICL's long-term cost of borrowing denominated in U.S. dollars in each year from 1985 through 1995 as the most appropriate discount rate. ICL's rates are shown in the notes to the company's financial statements, which are public documents that have been placed on the record of this proceeding. *See* ''Calculation Memorandum.'' For 1983 and 1984, we used the interest rate on short-term euro-dollar financing because we were unable to locate an appropriate long-term dollar-denominated interest rate for those years. *See* ''Calculation Memorandum.'' In converting the ECIL grants into dollars, we used the shekel/U.S. dollar exchange rates prevailing on the day the grants were received by Rotem. This information is available from the Bank of Israel. *See* the ''Calculation Memorandum'' for additional discussion of this issue.

Comment 10: Timing of Inflation Adjustments for Non-Recurring Subsidies

According to respondents, in the preliminary results, the Department incorrectly adjusted the ECIL subsidies to take into account inflation for all grants dating back to 1986, the beginning of the relevant period. Respondents argue that it is ''not appropriate to adjust those grants that have already been adjusted by virtue of the inflated interest, since adjusting both interest and principal for inflation leads to a total subsidy greater than actually received.'' Therefore, respondents claim that the inflation adjustment should begin in 1995, as ''inflation has already been captured in the interest rate formula used for the grants prior to that year,'' and adjusting those grants now double counts the effects of inflation.

Petitioners contend that dollarization should apply only to the period marked by high inflation in Israel, *i.e.,* between 1983 and 1986, when inflation exceeded 30 percent. Petitioners state that this conforms with the approach taken in *Wire Rod from Venezuela.* Starting in 1987, petitioners argue, the remaining principal of the grants should be reconverted into shekels and interest on the remaining amount should be calculated using the rate of return on CPI-indexed commercial bonds. Petitioners reject respondents' argument that adjusting the principal of the grants received prior to 1995 would double count the effect of inflation. According to petitioners, in previous years the Department countervailed only the portion of the grants allocated to a particular POR, while no allocation has been made for the portion that will be countervailed in this review.

Department's Position. Respondents' argument that inflation has already been captured for the grants in years prior to 1995 is incorrect. The purpose of adjusting non-recurring grants for inflation is to capture the impact of inflation on the nominal grant amounts. This merely accounts for the fact that, when inflation is consistently high, the value of non-monetary assets increases, and the value of the subsidy that benefits the non-monetary assets also increases. By converting the subsidy into dollars at the beginning of a high inflation period, we are taking into account the real value of the subsidy. To accurately capture that real value, we must adjust the nominal value from the time that inflation has a measurable impact. In this case, inflation was significant from the beginning of the allocation stream, with annual inflation at over 100 percent. If the adjustment is not made at the beginning of the allocation stream, in particular during the high inflation period of 1983 through 1986, the real value of the grant principal is eroded significantly. Therefore, it is essential that the ECIL grants are dollarized from the beginning of the allocation stream to preserve the real value of the grant and the real benefit from those grants to Rotem. Further, Rotem converts and maintains all of its financial records in U.S. dollars. Thus, dollarization conforms with Rotem's own business practices. It is also consistent with the approach followed in *Wire Rod from Venezuela* (62 FR at 55014).

Respondents' claim that adjusting for inflation for years prior to 1995 overstates the countervailable benefit because the adjustment has already been captured in prior reviews, is also without merit. As explained above, the real benefit in 1995 will be significantly understated if the adjustment is not made from the beginning of the allocation stream. Further, the inflation adjustment used in prior administrative reviews of this order added the rate of inflation to the discount rate. This approach treats inflation as a benefit in each year. However, as explained above, inflation increases the real value of non-monetary assets, such as machinery, over time, and is not a benefit in each year. Therefore, if anything, the impact of inflation was underestimated in prior reviews because inflation was only accounted for in the interest component of the benefit, while the principal amount remained in constant terms during the entire allocation period. Furthermore, petitioners correctly note that no allocation has yet been made for the portion that will be countervailed in this review, and therefore, the 1995 benefit has not yet been adjusted and is not overstated. For these reasons, we determine that dollarization is the most appropriate approach to capture the impact of inflation on ECIL grants received by Rotem. As noted above, we also determine that the grants should be dollarized throughout the entire allocation period.

Comment 11: Privatization of ICL

Respondents allege that the Department's privatization methodology

is flawed. First, respondents state that each partial privatization of ICL between 1992 and 1995 was at fair value, and that the privatization process was highly competitive. Therefore, the stock price of ICL at the time of privatization reflected all publically available information about the company, including the fair value of the subsidies bestowed upon Rotem up to privatization. This means that investors who form expectations about ICL's projected cash flows would include the full benefits of the subsidies Rotem received. Accordingly, respondents argue that because the privatization price reflected the fair value of ICL, including the fair value of Rotem's subsidies, those subsidies are fully repaid to GOI with the sale of the company. Respondents further claim that while ICL was only partially privatized (51.48 percent of the company has been sold), the private party that purchased ICL has gained control over the company, including control over Rotem's business decisions. Thus, the effect on the pricing of Rotem's products is ''as if none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization.''

Petitioners dispute respondents' claim that market forces have adjusted the selling price of ICL to reflect the full value of Rotem's subsidies. Even if this were the case, petitioners state that in 1995, only 24.9 percent of ICL's stock was sold, and therefore, only a portion of the subsidies could have been reflected in the sale price. Petitioners also dispute respondents' contention that the issue of control is a relevant factor in the privatization analysis. Again, even if control were germane, petitioners note that the GOI still enjoys ''special rights'' to make business decisions, including (1) sales of company assets, (2) structural changes such as voluntary liquidation, reorganizations, or mergers that would impair the GOI's special rights, and (3) investments or holding in shares of subsidiaries. Moreover, the GOI retains over 48 percent ownership in the ICL.

Department's Position. The issue of whether a fair market value privatization eliminates previous subsidies has already been addressed by the Department. Respondents in the certain steel investigations made similar arguments, stating that, since the fair market price of a government-owned company must include any remaining economic benefit from the subsidies, privatization extinguishes all remaining unamortized subsidies. At the time, we disputed this assertion because it rests on the assumption that subsidies must confer a demonstrated benefit on production in order to be countervailable. As we stated,

> [T]his is contrary to the CVD law, in which is embedded the irrebuttable presumption that nonrecurring subsidies benefit merchandise produced by the recipient over time. In sum, the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy. The privatization of a government-owned company, per se, does not and cannot eliminate this countervailability.

GIA, 58 FR at 37263. This conclusion is also permitted under the change in ownership provision of the Act, as amended by the URAA. The SAA specifically states that the Department retains ''the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable susidies.'' SAA at 258. This is the conclusion we reached in a recent countervailing duty proceeding, where we noted that the Act ''purposely leaves the Department with the discretion to determine the impact of a change in ownership on the countervailability of past subsidies.'' *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 58377, 58379 (November 14, 1996).

We also disagree with respondents contention that, while ICL was only partially privatized, by virtue of the private party's control over the company, all of Rotem's prior subsidies are extinguished. As a preliminary matter, the Department has always applied it's privatization methodology to changes in ownership which resulted in the transfer of control from one party to another. *See e.g., Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 55003 (October 22, 1997).

Furthermore, respondents claim that the transfer of control has an effect on the pricing of Rotem's products, so that none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization, is also without merit. As we noted in the GIA, the Department does not, and is not permitted to undertake an analysis of the effect of subsidies. In particular, we stated '' the Department does not take account of subsequent developments that may reduce any initial cost savings or increase in output from a subsidy.'' *GIA*, 58 FR at 37261; see *also,* SAA at 256. Therefore, whether and to what extent the pricing of Rotem's products changes as a result of ICL's partial privatization is irrelevant for determining whether Rotem's previously bestowed subsidies remain countervailable. In any case, the Department's determination that previously bestowed subsidies may continue to benefit the privatized company during an arm's length transaction, has been upheld by the Court of Appeals of the Federal Circuit. *See Saarstahl AG* v. *United States*, 78 F.3d 1539, 1544 (Fed. Cir. 1996). For these reasons, our preliminary finding with respect to ICL's partial privatization will remain unchanged in these final results.

Comment 12: The Privatization Methodology

According to respondents, the Department's gamma methodology is flawed. In particular, respondents state that the gamma is incorrectly based on the average ratio of annual subsidies to Rotem's net worth. Therefore, the Department is considering the annual flow of subsidies to Rotem. However, the net worth in a given year reflects the accumulated value of Rotem's equity. According to respondents, this results in an undervalued gamma ratio. Therefore, respondents contend the gamma calculation should consider the stock of countervailable subsidies at the time of the privatization. This would be done by dividing the total bestowed subsidies accumulated up to the privatization by Rotem's equity capital just prior to ICL's privatization.

Respondents also contend that the Department's gamma percentage is understated because the denominators used in the gamma calculation are expressed in adjusted U.S. dollars while the numerators are nominal Shekel values. According to respondents, because the denominators (the net worth amounts) are expressed in adjusted U.S. dollars, they reflect inflation, while the grant amounts, the numerators, are expressed in nominal terms. Therefore, respondents suggest the Department use Rotem nominal net worth amounts submitted in the case brief. Alternatively, respondents assert that the Department should convert the ECIL grants into dollars at the exchange rate on the day of receipt of the grants.

Petitioners argue that the Department's gamma calculation used Rotem's audited financial statements, which are an accurate tool for this calculation. Petitioners further state that Rotem should not be permitted to submit new net worth figures, after the Department has conducted verification.

Department's Position. The gamma calculation attempts to derive a reasonable historic surrogate for the percent that subsidies constitute of the company's net worth in the year prior to privatization. Respondents' proposed modification of the gamma calculation is flawed because it incorrectly compares the value of Rotem's accumulated subsidies in the year before privatization to the company's net worth in that year. Such a comparison overstates the value of the subsidies in relationship to the company's net worth because it assumes that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. However, this is not the case, as those values are depreciating from year to year. Simply stated, respondents comparison ignores the fact that the value of subsidies is eroding over time, i.e., a subsidy received in 1986 does not have the same relative value as a subsidy received in 1994. Therefore, respondents' approach overvalues the subsidies and thus grossly overstates the ratio of Rotem's subsidies to net worth in the year prior to privatization.

Although we also disagree with respondents' argument that the gamma percentage is understated because the denominator is expressed in adjusted U.S. dollars and the numerator in nominal shekels, this issue is now moot because we have dollarized the ECIL grants.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy for Rotem to be 8.93 percent *ad valorem*.

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

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 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* 61 FR 28841. 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: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration,

[FR Doc. 98–7352 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Participation in Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions: Telecommunications Trade Mission to Spain and Portugal, Madrid and Lisbon, May 3–8, 1998, Recruitment closes April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Denny-Brown, Tel: 202–482–0398, Fax: 202–482–5834

Environmental Technologies Trade Mission Spain and Portugal, Madrid and Lisbon, June 24–July 3, 1998, Recruitment closes May 22, 1998

FOR FURTHER INFORMATION CONTACT: Ann Novak, Tel: 202–482–8178, Fax: 202–482–5665

Professional Services Trade Mission to Brazil, San Paulo, Belo Horizonte, Rio de Janeiro, September 28–October 2, 1998, Recruitment closes August 1, 1998

FOR FURTHER INFORMATION CONTACT: Richard Boll, Tel: 202–482–1135, Fax: 202–482–2669.

FOR FURTHER INFORMATION CONTACT: Reginald Beckham, Department of Commerce, Tel: 202–482–5478, Fax: 202–482–1999.

Dated: March 16, 1998.

Tom Nisbet,

Director, Office of Trade Promotion Coordination.

[FR Doc. 98–7226 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Narrative Reporting Requirements

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing