account for differences in credit expenses associated with the U.S. and home market sales.

In addition, the petitioners alleged that sales in the home market were made at prices below the fully allocated COP and requested that the Department conduct a sales below cost investigation. Therefore, the petitioners constructed a normal value for sales in Venezuela. To calculate CV, petitioners based COM for SIDOR based on publicly available data and their own production experience, adjusted for known differences between costs incurred to produce SWR in the United States and costs incurred for producing the subject merchandise in Venezuela. To calculate SG&A and financing expenses, the petitioners relied on the most recent company-specific data available to the public. To calculate profit for CV, the petitioners relied on the most recent profitability data for a Venezuelan steel manufacturer available to the public.

The dumping margins in the petition based on price-to-price comparisons range from 15.46 percent to 34.06 percent. The dumping margins in the petition based on price-to-CV comparisons range from 40.99 percent to 66.75 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners alleged that sales in the home markets of Canada, Germany, Trinidad and Tobago, and Venezuela were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales below COP investigation in each of these petitioned-for antidumping investigations. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition of the foreign like products in their respective home markets to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are being, or are likely to be, sold at less than fair value.

Initiation of Antidumping Investigations

We have examined the petition on SWR and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the subject imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by August 5, 1997.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Canada, Germany, Trinidad and Tobago, and Venezuela. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by April 14, 1997, whether there is a reasonable indication that imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: March 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7357 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–DS–P

[C–122–815]

Pure and Alloy Magnesium From Canada: Final Results of the First (1992) Countervailing Duty Administrative Reviews

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

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

SUMMARY: On March 19, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty orders on pure and alloy magnesium from Canada for the period December 6, 1991 through December 31, 1992 (see *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (Preliminary Results),* 61 FR 11186 (March 19, 1996)). We have completed these reviews and determine the net subsidy to be 9.86 percent ad valorem for Norsk Hydro Canada, Inc. and all other producers/exporters except Timminco Limited, which has been excluded from these orders. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4087.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1996, the Department published in the **Federal Register** the *Preliminary Results* of its administrative

reviews of the countervailing duty orders on pure and alloy magnesium from Canada (61 FR 11186). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the *Preliminary Results.* On April 18 and 25, 1996, case briefs and rebuttals were submitted by Norsk Hydro Canada, Inc. (NHCI), a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period, the Government of Québec (GOQ), and the Magnesium Corporation of America (petitioner). At the request of respondents, the Department held a public hearing on May 2, 1996.

Period of Review

The reviews cover the period December 6, 1991 through December 31, 1992. The reviews involve one company and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. (See 60 FR 80 (Jan. 3, 1995)).

Scopes of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included in the scope of the orders. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from Canada* (57 FR 6094, February 20, 1992).

Calculation Methodology for Assessment and Cash Deposit Purposes

Since NHCI is the only known producer/exporter subject to these orders, we used its ad valorem subsidy rate to determine the country-wide ad valorem subsidy rate. This ad valorem subsidy rate does not apply to Timminco Limited because it has been excluded from these orders.

Analysis of Programs

Based upon our analysis of our questionnaire responses and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

1. Exemption From Payment of Water Bills

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI and All Other Producers/ Exporters except Timminco Ltd	1.31

2. Article 7 Grants From the Québec Industrial Development Corporation

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI and All Other Producers/ Exporters except Timminco Ltd	8.55

II. Programs Found Not To Be Used

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

- St. Lawrence River Environment Technology Development Program.
- Program for Export Market Development.
- Export Development Corporation.
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.
- Opportunities to Stimulate Technology Programs.
- Development Assistance Program.
- Industrial Feasibility Study Assistance Program.
- Export Promotion Assistance Program.
- Creation of Scientific Jobs in Industries.
- Business Investment Assistance Program.
- Business Financing Program.
- Research and Innovation Activities Program.
- Export Assistance Program.
- Energy Technologies Development Program.
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1: Countervailability of the Exemption From Payment of Water Bills

Respondents argue that the NHCI's contract with its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), was inextricably linked with the credit it received from the GOQ to offset its water bills. If the water credit had not been received, respondents state that a different billing arrangement would have been made. Therefore, in determining the amount of the benefit conferred by the credit, the Department should look to what NHCI would have paid absent the water credit and the contract compared to what it paid with the credit and the contract. To calculate what NHCI would have paid absent the credit and the contract, respondents argue that the closest approximation is the amount NHCI would have paid under its present contract based on actual water consumption rather than forecasted consumption.

Petitioner states that under the terms of the contract between NHCI and the Industrial Park, the amount invoiced is based, in part, on forecasted consumption and this amount is what NHCI would have paid in the absence of the water credit. By countervailing the portion of the water invoice that was offset by the water credit and, hence, not paid by NHCI, petitioner states that the Department correctly calculated the countervailable benefit in the *Preliminary Results.* Even if the Department were to consider what NHCI would pay in the absence of the credit and existing contract, petitioner points out that other Industrial Park customers also are obligated to pay an amount based, in part, on forecasted consumption although they are allowed to change their forecasted consumption levels yearly. Hence, forecasted consumption cannot be ignored as an element of the charge for water. Petitioner also points out that, in addition to requiring the Industrial Park to supply the actual amount of water used by NHCI, the contract also bound the Industrial Park to certain other potential obligations upon the request of NHCI. According to petitioner, the contract was structured to compensate the Industrial Park for any costs it might incur in meeting those other potential obligations.

DOC Response: We disagree with respondents that we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into to measure the benefit conferred by the credit. The position put forward by NHCI is analogous to a situation where a company received a low-interest loan from a government and argues to the Department that because of the low interest rate, it borrowed more than it otherwise would have. Therefore, the company would contend, to calculate the benefit conferred by the low-interest loan, the Department should compare the actual amount of interest paid on the low-interest loan with the actual amount of interest the company would have paid on a smaller loan at a higher benchmark interest rate. In this loan situation, we would not enter into a hypothetical calculation of what amount the company would have borrowed absent the low-interest loan. Instead, consistent with section 771(5)(A)(II)(c) of the Act, we would simply countervail the difference in the two interest rates without regard to what effect the interest rate has on the other terms of the loan, i.e., the amount borrowed.

In this review, the terms of the contract between NHCI and the Industrial Park unambiguously state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent the GOQ's provision of the credit relieved NHCI from paying its water bills, a countervailable benefit existed without regard to whether NHCI would have received different terms under an alternative arrangement. Therefore, we determine that the benefit is the full amount of the credit.

Comment 2: Article 7 Assistance Under the SDI Act

Petitioner states that the label ''interest rebate'' placed on the Article 7 assistance provided by the SDI does not change the nature of the assistance and that it remains, in substance, a grant. According to petitioner, the purpose, amount and disbursement timetable for the Article 7 assistance was inextricably linked to NHCI's purchase of specified environmental protection equipment. Petitioner further points out that the Article 7 assistance was not tied to the cost of NHCI's plant, the total amount of NHCI borrowing, the interest rate paid by NHCI on its borrowings, or the total amount of interest incurred by NHCI. Petitioner argues that the assistance had the impact of encouraging NHCI to install specified environmental protection equipment as opposed to encouraging NHCI to borrow money that it otherwise would not have borrowed. In light of the above, petitioner concludes that the funding was in the form of a non-recurring grant. Petitioner emphasizes that the Department should not allow respondents to engage in ''subsidy engineering'' by turning a large non-recurring capital grant into some other type of benefit.

Respondents argue that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to respondents, because NHCI knew it would receive interest rebates from SDI prior to taking out loans, the Department should calculate the benefit using its loan methodology and reduce the interest rate charged by the amount of the interest rebated. Respondents state that this would be consistent with the Department's methodology, citing a number of cases (e.g., *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom (UK Steel)*, 58 FR 37393, 37397 (July 9, 1993)).

Respondents further contend that the *Preliminary Results* were based on significant errors of fact regarding the interest rebates received by NHCI. First, respondents argue that the relationship between the interest rebates and the underlying loans was not indirect. Second, the interest rebates received by NHCI reduced NHCI's costs of borrowing for the construction of its plant, not its costs of purchasing environmental equipment.

With respect to the first point, respondents argue that the Department was incorrect in its assertion that the Article 7 assistance was more closely linked to the acquisition of certain assets than the accumulation of interest costs. Moreover, respondents maintain that the SDI assistance was not intended solely for the purchase of environmental protection equipment, but was also intended to facilitate the construction of NHCI's facility in Québec. The fact that the Article 7 assistance was intended to achieve more than one objective does not distinguish the Article 7 assistance from other interest rebate programs which the Department has treated under its loan methodology, according to respondents.

With respect to the second point, respondents argue that since the Department wrongly assumed that Article 7 assistance was provided solely for the purchase of environmental equipment, the Department was able to conclude that the interest rebates exceeded the interest that would be in connection with the purchase of the environmental equipment. Hence, the Department concluded that the Article 7 assistance should not be treated as an interest rebate. However, because the Article 7 assistance was intended to reduce the cost of financing for the project as a whole, the assistance was not excessive in the sense described by the Department.

DOC Position: The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology (*Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, (Belgium Steel*) 58 FR 37273, 37276, July 9, 1993). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In their brief, respondents argue that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, respondents conclude, the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, (See, e.g., *Belgium Steel*), we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel cases was never intended to dictate that the Department should apply the loan methodology in every situation. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, inter alia, on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* 58 FR 37217, 37254 (July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Re-Examination of Specificity of Article 7 Assistance

In the event the Department continues to treat Article 7 assistance as a non-recurring grant, respondents state that the Department is obliged to make a finding that the Article 7 assistance conferred a subsidy to NHCI during the POR. The Department may not, as it has here, rely on a factual finding of disproportionality during a different time period and different amounts of assistance. Respondents state that a finding of de facto specificity requires a case-by-case analysis, citing *PPG Industries, Inc. v. United States, Geneva Steel v. United States,* and *Certain Steel Products from Brazil* to support their reasoning. Respondents also cite the sixth administrative review of *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (Live Swine) (59 FR 12243 (March 16, 1994)) as an example where the Department reexamined the

countervailability of benefits found to be de facto specific in prior reviews.

Respondents maintain that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original period of investigation. Respondents then present a methodology they believe should be employed whereby the Department would compare the portion of NHCI's original grant allocated to the POR, based on the Department's standard allocation methodology, and the portions of benefits allocated to the POR for all assistance bestowed to all other enterprises receiving SDI assistance to determine whether NHCI received a disproportionate share of benefits. Respondents state that the Department had a responsibility to gather the information necessary to make the specificity determination they have described. Since the Department has not gathered the information required for their proposed methodology, respondents conclude that a determination of de facto specificity during the POR is not possible.

Petitioner counters that since the Article 7 assistance was in the form of a non-recurring grant, the Department properly looked at the time period when the government granted the assistance to make the specificity finding. According to petitioner, the provision of the assistance was, and always will be, specific regardless of how the GOQ administers the program in future years—even if it were to abolish the program. In other words, petitioner states that no future action by the GOQ could retroactively make the subsidy non-specific. Simply because the Department's grant calculation methodology assigns an amortized portion of the assistance to this review period, it does not mean that the GOQ is granting a new subsidy worthy of a new specificity analysis. Indeed, states petitioner, if a new subsidy were being analyzed, the Department's specificity analysis would not take into account portions of old subsidies amortized into the period being examined.

DOC Position: It is the Department's policy not to revisit specificity determinations absent the presentation of new facts or evidence (see, e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order*, 59 FR 58814, November 15, 1994). In this review, no new facts or evidence have been presented which would lead us to question that determination. We address respondents' arguments in favor of making a POR-specific determination below.

Respondents refer to the various reviews of the countervailing duty order on live swine from Canada as demonstrating that the Department has, as a matter of course, revisited its de facto specificity determinations from one segment of a proceeding to another. While distinct de facto specificity determinations were made with respect to the Tripartite program in the fourth, fifth and sixth reviews, these were not done as a matter of course. The Department reexamined specificity in these reviews of live swine only as a result of an adverse decision by the Binational Panel. Because the Binational Panel overturned the Department's finding of specificity regarding the Tripartite program in the fourth review of live swine for lack of evidence (and eventually rejected its analysis regarding specificity in the fifth review but upheld its decision), the Department continued to collect information in the sixth review, which was running concurrently with the Binational proceedings. In explaining its actions in the sixth review, the Department recognized that it does not routinely revisit specificity determinations, as respondents would have us believe, in stating the following:

> Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada.

(See *Live Swine*.) As can be seen from the foregoing, the facts surrounding the live swine reviews do not correspond to the situation presented here. In particular, the issue of specificity had not been conclusively settled in the live swine reviews and was in the process of litigation, and different information was available; unlike this case in which a definitive specificity determination had already been established.

As for respondents' arguments that de facto specificity determinations should be done on a case-by-case basis, we agree. However, we disagree with respondents as to what ''case-by-case'' means. In each of the citations respondents refer to, ''case'' referred not to a separate segment of the same proceeding (e.g., the first review of an order distinct from the second review), but to a separate investigation or review of different products (e.g., an investigation of carbon black from Mexico as opposed to an investigation of steel products from Brazil) . It is this latter definition of ''case'' we find to be the proper basis for examination of de facto specificity determinations. Since a separate de facto specificity determination was made in the investigations of pure and alloy magnesium, we find that the analysis was properly conducted.

In proposing that the Department base a POR-specific de facto specificity finding on the portions of non-recurring grants allocated to the POR, the respondents appear to be confusing the initial specificity determination based on the action of the granting authority at the time of bestowal with the allocation of the benefit over time. These are two separate processes. The portions of grants allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal. We agree with petitioner that the determination of whether a non-recurring subsidy was specific (or not) at the time of bestowal then becomes attached to the subsidy.

Based on all of the arguments above, we find that the bases of the original specificity determination are still valid. Since no new evidence has been presented which would cause us to revisit the original specificity determination, we continue to find assistance under Article 7 of the SDI Act to be specific and, therefore, countervailable.

Comment 4: Appropriate Denominator

Respondents state that in the *Preliminary Results* the Department deviated from its standard practice in determining the denominator for companies with multinational production facilities that fail to rebut the presumption that subsidies are domestically tied. In particular, respondents argue that it is the Department's policy to tie such subsidies to domestic operations, by allocating benefits to sales by the domestic company regardless of country of manufacture, as opposed to tying to domestic production, as was done in the *Preliminary Results*. Respondents additionally state that the Department both failed to explain its basis for presuming that the subsidies were tied to Canadian production and to respond to NHCI's arguments in favor of allocating the subsidies over sales by NHCI of subject merchandise regardless of country of manufacture. In so doing, respondents claim the Department denied NHCI due process by preventing it from rebutting the presumption and

from responding to the rationale the Department used to support its decision to tie the subsidies to domestic production. In support of their assertion that the subsidies NHCI received are tied to its domestic operations, respondents state that any funds received benefited all employment-related activities in Canada (e.g., sales of all products) and that these activities are related to both domestic and foreign production. Respondents elaborate further that the denominator policy used by the Department in this case is a deviation from the fungibility of money principle.

Respondents also cite *British Steel plc v. United States (British Steel)* (479 F. Supp. 1254, 1371) in which the Court reversed and remanded the Department's determinations because it found that the Department should have given plaintiffs due notice of its decision to apply the rebuttable presumption that the subsidies at issue were tied to domestic production in order to allow plaintiffs the opportunity to rebut the Department's presumption.

Petitioner states that there is nothing on the record indicating that the GOQ intended the funds it provided to NHCI to benefit production in another country. Therefore, the Department should continue to allocate the subsidies received over sales of merchandise produced in Canada.

DOC Response: Respondents cite *British Steel* in an attempt to imply that the Department must inform parties early during the course of each proceeding of its intent to use the rebuttable presumption that subsidies to companies with foreign manufacturing operations are tied to domestic production. However, the facts involved in *British Steel* are readily distinguishable. Therefore, the holding in that case does not apply to the present situation.

In *British Steel,* the Court was examining the Department's policy of using the rebuttable presumption articulated in the GIA. In particular, the Court took issue with the introduction of the new policy in the final-determination stage of the investigation because the timing prevented parties from both commenting on the methodology and from presenting evidence rebutting the presumption. It is important to note that the Department's remand determination, as affirmed by the Court, upheld the appropriateness of using the rebuttable presumption. The Department has continued to use the rebuttal presumption and this policy has become accepted Department practice. Unlike *British Steel,* we are not dealing with the introduction of a new policy late into the course of a proceeding in this case. Therefore, the Department was not required to forewarn respondents of the use of the rebuttable presumption.

We also note that the use of a denominator based only on domestically produced merchandise did not come as a surprise to respondents. To begin, in the original investigations of these cases (which pre-dated the rebuttable presumption) the Department used a denominator based only on sales of domestically produced merchandise (*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada,* 57 FR 30946 (July 13, 1992)). Since the investigations in these cases, there has been a changed circumstances review (57 FR 54047 (November 16, 1992)) and a Binational Panel proceeding. In all of the proceedings, the denominators have included only domestically produced merchandise and in no case have respondents objected to those denominators. In addition, the questionnaire for these reviews requested information on sales denominators based on domestically produced merchandise. NHCI provided the requested sales denominator information along with denominators based on total sales by NHCI and arguments why those based on total sales should be used. Moreover, sales of domestically produced merchandise was used as the denominator in the *Preliminary Results.* As can be seen from the foregoing, respondents were aware as to the possible use of a denominator based on domestically produced merchandise and did indeed have an opportunity to attempt to rebut the presumption.

Respondents also argue that the Department must explain the basis of its presumption. However, the idea behind the use of a rebuttable presumption is that the fact presumed—in this case that subsidies bestowed on companies with foreign manufacturing operations are tied to domestic production—becomes the default position and does not have to be explained in each case. As the Department stated in the GIA, ''Thus, under the Department's refined ''tied'' analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production'' (GIA at 37231). It follows that the Department will find that subsidies are tied to domestic production in the absence of evidence to the contrary.

As for respondents' complaint that the Department failed to address its arguments that the subsidies received by NHCI benefited all of the company's operations, not just its manufacturing activities, we note that in the GIA it states, ''A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production * * *'' The phrase, ''tending to show'' means that the party attempting to rebut the presumption must provide enough evidence to convince a reasonable fact-finder of the non-existence of the presumed fact—that subsidies are tied to the recipient firm's domestic production (Results of Redetermination Pursuant to Court Remand on General Issue of Sales Denominator: *British Steel plc* v. *United States,* Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) at 17). The mere absence of evidence limiting the government's intended scope of the benefit to domestic production is not sufficient. In this case, respondents' arguments have not risen to the level of evidence that would convince us that the GOQ intended that the subsidies it bestowed on NHCI were to benefit more than just domestic production. Therefore, respondents have failed to rebut the presumption that the subsidies received by NHCI were tied to domestic production.

The Department's methodology for determining what to include in the denominator when a company has foreign manufacturing operations is explained in the GIA: ''If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise'' [emphasis added] (GIA at 37231). This quotation makes it clear that sales of foreign-produced merchandise by a respondent company would not be included in the denominator. Even if we were to consider tying the subsidies at issue to domestic operations, using respondents' suggestion of a sales denominator based on total NHCI sales would be improper since such a figure would include sales of foreign-produced merchandise by NHCI and, therefore, value-added from operations in other countries. Based on the foregoing arguments, we have continued to allocate subsidies received by NHCI to the company's merchandise produced in Canada.

Comment 5: Suspension of Liquidation for the Period April 4, 1992 to August 31, 1992

Respondents argue that since the Department terminated suspension of liquidation for entries on or after April 4, 1992 to August 31, 1992,

countervailing duties cannot be reassessed for that period.

DOC Position: We agree with respondents.

Final Results of Review

For the period December 6, 1991 through December 31, 1992, we determine the net subsidy to be 9.86 percent ad valorem for Norsk Hydro Canada Inc. and all other companies except Timminco Limited, which has been excluded from these orders. This rate corrects the rate of 9.87 found in the *Preliminary Results* which arose from a rounding error.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties on entries during the periods December 6, 1991 to April 3, 1992 and September 1, 1992 to December 31, 1992:

Manufacturer/exporter	Rate (percent)
Norsk Hydro Canada Inc. and All Other Companies Except Timminco Limited (which is excluded from these orders)	9.86

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 9.86 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Norsk Hydro Canada Inc. and all other companies except Timminco Limited (which was excluded from the order during the original investigation), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

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)) and 19 CFR 355.22.

Dated: March 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7358 Filed 3–21–97; 8:45 am]

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[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews

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

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1993 through December 31, 1993. We have completed these reviews and preliminarily determine the net subsidy to be 7.13 percent *ad valorem* for subject merchandise for Norsk Hydro Canada, Inc. (NHCI) and all other producers/exporters from Canada except exports from Timminco Limited, which company has been excluded from these orders. If the final results of these reviews remain the same as these preliminary results, the Department will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Cynthia Thirumalai, AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464 or 482–4087, respectively.

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39392) the countervailing duty orders on pure and alloy magnesium from Canada. The Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 39543) of the countervailing duty orders on August 3, 1994. We received timely requests for review from petitioner, Magnesium Corporation of America (Magcorp) and respondent, NHCI. The Department initiated the administrative reviews, for the period January 1, 1993 through December 31, 1993, on September 16, 1994 (59 FR 47609).

The Department issued a questionnaire to the Government of Canada (GOC) on September 7, 1994. On October 24, 1994, we received questionnaire responses from NHCI, the GOC and the Government of Québec (GOQ). The Department issued supplemental questionnaires to the GOQ on October 11, 1996 and NHCI on November 5, 1996. We received supplemental responses from the GOQ on October 28, 1996 and NHCI on November 18, 1996.

On October 18, 1994, petitioner requested that the Department re-examine whether the amended electric power contract between NHCI and Hydro Québec is countervailable. On April 28, 1995, the Department declined to reinvestigate the amended electric power contract.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Scope of the Reviews

The products covered by these orders are pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and Customs purposes, our written descriptions of the scopes of these proceedings are dispositive.