

Illustrative List of Export Subsidies. Therefore, we determined that the charges in question were service charges rather than import charges. As such, we disallowed these items in the calculation of the indirect tax incidence on items physically incorporated in the manufacture of castings under the CCS program. For further discussion of this analysis, see the May 26, 1994 briefing paper titled Cash Compensatory Support (CCS) Program which is on file in the Central Records Unit (room B009 of the Main Commerce Building).

Comment 5

Petitioners claim that the Department understated the benefit to Carnation Enterprise from the CCS program in the 1991 administrative review. They state that the Department relied upon Carnation's claim that it was eligible for only a two percent CCS rebate in calculating its benefit from the CCS program because the company imported more than 80 percent of their pig iron. Petitioners state that information in Carnation's questionnaire indicates that the company understated its CCS rebate. Furthermore, petitioners contend that during the verification of Carnation's response for the 1990 review, the Department confirmed that all claims filed by Carnation for CCS benefits for subject castings were for rebates of five percent. Therefore, they argue that in its final analysis the Department should recalculate the benefits to Carnation under the CCS program based on a rebate rate of five percent.

Respondents state that petitioners' claim is based on the fact that (1) Carnation's financial statement shows less than 80 percent utilization of pig iron and (2) that the financial statements show that CCS receipts are greater than five percent of export sales. Respondents state that percentages of utilization of pig iron from year to year do not necessarily mean that less than (or more than) a certain amount was imported. Carry over of inventories will also affect the calculated ratios. In addition, the amount of CCS rebates paid on non-subject merchandise is greater than five percent. Therefore, the fact that the financial statement shows more than five percent CCS in terms of sales does not negate the fact that only two percent was received on subject castings.

Department's Position

In its response to the questionnaire in the 1991 administrative review, Carnation specifically stated that the CCS rebate in effect for its exports of the subject castings was only two percent. The company stated that because it

imported more than 80 percent of its pig iron during this period it was only eligible for a two percent CCS rebate. In addition, the company also stated that it did not use the CCS program after February 1, 1991. There is no information on the record which contradicts that statement. Therefore, the benefit calculated for Carnation in the 1991 administrative review for the CCS program was based on a two percent rebate.

Comment 6

Petitioners state that the Department improperly failed to countervail the value of advance licenses, because advance licenses are simply export subsidies and not the equivalent of a duty drawback program. Petitioners claim that the advance license program does not meet the criteria of a duty drawback system which would be permissible in light of Item (i) of the Illustrative List of Export Subsidies, annexed to the General Agreement on Tariffs and Trade (GATT) Subsidies Code (Illustrative List). They base this claim on the fact that (1) the advance licenses were not limited to use just for importing duty-free input materials because the licenses could be sold to other companies; (2) eligibility for drawback is always contingent upon the claimant demonstrating that the amount of input material contained in an export is equal to the amount of such material imported, which the respondents failed to do; and (3) the Government of India made no attempt to determine the amount of material that was physically incorporated (making normal allowances for waste) in the exported product as required under Item (i). For these reasons, petitioners state that the Department should countervail in full the value of advance licenses received by respondents during the period of review.

Respondents state that advance licenses allow importation of raw materials duty free for the purposes of producing export products. They state that if Indian exporters did not have advance licenses, the exporters would import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that, although advance licenses are slightly different from a duty drawback system because they allow imports duty free rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also state that no advance licenses were sold.

Department's Position

Petitioners have only pointed out the administrative differences between a

duty drawback system and the advance license scheme used by Indian exporters. Such administrative differences can also be found between a duty drawback system and an export trade zone or a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be incorporated into an exported product without the assessment of import duties.

The purpose of the advance license is to allow an importer to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under advance licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are physically incorporated into an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that respondents used advance licenses in a way that is equivalent to how a duty drawback scheme would work. That is, they used the licenses in order to import, net of duty, raw materials which were physically incorporated into the exported products. Since the amount of raw materials imported was not excessive vis-a-vis to the products exported, we determine that use of the advance licenses was not countervailable.

Comment 7

Petitioners claim that the Department understated the benchmark interest rate used to calculate the benefits for pre-shipment and post-shipment loans. They state that, rather than using the interest rate obtained from commercial banks during verification or the average lending rates published by the International Market Fund (IMF), the Department used the average interest rates published by the Reserve Bank of India (RBI) for small-scale industry loans to calculate the benchmark. Petitioners claim that these were regulated and preferential small-scale industry rates which were used to calculate average benchmark interest rates. As such, the Department merely compared interest rates for one type of preferential loan to interest rates for another type of preferential loan.

Respondents state that the RBI rates used by the Department are the commercial rates available in India. Therefore, it is those rates which should be used as the benchmark.