(The ITC discontinued its injury determination under Section 303(a)(2) because the duty-free status of rubber thread from Malaysia was terminated.) Respondents contend that without an injury determination, the Department had no authority to issue a countervailing duty order and to require the payment of cash deposits. Respondents further maintain that the Department cannot simply transfer the jurisdiction for an investigation from Section 303(a)(2) to Section 303(a)(1) without issuing a public notice that it intends to proceed with the investigation under a different statutory provision. See, Certain Textile Mill Products and Apparel from Turkey (50 FR 9817; March 12, 1987); Certain Textile Mill Products and Apparel from the Philippines (50 FR 1195; March 26, 1985 and Certain Textile Mill Products and Apparel from Indonesia (50 FR 9861; March 12, 1985). Furthermore, because there was no initiation notice or a preliminary determination under section 303(a)(1), a final determination under that section was not appropriate. If the Department wanted to proceed with the investigation, it was required to re-initiate under the appropriate provision.

Department's Position: As the Department pointed out in the previous review, respondents' challenge to the Department's authority to issue the order is untimely. Challenges to the issuance of an order must be filed within 30 days of the date the order is published. The countervailing duty order on extruded rubber thread from Malaysia was published on August 25, 1992. Respondents voluntarily withdrew a timely-filed complaint challenging the order on these same grounds. Respondents' attempt to revive that challenge in this proceeding is untimely.

Comment 2: Respondents contend that the Department overstated the benefit received under the ECR program in its administrative review. They argue that the Department must use the "cost of funds" to the government as the benchmark as required by item "k" of the Illustrative List of Export Subsidies annexed to the Subsidies Code, and the appropriate "cost of funds" is the 90day rate for government bonds. Respondents assert that if the Department continues to use the cost to the recipient as a benchmark, it should also continue its past practice and use the bankers' acceptances (BA) rates because they are identical to ECR financing in terms of risk, maturity and purpose. Respondents further contend that the Department should interpret the "predominant" form of financing as the

most comparable form of financing. They assert that it makes no sense to compare trade financing to other financing such as short-term loans and overdrafts. Furthermore, if the Department uses the weighted-average of commercial rates, it should account for the differences in the terms of financing.

Respondents further argue that if the Department does not use the BA benchmark, it should use the Average Lending Rate (ALR) provided in the Bank Negara Statistical Bulletin rather the Base Lending Rate (BLR) plus an estimated spread. If the Department, nevertheless, uses this method, then the spread should be calculated by deducting the average BLR rate calculated by the Department from the ALR published in the *Bank Negara Statistical Bulletin*.

Department's Position: We disagree with respondents. As explained in the previous review, the Illustrative List identifies common forms of export subsidies but does not necessarily instruct the Department how to value them. The Department has a longstanding practice of valuing the benefit to the recipient rather than the cost to the government for the purpose of calculating countervailing duty rates.

The Department's practice is to use the rate for the predominant form of short-term financing in the country under review as the benchmark for short-term loans. See, Proposed Regulations (19 CFR 23380; May 31, 1989). Where there is no single predominant source of short-term financing in the country in question, the Department may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question. See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire Rope from Thailand (56 FR 46299; September 11, 1991). BAs constitute an extremely small percentage of short-term financing in Malaysia and, therefore, it would be inappropriate to use the BA rates as a benchmark. The Bank Negara Statistical *Bulletin,* provided in Exhibit 4 to the Government of Malaysia's Questionnaire Response dated November 18, 1994, lists the commercial bank BLR rates prevailing during the review period. The rates ranged from 8.25 percent to 9.50 percent. According to commercial bank officials, the banks add a 1.00 to 2.00 percent spread to the BLR. (See Memorandum to the File from Chris Jimenez Regarding Conversation With Bank of America Official in Malaysia Regarding Spread Used by Commercial

Banks in 1993 dated May 10, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

During verification of the 1992 administrative review, we found that ALR rates published in the Bank Negara Statistical Bulletin included both shortterm and long-term rates, while the BLR rates are strictly based on short-term loans. (See Memorandum to the File from Judy Kornfeld and Lorenza Olivas Regarding Extruded Rubber Thread from Malaysia; Benchmark Information dated August 15, 1995, on file in the public file of the Central Records Unit, Room B-099 of the Department of Commerce). Therefore, we disagree with respondents that we should use the ALR rate because it would improperly include long-term rates. Rather, we have determined that it is appropriate to continue to use the average of the commercial BLR rates published in Bank Negara Statistical Bulletin, plus an average 1.5 percent spread, as a benchmark, in accordance with section 355.44(b)(3)(i) of the Department's Proposed Rules. Respondents' argument, that if the Department, nevertheless, uses this method, it should calculate the spread by deducting the average BLR rate from the average of the ALR rates, would again improperly include long-term rates in the benchmark calculation.

Comment 3: Respondents argue that the Department overstated the net subsidy for the review period and for the duty deposit purposes because the Department failed to take account of the exclusion by Heveafil and Filmax of U.S. exports from the calculation of eligibility for the pre-shipment export financing. In addition, respondents claim that the two companies did not use funds from exports to the United States to repay any of the pre-shipment loans. They claim that in a similar situation, the Department concluded that exports to the United States did not receive benefits from short-term financing. See, Suspension of Countervailing Duty Investigation; Certain Forged Steel Crankshafts from Brazil (52 FR 28177, 28179; July 28, 1987) (Brazilian Crankshafts Suspension Agreement). Respondents' claim that in the first administrative review, the Department incorrectly rejected this method of eliminating the effect of a subsidy. Therefore, respondents maintain that Heveafil and Filmax received no benefit with regard to U.S. shipments.

Respondents further assert that the Department found a subsidy in this case in part because there was no strict segregation of U.S. exports and the