consumption on or after the date of publication of the final determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Gunawan/Jaya Pari	42.36
PT Krakatau Steel	52.42
All Others	42.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33232 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Tipten Troidl, Office of CVD/AD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Final Determination: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from the Republic of Korea. For information on the countervailing duty rates, see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (petitioners).

Case History

Since the publication of our preliminary determination in this investigation on July 26, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445 *(Preliminary Determination)*), the following events have occurred:

On September 13, 1999, we issued supplemental questionnaires to Pohang Iron & Steel Co., Ltd. (POSCO), Dongkuk Steel Mill Co., Ltd. (DSM), and the Government of Korea (GOK). We received the respondents' questionnaire responses on October 5, 1999. We conducted verification of the countervailing duty questionnaire responses from October 25 through November 9, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR 40416), and the final antidumping duty determination was postponed (*see* 64 FR 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR 40416). On November 19, 1999, we issued to all parties the verification reports for POSCO, DSM, and the Meetings with Banking Experts in Korea. We later issued on November 23, 1999, the verification report for the GOK. Petitioners and respondents filed case briefs on November 29, 1999. Rebuttal briefs were submitted to the Department by petitioners and respondents on December 3, 1999. A public hearing on the case was held on December 6, 1999.

On November 23, 1999, we discontinued the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the ''Suspension of Liquidation'' section of this notice.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or

0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

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). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because the Republic of Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations,* 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the CVD Regulations, we have allocated POSCO and DSM's non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-term Loans and Discount Rates

During the POI, POSCO and DSM had a number of won-denominated and foreign currency-denominated long-term loans outstanding which the company received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*,[1] the Department determined that the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans through 1991. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37328, 37338 (July 9, 1993) (*Steel Products from Korea*), and the ''Direction of Credit'' section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*,[2] the Department, for the first time, examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered during the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997. In the current investigation, we determine that the GOK still exercised

[1] On October 1, 1999, the United States Court of Appeals for the Circuit (CAFC) issued a decision regarding *Steel Products from Korea. See AK Steel Corp.* v. *United States,* 192F.3d (*AK Steel*). The Department has not received specific instructions from the Court on how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. In this investigation, we have additional information on the record indicating that the GOK's direction of credit prior to 1992 provided a countervailable benefit to the Korean steel industry. Therefore, the selection of long-term benchmarks cited to in *Steel Products from Korea* is appropriate for this current investigation. For further information on direction of credit prior to 1992, see the ''Direction of Credit'' section of this notice.

[2] *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530, 15532 (March 31, 1999) (*Stainless Steel Plate*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 30636, 39641 (June 8, 1999) (*Stainless Steel Sheet and Strip*).

substantial control over lending institutions in Korea during the POI.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained in the years 1992 through 1998. First, for countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea. However, certain companies had foreign currency loans denominated in a currency other than U.S. dollars but did not have the same type of currency loans from foreign bank branches in Korea. Because we were unable to find a similar foreign-currency denominated loan benchmark within Korea, we used foreign-currency interest rates as reported in the *International Financial Statistics,* a publication of the IMF. Second, for countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' public and private bonds. We note that this benchmark is based on the decision in *Stainless Steel Plate,* 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year corporate bonds as reported by the Bank of Korea (BOK).

We are also using the three-year company-specific corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 1998.

Benchmarks for Short-Term Financing

For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans for the POI. Each respondent provided its respective company-specific, short-term commercial interest rate to the Department.

Treatment of Subsidies Received by Trading Companies

During the POI, POSCO exported the subject merchandise to the United States through three trading companies, POSTEEL, Hyosung, and Sunkyong. DSM exported through one trading company, DKI. POSTEEL is affiliated with POSCO, and DKI is affiliated with DSM within the meaning of section 771(33)(E) of the Act because as of December 31, 1998, POSCO owned 95.8 percent of POSTEEL's shares, and DSM owned 51.3 percent of DKI shares. The other trading companies are not affiliated with either POSCO or DSM. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. Responses were required from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we have determined that it is not appropriate to establish combination rates. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon the subject merchandise among the individual trading companies is insignificant. Therefore, combination rates would serve no practical purpose because the calculated subsidy rate for POSCO/POSTEEL or POSCO/Sunkyong or POSCO and any of the other trading companies would effectively be the same rate. For these reasons, we are not calculating combination rates in this investigation. Instead, we have only calculated one rate for each producer of the subject merchandise, all of which is produced by either POSCO or DSM.

To include the subsidies received by the trading companies, which are conferred upon the export of the subject merchandise, in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the four trading companies, we calculated the benefit attributable to the subject merchandise and factored that amount into the calculated subsidy rate for the producer. In each case, we determined the benefit received by the trading companies for each export subsidy and weight-averaged the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. This calculated *ad valorem* subsidy was then added to the subsidy calculated for either POSCO or DSM. Thus, for each of the programs below, the listed ad valorem subsidy rate includes the countervailable subsidies received by both the trading companies and either POSCO or DSM.

I. Programs Determined To Be Countervailable

A. The GOK's Direction of Credit Policies

1. The GOK's Credit Policies Through 1991

As noted above in the ''Subsidies Valuation'' section of this notice, on October 1, 1999, the CAFC issued a decision regarding *Steel Products from Korea. See AK Steel.* The Department has not received specific instructions from the Court as to how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. Since the time of the final determination of *Steel Products from Korea* the URAA was enacted and the Department developed and codified new substantive countervailing duty regulations. Under the new statute and regulations and considering the new information that was not on the record of *Steel Products from Korea*, we determine that all loans disbursed to respondent companies through 1991 are countervailable. For a discussion of this new information, please see Comments 1 and 2 in the ''Interested Party Comments'' section of the notice. The provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has

been conferred on the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation Information'' section, above.

POSCO and DSM were the only producers of the subject merchandise, and both companies received long-term loans prior to 1992 that were still outstanding during the POI. To determine the benefit from the regulated loans, we applied the long-term loan methodology provided for in section 351.505 of the CVD Regulations. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for POSCO, and 0.04 percent *ad valorem* for DSM.

In the preliminary determination, we stated that the long-term KExim Bank loans are regulated. Accordingly, these loans are countervailable as directed credit, and we included these long-term loans in POSCO's benefit calculations for directed credit. In the preliminary determination, we concluded that the loans provided to POSCO from the KExim Bank were export subsidies, and thus divided the benefit amounts from the loans attributable to the POI by the company's export sales. During verification, we found that these loans were provided under the Overseas Resource Development Program, and thus were not provided to POSCO based upon its export performance. Therefore, for the purposes of this final determination, we have attributed the benefit conferred from the KExim Bank loans over POSCO's total sales.

2. The GOK's Credit Policies From 1992 Through 1998

In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997.[3] The Department also determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. This credit conferred a benefit on the producers/exporters of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans. *See* section 771(5)(ii) of the Act. *See* also *Stainless Steel Plate,* 64 FR 15530, 15533, and *Stainless Steel Sheet and Strip,* 64 FR 30636, 30642.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies during the 1992 through 1997 period, which we would consider along with our finding in the prior investigations. The GOK did not provide new factual information that would lead us to change our determination in *Stainless Steel Plate and Stainless Steel Sheet and Strip.* Therefore, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable.

In the instant investigation, we examined whether the GOK continued to control or influence directly or indirectly, the lending practices of sources of credit in Korea in 1998, in light of our prior finding that the GOK controlled and directed credit provided by domestic banks and government-owned banks during the period 1992 through 1997. The GOK asserted that it does not provide direction or guidance to Korean financial institutions in the allocation of loans to selected industries. The GOK stated that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK also stated that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

According to the GOK, measures were taken in 1998 to liberalize the Korean financial sector. For example, in January 1998 the GOK announced closure of some banks, and in April 1998, launched the Financial Supervisory Commission (FSC) to monitor the competitiveness of financial institutions. In June 1998, the Regulation on Foreign Exchange Controls was amended to further liberalize foreign currency transactions, and in July, the GOK abolished the limit on purchasing foreign currency. According to the GOK, it also liberalized access to foreign loans. For direct foreign loans to Korean companies, the approval process under Article 19 of the Foreign Investment and Foreign Capital Inducement Act (FIFCIA) and Article 21 of its enforcement decree were eliminated and replaced with the Foreign Investment Promotion Act (FIPA), effective in November 1998. However, during most of the POI, access to direct foreign loans still required the approval of the Ministry of Finance and Economy.

Regarding the GOK regulated credit from government-controlled banks such as the Korea Development Bank (KDB), the GOK reported that the KDB Act was amended in January 1998, in response to the financial crisis in 1997. According to the GOK, with the new Act, the KDB no longer allocates funds for various functional categories; such as R&D, environment and technology. All functional loan categories were eliminated and such loans were consolidated into a single category for facility (equipment) loans. The GOK also stated that the KDB strengthened its credit evaluation procedures by developing an objective and systematic credit evaluation standard to prevent arbitrary decisions on loans and interest rates. The KDB changed its Credit Evaluation Committee to the Credit Deliberation Committee (CDC), and gave the CDC the authority to make lending decisions. As a result, the KDB governor no longer makes lending decisions without the approval of the CDC. The GOK also stated that in 1997, the KDB used the prime rate plus a spread for determining interest rates. Effective January 1, 1998, the KDB increased the range of the credit spread to provide more flexibility in determining interest rates based on creditworthiness and to allow the KDB to increase its profits. However, respondents did not provide any evidence to demonstrate that the KDB has discontinued the practice of selectively making loans to specific firms or activities to support GOK policies.

In *Stainless Steel Plate,* the Department noted conflicting information regarding the GOK's direct or indirect influence over the lending decisions of financial institutions. For example, the GOK policies appeared to be aimed, in part, at promoting certain sectors of the economy, such as high technology, which is defined to include the steel industry.

While the GOK started to plan and implement reforms in the financial system during the POI as a result of the 1997 financial crisis, the record evidence indicates that the GOK previously attempted reforms of the

[3] In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department based its affirmative direction of credit determination for the period 1992 through 1997 on record evidence covering a time period different than that covered by the CAFC's decision in *AK Steel* which was Pre-1992. Moreover, in its decision, the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry but rather took issue with the evidence upon which the Department based its affirmative finding. Thus, because the Department based its affirmative direction of credit determination for the years 1992 through 1997 on evidence that was not before the CAFC at the time of its decision in *AK Steel,* that case does not preclude a finding of directed credit during this later time period.

financial system in order to remove or reduce its control and influence over lending in the country. In the past ten years, the GOK has twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the government deemed the 1988 liberalization a failure. When the interest rates began to rise, the GOK canceled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. During 1998 and 1999, the GOK has threatened to cut off credit to Korean companies unless the companies follow GOK policies. In addition, during the POI, the GOK took control of five large commercial banks due to the financial crisis.

Based upon the information on the record and our determinations in *Stainless Steel Plate and Stainless Steel Sheet and Strip,* we determine that the GOK continued to control, directly and indirectly, the lending practices of domestic banks and government-owned banks through the POI.

With respect to foreign sources of credit, in *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*, we determined that access to government regulated foreign sources of credit in Korea did not confer a benefit to the recipient as defined by 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. On the basis of this comparison, we found that there was no benefit during the POI. Petitioners have not provided any new information or evidence of changed circumstances to cause us to revisit this determination. Therefore, we continue to determine that credit from Korean branches of foreign banks were not subject to the government's control and direction. As such, lending from this source continues to be not countervailable, and loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign sources of funds confer a benefit to respondents.

With respect to loans provided under the Energy Savings Fund, in *Stainless Steel Plate,* 64 FR at 15533, the Department found that these loans were countervailable as directed credit on the grounds that they are policy loans provided by banks that are subject to the same GOK influence as described above. POSCO had Energy Savings Fund loans outstanding during the POI. Accordingly, these loans are countervailable as directed credit, and we have included these long-term loans in POSCO's benefit calculations for directed credit.

In addition, respondents received loans under the Industry Promotion Fund and the Industry Technology Development Fund. Similar to our determination with respect to the Energy Savings Fund, loans from both of these Industry Funds are policy loans provided by banks subject to the same GOK influence as described above. Therefore, loans from these two Industry Funds are countervailable as directed credit. POSCO's affiliates had outstanding loans during the POI from these Industry Funds. Therefore, we have included these long-term loans in POSCO's benefit calculations for directed credit.

Both POSCO and DSM received long-term loans from domestic banks and government-owned banks during the period 1992 to 1998 that were still outstanding during the POI. These included loans with both fixed and variable interest rates. To determine the benefit from the regulated loans with fixed interest rates and those with variable interest rates, we applied the methodology provided for in section 351.505(c)(2) and section 351.505(c)(4), respectively, of the CVD Regulations, using as our benchmark the rate described in the ''Subsidies Valuation Information'' section of the notice, above. Therefore, for both fixed and variable rate loans, we calculated the difference in interest payments for the POI based upon the difference in the amount of actual interest paid during 1998 on the regulated loan and the amount of interest that would have been paid on a comparable commercial loan. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to 0.15 percent *ad valorem* for POSCO, and 0.13 percent *ad valorem* for DSM.

B. GOK Infrastructure Investment at Kwangyang Bay

In *Steel Products from Korea,* the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea,* 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea,* which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. We used as our discount rate the three-year corporate bond rate on the secondary market as used in *Steel Products from Korea.* We then summed the benefits received by POSCO during 1998 from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1998. On this basis, we determine a net countervailable subsidy of 0.23 percent *ad valorem* for the POI.

C. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea (see* 58 FR at 37350). During the POI, POSCO was the only producer/exporter of the subject merchandise that used export financing.

In accordance with section 771(5A)(B) of the Act, this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(i) of the Act in the form of a

loan. To determine whether this export financing program confers a countervailable benefit to POSCO, we compared the interest rate POSCO paid on the export financing received under this program during the POI with the interest rate POSCO would have paid on a comparable short-term commercial loan. See discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.,* interest is paid up-front at the time the loans are received), the effective rate paid by POSCO on its export financing is a discounted rate. Therefore, it was necessary to derive from POSCO's company-specific weighted-average interest rate for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rate. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers a countervailable benefit because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We then divided the benefit derived from all of POSCO's export loans by the value of the company's total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

D. Reserve for Export Loss

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. During the POI, DSM was the only exporter of the subject merchandise that benefitted from this program.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the company.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1997, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, the amount of tax savings was multiplied by the company's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we determine a net countervailable subsidy of 0.02 percent *ad valorem* for DSM.

E. Reserve for Overseas Market Development

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets overseas expenses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. The following exporters of the subject merchandise used this program during the POI: Hyosung, POSTEEL, Sunkyong, and DKI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the companies.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. Using the methodology for calculating subsidies received by trading companies, which is detailed in the ''Subsidies Valuation Information'' section of this notice, we determine a net countervailable subsidy of 0.01 percent *ad valorem* for POSCO and a rate of 0.01 percent *ad valorem* for DSM.

F. Technical Development Reserve Funds Under Article 8 of TERCL

Article 8 of TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduces the amount of taxes paid by the company. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determine that the Technical Development Reserve Funds is specific under section 771(5A)(D). We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital

goods industry, which includes steel manufacturers.

During the POI, POSCO was the only exporter of the subject merchandise that benefitted from this program. To determine the benefit conferred by this program, we first calculated the balance amount of the reserve as of December 31, 1997, attributable to the company being allowed to contribute a higher amount to the reserve account. We then calculated the tax savings by multiplying the calculated balance amount in the reserve account, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. As a benchmark interest rate, we used an affiliated company's weighted-average interest rate for short-term won-denominated commercial loans for the POI. On this basis, we determine a net countervailable subsidy for POSCO of less than 0.005 percent *ad valorem*.

G. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent tax years. During the POI, POSCO claimed various investment tax credits to reduce its 1997 net tax liability. In *Steel Products from Korea,* we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the countervailing duty statute effective in 1995, which have caused us to revisit the countervailability of the investment tax credits.

POSCO used the following tax credits: (1) tax credits for investments in facilities for research and experiment under Article 10(1)(a) and Article 10(1)(b); (2) tax credits for investments in productivity improvement under Article 25; (3) tax credits for specific facility investments under Article 26; (4) tax credit for Equipment Investment to Promote Workers' Welfare under Article 88.

Under these TERCL Articles, if a company invested in foreign-produced facilities (*i.e.,* facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.*, facilities produced in Korea) under the same Articles, it received a 10 percent tax credit. Under Article 88, a tax credit can only be claimed if a company is using domestic machines and materials. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10(1)(a), 10(1)(b), 25, 26, and 88 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK is foregoing the collection of tax revenue otherwise due under this program, we determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program is a reduction in taxes payable. Therefore, we determine that this program is countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1997 fiscal year. POSCO deducted from its 1997 taxes payable, credits earned in the years 1995 and 1996. Therefore, we first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.32 percent *ad valorem* for POSCO. DSM did not claim any tax deductions during the POI through the use of any of these investment tax credits.

H. Electricity Discounts Under the Requested Load Adjustment Program

The GOK reported that during the POI, the government-owned Korea Electric Power Company (KEPCO) provided respondents with four types of discounts under its tariff schedule. These four discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; (3) Requested Load Adjustment; and (4) Voluntary Curtailment Adjustment. *See* the discussion below in ''Programs Determined To Be Not Countervailable'' with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment discount programs.

The GOK introduced the Requested Load Adjustment (RLA) discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

During the POI, KEPCO granted 33 companies RLA discounts even though KEPCO did not request these companies to reduce their respective loads. The GOK reported that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997 and 1998. In 1996, KEPCO had entered into RLA contracts with 232 companies, which was reduced to 44 companies in 1997 and 33 in 1998. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The benefit provided under this program is a discount on a company's monthly electricity charge. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government. *See Stainless Steel Sheet and Strip,* 64 FR at 40454.

Under section 351.524(c) of the CVD regulations, discounts on electricity will normally be treated as recurring benefits and expensed in the year of receipt. Therefore, to measure the benefit from this program, we summed the electricity discounts which POSCO and DSM received from KEPCO under the RLA program during the POI and divided that amount by each company's total sales value for 1998. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO, and a rate less than 0.005 percent *ad valorem* for DSM from the RLA discount program.

I. Asset Revaluation Pursuant to TERCL Article 56(2)

This provision under Article 56(2) of the Tax Exemption and Reduction Control Act (TERCL) allowed companies making an initial public offering between January 1, 1987, and December

31, 1990, to revalue their assets without meeting the requirement in the Asset Revaluation Act of a 25 percent change in the wholesale price index since the company's last revaluation. In *Steel Products from Korea,* after verification, petitioners submitted additional information, which according to them, indicated that POSCO's revaluation may have been significantly greater than that of the other companies that revalued. Because the information submitted by petitioners was untimely, it was rejected; however, we requested additional information on the subject. The additional information submitted by petitioners contained data on the amount of assets revalued of only 45 of the 207 companies that revalued pursuant to Article 56(2). It was unclear from petitioners' data which companies revalued pursuant to Article 56(2) and which revalued in accordance with the general provisions of the Asset Revaluation Act. Because of these shortcomings, and because the information was submitted too late for verification, we were unable to draw conclusions with respect to the relative benefit derived by POSCO from this program. Since there was no evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea,* 58 FR at 37351.

In the petition in this case, petitioners provided information to substantiate their allegation that POSCO and DSM received a specific benefit under this program because their massive asset revaluations permitted the companies to substantially increase their depreciation and, thereby, reduce their income taxes payable. Based on this new information, the Department initiated a reexamination of the countervailability of this program and solicited information regarding the usage of this program.

Because the enabling legislation does not expressly limit access to the subsidy to an enterprise or industry, or group thereof, the program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Although the regulation itself does not expressly limit the access to this law to a specified group or industry, it does place restrictions on the time period and eligibility criteria which may have been structured to result in *de facto* limitations on the actual usage of this tax program. For example, Article 56(2) was enacted on November 28, 1987, and applied only to companies making an initial public offering from January 1, 1987 until the provision was abolished effective December 31, 1990. Pursuant to Article 56(2), companies listed on the Korea Stock Exchange between January 1, 1987 and December 31, 1988 (as was the case with POSCO) had until December 31, 1989 to revalue their assets. A company that listed its stock after December 31, 1988 had to revalue its assets prior to being listed on the stock exchange. Therefore, based upon the eligibility criteria of the program, Article 56(2) effectively limited usage of this program to only the 316 companies that were newly listed on the Korean Stock Exchange during the three years the program was in place rather than the 15 to 24 thousand manufacturers in operation in Korea during that period.

Information on the record of the current investigation shows that during the period 1987–1990, there were between 14,988 and 24,073 manufacturing companies operating in Korea, and only 77 companies revalued their assets in 1989 (at the time the respondents revalued their assets). In addition to the limited number of companies using this program, we note that the basic metal sector accounted for 83 percent of the total revaluation surplus amount (book value less revalued amount), which indicates that the basic metal industry was a dominant user of this program in 1988/89. *See, e.g., Stainless Steel Plate in Coils from South Africa,* 64 FR 15553 (March 31, 1999). In examining the *de facto* specificity of the program, we recognize the concern that a tax benefit conferred on a large company might be disproportionate merely because of the size of the company. However, based upon the facts of this particular case, this concern is unfounded. First, given the number of manufacturing companies in Korea during the effective period of this program's operation, there were very few companies receiving tax benefits under this program. In addition, given the number of manufacturers in Korea, there should have been other large companies relative to the size of POSCO revaluing assets under this program. However, this is not the case with respect to this program.

Therefore, based upon the above set of facts, we determine that this program is specific, within the meaning of 771(5A)(D)(iii). As a result of the increase in the value of depreciable assets resulting from the asset revaluation, the companies were able to lower their tax liability. Therefore, we also determine that the program provides a financial contribution within the meaning of section 771(5)(D)(ii), because by allowing companies to reduce their income tax liability, the GOK has foregone revenue that is otherwise due.

The benefit from this program is not the amount of the revaluation surplus, but rather the impact of the difference that the revaluation of depreciable assets has on a company's tax liability each year. Based on clarification of the May 28, 1999 questionnaire responses submitted by the respondents, we have revised our calculations. We have now used the additional depreciation in 1997, which resulted from the company's assets revaluation and multiplied that amount by the tax rate applicable to the tax return filed in the POI, and divided the benefit for each company by their respective total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.04 percent *ad valorem* for POSCO and a rate of 0.02 percent *ad valorem* for DSM.

I. Exemption of Bond Requirement for Port Use at Asan Bay

The GOK's overall development plan is published every 10 years, last published in 1991, and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (KOLAND) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by KOLAND.

After the preliminary determination, we requested and received information regarding the GOK's infrastructure investments at Asan Bay, which we subsequently verified. At verification, the officials explained that the GOK had built port berths #1, #2, #3, and #4 in the Poseung area. We also learned of POSCO's activities at Asan Bay. In September 1997, POSCO signed a three-year lease agreement with the Inchon Port Authority (IPA) for the exclusive use of port berth #1, which was constructed by the GOK, and paid the applicable user fee.

In 1997, the GOK also entered into a lease agreement for the exclusive use of the other port berths #2, #3, and #4, with

a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1. See POSCO Verification Report, public version dated November 19, 1999, on file in the CRU.

We first determine that the waiver of the bond purchase was only provided to POSCO. Therefore, the program meets the specificity requirements under section 771(5A)(D) of the Act. In addition, we determine that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease.

To determine the benefit from the loan, we treated the amount of the bond as a long-term interest-free loan. We then applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations for a long-term fixed rate loan, and compared the amount of interest that should have been paid during 1998 on the interest free loan to the amount of interest that would have been paid based upon the interest rate on a comparable won-denominated benchmark loan. We then divided the benefit by the company's total sales. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent ad valorem for POSCO.

J. Price Discount for DSM Land Purchase at Asan Bay

In 1995, DSM purchased land at the Asan Bay Industrial Site, a GOK constructed industrial estate. DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees, and land development costs. During the period of the contract from 1995 to 1998, a variety of cost and fees changed. For instance, DSM decided to have a private company perform land development, thus reducing the original total amount of land cost. Also, the management fee to West Area Industrial Site Management Corporation (WAISM) was waived and the GOK further reduced the land price.

During verification, the Department noted a difference between the total cost of land amount after changes and what DSM actually paid. This difference occurred because the GOK reduced the amount by percent and waived a management fee owed to WAISM. Based upon 771(5A)(D)(iii)(I) of the Act, this price reduction was specific to DSM. As the GOK issued this price reduction, this confers a benefit under 771(5)(D)(ii) of the Act, because the GOK foregoes revenue that it normally would collect.

To calculate the benefit from this program, the Department first took the original amount of the land cost and deducted the amount that was to be paid to the KLDC for land development, to obtain the new price of the land. Next, to derive the amount DSM paid for the land, we took the actual amount and added the prepaid interest. The Department then took the difference between the new price of the land and the calculated amount paid by DSM. We treated the difference as a grant as described in 19 CFR 351.504 of the CVD regulations. Although this program confers a non-recurring benefit, the amount of the benefit is less than 0.5 percent of DSM's total sales, therefore, we have expensed this benefit in the year of receipt, which was the POI, pursuant to section 351.524(2) of the CVD regulations. On this basis, we have calculated a net countervailable subsidy rate of 0.48 percent *ad valorem* for DSM.

K. POSCO's Dual-Pricing Scheme

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported. POSCO is the only Korean producer of slabs, which is the main input into the subject merchandise. During the POI, POSCO sold slab to DSM for products that will be consumed in Korea, as well as slab to produce exports of the subject merchandise.

During the POI, POSCO continued to be a government-controlled company. *See Stainless Steel Sheet and Strip* 64 FR at 30642–43. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. *See Stainless Steel Sheet and Strip,* 64 FR at 30647. Thus, in selling to DSM, POSCO charged a domestic price for slab when DSM's finished product was to be sold in Korea, and a ''local-export'' price for slab when DSM's finished product was to be exported. In *Stainless Steel Sheet and Strip,* we found this pricing scheme to be an export subsidy under section 771(5A)(B) of the Act, which provides a financial contribution under section 771(5)(D) of the Act.

In *Stainless Steel Sheet and Strip,* we calculated the benefit conferred by POSCO's pricing policies under section 351.516 of the CVD regulations which provides the methodology used to determine price preferences for inputs used in the production of goods for export. Therefore, in *Stainless Steel Sheet and Strip,* and in the preliminary determination of this investigation, the Department determined the benefit from this pricing scheme by comparing the difference in the local-export and domestic prices charged by POSCO.

In comments prior to our preliminary determination, petitioners argued that POSCO's dual-pricing system is a provision of a good for less than adequate remuneration under section 771(5)(E)(iv), therefore, petitioners stated that the Department should analyze this pricing scheme in accordance with section 351.511 of the CVD regulations. In our preliminary determination, we stated that we would continue to analyze this issue for our final determination.

The focus of our analysis in *Stainless Steel Sheet and Strip* was whether the GOK, acting through its ownership and control of POSCO, was setting below-market prices for raw materials used by Korean steel exporters. Based upon this premise, we determined that this program should be analyzed under section 351.516 of the CVD regulations to measure the discriminatory pricing practice between domestic and export consumption. This was the appropriate methodology to employ based upon the allegation in *Stainless Steel Sheet and Strip* that the government was providing price preferences for inputs used in the production of goods for export. As noted above, section 351.516 specifies the methodology to be employed when there are price preferences for inputs used in the production of goods for export and is based upon Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.

In this current investigation, petitioners have argued that the GOK is controlling both the domestic and export prices of slab, the input into plate. Petitioners have stated that the same information on the record that demonstrates that the GOK through its control of POSCO is setting below-market prices for exporters also supports a conclusion that a similar pricing policy is followed for POSCO's

domestic-priced slab sales. Therefore, we must analyze POSCO's dual pricing scheme based upon the specific allegation in this current investigation, *i.e.*, the provision of a good or service for less than adequate remuneration.

Under section 351.511(a)(2), the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, DSM imported slab; therefore, we are using actual imported prices of slab as our basis of comparison. Based upon this comparison, we determined that POSCO's local-export price for slab is sold at less than adequate remuneration. As a result, a benefit is conferred to DSM under section 771(5)(E)(iv). We have not made a determination with respect to POSCO's domestic-priced slab sales to DSM because under section 351.525(b)(4) of the CVD regulations, subsidies tied to a particular market will be attributed only to the products sold by the firm to that market.

To determine the value of the benefit under this program, we compared the quarterly delivered weighted-average price charged by POSCO to DSM for local export production to the quarterly delivered duty-exclusive weighted-average price DSM paid for imported slab, by grade of slab. We used a duty-exclusive price because, consistent with the prevailing market conditions referred to in section 771(5)(E)(iv) of the Act, an exporter in Korea is entitled to duty drawback. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that DSM received a countervailable subsidy of 0.90 percent *ad valorem* from this program during the POI.

L. Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43)

TERCL Article 43 allows a company to claim a tax reduction or exemption for income gained from the disposition of factory facilities when relocating from a large city to a local area (*e.g.,* Seoul Metropolitan area to a place outside the Seoul Metropolitan area). On December 29, 1995, DSM sold land from its Pusan factory and within three years from the sale date began production at its Pohang plant. In accordance with Article 16, paragraph 7 of the Addenda to the TERCL, DSM was entitled to receive an exemption on its income tax for the resulting capital gain.

Payment for the Pusan facilities is on a long-term installment basis. Therefore, the income tax on the capital gain is payable when DSM actually receives payment or transfers the title of ownership. The capital gain in the tax year cannot exceed DSM's total taxable income. The maximum tax savings permitted is 100 percent of the taxable income; however, this program is also subject to the minimum tax. This program does not allow carrying forward of unused benefits in future years.

We determine that the TERCL Article 43, for Special Cases of Tax for Balanced Development Among Areas is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy,* 64 FR 15508, 15516 (March 31, 1999) (funds were regionally specific because they were limited to certain areas within Italy). We also determine that Article 43 provides a financial contribution within the meaning of section 771(5)(D)(ii), because the GOK foregoes revenue that is otherwise due by granting this tax credit.

To calculate the benefit from this tax credit program, we examined the amount of the tax credit DSM deducted from its taxes payable for the 1997 fiscal year. In DSM's 1997 income tax return filed during the POI it deducted from its taxes payable, credits earned in 1997. Next, we calculated the amount of the tax savings and divided that amount by DSM's total sales during POI. Using this methodology, we determine a net countervailable subsidy of 0.61 percent *ad valorem* for DSM. POSCO did not use this program.

M. Research and Development (R&D)

The GOK, through MOCIE, provides R&D grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. The program is designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) a company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of SME's established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount.

This program was not reported until after the Department published its preliminary determination. We subsequently received information on this program during verification. However, we are unable to conduct a complete *de facto* specificity analysis regarding R&D that respondents performed with GOK assistance because: (1) A complete breakdown of projects, company names, sector, grant amount, and the duration of the projects was not provided until verification, and (2) this data is primarily in Korean. Therefore, as facts available, we determine that grants provided directly to respondents and their affiliates that are steel-related, are specific and thus countervailable. We also determine that R&D funds through KNISTRA are specific to the steel industry, and therefore countervailable. These grants also provide a financial contribution under section 771(5)(D)(i) of the Act.

Under 19 CFR 351.524, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. In addition, non-recurring benefits which are less than 0.5 percent of a company's relevant sales are also expensed in the year of receipt. The grants provided to respondents did not exceed 0.5 percent of each company's respective sales. Therefore, regardless of whether this program provided recurring or non-recurring benefits, the benefits are expensed in the year of receipt. To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the

amount of the grant by each company's respective consolidated total sales. Based upon this methodology, we determine that POSCO received a countervailable subsidy of 0.07 percent *ad valorem,* and that DSM received a countervailable subsidy less than 0.005 percent *ad valorem.*

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts under Power Factor Adjustment, Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment Programs

In *Stainless Steel Sheet and Strip,* we determined that the Power Factor Adjustment, and the Summer Vacation and Repair Adjustment programs are not countervailable because the discounts under these programs are distributed to a large number of firms in a wide variety of industries. *See Stainless Steel Sheet and Strip* 64 FR at 30647–48.

Regarding the Voluntary Curtailment Adjustment (VCA) program, KEPCO introduced this discount in 1995, to provide a stable supply of electricity and to improve energy efficiency by reducing demand during periods of peak consumption that occur during the summer. Under this program, customers who use general, educational or industrial services with a contract demand of 1,000 kw or more, and who arrange with KEPCO a curtailment period of five or more days (or times) during the July 15–August 31 period, are eligible to enter into a VCA contract with KEPCO. Customers who choose to participate in this program must curtail demand by 20 percent or more on the basis of the average daily demand during 10 a.m.–12 p.m., or by 3,000 kw.

Customers can apply for this program until June 15 of each year. If KEPCO finds the application in order, KEPCO approves the application. After approval, KEPCO and the customer enter into a contract with respect to the VCA discount. Under this program, a basic discount of 110 won per kw is granted between July 15 and August 31.

We analyzed whether the VCA discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The VCA discount program is available to numerous companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we determine that the VCA electricity programs is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the VCA program to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the VCA program were distributed to a large number of customers, across a wide range of industries. Given the data with respect to the large number of companies and industries which received VCA electricity discounts, and the fact that POSCO and DSM were not dominant or disproportionate users of this program, we determine that the VCA program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the VCA program is not countervailable.

B. Port Facility Fees

In *Stainless Steel Sheet and Strip,* we determined that this program is not countervailable because a diverse and large group of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. *See Stainless Steel Sheet and Strip* at 30649.

C. GOK Infrastructure Investments at Kwangyang Bay Post-1991

In *Stainless Steel Plate,* we determined that this program is not countervailable because the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. *Id.* at 15536.

III. Programs Determined To Be Not Used

Based on the information provided in the questionnaire responses and the results of our verification, we determine that the companies under investigation either did not apply for, or receive, benefits under the following programs during the POI:

A. Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 44 and 45)
B. Private Capital Inducement Act (PCIA)
C. Social Indirect Capital Investment Reserve Funds (Art. 28)
D. Energy-Savings Facilities Investment Reserve Funds (Art. 29)
E. Industry Promotion and Research and Development Subsidies
1. Highly Advanced National Project Fund
2. Steel Campaign for the 21st Century
F. Export Insurance Rates Provided By The Korean Export Insurance Corporation
G. Export Industry Facility Loans (EIFL) and Specialty Facility Loans
H. Scrap Reserve Fund
I. Excessive Duty Drawback

IV. Program Determined Not To Exist

Free Trade Zones (FTZ) at Pusan and Kwangyang

Interested Party Comments

Comment 1: CAFC's Decision in AK Steel With Respect to Domestic Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC ruled on the issue of direction of credit and foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision in *Steel Products from Korea* that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry. *See AK Steel.* Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the direction of credit.

Petitioners argue that, although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea,* the ultimate disposition of that decision has no impact upon the Department's ability to countervail the domestic loans in this investigation, because the record in this proceeding contains new evidence that was not before the CAFC in *AK Steel.* Petitioners claim that this new evidence clearly establishes a proximate causal nexus between the GOK's control of the financial system (control which POSCO and the GOK denied, but which the CAFC affirmed) and the benefit of low cost credit to the Korean steel industry. Moreover, according to petitioners, the CAFC's decision pertained only to the lack of a casual nexus for an indirect subsidy finding, *i.e.,* private loans directed or induced by government action, which were received after the end of the *de jure* preferences for steel, and does not impact upon loans received directly from government sources such as the Korean

Development Bank, or any loans received prior to 1987.

Department's Position

A large portion of the comments submitted by petitioners and respondents dealt with the *AK Steel* decision and its relationship to our preliminary determination that the GOK directed credit to the steel industry. The CAFC decision was based upon the Department's determination in *Steel Products from Korea* that the GOK provided a countervailable benefit to the Korean steel industry through its direction and influence over the provision of credit to selected industries. The decision in *Steel Products from Korea* covered the GOK's direction of credit polices through 1991. In subsequent investigations, *Stainless Steel Plate* and *Stainless Steel Sheet and Strip,* which were completed during 1999, the Department determined that the GOK also directed credit to selected industries during the period 1992 through 1997. The CAFC ruling in *AK Steel* does not cover the GOK's directed lending policies after 1991.

As we noted earlier, the Department has not received specific instructions from the Court on the *AK Steel* decision. However, our review of that decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided directed domestic credit to the Korean steel industry between 1985, the year the GOK removed *de jure* lending preferences to the steel industry, and 1991. With respect to pre-1992 foreign loans, the CAFC found that the Department did not establish that the terms of the foreign loans, which were provided through the GOK's control of preferential access to foreign lending, were on ''terms inconsistent with commercial considerations'' as required by the then governing statute. Since the final determination of *Steel Products from Korea,* Congress enacted a new statute and in 1998, the Department codified new substantive countervailing duty regulations. Below, we address the issue of the GOK's control over domestic credit. The Department's position with respect to access to foreign lending is addressed in ''Comment 2''.

Based upon our reading of *AK Steel,* the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry, but rather took issue with the evidence upon which the Department based its affirmative finding. Information which is on the record of this investigation, which was not in the record of *Steel Products from Korea,* indicates that the GOK directed credit to the Korean steel industry through 1991.

In its decision in *AK Steel,* it appears that the CAFC focused on the importance of Korea's second integrated steel mill at Kwangyang Bay, and noted the key role that project played in the Department's decision that the GOK was directing credit to the steel industry. Indeed the CAFC stated:

> If Commerce is correct in describing Kwangyang Bay as essentially a government project, Commerce can plausibly contend that a *de jure* preference program was replaced with a *de facto* system under which industry credit requirements and supplies were both managed by the government. If that premise is incorrect, however, the aggressive targeting theory is clearly unsupported.

Based upon a review of the evidence, the CAFC decided that the information on the record of *Steel Products from Korea* did not support the Department's decision. Therefore, we have reviewed the record of the instant investigation to determine whether there is new evidence on this record to support a conclusion that Kwangyang Bay was essentially a government project. Based upon this review, additional information is on the record of this current investigation to support a determination that the GOK directed credit to the steel industry.

In a speech in March 1981, Korean President Chun Doo Hwan stated that despite the stagnation plaguing steel industries in other countries, Korea intended to expand its steelmaking capacity.[4] In this speech marking the completion of POSCO's fourth phase of construction at Pohang, President Chun stated that his government will give special emphasis to Korea's steel industry and promised to carry on the work of building a second integrated steel plant in Korea. The speech from President Chun was on the record on *AK Steel,* however, the CAFC questioned the relevance of excerpts from his speech because the speech took place before any construction began at Kwangyang Bay. Information on the record of the current investigation places the speech in context of the time frame of the actual decision to build a second integrated steel mill at Kwangyang Bay. At the time of President Chun's speech, POSCO Chairman Park Tae Joon, stated that an evaluation of sites for the second integrated steel plant would be completed in July of 1981, at which time the government would make its final decision. Information on this record also shows that in November 1981, the government selected Kwangyang Bay as the site of the country's second integrated steel works and that groundbreaking for the construction of the Kwangyang steel works began in 1982.

In addition, information from the 1995 KOSA (the Korea Iron and Steel Association) Yearbook reports that the GOK originally designated Asan Bay as the second integrated steel manufacturing site in 1979, but put off construction of the second integrated steel at Asan Bay in 1980, before designating Kwangyang Bay as the site for the construction of the steel mill. According to the publication *Business Korea,* the GOK has been criticized for showing favoritism towards POSCO. The publication noted that POSCO was given free hand with millions of dollars in foreign loans for the construction of the Kwangyang steel mill in the late 1980's. This publication also noted that in 1991 when the GOK was following a tight fiscal policy, foreign loans coming into the country were virtually halted. However, even when the GOK was cutting off the supply of foreign funds, POSCO's application to bring in US$200 million in foreign currency was quickly approved by the government.

Information on the record includes statements from bankers in Korea reporting that through the late 1980's the government directed funds to specially designated sectors such as the steel sector. *See Memorandum on Meetings with Commercial and Investment Banks and Research Institutes in the Countervailing Duty Investigation of Stainless Steel Plate in Coils from the Republic of Korea* dated February 2, 1999 (*February Banker Verification Report*). This verification report was provided in petitioner's February 25, 1999 ''Amendment to Petition'' of this current investigation. The *February Banker Verification Report* also provides information of the role of the Korean Development Bank (KDB) in support of the Korean steel industry. The KDB is and has been since its inception the predominant source of long-term lending in Korea and is used by the government to support GOK industrial policies. According to Korean banking experts, the steel industry directly benefitted from preferential access to KDB lending, and the KDB is still known for preferring the semiconductor, shipbuilding, and steel industries. In addition, other information on the record shows that even in the 1990's the KDB has channeled billions of dollars into

[4] Supporting evidence on this record has been cited in the December 13, 1999 Memorandum to David Mueller from Team, which is on file in the CRU.

sectors favored by the GOK's industrial policies, including the steel industry. During our verification in this investigation, we examined internal KDB loan approvals for DSM and POSCO. According to the KDB's loan approval documents, both POSCO and DSM were ''nationally important industr[ies].'' *See GOK Verification Report* at page 4.

These same financial experts also stated that the GOK can influence commercial bank lending decisions by using the KDB. Korean financial experts stated that when the KDB decides to fund a project, it may be considered as a guarantee from the government. Projects funded by the KDB are receiving tacit government approval for that project, and thus an implicit guarantee is provided to commercial banks in Korea to follow the KDB's lead. *See February Banker Verification Report* at 7.

A review of respondents' outstanding loans which were received before 1992, demonstrates the importance of the KDB financing to the steel industry. A substantial portion of POSCO's pre-1992 outstanding loans are either from the KDB or guaranteed by the KDB. In addition, almost all of DSM's pre-1992 outstanding loans are from the KDB.

In addition, further information on the GOK's direction of credit policies came to light after Korea's 1997 financial crisis. Portions of this information are now on the record of this current investigation. The GOK has acknowledged to the IMF that it has directed lending in the financial sector. As noted above, banking experts and other analysts have stated that the GOK has used the KDB as a tool for directing credit to strategic industries such as steel. Other observers of the Korean financial system have concluded that the GOK has used commercial banks to funnel money into favored industries, and that the GOK has directed banks to provide lending to ''promising'' industries. These experts have concluded that the GOK's directed lending policies have helped build Korea's formidable steel industry.

As noted above, the CAFC decision in *AK Steel* was based upon the evidence of the record on the *Steel Products from Korea* investigation. As detailed above, there is additional information on the record of this current investigation, which in conjunction with prior case precedent, supports a determination that the GOK has directed credit to the steel industry prior to 1992, the period covered by the *AK Steel* decision.

Comment 2: CAFC's Decision in AK Steel With Respect to Foreign Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC issued its findings on the issue of foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry in *Steel Products from Korea. See AK Steel.* Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the foreign loans.

Petitioners argue that although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea*, the ultimate disposition of that decision has no impact upon the Department's ability to countervail the foreign loans in this investigation, because the record in this proceeding contains new evidence that is not before the CAFC in *AK Steel*.

Department Position

First, we note that the CAFC in *AK Steel* did not disagree with our determination that the GOK controlled the provision of foreign loans and that a disproportionate share of those foreign loans were provided to the steel industry. The CAFC, instead, based its decision on the statutory language as to when a loan provides a countervailable subsidy. In *AK Steel*, the CAFC stated the Department characterized the foreign loans as subsidies on the ground that preferential access to those loans benefitted the Korean steel industry. The CAFC concluded that this was an inadequate basis under the then governing statute for determining that the foreign loans constituted subsidies. Under the statute in effect during the period pertinent to *Steel Products from Korea*, 19 U.S.C. 1677(5)(a)(ii)(1) required that for a loan to be countervailable it must be provided ''on terms inconsistent with commercial considerations.'' The CAFC concluded that the Department did not provide evidence to demonstrate the legal requirement that the foreign loans were provided on ''terms inconsistent with commercial considerations.''

Since the investigation of *Steel Products from Korea*, Congress has amended the statute. With the enactment of the URAA in 1995, section 771(5)(E)(ii) of the Act provides that the standard for determining whether a benefit has been provided is ''in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Therefore, to determine in this current investigation whether the foreign loans received by POSCO and DSM are countervailable, the Department must apply the standards set forth under section 771(5)(E)(ii) of the Act.

As noted above, the CAFC did not disagree with our conclusion that the GOK controlled the access to foreign loans, which were made on terms more favorable than the loans available in the Korean domestic market. Absent GOK approval, a company could not borrow foreign loans and would have to obtain financing in the more expensive, domestic market. Under section 771(5)(E)(ii), a loan program provides a countervailable benefit to the extent that the costs of the loan provided under the government program is lower than the cost of a loan the recipient could actually obtain on the market. Absent the approval from the GOK to participate in this program, a Korean company would be unable to obtain foreign lending and would only be able to obtain loans in the Korean market. Therefore, under section 771(5)(E)(ii) of the Act, the foreign loans received by DSM and POSCO are countervailable to the extent that the interest rates on these foreign loans are less than the interest rates the companies could actually obtain in the Korean financial market. Based upon the statutory requirements set forth under 771(5)(E)(ii), we continue to find these loans countervailable.

Comment 3: Long-Term Won-Denominated Loan Benchmark Methodology

Petitioners argue that the long-term loan benchmark that the Department used to calculate the benefit to POSCO from its won-denominated loans received in 1998 is at odds with the Department's Regulations and the Department's POSCO Verification Report. First, the applicable regulation governing the choice of long-term loan benchmark in section 351.505(a)(2)(iii), states that: in selecting a comparable loan, the Department will normally use a loan the terms of which were established during or immediately before, the year in which the terms of the government-provided loan were established.

Second, to apply this regulatory objective, the Department must consider POSCO's borrowing experience and developments in the Korean financial

market in 1998. Petitioners state that according to the Department's POSCO Verification Report, POSCO did not issue bonds or foreign securities before August 1998 due to the financial crisis in Korea. Instead, POSCO turned to subsidized long-term loans. However, late in 1998, after the financial crisis subsided and corporate-bond interest rates declined, POSCO returned to the corporate bond market in August 1998. Thus, petitioners argue that the Department cannot use POSCO's post-crisis borrowing experience as a benchmark to measure the benefit from the government's subsidized loans to POSCO during the crisis period. Therefore, petitioners argue that the Department should use a monthly benchmark comparison and, during months when POSCO did not issue corporate bonds, the Department should use the Bank of Korea's corporate bond index.

Respondents counter that petitioners' cite to section 351.505(a)(2)(iii), is an unequivocal twist in the standard choices the Department uses for comparable benchmarks. Respondents state that the Department used a benchmark in the year that the KDB loan was given in its preliminary determination. Therefore, they argue that petitioners' argument that the Department should use data from a different part of the year, as its benchmark, is an attempt to manipulate a subsidy calculation, and should be rejected by the Department.

Department's Position

Petitioners' proposed methodology for selecting the long-term loan benchmark for the government-provided won-denominated loans is inappropriate in this investigation. The Department's regulations state that the Department will select an interest rate benchmark from the year in which the terms of the government-provided loan were established. *See* section 351.505(a)(2)(iii) of the CVD regulations. The interest rate benchmark selected in this investigation reflects the rate at which POSCO could borrow in the same currency during the year in which the government-provided loan was given. Petitioners have not provided sufficient evidence to dictate a change in the Department's policy. Furthermore, we used the same methodology of selecting the interest rate benchmarks in *Stainless Steel Sheet and Strip* and *Stainless Steel Plate*.

Comment 4: Subsidies Received by Affiliates

Petitioners state that the Department instructed respondents to identify all affiliated companies, and further instructed certain affiliated companies to provide complete questionnaire responses. Petitioners argue that all of these affiliated companies fall under the definition of mandatory respondents because they supply an input product that is primarily dedicated to the production of the subject merchandise or have otherwise engaged in financial transactions with respondents. Therefore, petitioners argue that all subsidies received by these affiliates are attributable to the subject merchandise and should be countervailed.

Respondents counter that while they do not disagree in principle with petitioners, they disagree with the methodology that the Department should employ in allocating any subsidies found to be received by these affiliated parties. Respondents counter that the Department should determine the total *ad valorem* benefit of all relevant subsidies received by each affiliated party and, based on the portion of each affiliate's sales to the respondent company as a percentage of their total sales, calculate the amount of subsidy applicable to the respondents through their purchases from these affiliates.

Department's Position

During this period of investigation, certain of POSCO's and DSM's affiliates have received subsidies under investigated programs which benefit the respondents' steel production, including the production of subject merchandise. For example, certain of POSCO's affiliates have received benefits under certain R&D loan and grant programs. To quantify the benefit from these programs, we have calculated the *ad valorem* subsidy rate by dividing the program benefit by POSCO's total consolidated sales which includes the total sales of POSCO as well as its affiliates. This methodology is consistent with section 351.525 of the CVD regulations.

Comment 5: Exemption of Bond Requirement for Port Use at Asan Bay

Petitioners argue that on more than one occasion, POSCO did not respond truthfully regarding its activity at Asan Bay, until the Department discovered the truth as verification. According to petitioners, these misrepresentations constitute a failure by POSCO to act to the best of its ability. Therefore, they argue, as facts available, the Department should find that (1) POSCO received a specific benefit from the GOK's expenditures on infrastructure at Asan Bay, and that (2) POSCO received a specific subsidy because the company never paid the bond requested by the GOK for POSCO's exclusive use of port berth #1, or (3) at a minimum the Department should use the highest previously calculated rate for infrastructure provided in Korea.

Respondents counter that the issues raised in this investigation regarding Asan Bay were always framed by petitioners and the Department in the context of infrastructure. Respondents claim that a warehouse, unloading equipment and a coil service are not traditionally considered infrastructure and POSCO has not built any infrastructure to date. Furthermore, respondents counter that some of the facilities built in the dockyard area, such as the coil service center and equipment used in the unloading of cargo were reverted to the GOK, for which POSCO is being compensated through free usage until full recovery of its expenditures, pursuant to relevant provisions of the Harbor Act. Respondents claim that in *Stainless Steel Plate*, the Department determined that the program by which companies build facilities at ports that are reverted to the GOK, and then are allowed free usage and the right to collect fees from other users until fully compensated for their costs, does not constitute a countervailable subsidy.

Respondents also counter that petitioners are wrong with respect to the facts concerning POSCO's exclusive use of port berth #1. Respondents claim that POSCO signed an agreement to purchase bonds on the same terms as the companies that obtained the rights to exclusive use of port berths #2, #3, and #4 through an open bidding process; however, POSCO was not permitted to follow through on the agreement, and has instead been required to either build port berth #5 or pay for the construction costs of port berth #1, and receive compensation through free use until it recovers its costs. Therefore, respondents counter that instead of POSCO benefitting from a financial contribution by not being required to purchase the bond, it is being required to incur a far larger outlay of expenses for the construction of port berth #5.

Department's Position

During verification, we found that other companies which received exclusive use of port berths at Asan Bay were required to purchase a bond through the GOK. POSCO was not required to purchase the bond because it was going to build port berth #5. POSCO's argument that it was required to build a port berth is not germane to the analysis as to whether the

exemption from the bond requirement provided POSCO with a countervailable subsidy. When POSCO builds the port berth, which will revert back to the GOK under the provisions of the Harbor Act, POSCO will be compensated for its expenditures through free usage of that newly-built port berth until full recovery of its costs under the same Harbor Act. As POSCO has correctly noted, the Department has found this practice under the Harbor Act not countervailable. *See* the discussion of the ''Port Facility Fees'' in *Stainless Steel Sheet and Strip*, 64 FR at 30649.

Therefore, based upon the information gathered during verification, the issue is whether POSCO received a benefit from the bond exemption. Because POSCO was the only company to receive this exemption, the program is specific to POSCO under section 771(5A)(D) of the Act. In addition, a financial contribution was provided to POSCO under section 771(5)(D)(ii). Therefore, we determine that POSCO received a countervailable benefit when it was not required to purchase a bond for the exclusive use of the port berth at Asan Bay.

Comment 6: Highly Advanced National Project Fund (HANP)

Petitioners state that although the GOK claimed that it was unaware of the existence of HANP, an exhibit provided by the GOK in the same response explicitly referenced the HANP. Petitioners also state that at verification, the Department found that a subsidiary of POSCO received a HANP grant. Therefore, petitioners argue that because the parties failed to act to the best of their ability to comply with a request for information, the Department is required to apply facts available, and determine that the HANP program conferred a specific benefit to POSCO. Petitioners also argue that the benefit should be treated as a grant and amortized using the mid-year convention.

Respondents counter that this grant received by POSCO's subsidiary was not originally reported because the GOK and POSCO were unaware of the HANP program. According to respondents, the program is commonly referred to by the GOK as the G–7 project, and the company received the R&D under the STEP 2000 project. Respondents also counter that the grant which was received in 1994 would have been expensed in the year of receipt, pursuant to section 351.524(b)(2) of the Department regulations, because the subsidy is less than 0.5 percent *ad valorem*.

Department's Position

Although the HANP project, as argued by respondents is known by different names, a POSCO affiliated subsidiary did receive a GOK grant which should have been reported in their response. However, because this grant was provided in 1994, and the calculated subsidy was less than 0.5 percent *ad valorem*, it is expensed in the year of receipt in accordance with section 351.524(b)(2) of the CVD regulations. Therefore, no benefit was provided to POSCO from this program during the POI.

Comment 7: Steel Campaign for the 21st Century

Petitioners argue that the GOK's claim that this program is a private initiative organized by the Korea Iron and Steel Association (KOSA), a trade organization with no government involvement and no participation by respondents, has been demonstrated to be false. According to petitioners, record evidence indicates that the GOK and the respondents are active participants in the Campaign. A KOSA report identifies the Ministry of Trade, Industry and Economy (MOTIE) as providing ''fiscal and tax support,'' and the respondents as receiving substantial benefits from various R&D projects. The KOSA report also states that the Campaign funds R&D so as to boost exports and create import substitution savings. Petitioners further state that a program entitled ''Korean Industry in the 21st Century,'' which was never disclosed to the Department in questionnaire responses, was discovered by the Department at verification.

Petitioners also argue that, given respondents' repeated denials, and their not acting to the best of their ability, the Department should use facts available, and find that this program provides an import substitution subsidy, which is specific, and therefore countervailable.

Respondents counter that this is a private initiative by the Korean steel industry, under the auspices of the Korea Iron and Steel Association (KOSA), the industry trade association. Respondents also counter that if there were any benefits specifically offered under this program, one would expect that there would be explicit mention and some attempt at quantification, just as other parts of the report mention. Respondents also counter that if import substitution is done economically and without government involvement, it is a perfectly normal strategy for increasing revenues, and state that petitioners offer no evidence of any specific government involvement in this program.

Department's Position

At the GOK's verification, we obtained a document entitled ''Vision and Development Strategy of Korean Industry in the 21st Century.'' We were unable to determine whether there is a relationship between this program that is administered by MOCIE and the Steel Campaign for the 21st Century, which respondents' claim is handled through KOSA. However, we did not find any benefits given to respondents under either of these programs during the POI.

Comment 8: Whether Assets Revaluation Pursuant to TERCL Article 56(2) Is Countervailable

Petitioners argue that in its preliminary determination, the Department properly countervailed a program which permitted POSCO and DSM to revalue their assets at an earlier time than would otherwise be allowed, and that the Department should maintain its position in the final determination.

Respondents argue that the Department erred in its preliminary determination that asset revaluation pursuant to TERCL Article 56(2) was *de facto* specific to the basic metals sector, and in its calculation of the benefit. According to respondents, this determination cannot stand because the Department examined this program in *Steel Products from Korea* based on the same record evidence in this case, which the CAFC affirmed in *AK Steel*. Respondents also counter that in *Steel Products from Korea*, the Department analyzed and rejected petitioners' theory of dominant or disproportionate use based on the percentage change in the value of a company's assets after revaluation. Respondents claim that in defending the Department's decision to use this methodology before the CAFC, the Department argued that the domestic producers erroneously contend that percentage change information contained within the record is not relevant in the disproportionality analysis, and that with respect to a tax program, it easily enables the Department to distinguish between general and specifically targeted tax schemes without penalizing companies due to their profits or size. Respondents also argue that the CAFC also considered and rejected petitioners arguments on (1) dominant or disproportionate share of the benefit conferred based on a percentage basis rather than on an absolute basis, and (2) the Department's reliance on the information contained in the Korea Listed Companies Association (KLCA) report.

Respondents also argue that if the Department continues to countervail the asset revaluation, the benefit from the asset revaluation program, was calculated incorrectly, which reflects the Department's misunderstanding of the data reported in respondents' May 28, 1999 questionnaire responses. Respondents claim that its May 28, 1999 responses were clarified at verification; therefore, the Department should take the additional depreciation in 1997 as a result of asset revaluation pursuant to TERCL 56(2), and multiply that by the corporate tax rate of 30.8 percent to obtain POSCO's total tax savings in fiscal year 1997.

Petitioners also counter that while they do agree with respondents that the Department's methodology does not accurately reflect the benefit received by respondents in any given year, they argue that respondents' proposed methodology does not accurately represent the true benefits either. According to petitioners, benefits received in fiscal years 1990–1993 should be amortized using their mid-year grant allocation methodology, and benefits received in fiscal years 1994–1998 should be expensed in the year of receipt. Petitioners also counter that the benefits are exceptional because the recipient cannot expect to receive additional subsidies under the same program on an on-going basis from year to year, the program is not automatic, and because this program is undoubtedly tied to the companies' capital structure and capital assets.

Department's Position

We disagree with respondents that the Department should not reconsider the specificity determination made in *Steel Products from Korea*. In *Steel Products from Korea*, there was not sufficient information on the record to indicate that POSCO revalued more of its assets than is generally allowed under Korean law. We noted in that case that the Department had rejected specificity information submitted by petitioners, because it was untimely. In the absence of evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea*, 58 FR at 37351.

In the instant investigation, petitioners have timely submitted information that warrants reconsideration of this program by the Department. Information on this record shows that during the period 1987–1990, companies making an initial public offering were allowed to revalue their assets pursuant to Article 56(2). There were between 14,988 and 24,073 manufacturing companies operating in Korea at that time. However, only 77 companies revalued their assets in 1989, the same year in which POSCO revalued its assets. The basic metal sector accounted for 83 percent of the total revaluation surplus, of which POSCO's revaluation accounted for 91 percent. While we recognize that many factors can affect the relative size of tax benefits claimed under programs (*e.g.*, company size, value of assets, timing of investments, management decisions, capital intensiveness, labor intensiveness), the record evidence indicates that the basic metal industry was a dominant user of this program in 1988/89. We also note that the GOK enacted Article 56(2) on November 28, 1987, and it listed POSCO shares on the Korean Stock Exchange in 1988. POSCO was also, by far, the largest beneficiary under this program.

After clarification of the assets revalued by respondents at verification, we agree with petitioners and respondents that the Department did not properly calculate the benefits from this program in its preliminary determination. However, we disagree with the calculation methodology suggested by petitioners. Petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations. Further, petitioners' methodology combines allocating some benefits over time and expensing other benefits in the year of receipt, two different methodologies.

However, we disagree with petitioners that this program provides exceptional non-recurring benefits. While there may be instances where these types of benefits could be found to be non-recurring, in this case, that is not possible because the total value of the benefit cannot be determined at the point of the revaluation. This is because the benefit is not the amount of the revaluation surplus, but rather the impact of the difference the revaluation of depreciable assets has on a company's tax liability in each year. Therefore, based on verification of the respondents questionnaire responses, we have used the additional depreciation in 1997, as a result of the asset revaluation pursuant to 56(2), and multiplied that amount by the applicable tax rate in 1997. We then divided the benefit for each company by their respective total sales during the POI.

Comment 9: Countervailability of TERCL Investment Tax Credits

Petitioners argue that Articles 8, 9 and 10 fall under Section 2 of the TERCL, which provides tax benefits for companies engaged in R&D activities. Petitioners also argue that the Department previously found Article 10 countervailable, and it should also find Article 8, technical development reserve funds, and Article 9, technology for manpower development expenses, specific and therefore countervailable. Petitioners argue that Article 8 is specific because it is limited to the manufacturing and mining industries, and it provides for a varying level of benefit to industries. Petitioners argue that Article 9 is also limited on its face to the manufacturing and mining industries.

Petitioners argue that Article 11 confers a type of import substitution subsidy by granting greater tax benefits for patent rights sold or leased domestically rather than abroad, which encourages domestic production as a substitute for importation. Petitioners also claim that Article 88 provides tax credits to companies that build or purchase qualified assets for employee welfare. Petitioners argue that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials.

Regarding Articles 8 and 9, respondents counter that since the manufacturing sector, by itself, covers a very broad and non-specific range of industries, there is no basis for finding these programs specific. Respondents also counter that petitioners have not cited to any Department precedent for the proposition that participation in such a program, in and of itself, mandates a finding of specificity. Respondents further counter that petitioners have not offered any reasons for the Department to reverse its finding in *Stainless Steel Sheet and Strip*, 64 FR at 30646, that Article 9 is not countervailable.

With respect to Article 11, respondents counter that this program was investigated in *Stainless Steel Plate*, and the Department did not countervail it. Respondents also counter that since the tax incentive is earned for transferring or leasing either a patent right or technical know-how, it is difficult to construe how this fits under the rubric of import substitution.

Finally, with respect to Article 88, respondents counter that this program had been reported and explained in *Stainless Steel Plate*, and that the Department did not countervail this program in that investigation. Respondents also counter that there is no apparent basis for arguing that the benefit received has any bearing on the production of subject or other merchandise, or in this case that investments in worker housing provide any competitive benefit to POSCO.

Department's Position

Regarding Article 8, this article provides a higher tax credit to the capital goods industry than to other manufacturers. Therefore, we determine that the difference in the tax credit provided to the capital goods industry and the tax credit rate provided to all other industries to be a countervailable subsidy. However, we disagree with petitioners argument with respect to Article 9. We previously determined in *Stainless Steel Sheet and Strip* that this program is not countervailable. Petitioners have provided no additional evidence or information to suggest that a program provided to all manufacturing and mining industries is specific under CVD law.

With respect to Article 11, we agree with respondents that this program is not an import substitution subsidy as argued by petitioners. Under an import substitution program, the government provides an incentive to a domestic company to favor domestic consumption over export consumption. For example, in certain of these investment tax credits, the GOK provides Korean companies with a higher tax deduction if they purchase domestically-manufactured machines rather than purchasing imported machinery. This type of program is the classic example of an import substitution program because it seeks to influence the behavior of the party seeking to purchase a good or service. Article 11 does not operate in this fashion. There is no incentive provided to a domestic company by the GOK to purchase patent rights from a domestic company as opposed to a foreign company. Any benefit from this program would confer to a company for not exporting its technology, not to a company which is purchasing the technology.

Finally, we have determined that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials, and as such is an import substitution subsidy under section 771(5A)(C) of the Act.

Comment 10: Countervailability of Tax Programs TERCL Article 23

Petitioners argue that although the Department failed to initiate an investigation into Article 23, the Department must reconsider its prior decision, especially in light of the European Union's recent findings that this same program was countervailable and specific. Petitioners also argue that this program is an export incentive, as the amount of the allowable loss is limited to a set percentage of foreign exchange receipts from overseas business, and is limited to exporters.

Respondents counter that Article 23 was found not countervailable in *Steel Products from Korea*. Moreover, respondents state that Article 23 permits creation of a reserve for overseas investment losses and not a deduction of income from an overseas business, which is covered under Article 20, as argued by petitioners.

Department's Position

We disagree with petitioners that the Department must reconsider its prior decision of not initiating an investigation on Article 23 given the European Union's recent findings that this same program was countervailable and specific. The Department must base its decisions on U.S. CVD law. (For example, in the referenced EU decision cited by petitioners, it appears that the EU found Korean tax reserves provided to all manufacturing and mining industries to meet the standards of de jure specificity.) We also disagree with petitioners that this program is an export incentive and limited to only exporters. The foreign exchange in question under this tax reserve is foreign receipts earned from an overseas business. Therefore, the income is not earned on exports from Korea. Furthermore, a non-exporter may also be able to earn foreign exchange from an overseas business.

Comment 11: Electricity Discount Programs

Petitioners argue that the Department incorrectly determined that the Voluntary Curtailment Adjustment (VCA) program was not countervailable. Petitioners argue that in its *de facto* specificity analysis, the Department relied solely on one criterion. According to petitioners, there is no indication of how the Department conducted its specificity analysis of dominant or disproportionate use of this program. Petitioners argue that the steel industry received an overwhelming 51 percent of the total benefit during the POI, which is specific, and thus countervailable. Petitioners also argue that this analysis is consistent with Department practice.

Petitioners also argue that record evidence demonstrates that KEPCO provides electricity subsidies through discriminatory pricing schedules for certain industries, such as the steel industry. They argue that the manufacturing and mining industries receive a lower rate than do other industries in Korea, and therefore, a countervailable subsidy is bestowed on these industries.

Respondents counter that petitioners misstate the nature of the Department's specificity analysis. They state that the Department analyzed the detailed breakdown of the number of companies in each sector that used the program, and properly found that this program was used by a wide variety of industry sectors, and that the respondents were not dominant or disproportionate users. Respondents also counter that petitioners ignore the fact that (1) steel companies tend to be very large consumers of electricity, so it would be expected that their savings from this program are relatively high, and (2) in order to qualify for VCA savings, steel companies have to curtail relatively more electricity usage than other sectors.

Respondents also counter that KEPCO's varying rate schedules to different types of industries with different electricity use patterns do not give rise to countervailable subsidies for those industries with lower per unit rates. Moreover, according to respondents, a cursory examination of KEPCO's rate schedule shows that there are considerable variations in the rates applicable to users, including manufacturers, that have different requirements as to voltage level and contract demand.

Department's Position

The examination of electricity tariffs is a complicated issue. However, tariff rates that are applicable to manufacturing and mining industries would generally not be found countervailable. We have recognized in prior cases that electricity tariffs are generally based upon the type and amount of consumption of electricity, and have not countervailed utility rates solely because the rates are provided to large consumers. *See e.g., Pure and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992); *Oil Country Tubular Goods from Argentina*, 62 FR 32307 (June 13, 1997). Therefore, we did not simply analyze one specificity criterion to reach a determination that the VCA program is not countervailable, as argued by petitioners, but analyzed

the specificity of this program in light of established Department practice regarding the countervailability of utility programs. As noted by the above-cited case precedent, the fact that certain companies are necessarily large consumers of electricity does not make an electricity program providing tariff reductions to those companies countervailable. KEPCO has established a program whereby electricity customers who use general, educational, or industrial services with a contract demand of at least 1,000 kw can volunteer to reduce their consumption during peak summer periods (July 15—August 31) in exchange for a discount during that period. Based upon our review of the KEPCO customers that volunteered for this program, we found that there were a large number of volunteers from across a wide range of industries. We also found that steel companies were not the dominant or disproportionate volunteers for this program.

Comment 12: Private Capital Inducement Act (PCIA)

Petitioners argue that, in their petition, they provided evidence that POSCO had received government subsidies under the PCIA related to the construction of coal-fired power co-generation facilities at Kwangyang Bay. Petitioners argue that POSCO obfuscated the Department's repeated requests for information on this program. According to petitioners, if POSCO and the GOK had been honest regarding the cogeneration facilities at Kwangyang, the investigation would have taken a different track. Petitioners claim it was not until verification that the Department discovered this misrepresentation.

Respondents counter that contrary to petitioners claim, the petition merely noted that POSCO had plans to build four power plants (two using coal and two using LNG as the power sources) and indicated that they are being built pursuant to the PICA. Respondents claim that it reported that POSCO did not use the PCIA program, which the GOK confirmed. Respondents also counter that in subsequent responses, POSCO and the GOK clarified the nature of POSCO's electric power projects in response to the Department's questions. Furthermore, respondents counter that the Department verified that POSCO did not receive any loans for construction of these plants, nor was there evidence of government contributions for the development of these plants.

Department's Position

At verification we examined the published list of approved PCIA projects during our meetings with GOK officials. An examination of this published list revealed that there were no POSCO approved PICA projects. In addition, during our verification of POSCO, we reviewed the company's accounts and its corporate financing. During this examination of POSCO's records, we did not find any evidence that POSCO received any loans for construction of these plants, nor was there any evidence of government contributions for the development of these plants.

Comment 13: DSM's Denominator

Petitioners assert that the denominator used for DSM is overstated. Petitioners note that at verification the Department concluded that certain materials, such as: other products, (non-subject merchandise purchased and resold) and sub-materials, (products purchased from outside vendors as intended for production materials but were resold without being used in the production) were included in DSM's sales denominator. Petitioners explain that the statute requires the Department to countervail subsidies bestowed upon the manufacture, production, or export of the subject merchandise; the other products and sub-materials which were not manufactured, produced or exported by the respondent. Therefore, petitioners argue that these amounts should be excluded from the sales denominator.

Department's Position

According to the *General Issues Appendix*, attached to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993) (GIA), it is the Department's aim to ''capture every part of the sales transaction that could benefit from subsidies'' in the total sales denominator. GIA, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. *See* 351.525 of the CVD Regulations. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that DSM's ''merchandise'' sales should appropriately be included in the sales denominator. We, therefore, determine that the appropriate sales denominator is the total of DSM's domestically produced merchandise, and we have excluded DSM's ''merchandise'' sales, as these are not sales of goods produced by the company. The Department also verified that DSM included other items which were not produced, manufactured or exported in total sales. As applied to ''merchandise sales'' the Department will remove the value of ''other products,'' and ''sub-materials'' from total sales.

Comment 14: Tax Exemption for Locating at Asan Bay

Petitioners state that DSM received a countervailable benefit from the exemption of taxes related to its purchase of land at Asan Bay. DSM entered a purchasing agreement in 1995, and closed the deal in 1998; however, DSM did not register the land until 1999. Petitioners note that DSM benefitted from this tax exemption for 1998. Petitioners suggest treating this amount as a grant or as an interest free loan.

Respondents refute petitioners allegation, based upon the fact that taxes are only due upon registration of the title for land purchase after the settlement. Notification of settlement was on January 7, 1999, which required DSM to enter into the settlement agreement by January 30, 1999. Based upon the dates of notification and settlement agreement, taxes were not due during the POI.

Department Position

The date of settlement on the land purchased at the Asan Bay was December 31, 1998. After the final settlement, DSM registered title of the land in June of 1999. Under Korean law when title is registered companies are required to pay certain taxes including the registration tax, the education tax, and acquisition tax. However, land purchased in industrial estates is exempt from these taxes. We verified that these taxes are due at the time the title is registered with the court and that DSM received these exemptions on June 30, 1999, which is outside the period of investigation. Under section 351.509(b) of the CVD regulations, the benefit from a tax exemption is the date on which the recipient would otherwise have had to pay the taxes associated with the exemption. We verified that this date is in 1999. Therefore, no benefit is provided under this program during the POI. If this investigation results in a countervailing duty order, we will review this issue in a subsequent administrative review if one is requested.

Comment 15: Price Discount for DSM Land Purchase at Asan Bay

Petitioners state that DSM received a countervailable benefit from paying a discounted price for its land at Asan Bay. Petitioners note that a difference in cost of the land and the amount that DSM paid exists; and this reduction in cost of the land reflects a benefit from the GOK to DSM. This deduction also included the removal of a management fee that was to be paid by DSM. Petitioners point out that DSM had a contract with West Area Industrial Site Management Corp (WAIMC) and was obligated to pay a management fee; however, DSM did not end up paying this fee. Rather the management fee was waived. Petitioners argue that since the GOK sold land to DSM for less than the official price available to other purchasers, the GOK has provided a financial contribution.

Respondents refute petitioners allegation that DSM received a countervailing benefit from the management fee being waived for the land purchase at Asan Bay. First, the purchase agreement was not final until the last payment and title transfer. Second, the fee was waived between the original purchase agreement and the revised 1997 agreement, and there is no legal provision for collecting a management fee. Third, DSM does not have an obligation to pay this fee.

Department Position

DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees and land development costs. During verification, the Department noted a difference between the total cost of land amount compared to the amount that DSM actually paid. This difference occurred because the GOK reduced the purchase price of the land, waived the management fee, and deducted the land development costs. We determine that the purchase price reduction of the land, and the waiver of the fee are specific to DSM and thus countervailable. We also determine that the deduction of the land development costs is not countervailable, because the development was contracted out to another company. Hence, the GOK was not entitled to payment for developing the land.

Comment 16: Infrastructure at Asan Bay

Petitioners state that the industrial estate at Asan Bay benefits the steel industry, and the Department should follow the methodology used for Kwangyang Bay. Petitioners state that DSM has received a benefit from the infrastructure built at Asan Bay by the GOK, such as: roads, industrial water conduits, electricity, transmission lines, and port facilities. This expenditure relieves DSM from the financial liability it would otherwise have to bear. Petitioners state that the value of land DSM purchased increases with the addition of infrastructure, and therefore, DSM receives a benefit by the amount that the land appreciates.

Respondents argue that DSM does not have a facility at Asan Bay, rather they concluded the settlement agreement in 1999. Respondents state that DSM has only purchased land, and the land in question is still undeveloped, therefore, DSM is not receiving any benefits for any infrastructure at Asan Bay.

Department Position

We verified that DSM does not have any facilities at Asan Bay. Therefore, during the POI, the company is not benefitting from any of the GOK developed infrastructure at Asan Bay. Because there is no benefit to DSM during the POI, we need not address the specificity arguments raised by petitioners. With respect to petitioners' novel argument that DSM is accruing a benefit from the Asan Bay infrastructure based on an increase in the value of its land holdings at Asan Bay we note that (1) there is no evidence on the record to indicate that land prices are appreciating at Asan Bay, and (2) assuming that the Department were to adopt such a methodology, the benefit would accrue to DSM at the point in which the land is sold.

Comment 17: Excessive Duty Drawback

Petitioners argue that DSM received a countervailable subsidy from claiming excessive duty drawback. DSM receives duty drawback from certain materials used in the production of subject merchandise. Drawback must be claimed on the amount of an input product consumed in production, if there is a drawback on wastage, then it is considered excessive. The GOK maintains ''standard input usage tables,'' prepared by the National Institute of Technology and Quality (NITQ) based upon POSCO's 1990 production data. DSM used the standard input usage rate from these tables in its duty drawback calculations. Petitioners argue that DSM is not as efficient as POSCO and by DSM using POSCO usage chart demonstrates excessive duty drawback. Petitioners state that DSM used a higher standard rate rather than its own, less efficient usage rate. Being able to use a higher standard rate and claim a greater percentage of imported inputs as incorporated into the subject merchandise constitutes a financial contribution, for the GOK has foregone revenue which is would have otherwise received.

Respondents claim that duty drawback is based on the standard usage rate applicable when a company imports slab as an input for plate for export, and can only be claimed when matching imports of slab for paid import duties. Based upon the context of how the Korean duty drawback operates, there were no over-rebates of import duties.

Department's Position

We have determined this program not to be used because DSM did not receive excessive duty drawback. We verified that the amount of duty drawback received by DSM is based directly on the duty actually paid by DSM at the time of importation of slab. The argument that DSM is a less efficient producer than POSCO does not negate the fact that DSM did not receive excessive duty drawback. Indeed, it supports a determination that DSM did not receive excessive drawback. This is because a less efficient producer would have a higher wastage rate, *i.e.*, it would require more of the imported slab to produce the same quantity of exported plate. However, the amount of drawback is determined by the NITQ's standard usage rate, which according to petitioner, is based upon a more efficient producer's lower wastage rate. Therefore, DSM would not receive the duty drawback on the additional amount of imported slab it requires to produce the same quantity of exported plate as the more efficient producer.

Comment 18: Tariff Rate Quota on Slab

Petitioners claim that during 1998, the tariff rate for imported slab was lowered from 8 percent to 1 percent during the first half of 1998 and up to 3 percent for the second half of the year. According to petitioners, this program is limited by the number of products and therefore is specific. A reduction in tariff rate for imported slab constitutes a financial contribution because the GOK foregoes revenue it would otherwise receive. Petitioners suggest calculating this benefit by taking the difference between the import duty actually paid on imported slabs (1 to 3 percent) and the usual duty (8 percent). The Department should allocate this sum to only the production of the subject merchandise.

Respondents argue that duties on imported slab are paid upon import and rebated upon export (whether at normal or reduced rates). If a lower duty is

initially charged upon import then the company receives the rebate of that lower import duty at the time of export. No import duties are ultimately paid on imported slab that is eventually exported. A subsidy could only arise if normal import duty rates were refunded on exports for slab that had paid the lower duty rate upon import.

Department's Position

First, we note that petitioners made this allegation in a July 8, 1999 submission to the Department. Thus, we rejected this allegation as being untimely as set forth in section 351.301(d)(4)(i)(A) of the Department's regulations, and we declined to examine this allegation in this current investigation. *See* ''Memorandum to David Mueller from the Team Re: New Subsidy Allegation in Countervailing Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate from Korea'' dated August 11, 1999, which is on file in the CRU. Furthermore, we note that petitioners have failed to demonstrate how a temporary reduction in a tariff rate for slab would confer a benefit upon the export of subject merchandise. Regardless of whether the tariff rate is one percent or eight percent the full amount of the tariff would be returned to the respondents through the duty drawback system when the imported slab is manufactured into plate and then exported as subject merchandise.

Comment 19: Scrap Reserve Fund

Petitioners argue that the GOK provides low-interest or no-interest financing through the scrap reserve fund, thus affording a financial subsidy to DSM. They further observe that the financial contribution benefits all of DSM's production, not strictly subject merchandise. Since the scrap reserve fund is limited to only those producers of steel that have the capability of using scrap, this program is specific.

Respondents state that the loans are directly tied to the purchase of scrap. The scrap reserve fund involves specific purchases of scrap that were not used to produce slab, the input into the subject merchandise. As a result, there is no possibility that these purchases will ever be used to produce slab.

Department Position

The Department verified DSM's scrap reserve fund. The Department verified that DSM purchased all of its slab used in the production of plate. Therefore, DSM does not use scrap in the production of plate. Based upon 19 CFR 351.525(b)(5)(ii), if a subsidy is tied to production of an input product then the Secretary will attribute the subsidy to both the input and the downstream products produced by a corporation. Since scrap is tied to slab and DSM does not produce slab, the Department finds this program not tied to subject merchandise and therefore not countervailable.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 2.21 percent *ad valorem* for DSM. We determine that the total estimated net countervailable subsidy is 0.95 percent *ad valorem* for POSCO, which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' On this basis, we determine that the all-others rate is 2.21 percent *ad valorem,* which is the rate calculated for DSM.

Company	Net subsidy rate
POSCO	0.95% *ad valorem.*
DSM	2.21% *ad valorem.*
All Others	2.21% *ad valorem.*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Korea, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries except for POSCO if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33233 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–836]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Frank Thomson, or Lyman Armstrong, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193, (202) 482–4793 or (202) 482–3601, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Korea,* 64 FR 41224 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

In August, September, and October 1999, the Department conducted verifications of Pohang Iron & Steel Co., Ltd. (''POSCO'') and Dongkuk Steel Mill Co., Ltd. (''DSM''), the respondents in the instant investigation. A public version of our analysis and report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

On October 15, 1999, and October 27, 1999, respondents submitted revised databases. Petitioners [1] and respondents submitted case briefs on November 12, 1999, November 15, 1999, and November 16, 1999, and rebuttal briefs on November 22, 1999. On November 23, 1999, the Department held a public hearing concerning this investigation.

Subsequent to the hearing on November 29, 1999, petitioners submitted a letter alleging that respondents' rebuttal brief contained untimely filed new factual information that must be rejected. Specifically, petitioners stated that an opinion from an expert on accounting issues was new information. On December 3, 1999, respondents submitted a letter arguing that this opinion was not new factual information. The opinion in question is that of Dr. Charles T. Horngren, and was found at attachment 4 to respondent's cost rebuttal brief. We agree with petitioners that this opinion constitutes new factual information because it is offered as an ''expert opinion,'' and as such, constitutes testimony rather than a general opinion. Therefore, we find that the information in question is new factual information untimely submitted pursuant to section 351.301(b) of the Department's regulations. Normally such new factual information is returned to the submitter. However, given that this issue was raised so late in the proceeding—less than two weeks before the final determination—for administrative convenience we have not returned these data. We have not considered them in making our final determination in this case. Rather, all copies were removed from the record and destroyed, except that, pursuant to section 351.104(a)(ii)(A), of the Act, we have kept one copy solely for the purpose of documenting the reason for rejecting the new information.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).