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 return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). 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: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7528 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–832]

Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Kristen Johnson, 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 not being provided to producers and exporters of stainless steel plate in coils from the Republic of Korea.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Lukens Inc., United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on September 4, 1998 (63 FR 47253), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from December 3 through December 18, 1998. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR 47253), and the final antidumping duty determination was postponed (*see* 63 FR 59535), the Department on January 13, 1999, extended the final determination of this countervailing duty investigation until no later than March 19, 1999 (*see* 64 FR 2195). On January 27, February 2, 10, and 12, 1999, the Department released its verification reports to all interested parties. The Department issued decision memoranda on the issue of direction of credit by the Government of Korea (GOK) and the operations of the Korean domestic bond market on March 4 and March 9, 1999, respectively. Petitioners and respondents filed case briefs on March 5 and 10, 1999, and rebuttal briefs on March 10 and 12, 1999.

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 regulations as codified at 19 CFR Part 351 (April 1998).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because the Republic of Korea (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 May 28, 1998, the ITC published its preliminary determination 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 Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 63 FR 29251).

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: During the POI, Pohang Iron & Steel Company, Ltd. (POSCO) 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*, 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 at 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 the instant investigation, to calculate the benefit which POSCO received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1991, and still outstanding during the POI, we used as our benchmark the three-year corporate bond rate on the secondary market.

In this investigation, the Department also examined whether the GOK continued to control and/or influence the practices of lending institutions in Korea between 1992 and 1997. Based on our findings on this issue, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate POSCO's benefit from long-term loans obtained in the years 1992 through 1997: (1) For countervailable, foreign-currency denominated loans, we are using POSCO's company-specific, weighted-average U.S. dollar denominated interest rate on the company's loans from foreign bank branches in Korea; (2) for countervailable won-denominated loans, we are using POSCO's company-specific three-year corporate bond rate. In the preliminary determination, we used a national average three-year corporate bond rate. *See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 63 FR 47253, 47254 (September 4, 1998) *(Preliminary Determination).* We continue to find that the Korean domestic bond market was not controlled by the GOK during the period 1992 through 1997, and that domestic bonds serve as an appropriate benchmark interest rate. *See Analysis Memorandum on the Korean Domestic Bond Market*, dated March 9, 1999, (public document on file in the Department's Central Records Unit, Room B–099 (CRU)). On February 5, 1999, POSCO submitted to the Department the company's average interest rate on corporate bonds for each year 1992 through 1997. *See* POSCO's February 5, 1999 Questionnaire Response (QR) (public version on file in the CRU). Because POSCO was unable to retrieve data on the bond issuance fees the company paid in the years 1992 through 1996, we have added to the average interest rate for each of those years the bond issuance fees that POSCO paid in 1997.

We are also using POSCO's three-year company-specific corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 1997.

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 to the Department its respective company-specific, short-term commercial interest rate. During our verification of Samsun Corporation (Samsun) on December 15, 1998, we learned that the weighted-average, short-term interest rate which Samsun had earlier submitted to the Department was incorrect. For the final calculations for this determination, we have used the interest rate obtained at verification.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *General Issues Appendix (GIA)*, 58 FR at 37227, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993). However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). Thus, we are determining the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden*, 62 FR 16551 (April 7, 1997).

For the preliminary determination of this investigation, the Department followed the Court's decision in *British Steel I and II*. Using the AUL information which POSCO submitted, we calculated POSCO's AUL, excluding adjustments for special accelerated depreciation expenses and a depreciation of salvage value which the company reported. During verification, we reviewed POSCO's calculation of its average useful life of assets. In examining the company's calculations, we learned that the basis of the rates in the GOK's tax depreciation tables is the Japanese tax depreciation tables which were in existence at the time the GOK determined the useful life of assets in the 1950's. In order to determine whether the tax tables provide a reasonable estimation of POSCO's average useful life of assets, we examined POSCO's asset ledger. We verified through an examination of POSCO's asset ledgers that the depreciation schedule used by POSCO does not represent the actual useful life of the company's assets. *See* March 1, 1999 Supplement to the POSCO Verification Report, (public version on file in the CRU). For these reasons, we determine that it is not appropriate to use POSCO's AUL data to determine the average useful life of the company's assets. Therefore, for the final determination, as facts available, we have used the 15-year allocation period as reported in the IRS depreciation tables for the allocation of POSCO's non-recurring subsidies.

Treatment of Subsidies Received by Trading Companies: During the POI, POSCO, the only Korean steel producer of stainless steel plate in coils, exported the subject merchandise to the United

States through five trading companies: POSCO Steel Service & Sales Company, Ltd. (POSTEEL), Hyosung Corporation (Hyosung), Samsun, Samsung Corporation (Samsung), and Sunkyong Ltd. (Sunkyong). We required that the five trading companies provide responses to the Department's questionnaires with respect to the export subsidies under investigation. One of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other four trading companies are not affiliated with POSCO.

We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided separately to the exporter, in addition to any subsidies provided to the producer. All subsidies conferred on the production and exportation of the 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.

Under § 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 producer, POSCO. 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/Hyosung or POSCO/Sunkyong or POSCO and any of the other trading companies effectively would be the same rate. For these reasons, we have not calculated combination rates in this investigation. Instead, we have only calculated one rate for the subject merchandise, all of which is produced by POSCO.

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 five 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 POSCO. Thus, for each of the programs below, the listed *ad valorem* subsidy rate is cumulative of any countervailable subsidies received by both the trading companies and POSCO.

I. Programs Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea,* the Department determined that (1) the GOK influenced the practices of lending institutions in Korea; (2) regulated long-term loans were provided to the steel industry on a selective basis; and (3) the selective provision of these regulated loans resulted in a countervailable benefit. *See Steel Products from Korea,* 58 FR at 37338. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991.

In the instant investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in countervailable benefits being conferred on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. The GOK's Credit Policies Through 1991

As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea.* This finding of control was determined to be sufficient to constitute a government program and government action. *See Steel Products from Korea,* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. In the preliminary determination, we stated that respondents' information did not lead us to change our determination concerning the GOK's pre-1992 credit policies, as described in *Steel Products From Korea.* Moreover, respondents' arguments in their case brief have also not led us to change our preliminary determination concerning the GOK's pre-1992 credit policies. *See* the discussion under *Comment 1,* below (''The GOK's Pre-1992 Credit Policies: New Factual Information Concerning Foreign Currency Denominated Loans''). On this basis, we continue to find for this final determination that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991, were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding conforms with our determination in *Steel Products from Korea* (*see* 58 FR at 37342), which was upheld by the Court of International Trade in *British Steel plc* versus *United States,* 941 F. Supp 119 (CIT 1996) (*British Steel II*). Moreover, in accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates

described under the ''Subsidies Valuation'' section, above.

POSCO was the only producer of the subject merchandise, and POSCO received long-term loans prior to 1992, 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, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For POSCO's variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by POSCO's total sales. On this basis, we determine the net countervailable subsidy to be 0.17 percent *ad valorem*.

2. The GOK's Credit Policies From 1992 Through 1997

The Department's preliminary analysis of the GOK's credit policies from 1992 through 1997, is contained in the March 4, 1999, Memorandum Re: Analysis Concerning Post 1991 Direction of Credit, on file in the CRU (Credit Memo). As detailed in the Credit Memo, the Department preliminarily determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through the POI. The Department also preliminarily determined that GOK-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 producer/exporters of the subject merchandise in accordance with section 771(5)(E)(ii) of the Act, because the interest rates on the countervailable loans were less than the interest rates on comparable commercial loans. *See* Credit Memo at 15–17. Finally, we preliminarily found that POSCO's access to government-regulated foreign sources of credit did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by POSCO from these sources was found not countervailable. This determination was based on the fact that credit from Korean branches of foreign banks were not subject to the government's control and direction. Thus, POSCO's loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of funds conferred a benefit on respondent. On the basis of that comparison, we found that there was no benefit. *See id.* at 18. While some of the comments we received from the parties have led us to make minor modifications to our calculations, they have not led us to change the basic findings detailed in the Credit Memo.

In the preliminary determination we examined, as a separate program, loans provided under the Energy Savings Fund, and found that these loans were countervailable. *See Preliminary Determination,* 63 FR at 47256. However, on the basis of our findings detailed in the Credit Memo, we now determine that these loans are countervailable as directed credit, rather than as a separate program. These loans are policy loans provided by banks that are subject to the same GOK influence that is described in the Credit Memo. Accordingly, they are countervailable as directed credit, and we have included these loans in our benefit calculations. Thus, on the basis of our finding in the credit memo, and the modifications to the calculations discuss in the comments section, below, for the GOK's post-1991 credit policies, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem*.

B. GOK Infrastructure Investments 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 1997, 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 1997. On this basis, we determine a net countervailable subsidy of 0.29 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. Because POSCO was unable to segregate its production financing applicable to only subject merchandise exported to the United States, we divided the benefit derived from the loans by total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem*.

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, Samsun was the only exporter of the subject merchandise which used 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, 1996, by the corporate tax rate for 1996. 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 less than 0.005 percent *ad valorem*.

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, Samsun, Samsung, and Sunkyong.

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*.

F. 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 used various investment tax credits to reduce its 1996 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 statute effective in 1995, which have caused us to revisit the countervailability of the investment tax credits.

At verification, we received clarification of the particular investment tax credits which POSCO used in its fiscal year 1996 tax return which was filed during the POI. We learned that the company 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; and (4) tax credits for temporary investments under Article 27.

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 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 27 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 1996 fiscal year. POSCO deducted from its 1996 taxes payable, all remaining credits earned in the years 1992, 1993, 1994, and a portion of credits earned in 1995. 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 0.18 percent *ad valorem*.

G. Electricity Discounts under the Requested Load Adjustment Program

Petitioners alleged that POSCO is receiving countervailable benefits in the form of utility rate discounts. The GOK reported that during the POI the government-owned Korea Electric Power Company (KEPCO) provided POSCO with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load 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 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.

The RLA discount is provided based upon a contract of two months, normally July and August when the demand for electricity is greatest. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 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. In 1996, KEPCO had entered into RLA contracts with 232 companies.

At the preliminary determination, we found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Therefore, we preliminarily determined that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. We also stated in the preliminary determination that, given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we would further investigate the *de facto* specificity of this discount program at verification. We stated that it was the GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into RLA contracts during the POI.

Based on the information which we obtained at verification, we analyzed whether this electricity discount program is specific in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(iii) of the Act. We find that the GOK failed to demonstrate to the Department a systematic procedure through which KEPCO selects those customers with which it enters into RLA contracts. The GOK simply stated that KEPCO enters into contracts with those companies which volunteer for the discount program. If KEPCO does not reach its targeted adjustment capacity with those companies which volunteered for the program, then KEPCO will solicit the participation of large companies. We note that KEPCO was unable to provide to the Department the percentage of 1997 RLA recipients which volunteered for the program and the percentage of those recipients which were persuaded to cooperate in the program. 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.

Because the electricity discounts are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we determine that these discounts provide a recurring benefit to POSCO. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's total sales value for 1997. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts Under the Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

The GOK reported that KEPCO provided POSCO with three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. *See* the separate discussion above in regard to the countervailability of the ''Requested Load Adjustment'' program.

With respect to the Power Factor Adjustment (PFA) program, the GOK reported that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge.

The GOK stated that the PFA is not a special program, but a normal factor used in the calculation of a customer's electricity charge which was introduced in 1989. The PFA is available to all

general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) Have a contract demand of 6 KW or more; (2) have a power factor that exceeds the 90 percent standard power factor; and (3) have proper facilities to measure its power factor. If these criteria are met, a customer always receives a PFA discount on its monthly electricity invoice. During the POI, over 600,000 customers were recipients of PFA discounts.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment program (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months.

The GOK stated that the VRA discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The GOK stated that the VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand. The GOK submitted information demonstrating that over eight hundred customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these electricity discount programs are 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 identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. The VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, based on our analysis of the law, we determine that the PFA and VRA electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the discount electricity programs and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the PFA and VRA are distributed to a large number of firms in a wide variety of industries. Therefore, after analyzing the data with respect to the large number of companies and diverse number of industries which received electricity discounts under these programs during the POI, we determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we determine that the PFA and VRA discount programs are not countervailable.

B. GOK Infrastructure Investments at Kwangyang Bay Post-1991

The GOK has made the following infrastructure investments at Kwangyang Bay since 1991: Construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK stated that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. The GOK provides services to companies through the use of the infrastructure facilities and charges fees for the services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reported that the purpose of developing the Jooam Dam was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon Dam, which was constructed prior to 1991, cannot meet the area's water needs and, therefore, a second dam in the Kwangyang Bay area was built. The GOK further reported that the Jooam Dam does not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. At verification, we obtained information which demonstrates that the Jooam Dam's water pipe line connects neither to the Sueochon Dam nor to POSCO's steel mill at Kwangyang Bay. Accordingly, POSCO cannot source any of its water supply from the Jooam Dam and, therefore, the company is not benefitting from the GOK's construction of the Jooam Dam.

The GOK also constructed a container terminal at Kwangyang Bay to relieve congestion at the Pusan Port and to encourage the further commercial development of the region. The GOK stated that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses of the GOK and POSCO and the information obtained at verification, neither steel inputs nor steel products can be shipped through the container terminal at Kwangyang Bay. Given the nature of steel inputs (*e.g.*, bulk products like scrap) and finished steel products (*e.g.*, bundled bars and plate), products such as these would or could not be loaded or unloaded from a ship through a container terminal and, therefore, the facility is not used by steel producers.

The road from Kwangyang to Jinwol was constructed in 1993. The GOK stated that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country and to relieve a transportation bottleneck. At verification, we obtained information on the road and learned that, in fact, it is utilized by both industries in the area to transport goods and by residents living in the Kwangyang Bay area.

Based on the information obtained at verification regarding the GOK's infrastructure investments at Kwangyang Bay since 1991, we determine that the GOK's investments in the Jooam Dam, the container terminal, and the public highway were not made for the benefit of POSCO. Therefore, we find that these investments are not providing countervailable benefits to POSCO.

C. Port Facility Fees

In the 1993 investigation of *Steel Products from Korea*, the Department found that POSCO, which built port berths at Kwangyang Bay but, by law, was required to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved

POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable subsidy. The Department stated that each exemption from payment of the fees, or ''reimbursement'' to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense which the company would have otherwise incurred. *See Steel Products from Korea*, 58 FR at 37347–348.

With respect to the instant investigation, since 1991, POSCO, at its own expense, has built new port facilities at Kwangyang Bay. Because title to port facilities must be deeded to the GOK in accordance with the Harbor Act, POSCO transferred ownership of the facilities to the GOK.

In return, POSCO received the right to use the port facilities free of charge, and the ability to charge other users a usage fee until the company recovers all of its investment costs. At the preliminary determination, we determined that because POSCO is exempt from paying port facility fees, which it otherwise would have to pay, and the government is foregoing revenue that is otherwise due, POSCO's free usage of the port facilities provided a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily found that the exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act, because POSCO was the only company exempt from paying these port facility fees during the POI.

Since our preliminary determination, we have gathered further information with respect to the Harbor Act and the number and types of companies which have built infrastructure which, as required by law, were subsequently transferred to the government. At verification, we learned that, because the government does not have sufficient funds to construct all of the infrastructure a company may need to operate its business, the GOK allows a company to construct, at its own expense, such infrastructure. However, the Harbor Act prohibits a private company from owning certain types of infrastructure, such as ports. Therefore, the company, upon completion of the project, must deed ownership of the infrastructure to the government pursuant to Article 17–1 of the Harbor Act. Because a company must transfer to the government its infrastructure investment, the GOK, under Articles 17–3 and 17–4 of the Harbor Act, grants the company free usage of the facility and the right to collect fees from other users of the facility until the company recovers its investment cost. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure facility.

We verified that under the Harbor Act, any company within any industrial sector is eligible to construct infrastructure necessary for the operation of its business provided that it receives approval by the Administrator of the Maritime and Port Authority to build the facility. We learned that if the ownership of the infrastructure, which the company built, must transfer to the government, then the company, by law, has the right to free usage of that facility and the ability to collect fees from other users of the facility. The right of free usage and the ability to collect user fees are granted to every company which has to deed facilities to the GOK. The free usage and collection of user fees continues only until the company which built the facility recaptures its cost of constructing the facility.

Further, at verification we learned that in permitting a company to build infrastructure subject to the Harbor Act requirements, the GOK has in place a procedure for approving a company's investment costs and for monitoring the company's free usage and collection of user fees. Because the GOK allows a company, for a period of time, to use for free the infrastructure it built, the GOK, through the respective port authority, reviews each infrastructure project to assess the cost. The port authority then approves a certain monetary amount for the infrastructure through a settlement process with the company. A company can only receive free usage of a facility up to the monetary amount approved by the port authority.

At verification, we obtained documentation which indicates that since 1991, a diverse grouping of private sector companies across a broad range of industrial sectors have made a number of investments in infrastructure facilities at various ports in Korea, including at Kwangyang Bay. In each case, the company which built the infrastructure was required to transfer it to the GOK, and received free usage of the infrastructure and the ability to collect user fees from other companies until they recover their respective investment costs. POSCO was not the only company entitled to use a particular port facility infrastructure, which it built, free of charge.

As a result of the information obtained at verification, we have revisited our preliminary determination that POSCO's exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act. As discussed above, we verified that since 1991, a diverse grouping 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. Those companies which built infrastructure that was transferred to the GOK, as required by the Harbor Act, received free usage of the infrastructure and the ability to collect user fees from other companies which use the facilities, until they recover their respective investment costs. POSCO is one of a large number of companies from a diverse range of industries to use this program. Accordingly, we determine that this program is not specific under section 771(5A)(D)(iii) of the Act. Therefore, we find that this program is not countervailable.

III. Programs Determined To Be Not Used

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

A. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act

B. Reserve for Investment under Article 43–5 of TERCL

C. Export Industry Facility Loans and Special Facility Loans

D. Export Insurance Rates Provided by the Korean Export Insurance Corporation

E. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean producers/exporters may have received an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not consumed in the production of the exported item and, therefore, the amount of duty drawback is excessive. In *Steel Products from Korea*, we determined that certain Korean steel producers/exporters received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See*

Steel Products from Korea, 58 FR at 37349.

At verification, we learned that the refund of duties only applies to imported raw materials that are physically incorporated into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. We confirmed that the National Technology Institute (NTI) maintains a materials list for each product, and only materials and subsidy-materials that are physically incorporated into the final product are eligible for duty drawback.

We verified that the NTI routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. With this information, the NTI compiles a standard usage rate table for imported raw material inputs which is used to calculate a producer/exporter's duty drawback eligibility. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. At verification, the GOK confirmed that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime. We further verified that the NTI most recently completed a survey of POSCO in 1993, and because POSCO is the only producer of the subject merchandise, the standard input usage rate table for the subject merchandise is based on POSCO's actual production data.

We also confirmed during our verification of POSCO that there is no difference in the rate of import duty paid and the rate of drawback received. The rate of import duty is based on the imported materials and the rate of drawback depends on the exported merchandise and the usage rate of the imported materials. POSCO pays import duties based on the rate applicable to and the price of the imported raw material. POSCO then receives duty drawback based on the amount of that material consumed in the production of the finished product according to the standard input usage rate. Accordingly, the rate at which POSCO receives duty drawback is the amount of import duty paid on the amount of input consumed in producing the finished exported product.

Based on the information on the record, we determine that POSCO has not received duty drawback on imported raw materials that were not physically incorporated in the production of exported merchandise. As in *Steel Products from Korea,* we also determine that POSCO appropriately factored recovered scrap into its calculated usage rates and that the duty drawback rate applicable to POSCO takes into account recoverable scrap. *See Steel Products from Korea,* 58 FR at 37349. Therefore, we determine that POSCO has not received excessive duty drawback.

VI. Program Determined To Be Terminated

Unlimited Deduction of Overseas Entertainment Expenses

We verified that Article 18–2(5) of the Corporation Tax Law which provided for unlimited deductions of overseas entertainment expenses was repealed by the revisions to the law dated December 29, 1995. In calculating their 1996 income tax (which was filed during the POI) Korean exporters could no longer deduct overseas entertainment expenses without any limits.

Interested Party Comments

Comment 1: The GOK's Pre-1992 Credit Policies: New Factual Information Concerning Foreign Currency-Denominated Loans. Respondents assert that the Department ignored new factual information on the record of this proceeding concerning domestic foreign currency loans. Specifically, respondents submitted information indicating that from 1986 through 1988, interest rates on domestic foreign currency loans were only subject to an interest rate ceiling, and that after 1988, banks and other financial institutions were free to set the interest rates on these loans subject only to the ceiling established by the Interest Limitation Act. Respondents claim that the Department ignored this information and incorrectly assumed that the reimposition of interest rate ceilings on Korean won loans after a failed attempt at liberalization in 1988, also applied to domestic foreign currency loans. Respondents further state that the Department found at verification that the interest rate liberalization program applied solely to lending rates in Korean won. Therefore, respondents state, for all domestic foreign currency loans received prior to 1992, there is no basis for the Department's determination that interest rates on these loans were regulated and that these loans provided countervailable subsidies.

According to petitioners, the Department's finding that pre-1992 direct foreign loans provided a countervailable subsidy was correct and supported by the evidence on the record. Petitioners further state that respondents have provided no new evidence to disprove this finding and nothing in the new law is contrary to the Department's 1993 determination.

Department's Position: The alleged ''new'' information cited by respondents in their brief concerning interest rates on domestic foreign currency loans was in fact considered by the Department in *Steel Products From Korea.* The discussion addressing the GOK's strict control of interest rates specifically states that ''[i]nterest rate ceilings on domestic foreign currency loans were also maintained until 1988.'' *See Steel Products From Korea,* 58 FR at 37341. Thus, the Department considered the fact that the *de jure* controls over domestic foreign currency loans were removed after 1988, in reaching its conclusion that these loans continued to be subject to indirect GOK influence. Moreover, respondents' contention that ''window guidance'' (*i.e.,* the GOK's indirect control over interest rates) applied only to domestic won loans is also without merit. The Department examined this issue and reached the opposite conclusion in *Steel Products From Korea.* Also, in this investigation, independent bankers stated that ''interest rates were once again regulated until the early 1990s, through a system of 'window guidance.' '' Under this system commercial banks were effectively directed by the government not to raise interest rates above a certain level. While this statement is contained within the discussion of the failed 1988 liberalization plan, the bankers did not distinguish between domestic and foreign rates of lending by domestic commercial banks. Finally, in calling for the prohibition of ''window guidance'' over financial institutions' loan rates, the Presidential Commission did not refer only to won-denominated rates. As noted above, the Department's finding in *Steel Products From Korea* took into account respondents ''new'' information. This finding has since been upheld by the Court in *British Steel plc* v. *United States,* 941 F. Supp 119 (CIT 1996) (*British Steel II*). For these reasons our finding concerning the countervailability of pre-1992 foreign currency denominated loans from domestic sources remains unchanged in this final determination.

Comment 2: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Constitute a Financial Contribution Within the Meaning of the Act. According to respondents, the only government regulation of direct foreign loans consisted of an interest rate ceiling. Respondents state that the GOK could not, under its regulations, direct

or induce foreign lenders to provide loans to POSCO; nor could it regulate (and reduce) the interest rates these lenders would charge on such loans. Rather, these loans were negotiated directly between foreign banks and POSCO without the GOK's direct or indirect involvement. As such, respondents' state that the Department's preliminary finding that direct foreign loans are countervailable is in conflict with the ''financial contribution'' standard of section 771(5)(D)(i) of the Act. Respondents assert that direct foreign loans from foreign banks do not constitute countervailable subsidies because there is no government financial contribution. Respondents further claim that the Department did not explain in its preliminary determination how loans from foreign sources could constitute a financial contribution by the GOK. Moreover, respondents state that these loans do not meet the ''entrusts or directs'' standard of the Act, because (1) they can not be characterized as a contribution that ''would normally be vested in the government,'' and (2) the requirement that the practice of lending by the foreign entity ''does not differ in substance from practices normally followed by the government'' is not met in this instance. Furthermore, because access to direct foreign loans was restricted by the GOK on the basis of a borrowers' ability to access the market without a government or bank guarantee, POSCO would have been able to receive direct foreign loans at the interest rates obtained on its own and without government involvement.

Respondents also address the Department's assertion in the new countervailing duty regulations (and the Statement of Administrative Action) that its indirect subsidy standard remains unchanged under the ''financial contribution'' standard of the Post-Uruguay Round law, specifically referring to the indirect subsidy practices countervailed in *Steel Products from Korea.*[1] Respondent's state that to simply subsume direct foreign loans from foreign entities within the broad claim of an unchanged indirect subsidy standard (and the endorsement in the SAA of *Steel Products From Korea*) is ''overly simplistic and legally in error.''

Petitioners dispute respondents' assertion that the GOK's control over access to direct foreign loans does not constitute a financial contribution, within the meaning of the Act. Petitioners state that this question has been answered by the SAA, which specifically references the Department's indirect subsidy findings in *Steel Products From Korea* to illustrate that the indirect subsidy standard includes the GOK's control over access to direct foreign loans. Petitioners contend that to accept respondents' argument would be to repudiate the interpretation of the statute in the SAA. Petitioners note, moreover, that the Department preliminarily has found in the Credit Memo that the GOK's control over the Korean financial system continued through the POI and included the control of access to direct foreign loans.

Department's Position: As petitioners correctly note, respondents' arguments concerning this issue have been fully answered by the Congress through its approval of the SAA and the *CVD Final Rule*.[2] In *Steel Products From Korea,* the finding of government control was determined to be sufficient to constitute a government program and government action, as defined by the Act. Moreover, in the preliminary determination, we did not revisit that prior determination, and also found that the subsidy identified meets the standard for a subsidy as defined by the post-URAA Act. *Preliminary Determination,* 63 FR at 47255.

While respondents contend that subsuming GOK-controlled access to direct foreign loans from foreign entities within the SAA's claim of an unchanged indirect subsidy standard is ''overly simplistic and legally in error,'' the clear and unambiguous language of the SAA is that Congress intended the specific types of indirect subsidies found to be countervailable in *Steel Products From Korea* to continue to be covered by the Act, as amended by the URAA. The Department's final countervailable duty regulations are equally clear on this issue, the preamble of which confirms that the standard for finding indirect subsidies countervailable under the URAA-amended law ''is no narrower than the prior U.S. standard for finding an indirect subsidy as described in *Steel Products from Korea*.'' *See CVD Final Rule,* 63 FR at 65349. For these reasons, we have not changed our preliminary determination concerning the countervailability of pre-1992 direct foreign loans.

Comment 3: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Are Not Countervailable Pursuant to the Transnational Subsidies Rule. Respondents assert that pursuant to the so-called ''transnational subsidies rule,'' funds provided from sources outside a country under investigation are not countervailable. Specifically, respondents state that section 701(a)(1) of the Act applies only to subsidies provided by the government of the country in question or an institution located in, or controlled by, that country. In support of this contention, respondents cite *North Star Steel* v. *United States,* 824 F. Supp. 1074 (CIT 1993) (North Star), in which the Court upheld the Department's determination that an Inter-American Development Bank loan guaranteed by the Government of Argentina on behalf of the recipient was not subject to the countervailing duty law. In particular, the CIT stated that ''[t]his determination is consistent with the purpose of the countervailing duty law, which is ''intended to offset the unfair competitive advantage that foreign producers would otherwise enjoy from * * * subsidies paid by their government.'' *North Star,* 824 F. Supp. at 1079 (quoting *Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 456 (1978)). Respondents also cite a case in which the Department refused to initiate an investigation of private, foreign co-financing of a World bank project, stating that ''[f]or the same reasons (applicable to funds from the World Bank), a loan granted by a group of Japanese banks and insurance companies (in the Philippines) * * * would not be countervailable.'' *See Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products from the Philippines,* 49 FR 34381 (1984). Petitioners assert that the Department's determination does not contravene the transnational subsidy rule because the subsidy in this case is based on controlled access to credit, and not on a differential in interest rates. The fact that the payment of the funds comes from a private source outside of Korea is irrelevant. According to petitioners, the case law cited by respondents does not involve situations in which a foreign government conferred countervailable subsidies by controlling access to third country financial sources. In addition, petitioners note that these cases predate the changes in the statute that expressly recognize indirect subsidies provided through private actors.

Department's Position: Respondents' assertion concerning the transnational subsidies rule is without merit. Respondents made this same argument in *Steel Products From Korea* (*see,* 58 FR at 37344). In upholding the

[1] *Countervailing Duties; Final Rule,* 63 65348, 349 (November 25, 1998) (*CVD Final Rule*); SAA at 926.

[2] Although the *CVD Final Rule* are not controlling in this investigation, they do represent a statement of the Department's practice and interpretations of the Act, as amended by the URAA.

Department's determination in *Steel Products From Korea,* the Court did not find in any way that the Department's determination with respect to direct foreign loans was in conflict with the transnational subsidies rule, as argued by respondents in that prior investigation. The cases cited by respondents are also not relevant to the facts of this investigation because those cases deal with funds from foreign governments or international lending or development institutions. This investigation, however, concerns the Korean government's control over access to funds from overseas private sources of credit.

More specifically, however, the Department rejected respondents' argument in *Steel Products From Korea,* because the benefit alleged was not the actual funding of direct foreign loans, but rather the ''preferential access to loans that are not generally available to Korean borrowers.'' *Steel Products From Korea,* 58 FR at 37344. The GOK was found to control this access and because the steel industry received a disproportionate share of these low-cost funds, this preferential access was found to confer a countervailable benefit on the steel industry.

Nothing argued by respondents in this investigation would lead us to change that prior determination concerning direct foreign loans. Therefore, our preliminary determination remains unchanged.

Comment 4: The GOK's Pre-1992 Credit Policies: Benchmark Applied to Determine the Benefit From Foreign Currency-Denominated Loans. Respondents challenge the Department's use of a won-denominated benchmark to calculate the countervailable benefit from POSCO's outstanding pre-1992 long-term foreign currency-denominated loans. According to respondents, the Department's long established methodology is to compare countervailable loans with a benchmark in the same currency. Respondents cite the *Final Affirmative Countervailing Duty Determination: Certain Apparel from Thailand,* 50 FR 9818, 9824 (1985), which states that, the ''benchmark must be applicable to loans denominated in the same currency as the loans under consideration.'' Respondents also note that this standard was articulated in the *Final Affirmative Countervailing Duty Determination: Cold-rolled Carbon Steel Flat-rolled Products from Argentina,* 49 FR 18006 (1984) (*Cold-Rolled Steel From Argentina*). In that case, the Department stated:

> [f]or loans denominated in a currency other than the currency of the country concerned in an investigation, the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration (where possible, interest rates on loans in that currency in the country where the loan was obtained; otherwise, loans in that currency in other countries, as best evidence). The subsidy for each year is calculated in the foreign currency and converted at an exchange rate applicable for each year. *Id.* at 18019.

Respondents contend that this policy was reiterated in the Department's new regulations, the preamble to which refers to the currency of the loans as one of ''the three most important characteristics'' in determining the benchmark. *CVD Final Rule,* 63 FR at 65363. Thus, respondents assert that the Department (1) did not consider any other commercially-viable alternatives (such as those rates ''in other countries''); (2) ignored any reference to its long-standing policy of comparing loans in the same currency; and (3) provided no explanation for abandoning that policy. Accordingly, respondents state that the Department must revise its calculation of the benefit from foreign currency-denominated loans, using a benchmark that is in conformance with its policy and regulations.

Petitioners dispute respondents' benchmark argument, stating that respondents focused solely on currency and ignored the underlying principle of what the benchmark is intended to measure, namely the financing the company could have obtained on the market in lieu of the government-provided loans. In *Steel Products From Korea,* the Department had to determine what interest rate the company would have had to pay absent the GOK's policy and control over lending sources. Petitioners state that, because prior to 1992, all sources of foreign currency-denominated credit were found to be controlled by the GOK, these sources ''in other countries'' could not serve as a benchmark because they would not have been available to POSCO but for the approval by the Ministry of Finance and Economy (MOFE). Therefore, petitioners state, the Department chose the 3-year corporate bond rate. Record evidence in the current investigation also indicates that the bond market is the only commercial source (*i.e.,* free from GOK control) of long-term funding in Korea. Thus, petitioners assert, domestic bond rates reflect the most comparable, commercial financing that a company could obtain in the market absent the GOK's direction of credit and, therefore, are the most appropriate benchmark for POSCO's foreign currency loans and bonds both pre-and post-1992.

Department's Position: Respondents' arguments concerning the Department's methodology for measuring benefits from countervailable foreign currency-denominated long-term loans are partially correct. It is true that in most instances we measure the benefit from countervailable foreign currency loans by comparing such loans with a benchmark denominated in the same currency, provided the borrower would otherwise have had access to such foreign currency loans. However, in the context of the Korean financial system prior to 1992, this methodology is not appropriate. Specifically, in *Steel Products From Korea,* the Department found that all sources of foreign currency-denominated credit were subject to the government's control and direction. Therefore, these sources of foreign currency credit, including overseas markets, could not serve as an appropriate benchmark, as they were also found to be countervailable. In the absence of such a benchmark, the Department had to determine the rate that companies would have had to pay absent government control. That rate was the corporate bond yield on the secondary market. *See Steel Products From Korea,* 58 FR at 37346. Respondents assert that the Department did not consider any other commercially viable alternatives. Respondents ignore, however, the fact that the corporate bond yield on the secondary market was the only alternative, unregulated source and commercially viable source of financing in Korea. Accordingly, this was the only viable benchmark with which to measure the benefit from government-regulated sources of credit. Nothing argued by respondents in this investigation has led us to change our determination in *Steel Products From Korea.* Therefore, our finding concerning POSCO's pre-1992 foreign currency-denominated long-term loans remains unchanged in this final determination.

Comment 5: Post-1991 GOK Credit Policies: Whether Foreign Currency Loans From Domestic Branches of Foreign Banks are Countervailable. According to petitioners, the Department incorrectly found that domestic branches of foreign banks were not controlled and directed by the GOK. Petitioners state that the Department, in reaching its conclusion, relied only on a lack of any substantive discussion in the record concerning the influence of the GOK on foreign banks as affirmative evidence that no such controls exist. Petitioners further assert that there is little, if any, meaningful discussion

about the direct or indirect influence of GOK regulations and policies on the operation of foreign banks in Korea in the record, including the verification reports. Petitioners assert that record evidence in fact shows that foreign banks are subject to the same GOK controls and direction that applied to domestic commercial banks.

According to petitioners, the Department's assumption that, absent evidence to the contrary, GOK controls or influence over foreign commercial banks do not exist, is legally impermissible. In support, petitioners cite *Al Tech Specialty Steel* v. *United States,* where the CIT ruled that the Department may not simply infer the truth of certain facts from lack of any contradictory evidence on the record; rather, the Department is required to support or authenticate with record evidence (*i.e.,* verify) any factual assertion on which it relies. Slip Op. 98–136 at 9 (CIT 1998). Petitioners state that, in this case, the Department has violated that principle by failing to gather and verify the necessary facts in support of the conclusion reached. As such, the Department's conclusion is not based on substantial evidence on the record.

Petitioners further claim that the Department ignores record evidence that demonstrates GOK control over foreign banks in Korea. For example, petitioners state that foreign commercial banks are included within the OECD's analysis of commercial banks in its 1996 report. *OECD Economic Surveys: Korea 1996* at 41–42, submitted at Exhibit 20 of the March 31, 1998 Petition, on file in the CRU. Petitioners also claim that the Presidential Reports and the 1998 OECD Report recognize that foreign banks operating in Korea were subject to excessive control. Petitioners further state that the relevant banking legislation that restricts domestic commercial banks also restricts domestic branches of foreign banks operating in Korea. In particular, petitioners cite to the General Bank Act, the Bank of Korea Act, and the Foreign Exchange Management Law, noting that foreign banks are also subject to the provisions of these laws.

According to petitioners, foreign commercial banks must be subject to the same ''window guidance'' as domestic commercial banks to prevent interest rates from increasing. Petitioners point out that POSCO's interest rates from foreign commercial banks were lower than the company's rates for foreign securities. According to petitioners, risk-averse, profit-motivated foreign commercial banks would only charge such low interest rates in the Korean market if GOK policies restricted either the interest rates or borrowers' access to credit from those banks.

Moreover, petitioners state that foreign commercial banks in Korea could not have satisfied POSCO's demand for funds. In *Steel Products From Korea,* the Department specifically found that POSCO was unable to raise the large sums of money necessary for its credit needs from domestic banks. *See Steel Products From Korea,* 58 FR at 37345 (quoting, ''the domestic foreign loan market could not have adequately supplied POSCO with the volume of, and/or terms of payment on, loans that POSCO required.'') Petitioners note that foreign bank branches in Korea were responsible for less than 4 percent of total lending. *OECD 1996 Survey* at 42. According to petitioners, this is a direct result of government controls over the market.

Even if domestic branches of foreign commercial banks were not regulated by the GOK, petitioners state that they would be ''inescapably influenced by the controls on every other sector of the banking industry.'' As such, they could not behave in a free market manner. For example, foreign banks would be no less influenced than their Korean counterparts by the lead of the Korean Development Bank and the Bank of Korea to extend credit to certain government favored projects. In light of the GOK's complete dominance over the financial system, petitioners state that it would be impossible for foreign commercial banks to operate free of the same constraints and influences that domestic banks were subject to.

Respondents assert that the record evidence cited by petitioners amounts to (1) generalities and speculation about the operation of the Korean banking system, and (2) lists of normal regulatory provisions of how banks must operate in Korea and basic foreign exchange controls applicable to them. Respondents contend that this ''evidence'' was not relied upon by the Department in its finding of control and direction of credit from GOK-owned and domestic commercial banks, and has no relevance with respect to direction of credit to the steel industry.

Respondents also note that petitioners fail to reveal any record evidence which betrays the means by which the GOK controls the lending of foreign bank branches so as to direct credit where the GOK allegedly intends it to go, such as to the steel industry. For example, the Department cited the bank ownership rules and the GOK's intervention in the appointment of banking officials as means by which the government could influence domestic bank lending practices. Respondents note that foreign banks, in contrast, are wholly-owned by their parent banks and appoint their own officials. Thus, this was not a way in which the GOK could influence their lending decisions. Respondents also indicate that foreign banks' most important source of funds is from their head offices, which provide them with both greater autonomy from the Korean banking system and a lower cost of funds than available to Korean commercial banks which, due to their credit ratings, borrow at rates that are comparable to the rates POSCO can obtain on its own.

Respondents dismiss as empty speculation and unsupported inference petitioners claim that even if foreign bank branches were not regulated in the same manner as domestic banks, they would have nonetheless been ''influenced by the biases and controls built into the tightly controlled financial system.'' Respondents assert that such speculation is contradicted by the same OECD report cited by petitioners, which states that in the midst of a faltering economy, the foreign banks reportedly reduced their exposure. This indicates, respondents state, that foreign banks were acting not in a copycat manner, but prudently, and consistent with the GOK's view of the role of foreign banks in Korea, which ''play a leading role in motivating domestic banks to improve their banking practices and managerial skills.'' GOK July 1, 1998, Questionnaire Response, Exhibit A–7 at 32, on file in the CRU.

Respondents also reject petitioners' theory that foreign commercial banks' lending rates were lower than those of POSCO's foreign securities because GOK policies required them to charge such low rates. According to respondents, the rational explanation for this differential is market competition, of which they state there is clear record evidence. Specifically, respondents cite POSCO's loan documents collected as verification exhibits. One of these, a domestic foreign currency loan from the Seoul branch of Chase Manhattan Bank, states that POSCO chose Chase as the lead bank for the loan because it offered the lowest rate compared to two other foreign bank branches. Respondents state that there is no evidence of government control of interest rates or direction of credit by these banks with respect to this loan. Rather, the banks all competed to provide funds to POSCO at relatively low rates and chose to lend to POSCO because they saw it as good business and a solid asset in their portfolio. To conclude otherwise, respondents state, is to suggest that the

GOK can somehow manage the terms of a syndicated loan. Respondents state that this and other record evidence indicates that the GOK does not, and does not need to, influence these banks to lend to POSCO. Rather, as was repeatedly noted at verification, and specifically noted in the Bankers Verification Report, ''POSCO is one of the best companies in Korea and most commercial banks would like to lend to the company.'' Memorandum For David Mueller, Meetings with Commercial and Investment Banks and Research Institutes, 8 (February 2, 1999), on file in the CRU (Bankers Report).

Department's Position: Petitioners' contention that record evidence establishes that the Korean branches of foreign banks were subject to the same GOK controls and direction that applied to domestic commercial banks is not supported by the record. The record evidence cited by petitioners does not amount to GOK control and direction of these institutions' operations and lending practices.

First, the 1996 and 1998 OECD reports do not support petitioners' arguments. While the 1996 OECD report discusses funding levels by foreign banks in Korea, nowhere does that report state that these banks were subject to the GOK's control or direction. Moreover, the 1998 OECD Report, in discussing the weakness of the Korean banking system, and in attributing responsibility for that weakness partly to the government's direct and indirect intervention in the operations of commercial banks, mentions only domestic commercial banks, not foreign banks. In fact, the report discusses the inability of domestic commercial banks, after their privatization, to ''develop the autonomy (from the government) needed in a market economy.''

Petitioners reliance on the reports issued by the Presidential Commission for Financial Reform, quoted by the Department in the Credit Memo, is equally misplaced. The section of the Presidential Report titled ''Deregulation of Access to Foreign Capital Markets,'' cited by petitioners refers to regulations governing access to foreign capital markets, not regulations governing foreign currency-denominated loans from domestic branches of foreign banks in Korea.[3] Regulations governing access to foreign capital markets are quite separate from those governing domestic branches of foreign banks in Korea. To the extent that the Presidential Commission addressed domestic foreign currency loans, it addressed the lifting of restrictions on the usage of these funds, which is limited mostly to the importation of machinery from abroad. This has nothing to do with any GOK controls over the operations of domestic branches of foreign banks.

Petitioners also support their argument with the contention that foreign banks are subject to some of the same regulatory provisions contained in the General Bank Act that govern domestic commercial banks. However, the Department's analysis in the Credit Memo did not rely on these regulatory provisions but on the record evidence that the GOK continued to influence the lending practices of these domestic commercial banks indirectly, in part because these banks did not develop autonomy from the government. As we explained in the Credit Memo, the weakness of domestic banks vis-a-vis the government was in part an outgrowth of the government's historical role in allocating credit in accordance with policy objectives. Also, the corporate governance structure of Korea's commercial banks (weak ownership structure, lack of autonomy in appointing banking officials) only contributed to their weakness vis-a-vis the government. The fact that the GOK's indirect involvement in commercial banking operations continued into the 1990s merely exacerbated this problem. *See* Credit Memo at 8–9. Foreign banks in Korea, however, were not subject to this same influence. Their source of funds was from their head offices and, as respondents correctly illustrate, the appointment of their senior officials was not subject to influence by the GOK. Petitioners proffer no evidence that foreign banks in Korea were ''inescapably influenced by the controls on every other sector of the banking industry.'' Rather, they speculate that these banks would be no less influenced than their Korean counterparts by the lead of the Korean Development Bank and the Bank of Korea to extend credit to certain government-favored projects. This is not a conclusion reached by any of the commercial bankers at verification, and petitioners do not point to any evidence that would support this contention.

The fact that foreign banks in Korea did not account for a significant amount of total lending in Korea is not sufficient evidence to lead us to conclude that POSCO would not have been able to raise sufficient funds from this source. Rather, the record shows that benchmarks of foreign banks in Korea were a significant source of POSCO's borrowing, and credit from these banks was not regulated by the GOK. For these reasons, we disagree with petitioners' arguments that funding from domestic branches of foreign banks cannot serve as an appropriate benchmark to measure any potential benefit from regulated foreign currency-denominated sources of credit, *e.g.*, foreign securities from abroad.

Comment 6: Post-1991 GOK Credit Policies: Whether POSCO's Access To Foreign Securities Markets Results in Countervailable Benefits. According to petitioners, extensive record evidence, in particular the Department's findings at verification, shows that access to foreign sources of funds, including foreign securities, was strictly controlled by the GOK through the POI. Petitioners state that the Department in its Credit Memo recognized this control.

In addition, petitioners claim that the GOK's control over access to foreign funds constitutes a financial contribution within the meaning of the Act, in particular, the ''entrusts or directs'' standard of section 771(5)(B)(iii) of the Act. That this type of indirect program meets this standard was clearly stated in the SAA, petitioners note, which specifically referenced the Department's findings in *Steel Products From Korea* as an application of the ''entrusts or directs'' standard. Because the interest rates on foreign securities are lower than the rates charged on unregulated sources of credit in Korea, the GOK in effect is controlling access to preferential interest rates.

Finally, petitioners assert that access to foreign securities was provided on a specific basis to export and priority sectors in Korea. According to petitioners, statistics show that companies with substantial export earnings were given preferential access to foreign securities issuances. Therefore, petitioners claim that access to this source of funding is contingent, at least in part, on export performance. Even if the Department were to find that this access is not export contingent, petitioners argue that access was nonetheless *de facto* specific to the basic metals industry, which issued a disproportionate amount of foreign securities by Korean firms between 1992 and 1997.

Respondents dispute petitioners claim that access to foreign securities constitutes a financial contribution within the meaning of the Act, stating that petitioners' interpretation of the ''entrust or directs'' standard is unreasonable. Respondents state that this standard cannot encompass private actions by independent foreign parties that are consistent with market-oriented

[3] *Financial Reform in Korea: The First Report (Presidential Report I)* 22, (April 1997), Exhibit MOFE–9 of the MOFE Verification Report, on file in the CRU.

behavior at market-determined interest rates.

Respondents cite to *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 456 (1978), and section 701(a)(1) of the Act, for the proposition that the countervailing duty law does not apply to funds independently provided by foreign entities at market rates. Moreover, respondents note, the ''entrusts or directs'' standard on which petitioners rely includes the qualifier statement that such a practice ''would normally be vested in the government.'' According to respondents, this language is directed at circumstances where the government controls the provider of the benefit and used the provider as a surrogate for government functions. In this case, respondents argue, foreign securities markets, and the interest rates set therein, are not controlled by the GOK. Therefore, respondents state, the ''entrusts or directs'' standard of the Act does not apply to foreign securities issuances.

Respondents also state that petitioners provide no legal standard for a countervailable benefit from foreign securities issuances because none exists. Specifically, respondents state that because foreign securities issuances are essentially unregulated ''commercial loans'' with market-determined interest rates not subject to GOK influence, no comparison with ''a comparable commercial loan,'' within the meaning of section 771(5)(E)(ii) of the Act, is necessary to determine whether a benefit was conferred. According to respondents, this is supported by Article 14 of the SCM Agreement which states that it is a ''loan by a government'' that is to be compared to a commercial loan.

Respondents next assert that even without the GOK's approval regulations, POSCO would have obtained access to these foreign sources of funds. According to respondents, it is POSCO's excellent credit rating that allowed it to ''get practically unrestricted access to these funds.'' Bankers Report at 10.

Respondents also take issue with petitioners' characterization of interest rates on foreign currency-denominated bonds as ''preferential,'' which is based on the assertion that the appropriate comparison for these foreign-currency bonds issued in foreign markets is to domestic-currency bonds issued in the Korean market. However, respondents note that the Department rejected the comparison of foreign currency-denominated bonds to the interest rates on bonds issued in Korean won in its Credit Memo. As argued by respondents in *Comment 4*, above, the Department's own policy and regulations require, for benchmark purposes, the comparison of interest rates on loans under investigation be with a benchmark in the same currency. According to respondents, interest rates in different currencies are not directly comparable.

To illustrate the problem of making benchmark comparisons across currencies, respondents explain that if the Department were to adopt petitioners' methodology, it would find that bonds issued at market rates in Japanese yen provided greater subsidies (because of a greater interest rate differential) than bonds issued at market rates in U.S. dollars for no other reason than that the market interest rates for Japanese yen are lower. Respondents also note an additional problem with comparing the cost of funds in different currencies, namely the sometimes drastic change in the rates of exchange between currencies over the life of loans. Respondents explain that while the rate of change and even the direction of change may be unpredictable, the consequences of such changes can be considerable, as illustrated by the sharp depreciation in the exchange rate of the Korean won in late 1997. This depreciation made all liabilities, such as loans in foreign currencies incurred before the drop, far more costly than companies originally could have anticipated.

Department's Position. In the Credit Memo, we stated that there are three elements required to find a potential subsidy countervailable: (1) A financial contribution is made by a government or public body; (2) a benefit is conferred on the recipient; and (3) it is specific. If one of these three elements is not met, the subsidy is not countervailable. In accordance with section 771(5)(E)(ii) of the Act, we examined whether a benefit has been conferred on the recipient, POSCO, from foreign securities issued in overseas markets. We also preliminarily determined that POSCO's access to government-regulated foreign sources of credit did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, is not countervailable. *See* Credit Memo at 18. As discussed in *Comment 5*, above, we continue to find that branches of foreign banks are not subject to the GOK's control and direction. Therefore, we continue to find that POSCO's access to government-regulated foreign sources of credit did not confer a benefit to the recipient, because the rates obtained on foreign securities, even though limited in access, were not less than foreign currency loans available to POSCO in Korea. As such, there is no need to address the specific comments raised by petitioners and respondents above.

Comment 7: Post-1991 GOK Credit Policies: Whether POSCO's Direct Foreign Loans Received in 1997 Should be Countervailed in This Investigation. Petitioners argue that the Department incorrectly found in its preliminary determination that there was no benefit to POSCO from regulated direct foreign loans received in 1997. According to petitioners, the Department did not examine direct foreign loans received in 1997, because the company ''did not pay interest on these loans until after the POI.'' According to petitioners, the Department should determine that the benefit to POSCO and the financial contribution are received in the year of the receipt of the loan rather than the year the interest is paid. Petitioners contend that this is consistent with the Department's policy on the valuation of subsidies as it was applied in this case for pre-1992 loans.

Respondents argue that contrary to petitioners' contentions, the interest rates on these loans are variable. Therefore, respondents contend that the Department correctly did not examine these loans, because no interest was paid during the POI. According to respondents, this approach is consistent with the Department's variable rate loan methodology.

Department's Position. We agree with respondents' contention that petitioners have incorrectly characterized these loans as fixed rate loans. Because these loans have variable interest rates, our methodology is to calculate the benefit at the time the interest on the loan is paid. For these reasons, we have not changed our preliminary findings concerning direct foreign loans received by POSCO in 1997.

Comment 8: Post-1991 GOK Credit Policies: The Appropriate Benchmark Interest Rate for POSCO's Long-Term Financing. Petitioners assert that, even if the Department determines in the final determination that the GOK's control over foreign commercial banks in Korea is not sufficient to constitute direction for purposes of section 771(5)(B)(iii) of the Act, the Department should conclude that the interest rates charged by those banks are not appropriate benchmarks. Petitioners claim that the maturity and the structure of the foreign bank loans, the other factors (apart from currency) the Department treats as being of primary importance, are not comparable commercial instruments to POSCO's foreign securities. Petitioners assert that the Department in its comparison has ignored this. Therefore, the Department should use the corporate bond rate as a source of capital apparently not under the GOK's direction.

Respondents' arguments concerning domestic branches of foreign banks, and the appropriate use of lending rates from these banks, are summarized under *Comment 6*, above. Respondents also dismiss petitioners' contention that bonds issued in domestic currency are more comparable in terms of their maturity and structure than the foreign currency benchmark chosen by the Department. Respondents note that domestic currency bonds are of shorter duration than POSCO's domestic foreign currency loans, which generally have maturities of five years or more. While petitioners correctly note that domestic and foreign bonds are similar in terms of structure (*i.e.*, fixed rate), respondents assert that this one common criterion is not a superior or sufficient basis for departing from the Department's long-standing practice of comparing loans with benchmarks in the same currency.

Department's Position. The fact that the maturity and structure of foreign securities may not be identical to long-term lending rates from foreign banks in Korea is not a reason to reject these rates as benchmarks and default to the won-denominated three-year corporate bond rate. In fact, contrary to petitioners's assertion, in terms of duration, foreign securities are closer in structure to long-term foreign currency loans from Korean branches of foreign banks than to domestic bonds, which have a maturity of three years, shorter than the duration of POSCO's foreign securities. As outlined by respondents, it is appropriate to compare government-regulated credit to a benchmark denominated in the same currency, if such a benchmark is available. This is in accordance with Department policy and past practice. *See e.g., CVD Final Rule,* 63 FR at 65363; *see also, Certain Apparel from Thailand,* 50 FR at 9824 (quoting, ''benchmark must be applicable to loans denominated in the same currency as the loans under consideration),'' and *Cold-Rolled Steel From Argentina,* 49 FR at 18019 (quoting, ''the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration''). For these reasons, we have not changed our benchmark in this final determination.

Comment 9: Post-1991 GOK Credit Policies: Errors in POSCO's Loan Calculations. Petitioners claim that the Department understated the benefit conferred upon POSCO. First, petitioners state the Department applied the 1997 benchmark to all of POSCO's outstanding loans, which contradicts Department policy of using a fixed rate benchmark for variable rate loans in the year the loan was provided if a variable rate was not extended (19 CFR 351.505(a)(2)(iii) (1998)). Petitioners next state that the Department failed to include the relevant fees in the benchmark interest rate. Citing the Department's regulations, petitioners explain that it is appropriate to compare the effective interest rate on the government-provided loan, with an effective rate benchmark (19 CFR 355.44(8); 19 CFR 351.505(a)(1)(1998)). Because POSCO failed to provide fee information between 1992 and 1996, the Department should, petitioners state, apply the 1997 fee to all previous years; alternatively, the Department should use the higher of the company-specific rate and the national average in each year between 1992 and 1996, as adverse facts available. Finally, petitioners note several minor calculation errors that they state the Department should correct, *i.e.*, a ''negative benefit'' from one loan, which then was deducted from the total benefit provided to POSCO through these loans, and the exclusion of another loan from the Department's calculations.

Department's Position. We agree with the corrections recommended by petitioners. For the fees, we have applied 1997 fee to all years, as suggested by petitioners. *See also* the discussion under *Comment 13*, below.

Comment 10: Post-1991 GOK Credit Policies: Whether POSCO Received Disproportionate Benefits From GOK Regulated Long-Term Loans. According to respondents, the Department's Credit Memo analyzes lending to the basic metals sector as a whole but fails to directly analyze lending to POSCO, the producer of the subject merchandise. This analysis, respondents state, does not take into account the fact that POSCO borrowed very little from commercial banks during this period and its borrowings from the KDB declined and then stopped completely after 1995, so that POSCO's share of long-term loans was at or lower than its share of GDP during this whole period.

Rather than addressing this data, respondents assert that the Department merely relies on the GDP test to demonstrate that loans were provided disproportionately to the steel industry.

According to respondents, the GDP test was not a sufficient measure of disproportionality for the Department (citing *British Steel I,* 879 F. Supp. at 1323), and the Court was also unconvinced by the Department's finding of disproportionality in *Steel Products from Korea.* The Court remanded the case to the Department on the basis that ''Commerce does not sufficiently explain in the *Korean Final Determination* the connection between the government *de facto* program and the steel industries' alleged preferential access to specific sources of credit.'' *British Steel I,* 879 F. Supp at 1325. Respondents note that the Department was upheld by the Court on its finding only after making additional claims that there was ''aggressive targeting'' of lending to POSCO for the construction of POSCO's Kwangyang mill.[4]

Respondents characterize the Department's conclusion of disproportionate use by the steel industry as ''collective guilt,'' whereby even one long-term loan to POSCO, no matter how small, would be countervailable if the steel industry as a whole had received a disproportionately large share of long-term loans. However, respondents state that the appropriate legal standard is whether a domestic subsidy ''is a specific subsidy, in law or in fact, to an enterprise or industry * * * .'' (quoting section 771(5A)(D) of the Act). Because POSCO is ''an enterprise, as defined by the statute, and constitutes ''the industry'' for which the Department must make a determination concerning the existence of a domestic subsidy from the purported directed credit, the Department must find that the subsidy is not specific to POSCO.

Respondents further assert that if the Department has sufficient data to determine whether a company received disproportionate benefits under a program, it must use that data. The fact that other companies' benefits were disproportionate, respondents state, can not be ascribed to a company whose benefits were not. Respondents link this analysis to certain Department methodologies that are also based on company-specific data, including benchmarks, average useful life of depreciable assets calculations, and the calculation of company-specific countervailing duty rates.

According to petitioners, respondents' contention that the Department must examine whether disproportionate benefits have been provided to POSCO is a misinterpretation of the law. In particular, petitioners state that the statute dictates that the Department will find *de facto* specificity when either an enterprise *or* an industry receives disproportionate benefits. The record, petitioners note, shows that the Korean iron and steel industry received a disproportionate amount of a subsidy. *See, e.g.*, Credit Memo at 15–16.

[4] *See Final Results of Redetermination Pursuant to Court Remand, British Steel plc* v. *United States, Consol. Ct. No. 93–0900550–CVD* at 49–50(April 20, 1995) (*Remand); British Steel PLC* v. *United States,* 914 F. Supp. 119, 130 (CIT 1995) (*British Steel II*) (''the nature of the nexus Commerce found in this case (was) purposeful targeting'').

Accordingly, petitioners assert that the Department correctly found that POSCO, as a member of the iron and steel industry, has benefitted from the GOK's direction of credit in the form of access to preferred sources of credit.

In petitioners' view, the fact that POSCO may have received only one loan, as argued by respondents, is irrelevant. When a company receives a subsidy that confers a benefit that is *de facto* specific to its industry, that subsidy is countervailable. According to petitioners, the very purpose of the specificity analysis is to determine whether certain companies benefit when an enterprise or industry receive a *de jure* or *de facto* specific subsidy.

Petitioners also reject respondents assertion that POSCO's long-term loans declined during the 1992–97 period, because this is irrelevant to whether such loans were subsidies, specific to the steel industry, and countervailable as to POSCO. Moreover, petitioners state, the quantification of the subsidy rate for individual companies and the calculation of the amount of the benefit are unrelated to the specificity to a particular industry.

Petitioners further assert that the record in this investigation demonstrates disproportionality and targeting of the steel industry in the post-1992 period, in the same manner that was established in *Steel Products From Korea*. For example, petitioners refer to the lending practices of the Korea Development Bank as a demonstration of the GOK's policy of directed credit and the disproportionate lending to the steel sector. Petitioners also note that the KDB's business plans and lending guidelines, which are negotiated with and subject to the MOFE's final approval, reflect the GOK's policy objectives. Petitioners also cite statements by Korean bankers that the KDB's ''business plans'' serve as lending models for other banks in the Korean market, and that KDB funded projects represent an implicit guarantee for other domestic banks to follow the KDB's lead. Thus, petitioners state, the KDB is an important tool for the GOK's direction of credit in the Korean financial system, and record statistics illustrate that the iron and steel or basic metals sectors received a disproportionate amount of the KDB's lending.

Department's Position: We disagree with respondents' arguments. The fact that POSCO borrowed very little from those sources of credit that were found to be *de facto* specific to the steel industry during the relevant period is irrelevant. The clear language of the statute is that a subsidy is specific when ''an enterprise *or* an industry receives a disproportionately large amount of the subsidy.'' Section 771(5A)(D)(iii)(III) of the Act (emphasis added). Thus, when a subsidy is specific to an industry, even if it is not specific to an enterprise that is part of that industry, the Department will find that subsidy to be countervailable, even if the actual subsidy to the enterprise is very small. While respondents may characterize this approach as ''collective guilt,'' the Department has in numerous cases found countervailable relatively small subsidies to a respondent firm on the basis of disproportionate use by the industry to which the respondent belongs. Indeed, this is not an unusual fact pattern for *de facto* specificity findings, for example under large research and development programs. As such it is not surprising that under respondents' suggested approach, the Department would rarely find a subsidy to be *de facto*, because subsidies under a program are frequently not received on a disproportionate basis by an enterprise. Finally, we agree with petitioners that respondents' attempt to link certain methodologies that are conducted on a company-specific basis to the specificity analysis is also without merit. The quantification of the benefit is simply not germane to the Department's analysis concerning specificity.

Comment 11: Post-1991 GOK Credit Policies: Whether Long-Term Loans From the KDB Were Provided at Favorable Interest Rates. Respondents argue that the Department incorrectly used a domestic won-denominated benchmark to calculate the benefit from POSCO's countervailable foreign currency-denominated loans from domestic sources, including the KDB. Respondents' reasons for the appropriateness of comparing, in accordance with the Department's own policy and regulations, the interest rates on loans under investigation with a benchmark in the same currency, are discussed above under *Comment 4*. Respondents further note that the Department asserted and applied this principle in its Credit Memo when it compared the interest rates on POSCO's foreign securities with the interest rates on POSCO's foreign currency loans from foreign banks in Korea, which were found not to be not controlled or directed by the GOK during the years 1992 and 1997.

Accordingly, respondents assert, the Department should have used the dollar-based interest rates on these loans from foreign banks as benchmarks for POSCO's foreign currency loans from Korean banks. If this were done, the Department would find that there was no benefit to POSCO from the foreign currency loans it received from domestic banks, including the KDB. All of the loans at issue were variable rate loans, based on a spread above a base rate of either LIBOR or the KDB's own rate. This proves, respondents state, that loans from the KDB had become too expensive for POSCO compared to the alternatives.

Petitioners note that they have previously noted the errors in the Department's preliminary finding (that foreign banks in Korea are not subject to the GOK's control and direction and, therefore, the foreign bank interest rates are not an appropriate benchmark). *See Comment 5*, above. Therefore, petitioners state, the Department must not use this rate as a benchmark to determine the benefit from POSCO's access to foreign currency loans. Moreover, petitioners argue that the currency in which the loan is denominated is only one factor that the Department examines in determining an appropriate benchmark. The Department also examines the structure, maturity, principle amount, and availability of funds of the potential benchmark compared to the subsidized loan. Based on all these criteria, the Department should use the corporate bond rate in Korea as the only appropriate available benchmark. Accordingly, the Department should use the domestic corporate bond rate as the benchmark for all long-term financing. In so doing, the Department should find in its final determination that POSCO's foreign currency loans do provide a quantifiable and countervailable benefit.

Department's Position. We agree with respondents that the appropriate benchmark to use to determine the benefit from POSCO's foreign currency-denominated loans from the KDB and domestic commercial banks are the interest rates from unregulated foreign banks in Korea. As discussed under *Comment 8*, above, it is appropriate to compare countervailable foreign currency-denominated loans to a benchmark in the same currency. Accordingly, we have revised our calculations to reflect this change.

Comment 12: Average Useful Life. Petitioners note that, in the preliminary determination, the Department used a 12-year AUL, based on several adjustments to POSCO's calculations for certain special depreciation charges. They assert that the calculated AUL for POSCO remains distorted, however, in a way that cannot be rectified and, therefore, it should not be used in the final determination. Petitioners argue that the Department should use the 15-

year allocation period found in the IRS depreciation tables as the AUL for the final determination.

Petitioners state that POSCO's reported AUL remains distorted because of the company's revaluation of property, plant, and equipment under the Asset Revaluation Law. They argue that the information gathered at verification suggests that POSCO's AUL does not reflect the actual useful life of its assets, because assets which had been fully depreciated several years before remained in service. The Department, therefore, should reject POSCO's reported AUL, in accordance with its practice regarding distorted company-specific data. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany*, 62 FR 54990, 54991 (Oct. 22, 1997) (*Steel Wire Rod From Germany*).

According to respondents, in applying an AUL for POSCO of 12 years at the preliminary determination, instead of the 9 years calculated by POSCO, the Department misunderstood the nature of the special depreciation claimed by POSCO and, therefore, disallowed it when performing its own AUL calculation. Respondents state that, at verification, POSCO explained and demonstrated the legal basis for the reported salvage value, special depreciation, and 1989 revaluation. Therefore, having addressed the Department's concerns, the Department should use POSCO's calculation of its AUL for allocating the benefits from any non-recurring subsidies.

In response to petitioners' argument, respondents state that any misunderstanding the Department manifested in the preliminary determination concerning POSCO's company-specific AUL data was resolved at verification. Therefore, petitioners' allegation of distortions with the company's data is incorrect. Further, they assert that the company-specific AUL data provided by POSCO permits calculation of an allocation period that is more reflective of any commercial and competitive benefit to POSCO than the arbitrary 15-year IRS period.

Department's Position. We agree with petitioners that it is not appropriate to use POSCO's AUL data to determine the average useful life of the company's assets. During verification, we reviewed POSCO's calculation of the company's average useful life of assets. In examining the company's calculations, we learned that the basis of the rates in the GOK's tax depreciation tables is the Japanese tax depreciation tables which were in existence at the time the GOK determined the useful life of assets in the 1950's. In order to determine whether the tax tables provide a reasonable estimation of POSCO's average useful life of assets, we examined POSCO's asset ledgers. We verified through an examination of POSCO's asset ledgers that the depreciation schedule used by POSCO does not represent the actual useful life of the company's assets. Therefore, we determine that it is not appropriate to use POSCO's AUL data. The available data does not permit the calculation of an accurate company-specific AUL in this investigation. In previous cases, the Department has recognized instances in which the company-specific AUL information cannot be used based on distortions in the data. *See, e.g., Steel Wire Rod from Germany*, 62 FR at 54991. Therefore, for the final determination, we used the 15-year allocation period as reported in the IRS depreciation tables for the allocation of POSCO's non-recurring subsidies.

Comment 13: Long-Term Interest Rate Benchmark. Petitioners state that POSCO failed to provide to the Department information on the fees applied to its bonds prior to 1997, stating that ''the data on the bond issuance fees for the prior years (*i.e.*, 1992–1996) are difficult to retrieve from POSCO's records.'' Petitioners note that the Department's practice is to include all fees associated with debt obligations in order to compare effective interest rates on the subsidized loan or bond with an effective rate benchmark.

Petitioners assert that POSCO did not demonstrate that it was unable to provide the requested information; it merely asserted that providing the information would be ''difficult.'' Accordingly, petitioners argue that the Department should find that POSCO did not act to the best of its ability to provide fee information for the 1992–1996 period and apply adverse facts available. As adverse facts available, petitioners argue that the Department should use the higher of (1) the national average rate or (2) add the percentage fees that POSCO reported in 1997, for each of the bonds issued in the years 1992 through 1996.

Respondents state that in POSCO's submission to the Department regarding the company's bond issuances, POSCO stated that ''the average percentage cost of bond issuance fees is essentially the same for all years.'' Respondents contend that POSCO was clearly suggesting to the Department that adding the 1997 percentage fees to the average effective interest rates on its corporate bonds for each of the prior years was appropriate given that the relatively small bond issuance fees were difficult to obtain for the period 1992 through 1996.

Department's Position. In their submissions to the Department, respondents concede that the bond issuance fees which POSCO paid in 1997, are the appropriate basis for the adjustment to construct a long-term interest rate benchmark for the years 1992 through 1996. Therefore, in constructing the long-term interest rate benchmarks for the final determination, we have added to POSCO's average interest rate on its corporate bonds for each year 1992 through 1996, the bond issuance fees POSCO paid in 1997. *See* ''Benchmarks for Long-term Loans and Discount Rates'' section above for a further discussion of the Department's analysis.

Comment 14: Energy Savings Fund Loans. In their case brief, petitioners argue that while the Department accurately derived the grant equivalent for each of POSCO's Energy Savings Fund Loans (ESF loans), it miscalculated its allocation of the grant benefits by (1) not using the life of the loan as the allocation period, and (2) not starting the allocation of the loans in 1994. Petitioners assert that the Department should correct these errors in the final determination.

Petitioners also state that the Department is correct in countervailing the ESF loans provided to POSCO as the preferred terms of the loans were specific to POSCO and provided a benefit. Further, as policy loans, the ESF loans were monitored and implemented by the GOK. The GOK, in keeping with its policy of maintaining stringent controls on the Korean financial system, controlled the ESF loan program and determined the maximum interest rate for ESF loans. Therefore, the Department should affirm its preliminary determination that the ESF loans are countervailable because (1) the loans provided a benefit to POSCO, and (2) the loans were specific, in that POSCO was the only recipient of the preferential rate.

Respondents note that in the preliminary determination, the Department found that POSCO received two ESF loans and that the interest rates paid by POSCO on these loans were less than the 7.0 percent rate purportedly prescribed by the program. On this basis, the Department determined that these loans to POSCO were specific and, thus, countervailable. However, based on the Department's findings at verification with respect to the maximum interest rate prescribed by the program and the interest rates charged to POSCO, the respondents contend that

the Department should revisit its preliminary determination.

Respondents claim that the record evidence demonstrates that POSCO was treated in accordance with the lending guidelines set by the Korea Energy Management Corporation (KEMC), and in accordance with the commercial lending practices of the Korea Exchange Bank (KEB). Respondents state that while POSCO did receive an interest rate slightly lower than the ceiling amount set by the KEMC, this rate was set based upon the KEB's desire to induce future business from POSCO, and not upon any government-directed preferential basis. Moreover, the respondents state that the record demonstrates that ESF loans were not specifically provided to POSCO, as 80 percent of the ESF loans recommended by the KEMC each year were for small- and medium-size enterprises, not for POSCO or the steel industry. Accordingly, the Department should determine that ESF loans are not specific and thus not countervailable.

Department's Position. In the preliminary determination, we treated the ESF Loans as a separate program because, at that time, we required additional information on the GOK's credit policies during the period 1992 through 1997. As noted above in the ''Direction of Credit'' analysis section, we have determined that the GOK maintained direct control over many sources of long-term credit, including lending from government-owned and/or controlled banks during the years 1992 through 1997. We, therefore, find that all loans, including policy loans, such as the ESF loans, which POSCO received from government-owned and controlled banks are countervailable.

Given that the KEB, the bank from which POSCO received the ESF loans, is a government-owned bank, and the fact that loans under the ESF program are government policy loans, we have determined that it is not appropriate to treat the ESF loans as a separate program. Accordingly, ESF loans are countervailable based upon our analysis of the GOK's direction of credit. *See* ''Direction of Credit'' section above for a further discussion of the Department's analysis. The benefit from the ESF loans is included in the benefit calculation under the ''Direction of Credit'' program. In determining the benefit the loans provided to POSCO during the POI, we used the life of the loan as the allocation period and began the allocation in 1994, for the final calculations.

Comment 15: The GOK's Pre-1992 Investments Constitute Non-Countervailable ''General Infrastructure''. Respondents state that in the preliminary determination, the Department relied exclusively upon its decision in *Steel Products from Korea*, to find that the GOK's investments at Kwangyang Bay during the period 1983–1991, provided countervailable subsidies to POSCO. Respondents note that the final determination of *Steel Products from Korea*, however, was made under the Pre-Uruguay Round law and on a different factual record. Therefore, in order to carry out its statutory mandate, the Department must apply the Post-Uruguay Round law to the facts presented in this instant investigation, and revisit its preliminary determination. Under section 771(5)(B) of the Act, there is now a requirement that a financial contribution must be provided by the government in order for a countervailable subsidy to exist. Respondents further argue that under section 771(5)(D)(iii) of the Act, the term ''financial contribution'' does not include the provision of general infrastructure.

Respondents state that, although the Department's administrative determinations, and the statute itself, are silent as to the definition of ''general infrastructure'' under the new law, the Department's new CVD regulations are instructive. Respondents note that § 351.511(d) of the new regulations defines ''general infrastructure'' as ''infrastructure that is created for the broad societal welfare of a country, region, state, or municipality.'' *See CVD Final Rules*.

Respondents explain that the GOK has established a system of national industrial estates as part of a broad plan for the efficient development of Korea. The Kwangyang Bay industrial estate, one of 200 industrial estates, was established under this national industrial estate program. They contend that when analyzed within the context of this national industrial estate system that is planned, created, and administered under central government control, it becomes obvious that these infrastructure investments constitute ''general infrastructure.'' They assert that the record evidence demonstrates that these infrastructure investments are: (1) Generally available to all industries and companies in Korea, and (2) are provided to aid public welfare by advancing the economic development of Korea. Further, they note, as stated in Article 1 of the Industrial Sites and Development Act, ''The purpose of this Act is to promote the balanced development of national land and sustained industrial progress through the efficient supply of industrial locations and appropriate placement of industry, thereby contributing to the sound development of the national economy.'' Therefore, respondents argue that under the Post-Uruguay Round law and the basic standard for general infrastructure articulated in § 351.511(d) of the new regulations, the GOK's pre-1992 infrastructure investments at Kwangyang Bay constitute non-countervailable ''general infrastructure.''

Petitioners note that the Department in the past has found that the Kwangyang Bay investments do not constitute general infrastructure. *See Preliminary Determination*, 63 FR at 47257, and *Steel Products from Korea*, 58 FR at 37346–47. Petitioners note that in *Steel Products from Korea*, the Department found that because the infrastructure provided to POSCO at the Kwangyang Bay Industrial Estate failed at least two of the three prongs of the infrastructure test, the provision of the infrastructure is specific. Petitioners argue that POSCO remains the primary user of the Kwangyang Bay port facilities, accounting for approximately 40 percent of all incoming and outgoing traffic between 1992 and 1997 and, therefore the Department should affirm its preliminary finding.

Department's Position. Respondents are correct when they assert that general infrastructure is not considered to be a financial contribution under 771(5)(D)(iii) of the Act. However, they are incorrect when they state that the infrastructure development at Kwangyang Bay constitutes general infrastructure. As respondents have acknowledged, the statute is silent as to the definition of ''general infrastructure;'' however, they note that the Department's new CVD regulations are instructive. *See CVD Final Rules*, 63 FR at 65412. While the new CVD regulations are not applicable to this case because this investigation was initiated before the effective date of these regulations, we are referring to them, in part, for guidance as to what constitutes ''general infrastructure.''

The new CVD regulations define general infrastructure as ''infrastructure that is created for the broad societal welfare of a country, region, state or municipality.'' Thus, any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable. Therefore, the type of infrastructure *per se* is not dispositive of whether the government provision constitutes ''general infrastructure.'' Rather, the key issue is whether the infrastructure is developed for the benefit of the society as a whole. For example, interstate highways, schools, health care facilities, sewage systems, or police protection

would constitute general infrastructure if we found that they were provided for the good of the public and were available to all citizens and members of the public. Infrastructure, such as industrial parks and ports, special purpose roads, and railroad spur lines that do not benefit society as a whole, does not constitute general infrastructure within the meaning of the new CVD regulations, and is countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit.

The infrastructure provided at Kwangyang Bay was not provided for the good of the general public; instead, it was built to support POSCO; therefore, it does not constitute ''general infrastructure.'' It is clear from the record that the infrastructure provided for POSCO's benefit at Kwangyang Bay is *de facto* specific, and that POSCO is the dominant user. *See Steel Products From Korea,* 53 FR at 37346–47. Therefore, the infrastructure at Kwangyang Bay is countervailable. Indeed, the ''Explanation of the Final Rules'' (the Preamble) to the new CVD regulations, which respondents assert are instructive on this issue, specifically cites to the infrastructure provided at Kwangyang Bay in *Steel Product From Korea* as an example of industrial parks, roads, rail lines, and ports that do not constitute ''general infrastructure,'' and which are countervailable when provided to a specific enterprise or industry. *See CVD Final Rules,* 63 FR at 65378–79.

Comment 16: GOK's Pre-1992 Investments Are Not Countervailable Because They Are ''Tied' To Kwangyang Bay. Respondents state that, in the preamble to the new regulations, the Department has adopted the practice of attributing subsidies that can be ''tied'' to particular products to those products. *See CVD Final Rules,* 63 FR at 65400. With respect to the instant investigation, respondents argue that the alleged subsidies are ''tied'' to the products that are produced at POSCO's Kwangyang Bay facility. Since the subject merchandise is not produced at the Kwangyang Bay facility, the subject merchandise does not benefit in any way from the allegedly subsidized general infrastructure at Kwangyang Bay. Respondents contend that it would run counter to the Department's practice, and common sense, to attribute countervailable benefits to products that cannot benefit from the alleged subsidies. They also note that under the Department's past practice, where a subsidy is ''tied'' only to non-subject merchandise, that subsidy is not attributed to the merchandise under investigation. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 62 FR 32297, 32302 (June 13, 1997).

Respondents argue that the Department was faced with a similar factual situation as the instant case in the *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil,* (*see,* 51 FR 21961, 21966 (June 17, 1986) (*Iron Ore Pellets from Brazil*)). In that case, petitioners argued that infrastructure and regional tax benefits provided to the Carajas mine project should be attributed to the respondent even though respondent did not produce (or intend to produce) subject merchandise at the Carajas mine project. The Department rejected petitioners' argument finding that the infrastructure and tax benefits were, by definition, only for the Carajas mine project. Because the respondent did not produce subject merchandise at the Carajas mine project, the Department did not consider this program countervailable with respect to subject merchandise.

Respondents contend that, rather than directly addressing the fact that the alleged subsidies are tied to Kwangyang Bay, the Department has instead mis-cited to its earlier finding in *Steel Products from Korea.* They note that in the preliminary determination of the instant investigation the Department claims that the alleged subsidy in *Steel Products from Korea* was treated as ''untied.'' However, respondents state that nowhere in *Steel Products from Korea* does it state that the alleged subsidy was being treated as ''untied.'' In fact, respondents state that the issue of whether the subsidies were tied or untied never arose in that investigation because the subject merchandise was produced at both of POSCO's steel facilities and, therefore, it was unnecessary for the Department to characterize the alleged subsidy as either ''tied'' or ''untied.'' They argue that in mischaracterizing its finding in *Steel Products from Korea,* the Department is attempting to bootstrap that finding into the instant investigation.

In their rebuttal brief, petitioners reject the respondents' argument that the Department is attempting to bootstrap its finding in *Steel Products from Korea* into the instant investigation. In *Steel Products from Korea,* petitioners state that the Department, by dividing the benefit attributable to the POI by POSCO's total sales, clearly treated the grants as untied benefits. *See Steel Products from Korea,* 58 FR at 37347. Therefore, petitioners argue the Department should continue to find Kwangyang Bay infrastructure investments ''untied'' in the final determination.

Department's Position. First, we note that the attribution, or ''tying,'' of a subsidy to a particular product or market is a long-standing policy of the Department, not one recently adopted in the new CVD regulations. Also, it has been the practice of the Department to attribute the benefit conferred from an ''untied'' domestic subsidy to the recipient's total sales. (This is how the subsidy rate was calculated for the Kwangyang Bay subsidy in *Steel Products from Korea.*) By contrast, if the subsidy was, for example, tied to export performance, then the Department would only attribute the benefit of the subsidy to the recipient's export sales.

Respondents' argument that the infrastructure subsidy provided to POSCO is tied to only certain of POSCO's production is flawed. Part of respondents' argument rests upon the premise that a regional subsidy can be tied to only the subsidy recipient's production in that region. If this allocation methodology were adopted and the Department tied regional subsidies to production in a particular region, the Department would essentially be forced to calculate factory-specific subsidy rates. In addition, if such a methodology were applied, then foreign companies could easily escape collection of countervailing duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region. This allocation methodology has been clearly rejected by the Department. *See, e.g., Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile,* 63 FR 31437, 31445–46 (June 9, 1998) (stating, ''[T]he Department does not tie the benefits of federally provided regional programs to the product produced in the specified regions.'') Indeed, the Department has explicitly rejected this argument in the new CVD regulations cited by respondents in support of their argument on this issue. *See CVD Final Rules,* 63 FR at 65404. The infrastructure development at Kwangyang Bay provided a benefit to POSCO and, as discussed further below, the benefit from the subsidy is untied and is attributed to POSCO's total sales.

Respondents' argument is also flawed because respondents have misinterpreted the attribution methodology. Attribution of the benefit of a subsidy is based upon the information available at the time of bestowal. The concept of ''tying'' a

subsidy at the time of bestowal can be traced back to *Certain Steel Products from Belgium*. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium*, 47 FR 39304, 39317 (September 7, 1982). At the time of bestowal of the subsidy conferred by the Kwangyang Bay infrastructure, the benefit of the subsidy was to POSCO, not to a specific product line. Thus, the benefit cannot be tied to any specific product, but instead, is an untied benefit provided by the GOK to POSCO. *See Final Results of Redetermination Pursuant to Court Remand* (April 20, 1995) *in British Steel PLC,* v. *United States* Slip Op. 95–17 (February 9, 1995) at 35 and 36. Once it is determined that an untied subsidy has been provided to a firm, the Department will attribute that untied subsidy to the firm's total sales, even if the products produced by the firm differ significantly from the time when the subsidy was provided. The Department will not examine whether product lines have been expanded or terminated since the time of the subsidy's bestowal.

Finally, we note that respondents' reliance on *Iron Ore Pellets from Brazil* is misplaced. First, in both *Iron Ore Pellets from Brazil* and in the Kwangyang Bay subsidy at issue in this investigation, the determination of attribution of a subsidy was made at the time of bestowal, which is consistent with Department policy. Thus, in both cases, the Department applied the same standard in determining whether a subsidy was tied or untied. Second, the subsidy alleged in *Iron Ore Pellets from Brazil* was alleged to have been provided to an input into the subject merchandise, an issue distinct from the issue in the instant investigation. We further note that the treatment of input subsidies at issue in *Iron Ore Pellets from Brazil* has changed since 1986. *See e.g.*, § 351.525(b)(6)(iv) of the *CVD Final Rules and Final Results of Countervailing Duty Administrative Review: Industrial Phosphoric Acid from Israel*, 63 FR at 13626 (March 20, 1998). Thus, if the identical subsidy issue cited in *Iron Ore Pellets from Brazil* were before the Department today, it is uncertain whether the same decision would be made in 1999 as was made in 1986.

Comment 17: The Department Erred In Treating The Alleged Benefit To POSCO As A Grant. Respondents note that, in the preliminary determination, the Department determined that the GOK's costs of constructing the infrastructure at Kwangyang Bay constituted grants to POSCO. In treating these costs as grants to POSCO, respondents argue, the Department has ignored the fact that the GOK owns these facilities and charges POSCO the normal user fees for the services provided. They assert that it is erroneous as a matter of law and contrary to Department precedent to countervail as grants infrastructure that the respondent does not own and where normal user fees are paid to use the infrastructure services. (*Citing,* sections 771(5)(D)(i) and (E)(iv) of the Act, and the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel,* 52 FR 25447, 25451 (July 7, 1987) (*Industrial Phosphoric Acid from Israel*).)

Respondents contend that rather than treating the infrastructure investments as grants, the Department should have analyzed the issue as one of whether the infrastructure services were provided ''for less than adequate remuneration,'' citing section 771(5)(E)(iv) of the Act. They note that adequacy of remuneration is the new statutory provision for determining whether the government's provision of a good or service constitutes a countervailable subsidy. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service shall be determined in relation to prevailing market conditions (*i.e.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale) for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review.

Respondents state that the Department addressed a similar issue in *Industrial Phosphoric Acid from Israel.* At issue in that case were certain rail lines built (and owned) by the Israeli government for ''the almost exclusive use of a few chemical companies. *See Industrial Phosphoric Acid from Israel,* 52 FR at 25447. The Department recognized that any benefit to be derived from the infrastructure was related to the use of that infrastructure, and since the respondent in question paid for such use, the question was whether the payments for such use were higher or lower than those paid by other users for similar services. The Department determined that the rates paid were not preferential and, therefore, that no benefit or subsidy existed.

Respondents also state that in *Certain Steel Products from Brazil,* the Department applied a similar analysis. In that case, the Department determined that ''The fees charged . . . reflected standard fees applied to all users of port facilities, thus, they are non-specific.'' *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil,* 58 FR at 37295 (July 9, 1993) (*Certain Steel Products from Brazil*), and *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Trinidad and Tobago*, 49 FR 480, 486 (Jan. 4, 1984) (*Carbon Steel Wire Rod from Trinidad and Tobago*).

Respondents argue, in the alternative, that if the Department continues to treat these benefits as ''grants,'' then these grants must be pro-rated based upon the actual benefit to POSCO. They note that the GOK provided information on the use of these facilities and, where possible, POSCO's portion of the total usage during the POI. Since POSCO is not the only company that benefits from the infrastructure investments at Kwangyang Bay, the Department cannot simply attribute the entire benefit from the GOK's infrastructure investments to POSCO. The benefit found must be allocated proportionate to POSCO's use of these facilities at Kwangyang Bay during the POI.

In their rebuttal brief, petitioners state that respondents are blurring the distinction between the original provision of specific infrastructure investments and the adequacy of remuneration of fees charged for the future use of the infrastructure. In addition, petitioners argue that the investment grants should not be ''pro-rated'' based on POSCO's use of the facilities, because POSCO is the dominant beneficiary. Petitioners note that in *Steel Products from Korea,* the Department determined that Kwangyang Bay was specifically designed for POSCO. *See Steel Products from Korea,* 58 FR at 37347.

Department's Position. The Kwangyang Bay infrastructure subsidy under investigation in *Steel Products from Korea* and in this investigation is not the fee charged by the government for use of rail and port facilities, as was the issue in the cases cited by respondents. Indeed, we found an alleged program providing ''preferential'' port charges to the Korean steel industry not to exist in *Steel Products from Korea.* Therefore, the cases cited by respondents are not relevant to the treatment of the Kwangyang Bay subsidy.

The benefit under this subsidy program to POSCO was the creation of Kwangyang Bay to support POSCO's construction of its second integrated steel mill. The building of this infrastructure to support POSCO's expansion, which was planned years before POSCO commenced production at Kwangyang Bay, was the benefit

countervailed in *Steel Products from Korea* and in this investigation. Thus, the benefit conferred by this subsidy program to POSCO, and the benefit that must be measured, is the construction of these facilities, rather than the fees charged to POSCO for their use. Therefore, it is reasonable to measure the benefit from this program by treating the costs of constructing the Kwangyang Bay facilities for POSCO as nonrecurring grants.

In addition, we also disagree with respondents' argument that we pro-rate this subsidy between POSCO and to other companies currently located at Kwangyang Bay. Again, respondents have misinterpreted the nature of the benefit. The infrastructure at Kwangyang Bay was built to support POSCO's expansion and its creation of its second integrated steel mill. Therefore, the program is a subsidy provided to POSCO, and the benefit from the program is properly attributed to POSCO.

Comment 18: POSCO'S Exemption From Port Facility Fees. Respondents note that in the preliminary determination, the Department determined that POSCO's exemption from paying port facility fees provides a countervailable subsidy to POSCO. In reaching this conclusion, respondents argue that the Department incorrectly determined that: (1) A ''financial contribution'' had been provided to POSCO because it was exempt from paying port facility fees that it otherwise would have to pay; and (2) that the subsidy was ''specific'' because POSCO was the only company exempt from paying port facility fees during the POI. Respondents also argue that in reaching this preliminary determination, the Department failed to address section 771(5)(B) of the Act, which requires that a government action must confer a benefit in order to be considered a countervailable subsidy.

As to the ''financial contribution'' requirement, the respondents argue that but for the existence of a law (*i.e.*, Article 17–1 of the Harbor Act) compelling POSCO to cede title to the port facilities it built to the GOK, the issue of these fees would not arise because POSCO would simply own the facilities outright (and not have to pay fees to itself). Because POSCO ceded title to the port facilities to the GOK, the Department claims that a benefit arises because POSCO does not currently pay fees to use the facilities it built. Respondents, however, argue that the GOK is merely recognizing POSCO's costs and the statutorily-authorized payment for construction costs incurred by a private party. Therefore, according to respondents, the port fee exemption does not constitute a ''financial contribution'' under the new law.

Moreover, respondents state that the Department verified that port fee exemptions are not limited to companies at Kwangyang Bay. Rather, this program is commonly used by the GOK with respect to all ports in Korea as a means of encouraging private companies to raise the capital to develop port facilities throughout the country. Respondents also argue that this verified information demonstrates that fee exemptions, *i.e.*, free usage, was not specific to POSCO because a variety of companies which built and reverted port facilities to the GOK under Article 17(1) of the Harbor Act received comparable exemptions. Therefore, the Department should find that POSCO's exemption from port fees does not constitute a countervailable subsidy.

Petitioners argue that the benefit conferred upon POSCO is the fact that at the end of its fee exemption and fee collection period, POSCO will have paid nothing to use the facilities which furthered the company's business interests. Moreover, petitioners argue that more than half of the fee exemptions provided at Kwangyang Bay were conferred upon POSCO. Petitioners assert that under the Department's *de facto* specificity analysis, POSCO has been the predominant beneficiary of fee exemptions at Kwangyang Bay.

Department's Position. We agree with respondents that the port fee exemption is not specific to POSCO because POSCO was not the only company exempt from paying port facility fees during the POI. At verification, we obtained information which indicated that port fee exemptions are not limited to companies at Kwangyang Bay. Moreover, the verified information demonstrates that fee exemptions were not specific to POSCO as a large number of companies from a diverse and broad range of industries built and transferred port facilities to the GOK under Article 17(1) of the Harbor Act received comparable exemptions. For a further discussion of the Department's analysis see the section ''Port Facilities Fees'' above.

Comment 19: Port Facility Fees Collected by POSCO. Petitioners state that in the preliminary determination the Department failed to countervail port facility fees which POSCO collected from other users during the POI. Petitioners state that in addition to the revenues foregone by the GOK for POSCO's free use of the facilities, the GOK authorized POSCO to collect fees from other users. They note that the Department confirmed at verification, the amount of fees which POSCO collected from other users during the POI. Petitioners argue that as with the exemption of port fees, POSCO has received a financial contribution that is recurring and specific to POSCO since no other company is eligible for this benefit with regard to these facilities. Therefore, in the final determination, the Department should countervail fees collected by POSCO.

Respondents state that Article 17(3) of the Harbor Act and the Regulations on 20-year Repayment of Investment provide that companies shall be reimbursed for their investments through the temporary exemption from paying port facility fees and the right to collect fees from other users. They assert that the fees collected from other users simply serve as an additional form of reimbursement permitted by the GOK until POSCO recoups its investment costs. They stress that this option is available to all companies that revert port facilities to the GOK. Moreover, as argued in POSCO's case brief, these fees do not constitute a financial contribution or benefit to POSCO.

Department's Position. The Department disagrees with petitioners and finds that the fees which POSCO collected from other users of the infrastructure facilities which the company build are not countervailable. For the same reasons as outlined above in the *Department's Position* to *Comment 18*, we determine that POSCO's ability to collect fees from other users is not specific under section 771(5A)(D)(iii) of the Act.

At verification, we learned that Article 17(3) of the Harbor Act and the companion Presidential Decree provide that companies shall be reimbursed for their investments through the temporary exemption from paying port facility fees and the right to collect fees from other users. All companies which build infrastructure that has to be transferred to the GOK receive free usage of the infrastructure and the ability to collect user fees from other companies which use the facilities, until the investment cost of the facility is recovered. The fees which POSCO collected from other users simply serve as an additional form of reimbursement permitted by the GOK until POSCO recoups its investment costs. This option is available to all companies that transfer port facilities to the GOK. Because, POSCO was only one of a large number of companies from a diverse and broad range of industries which was authorized to collect users fees, we determine that this program is not specific under section 771(5A)(D)(iii) of the Act. *See* the ''Port

Facilities Fees'' section above for a further discussion of the Department's analysis.

Comment 20: Adjustment of the Gross Countervailable Subsidy from the Investment Tax Credits. Respondents do not dispute the Department's preliminary finding that certain investment tax credits received by POSCO conferred countervailable subsidies during the POI, because the level of benefits received was contingent upon the use of domestic goods instead of imported goods. However, as a result of verification, the respondents argue that the Department needs to adjust the gross subsidy amounts calculated for certain years. In the preliminary determination, the Department noted that POSCO deducted from its tax return for fiscal year 1996 (filed during the POI in 1997) tax credits earned in the years 1992 through 1995, which had been carried forward and used in fiscal year 1996. As discussed in the preliminary determination, the Department ''calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities' rather than at the regular rates for the respective tax credits. The Department then calculated the portion of the total tax credits earned in each year attributable to the 10 percent rate and applied that percentage to the total of all tax credits claimed for that year during fiscal year 1996. On this basis, the Department calculated the countervailable subsidy from these investment tax credits for the POI.

Respondents presume that the Department chose this methodology for calculating the amount of the countervailable tax credits attributable to fiscal year 1996, because, although it knew the total amount of the tax credits from each year that were used in fiscal year 1996, it could not determine for every year which tax credits were being used. Respondents note that this problem was resolved at verification when POSCO provided a detailed breakdown, by TERCL article, of the amounts claimed for each tax credit in fiscal year 1996. With this verified information, they state, the Department need only determine the amount to be allocated to fiscal year 1996, for one tax credit earned in 1992, Article 26, and for one tax credit earned in 1995, Article 25. Respondents propose that in calculating the benefit conferred by the investment tax credits, the Department should use the subsidy amounts calculated in the Department's August 28, 1998 Calculation Memo for Article 71 in 1993, Articles 10(1)(a), 25, 26 and 27 in 1994, and Articles 10(1)(a), 10(1)(b) and 26 in 1995, in conjunction with the allocable amounts for Article 26 in 1992 and Article 25 in 1995, to calculate the total gross subsidy from investment tax credits which POSCO used in its fiscal year 1996 tax return.

Department's Position. We agree that, as a result of the information obtained at verification with respect to those specific investment tax credits which POSCO utilized in its 1996 tax return, the calculations for determining the benefit conferred by the investment tax credits during the POI should be revised. However, we disagree with the respondents' proposed methodology for calculating the benefit. Respondents have not demonstrated to the Department that their proposed methodology would more accurately calculate the benefit POSCO received through the use of investment tax credits, than the methodology employed by the Department in the preliminary determination.

As discussed above in the section ''Investment Tax Credits,'' to calculate the benefit from this tax credit program, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1996 fiscal year. POSCO deducted from its 1996 taxes payable all remaining credits earned in the years 1992, 1993, 1994, and a portion of credits earned in 1995. With this information, we first determined the amount of the tax credits claimed which were based upon the investment 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 investments in domestically-produced facilities 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 for the POI. On this basis, we calculated the countervailable subsidy from these investment tax credits for the POI. *See* ''Investment Tax Credits'' section above for a further discussion of the Department's analysis.

Comment 21: Deduction of the Amount of the STRD Tax POSCO Paid On Certain Investment Tax Credits. Respondents explain that, pursuant to the Special Tax for Rural Development (STRD), certain investment tax credits are subject to a 20 percent surtax on the amount of tax exemptions claimed from the corporation income tax as a result of receiving tax credits. Respondents state that POSCO provided copies of its tax schedule from its fiscal year 1996 income tax return calculating the amount of the surtax and a copy of the law governing the STRD tax. As demonstrated in POSCO's calculation of its applicable STRD tax for fiscal year 1996, respondents state the total amount of tax credits claimed under TERCL Articles 25, 26, 27, and 88 in that year were subject to the STRD tax at the rate of 20 percent.

Respondents note that according to section 771(6) of the Act, the Department:

> may subtract from the gross countervailable subsidy the amount of—(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy, * * *

Thus, respondents argue, section 771(6) of the Act, provides the legal basis for determining the amount of the net countervailable subsidy arising from the investment tax credits used by POSCO in fiscal year 1996.

Respondents state that POSCO was required to pay the 20 percent STRD tax in conjunction with its receipt of investment tax credits under TERCL Articles 25, 26 and 27. In the absence of these tax credits (as well as the tax credit under TERCL Article 88, which respondents claim the Department found to be not countervailable), POSCO would not have had to pay any STRD tax. Therefore, consistent with section 771(6), POSCO's receipt of the benefit from these tax credits was contingent upon its payment of the STRD tax. They argue that the obligation to pay the STRD tax is not a situation where there is any uncertainty as to the amount of the STRD tax due or the net benefit to POSCO from the tax credits. The payment of the STRD tax is not a secondary consequence of a tax program, where the effects ''are too uncertain to be a necessary part of a subsidy calculation.'' (*Quoting, Michelin Tire Corp.* v. *United States,* 6 CIT 320, 328 (1983), vacated on other grounds, 9 CIT 38 (1985) (*Michelin Tire*).) They assert that the full tax consequences of using these investment tax credits are direct, known, and quantifiable at the time the tax credits are used. Respondents further note that a company can claim the tax credits only insofar as it has taxable income and, when it claims certain tax credits, there is a clear legal obligation to pay the STRD tax at a fixed percentage rate.

Petitioners argue that respondents' suggestion that the amount of STRD tax paid qualifies as a statutory offset to the investment tax credit benefits should be rejected by the Department. Petitioners assert that this type of ''after-the-fact'' tax does not qualify as a permissible

offset. They note that the statute specifically defines the type of offsets that can be subtracted from a countervailable benefit, (*i.e.*, application fee, deposit, or similar payment in order to qualify for, or receive the benefit). However, they note, the STRD is not mandatory prior to receipt of the subsidy, but rather, is a surtax levied post-receipt of the benefit.

Petitioners argue that respondents are asking the Department to examine the secondary tax effects of subsidies. Petitioners note that the Court has affirmed the Department's policy to disregard any secondary effect of a direct subsidy on a company'' financial performance. (*Citing, Saarstahl AG* v. *United States,* 78F.3d 1539, 1543 (Fed. Cir. 1996); *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 63 FR 64050, 64054 (Nov. 18, 1998).) Therefore, petitioners argue that the Department must countervail in full the investment tax credit benefits.

Department's Position. We agree with petitioners. Not only is it the Department's long-standing policy to disregard secondary tax consequences of countervailable benefits, but the statute is also clear with regard to permissible offsets to subsidies. Section 771(6) of the Act provides an exclusive list of offsets which may be deducted from the amount of a gross subsidy, and a tax which is payable upon receipt of a benefit is not included in that list. For purposes of determining the net subsidy, the Department, pursuant to section 771(6), may subtract from the gross countervailable subsidy the amount of:

> (A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,
>
> (B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
>
> (C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

In *Michelin Tire,* the Court upheld the Department's policy of disregarding secondary tax consequences, rejecting a claim that after-tax considerations should be included in the calculation of a subsidy. In its decision the Court stated that: ''(T)hese effects (secondary tax effects) are too uncertain to be considered a necessary part of a subsidy calculation in these circumstances.'' *See Michelin Tire,* 6 CIT 328. We note that the receipt of the investment tax credits are not contingent upon the payment of the STRD tax. The payment of STRD tax is a secondary tax effect. Thus, the payment of the STRD does not qualify as an offset which may be deducted from the amount of the gross subsidy. Therefore, based on the statute, case precedent, and the Department's policy to disregard secondary tax effects on subsidies, we have not altered our calculation of the countervailable subsidy which POSCO received from the investment tax credits during the POI.

Comment 22: Requested Load Adjustment Electricity Discount Program. Respondents note that, in the preliminary determination, the Department determined that discounts under the Requested Load Adjustment (RLA) program were countervailable because they were distributed to a limited number of customers during the POI. The Department stated, however, that it was going to further investigate the *de facto* specificity of this program at verification. Based upon the information that was obtained at verification, respondents argue, it is now clear that the RLA program is not *de facto* specific. Accordingly, in the final determination the Department should determine that the RLA program is not countervailable.

According to respondents, it is clear that Korea Electric Power Company (KEPCO) does not limit the availability of the RLA program. The Department learned at verification that some companies volunteer to participate in the RLA program, while KEPCO calls upon other companies to solicit their cooperation. In soliciting participants, KEPCO does not have a preference for companies in any particular industry sector as KEPCO contracts with any company willing to participate in the RLA program. The only limitations placed on availability arise from the threshold requirement that customers have a contract demand of 5,000 KW or more.

Second, respondents state that the verified record evidence demonstrates that during the 1995–1997 period a wide variety of users from various industries and all regions in Korea received benefits under the RLA program. While the number of recipients decreased significantly from 1996 to 1997, KEPCO officials explained that this was because KEPCO foresaw an increased ability to meet demand for electricity in 1997 and, therefore, decreased its targeted adjustment capacity, reducing the number of RLA participants needed. In 1997, 44 customers from various industries including textiles, electronics, cement and steel received benefits under the RLA during the POI.

Respondents state that another reason for the reduction in the number of participants was KEPCO's policy for reducing the administrative burdens of the RLA program by seeking out larger companies to participate in the RLA program so it can reach its targeted adjustment capacity with fewer participants. This policy, respondents explain, is why it may appear that a disproportionate number of the users are from the steel industry. In comparison to many other industries, steel companies require a large amount of electricity to power their machinery, plants, and furnaces. Since KEPCO is seeking to reduce the administrative burden of this program, it is only logical that they are going to seek out large electricity-intensive companies.

Accordingly, on the basis of the verified record evidence, respondents contend, the Department should determine that the RLA program is not *de facto* specific to POSCO or the steel industry, and thus not countervailable.

Petitioners state that of the 44 companies which received RLA discounts in 1997, a disproportionate amount of those benefits went to the iron and steel manufacturers. The second most represented industry which received discounts was the textile industry. Petitioners question why other ''electricity-intensive companies'' were not included in the list of the 44 companies which received discounts. Petitioners also note that KEPCO was unable to indicate what percentage of the 44 discount recipients were volunteers and what percentage was composed of selected participants. Petitioners assert that KEPCO must use discretion in allocating RLA discounts because of the limited number of users and the disproportionate use of the program by iron and steel manufacturers. Therefore, petitioners assert that the Department should uphold its preliminary determination and find that the RLA program is a *de facto* specific subsidy.

Department's Position. We disagree with the respondents and continue to find that the Request Load Adjustment electricity discount program is countervailable. We stated in the preliminary determination that, given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we would further investigate the *de facto* specificity of this discount program at verification. We stated that it was the

GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into the RLA contracts during the POI.

However, at verification the GOK failed to demonstrate to the Department a systematic procedure through which KEPCO selects those customers with which it enters into RLA contracts. The GOK simply stated that KEPCO enters into contracts with those companies which volunteer for the discount program. If KEPCO does not reach its targeted adjustment capacity with those companies which volunteered for the program, then KEPCO will solicit the participation of large companies. We note that KEPCO was unable to provide to the Department the percentage of 1997 RLA recipients which volunteered for the program and the percentage of those recipients which were persuaded to cooperate in the program. 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 within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See* ''Requested Load Adjustment Program'' section above for the Department's complete analysis.

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).

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total estimated net countervailable subsidy rate is 0.65 percent *ad valorem* which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of stainless steel plate in coils in Korea. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon publication of the final negative determination in the **Federal Register**.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). 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: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7529 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Kathleen Lockard or Dana Mermelstein, Office of CVD/AD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 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 stainless steel plate in coils from South Africa. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Lukens, Inc., and United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on September 9, 1998 (63 FR 47263), the following events have occurred.

We conducted verification of the countervailing duty questionnaire responses from November 2 through November 13, 1998. On January 2, 1999, we terminated 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. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR 47263), and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than March 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa: Notice of Extension of Time Limit for Final Determinations,* 64 FR 2195 (January 13, 1999)). Petitioners, the Government of South Africa, and Columbus Stainless (the operating unit of Columbus Joint Venture) filed case briefs on January 11, 1999, and rebuttal briefs on January 19, 1999. A public hearing was held on January 21, 1999.

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 effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 (1998).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further