parties with its responses to the Department's questionnaires in a timely fashion. However, the Department believes that Arinox, a *pro se* company, was operating in good faith and to the best of its ability in attempting to respond to the Department's requests for information. Although Arinox's responses to our questionnaires and other information were not served immediately upon the petitioners, it submitted this information in a timely fashion, was sufficiently complete so as to provide a reliable basis for our determination, was capable of being used without undue difficulty, and we provided it to the petitioners shortly before the preliminary determination. We conducted the verification of Arinox approximately three weeks later and verified the accuracy of Arinox's submissions. This three-week period provided the petitioners with a reasonable amount of time to make substantive comments regarding any potential subsidies to Arinox prior to verification. For these reasons and consistent with sections 782(c)(2) and (e) of the Act, the Department has continued to calculate a separate *ad valorem* subsidy rate for Arinox in this final determination.

**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 government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy rate is 12.22 percent *ad valorem* for AST and 1.03 percent *ad valorem* for Arinox. The All Others rate is 12.09 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from Italy, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

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

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

**Return or Destruction of Proprietary Information**

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

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

Dated: May 19, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–13683 Filed 6–7–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–580–835]**

## Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

**EFFECTIVE DATE:** June 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Eva Temkin or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

**Final Determination**

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel sheet and strip in coils from the Republic of Korea. 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., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the petitioners).

**Case History**

Since the publication of our preliminary determination in this investigation on November 17, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 63 FR 63884 (Preliminary Determination)), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from February 2 through February 12, 1999. In addition, portions of the questionnaire responses were verified from December 3 through December 18, 1998, during our verification of the countervailing duty investigation of Stainless Steel Plate in Coils from Korea. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR at 63885), and the final antidumping duty determination was postponed (*see* 64 FR 137), the Department on January 13, 1999, extended the final determination of this countervailing duty investigation until no later than May 19, 1999 (*see* 64 FR 2195). On January 27, February 2, 10, and 12, April 12 and 13, 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, during the countervailing duty investigation of Stainless Steel Plate in Coils from the Republic of Korea. *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530, 15533 (March 31, 1999) (*Stainless Steel Plate from Korea*). These memoranda were placed on the record in this investigation on March 31, 1999. Petitioners and respondents filed case briefs on April 21, 1999, and rebuttal briefs were filed on April 28, 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 current regulations as codified at 19 CFR Part 351 (April 1998).

**Scope of Investigation**

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip 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 sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 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, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 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 Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than

0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

**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 August 9, 1998, the ITC announced its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

**Period of Investigation**

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

**Use of Facts Available**

As discussed in our preliminary determination, both Sammi Steel Co., Ltd. (Sammi) and Taihan Electric Wire Co., Ltd. (Taihan), two producers of subject merchandise, failed to respond to the Department's questionnaire. *See Preliminary Determination*. Since the preliminary determination in this investigation we have not been presented with new information on this issue. Therefore, we have continued to find that Sammi and Taihan each have failed to cooperate to the best of their abilities, and, in accordance with 776(b) of the Act, have continued to apply an adverse facts available (AFA) rate to these two companies. This rate was based on the petition, as well as our findings in the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), and additional findings in this proceeding.

In *Steel Products from Korea*, we determined a country-wide *ad valorem* subsidy rate of 4.64 percent based on many of the same programs alleged in this case. Therefore, we are using the highest published *ad valorem* rate of 4.64 percent that was calculated in *Steel Products from Korea* as representative of the benefits from the industry-wide subsidies alleged in this petition, and received by the other respondents in this investigation. In addition, we are also applying a facts available rate to Sammi and Taihan for a subsidy program newly examined in this investigation, POSCO's two-tiered pricing structure to domestic customers. We found this program to be countervailable, and calculated company-specific program rates for Dai Yang and Inchon; as discussed below, we used Inchon's calculated rate for this program as adverse facts available for Sammi and Taihan. (A detailed discussion of this program can be found in the ''Programs Determined to be Countervailable'' section of this notice.)

Therefore, in Taihan's case, we used the 4.64 rate from *Steel Products from Korea* because the subsidy programs alleged in this investigation, with the exception of the one new allegation, are

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

virtually identical to the programs for which the 4.64 rate in *Steel Products from Korea* was calculated. In addition, in accordance with section 776(b)(4) of the Act, for the two-tiered pricing program, we are applying the highest calculated company-specific rate for this program to Taihan as adverse facts available, 2.36 percent *ad valorem*, the company-specific program rate for Inchon. We added this 2.36 percent rate to the 4.64 percent rate (representing the program rates of the other subsidy allegations) to arrive at a total *ad valorem* rate of 7.00 percent as adverse facts available for Taihan.

In Sammi's case, in addition to applying the 4.64 rate from *Steel Products from Korea* for most of the programs covered in this investigation and the 2.36 rate for POSCO's two-tiered pricing structure, we calculated a rate for one other program that was not previously investigated: POSCO's purchase of Sammi Specialty Steel. This program is addressed below in the ''Programs Determined to be Countervailable'' section of this notice. We used information provided in the petition, in the verification reports of POSCO and the Government of Korea, in POSCO's questionnaire responses, and additional information placed on the record of this investigation, for the calculation of the program rate for POSCO's purchase of Sammi Specialty Steel. We then added the rate calculated for this program and the rate representing the subsidy conferred by POSCO's two-tiered pricing structure to the other programs' rate of 4.64 percent *ad valorem* calculated in *Steel Products from Korea*, which is representative of the benefits from the other industry-wide subsidies alleged in the petition and received by the other respondents. We thus arrived at a total *ad valorem* rate of 59.30 percent as adverse facts available for Sammi.

Petitioners also alleged that Sammi benefitted from two other company-specific subsidies: (1) A ''national subsidy'' and (2) 1992 emergency loans. With respect to the alleged ''national subsidy,'' we have not deviated from the methodology established in the *Preliminary Determination*. We continue to treat this ''national subsidy'' as a grant bestowed upon Sammi, and employ the Department's grant methodology. *See* the *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37225, 37227 (July 9, 1993) (*GIA*). Because the total amount of the national subsidy is less than 0.50 percent of Sammi's 1993 sales, the subsidy was expensed in the year of receipt. Thus, there is no benefit under this program during the POI.

The petitioners also alleged that in 1992 the GOK directed a package of 132 billion won in ''emergency loans'' to Sammi in order to save the company from bankruptcy. In our preliminary determination we calculated a separate subsidy rate for this allegation. However, we have reconsidered this facts available calculation in this final determination. In *Steel Products from Korea*, we investigated the allegation that the GOK directs banks in Korea to provide loans to the steel industry. This program was determined to be countervailable, and a calculated subsidy rate for this program is included as part of the facts available rate applied in this determination. Because we have already accounted for the subsidy provided by the GOK's direction of credit in our facts available rate taken from *Steel Products from Korea*, we have not calculated an additional subsidy rate for this allegation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

With respect to the programs for which we did not receive information from uncooperative respondents, the information was corroborated either through the exhibits attached to the petition or by reviewing determinations in other proceedings in which we found virtually identical programs in the same country to be countervailable. Specifically, with respect to Taihan, the programs alleged in the current investigation were virtually identical to those found to be countervailable in *Steel Products from Korea*. We were unable to corroborate the rate we used for Taihan, because the petition did not contain countervailing duty rate information for these programs. Therefore, it was not practicable to corroborate such a rate. However, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Further, in Sammi's case (in addition to the programs from *Steel Products from Korea* discussed above), we corroborated the newly-alleged programs with the information provided in the petition, *i.e.*, Sammi's financial statements for years 1993 through 1996, and numerous public press articles. Specifically, Sammi's financial statements show a line item entitled ''national subsidy.'' The financial statements further indicate that Sammi's debt burden was very high and that the company was not making interest payments that reflected the significant debt load. This demonstrates that the GOK may have entrusted or directed government and/or commercial banks to provide the type of emergency loan package to Sammi in 1992 that was alleged in the petition. Moreover, news articles indicate that the GOK was trying to rescue Sammi, and that this effort included both the emergency loans in 1992 and POSCO's purchase of Sammi Specialty Steel.

Additionally, the Department initiated an investigation with respect to a fourth new allegation, ''Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy.'' The petitioners alleged that the GOK mitigated the effects of Sammi's bankruptcy with the use of countervailable subsidies. According to petitioners, when Sammi filed for receivership in March 1997, the GOK: (1) Provided grants and other rescue aid which were directed through a consortium of Sammi's rivals, and (2) rescheduled Sammi's debt through a combination of loan forgiveness and reduced interest rate loans.

We requested information concerning this program from the GOK and Sammi. While Sammi chose not to cooperate in this investigation, the GOK responded to the Department's questionnaires, stating that there was no consortium and that no grants were provided to Sammi. The GOK further stressed that Sammi's debt was addressed in the context of normal bankruptcy proceedings. In our preliminary determination we calculated no benefit from this program, but we stated we would continue to seek information that would enable us to make a facts available determination about this program in our final determination. Therefore, during our verification of POSCO, we examined various accounts of POSCO to determine whether POSCO provided any assistance to Sammi

similar to that alleged by petitioners. We did not find a provision of assistance to Sammi or write-off of Sammi's debt by POSCO. In addition, during our verification of the Government of Korea, we examined Sammi's Bankruptcy Reorganization Plan, which included Sammi's 1997 balance sheet and income statement. Our examination of these documents revealed no government assistance to Sammi in the form of grants or write-off of debt. Therefore, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review.

**Subsidies Valuation Information**

*Benchmarks for Long-term Loans and Discount Rates:* During the POI, the respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been 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, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. *See Certain Steel Products from Korea*, 58 FR at 37338, and the ''Direction of Credit'' section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1991, and still outstanding during the POI. These rates were reported by the GOK in its September 10, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099).

For years in which the companies under investigation have been deemed uncreditworthy, we calculated the discount rates according to the methodology described in the *GIA*. Specifically, due to the necessary use of adverse facts available with regard to Sammi, we used the highest commercial bank loan interest rates available, and added a risk premium equal to 12 percent of the commercial lending rate, in accordance with the methodology outlined in the *GIA*.

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, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate the companies' benefit from long-term loans obtained in the years 1992 through 1997: (1) For countervailable, foreign-currency denominated loans, we are using, where available, company-specific, weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea; and (2) for countervailable won-denominated loans, where available, we are using company-specific three-year corporate bond rates. Where unavailable, we continue to use a national average three-year corporate bond rate on the secondary market, consistent with our preliminary determination. We are also using three-year company-specific corporate bond rates, where applicable, as discount rates to determine the benefit from non-recurring subsidies received between 1992 and 1997.

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, Inchon, and Dai Yang submitted information in response to the Department's request for the companies' average interest rate on corporate bonds for each year 1992 through 1997. *See* POSCO's February 5, 1999 questionnaire response, Inchon's February 5, 1999 questionnaire response, and Dai Yang's February 5, 1999 questionnaire response (public versions on file in the CRU). Dai Yang had no corporate bonds (other than a previously reported convertible bond) issued during the period 1992–1997; therefore, we continue to use the national-average three-year corporate bond rate as a benchmark for this company. Additionally, Inchon had not issued any bonds prior to 1997; thus, we continue to use the national-average three-year corporate bond rates as a benchmark for Inchon between 1992 and 1996. 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.

Dai Yang did not have U.S. dollar loans from foreign bank branches in Korea. Therefore, we had to rely on a dollar loan benchmark that is not company-specific, but provides a reasonable representation of industry practice, to determine whether a benefit was provided to Dai Yang from dollar loans received from government banks and Korean domestic banks. Our first alternative was to use a national-average benchmark, but we were unable to identify a national-average dollar benchmark from foreign bank branches in Korea. Therefore, we used the interest rates on dollar loans from foreign bank branches in Korea received by another respondent in this investigation, Inchon, as a benchmark for Dai Yang's dollar loans from government banks and Korean domestic banks. For a further discussion on our selection of a dollar-loan benchmark for Dai Yang, see Comment 9.

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

*Allocation Period:* In the *Preliminary Determination*, we allocated nonrecurring subsidies received by POSCO and Sammi over 15 years. (No other company received nonrecurring subsidies.) We invited interested parties to comment on this allocation period. We received no objections from the interested parties on the use of a 15 year allocation period. Therefore, for the reasons specified in the *Preliminary Determination* and in the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999), we continue to determine that the appropriate allocation period is 15 years for this investigation.

*Treatment of Subsidies Received by Trading Companies:* We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise 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. During the POI, POSCO and Inchon exported subject merchandise to the United States through trading companies. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation.

We continue to find that 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 trading companies are not affiliated with POSCO. Additionally, according to its response, Inchon is affiliated with one of the trading companies, Hyundai. This reported affiliation is based upon cross-shareholdings and common board members within the Hyundai group. The trading company, Hyundai, responded to the Department's questionnaire concerning subsidies that it had received during the POI. In the current proceeding, the status of affiliation does not affect the inclusion of subsidies provided to trading companies in the respondents' calculated subsidy rates. Therefore, we are not making a determination of affiliation of Inchon and Hyundai within the meaning of section 771(33) of the Act.

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

In the *Preliminary Determination* of this investigation, we determined that it was not appropriate to establish combination rates. This determination was based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers; second, the difference in the levels of subsidies conferred upon individual trading companies with regard to the subject merchandise is insignificant. Combination rates would serve no practicable purpose because the calculated subsidy rate for a producer and a combination of any of the trading companies would effectively be the same rate. As no new information has been presented since the *Preliminary Determination* which would cause us to reconsider this methodology, we are not calculating combination rates in the final determination of this investigation.

Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the seven trading companies, we calculated the benefit attributable to the subject merchandise. We then factored that amount into the calculated subsidy rate for the relevant producer. In each case, we determined the benefit received by the trading companies for each export subsidy, and weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

**Creditworthiness**

As discussed in the *Preliminary Determination*, we initiated an investigation of Inchon's creditworthiness from 1991 through 1997, and of Sammi's creditworthiness from 1990 to 1997, to the extent that nonrecurring grants, long-term loans, or loan guarantees were provided in those years. In the *Preliminary Determination*, we found Inchon to be creditworthy, but we found Sammi to be uncreditworthy for the years 1990 through 1997. We received no comments from the interested parties relating to our analysis of Inchon's and Sammi's creditworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we determine that Inchon is creditworthy and that Sammi is uncreditworthy for the years 1990 through 1997. *See Preliminary Determination*, 63 FR at 63888.

*I. Programs Determined To Be Countervailable*

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea*, the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long-term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. 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. *See* 58 FR at 37339.

In this 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 the conferral of countervailable benefits 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* 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. The GOK has not provided new factual information that would lead us to change our

determination in *Steel Products from Korea*. Therefore, we determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the SAA, which states that ''section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable.'' SAA at 925. 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.

We also determine 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 is consistent with our determination in *Steel Products from Korea. See* 58 FR at 37342.

POSCO, Inchon and Dai Yang all received long-term loans prior to 1992 that remained outstanding during the POI. These included loans with both fixed and variable interest rates for all three responding companies. To determine the benefits 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 the 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 all of the loans attributable to the POI and divided the total benefit by each company's total sales. On this basis, we determine the countervailable subsidy rates to be 0.17 percent *ad valorem* for POSCO, 0.06 percent *ad valorem* for Inchon, and 0.04 percent *ad valorem* for Dai Yang.

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 access to government-regulated foreign sources of credit in Korea 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 respondents 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, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of funds conferred a benefit on the respondents. On the basis of that comparison, we found that there was no benefit. *See id.* at 18. The comments we received from the parties 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 63890. 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 discussed in the comments section, below, for the GOK's post-1991 credit policies, we determine the countervailable subsidy rates to be less than 0.005 percent *ad valorem* for POSCO, less than 0.005 percent *ad valorem* for Inchon, and 0.08 percent *ad valorem* for Dai Yang.

B. Purchase of Sammi Specialty Steel Division by POSCO

In February 1997, POSCO purchased the specialty steel bar and pipe division of Sammi for 719.4 billion won. This division became POSCO's Changwon facility. Petitioners alleged that POSCO was directed by the government to purchase the Sammi Specialty Steel Division as a matter of national interest as opposed to one of economic merit. Petitioners alleged that the GOK used its ownership in POSCO as a vehicle for the subsidization of Sammi. Thus, petitioners allege that POSCO's purchase of the Sammi Specialty Steel Division provided a countervailable benefit to Sammi.

As noted in the ''Use of Facts Available'' section of this notice, Sammi did not respond to the Department's questionnaires. POSCO has provided certain documents relevant to this purchase, but Sammi's lack of response to our questionnaires means that significant portions of information required by the Department to analyze this program have not been provided. Thus, in making this determination, we have relied, in part, on both information provided by POSCO and information provided in the petition with respect to this allegation. In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interest of a party when selecting from facts otherwise available when the party has failed to cooperate with a request for information. As discussed in the ''Use of Facts Available'' section, we determined that Sammi has failed to cooperate by not answering the Department's questionnaire.

Based on the information on the record, we determine that the actions of POSCO should be considered as an action of the GOK because POSCO is a government-controlled company. During the POI, the GOK was the largest shareholder of POSCO. The shareholdings of the GOK are approximately ten times larger than the next largest shareholder. Indeed, the next two largest shareholders of POSCO are domestic banks, the credit of which has been determined to be directed by the GOK (*see* the ''Direction of Credit'' section of this notice). In order to further maintain its control over POSCO, the GOK has enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK can exercise voting rights in excess of three percent of the company's common stock. According to POSCO, the GOK intends to maintain the individual ownership limit of three percent until the end of 2001.

In addition, the Chairman of POSCO is appointed by the GOK. The Chairman of POSCO during the POI was the former Deputy Prime Minister and the Minister of the GOK's Economic

Planning Board, and was appointed as POSCO's chairman by the Korean president. Half of POSCO's outside directors are appointed by the GOK and the Korean Development Bank (three by the GOK and one by the government-owned KDB.) During the POI, the appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO is also one of three companies designated a ''Public Company'' by the GOK. One of the other ''Public Companies'' is the state-run utility company, KEPCO.

Over the course of this investigation, we have reviewed numerous documents that relate to this purchase, including the valuation studies and the purchase contract between POSCO and Sammi. The purchase price of 719.4 billion won agreed upon by POSCO and Sammi included money both for the assets that POSCO was purchasing and for the repayment of debt associated with these assets. Ostensibly, Sammi used the proceeds from the sale to pay debts owed by its other divisions.

Because no information was provided by Sammi with respect to this program, as facts available the determination of the countervailability of this program was based upon information gathered from POSCO, the GOK, information provided in the petition, and from public documents regarding POSCO's purchase of Sammi which have been placed on the record of this investigation. This information indicates that POSCO purchased the speciality steel division of Sammi Steel as the result of government pressure. The current Chairman of POSCO has confirmed that the POSCO purchase of Sammi's speciality steel division was the result of outside political pressure. The Chairman characterized POSCO's decision in 1997 to purchase the production facilities from Sammi in an attempt by the government to prevent Sammi's bankruptcy as ''a mistake.'' At the time of the Sammi purchase, the Chairman of POSCO had been appointed by the former president. In addition, at the time of the purchase, a POSCO director stated that the decision to purchase Sammi's speciality steel division ''transcends economic merit.'' Internal proprietary documents of POSCO (which are on the record in this investigation) echo this statement. At the time of the purchase, the company was operating at less than 60 percent of its capacity. In addition, Sammi had shown a profit only once since 1991 and lacked strong future prospects. *See Memorandum to the File Re: Source Documents on Government Control of POSCO, Sammi Purchase by POSCO, and POSCO Pricing* (Source Document Memo).

Internal government auditors also examined POSCO's purchase of the Sammi speciality steel division. A report issued by the Board of Audit and Inspection (BAI) criticized POSCO's purchase of the Sammi plant. The BAI found fault with POSCO's investment decision resulting from poor feasibility studies. The BAI noted that, according to POSCO's own internal business plan, the internal rate of return (IRR) of new investments should be over 10 percent. However, the BAI noted that POSCO did not even examine Sammi's IRR when it decided to purchase the Sammi plant. The BAI concluded that Sammi's IRR is much lower than the minimum required by POSCO's own internal regulations for new investments. The BAI also stated that, in estimating the future profits and losses of an investment, POSCO's own internal regulations state that it should assume an investment's prices would remain constant for 15 years. However, as the BAI noted with respect to the Sammi purchase, POSCO assumed that prices would increase two percent a year. Thus, profit from the purchase was overestimated. POSCO's deviation from its own internal regulations on estimating future profit and loss resulted in calculations that anticipated profits from the Sammi investment within four years of the purchase date. If POSCO had followed its own internal regulations, it would have expected to incur losses on its purchase of Sammi for an additional 14 years.

In addition to noting that POSCO failed to follow its own internal regulations in its purchase of Sammi's speciality steel division, the BAI found other fundamental problems with the purchase of Sammi's Changwon facility. The BAI stated that at the time of the purchase of the Changwon plant, there was both oversupply and overproduction in the speciality steel industry. The BAI noted that, while supply at the time of the purchase was 240 million tons, the demand for speciality steel was only 110 million tons. Therefore, the BAI concluded that there was no reason for POSCO's ''hasty'' undertaking of Sammi's ''old equipment.'' The BAI also stated that because POSCO contracted to purchase the Sammi facility without clarifying the state of the equipment and labor force, the Changwon Tax Office and Labor Committee may require POSCO to pay an additional 80 billion won for both Sammi employees' retirement, and unforeseen tax consequences and administrative litigation. The BAI report also stated that POSCO paid Sammi 21.4 billion won for steel-making techniques that were already either developed by POSCO or widely used in the steel industry.

The information on the record demonstrates that POSCO is a government-controlled entity; that POSCO's decision to purchase the Sammi speciality steel division was the result of government pressure; that Sammi was in poor financial straits; that POSCO failed to follow its own internal regulations regarding new investments when making the investment decision to purchase Sammi; and that, overall, the purchase of Sammi did not make good economic sense. For these reasons, the Department determines that POSCO's purchase of the Sammi speciality steel division provided a countervailable benefit and a financial contribution to Sammi under section 771(5)(D) of the Act. In accordance with section 771(5A)(D)(i) of the Act, we also find that this program is specific to Sammi.

During verification of POSCO's questionnaire response, POSCO officials stated that Sammi was also trying to sell its specialty steel division to other companies. However, as Sammi has refused to cooperate in this investigation, we have no information as to whether any potential investor expressed an interest in purchasing Sammi's speciality steel division for any price. As adverse facts available, we are assuming that were it not for POSCO's purchase, Sammi's Changwon facility would not have been sold to a commercial investor due to the poor financial condition of the company and the overcapacity in the stainless steel market at the time of the POSCO purchase. In addition, according to POSCO's own internal guidelines regarding new investments, POSCO should not have purchased Sammi's Changwon facility. Further information on the record also demonstrates that the decision to purchase the stainless steel facility from Sammi was based upon political and government influence in order to provide funds to Sammi to forestall its eventual bankruptcy. The information on the record indicates that, absent the GOK's control of POSCO and its influence on POSCO's decision to purchase the Changwon facility, Sammi would not have been able to sell its stainless steel division; therefore, we consider the full amount of the purchase price paid to Sammi by POSCO to constitute a countervailable benefit.

To calculate the benefit to Sammi from this purchase, we treated the amount of the purchase price, 719.4 billion won, as a non-recurring grant

and allocated it over the average useful life of assets in the industry. For a discussion of the AUL, see the ''Subsidies Valuation'' section of this notice. Based on this methodology, we calculated a countervailable subsidy of 52.30 percent *ad valorem* for Sammi for this program during the POI.

C. GOK Pre-1992 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 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, the same rate 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.

D. Export Industry Facility Loans

In *Steel Products from Korea,* 58 FR at 37328, the Department determined that export industry facility loans (EIFLs) are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates. In this investigation, we provided the GOK with the opportunity to present new factual information concerning these EIFLs, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea.* Therefore, we continue to find that EIFLs are provided on the basis of export performance and are export subsidies under section 771(5A)(B) of the Act. We also determine that the provision of loans under this program results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred on the recipient to the extent that the EIFLs are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above. We note that this program is also countervailable due to the GOK's direction of credit; however, we have separated this program from direction of credit because it is an export subsidy, and therefore requires a different benefit calculation.

Dai Yang was the only respondent with outstanding loans under this program during the POI. To calculate the benefit conferred by this program, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the applicable dollar-denominated long term benchmark interest rate as discussed in the ''Subsidies Valuation'' section, above. When the interest that would have been paid at the benchmark rate exceeds the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We divided the benefits derived from the loans by total export sales. On this basis, we determine that Dai Yang received from this program during the POI a countervailable subsidy of 0.08 percent *ad valorem*.

E. 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 and Dai Yang were the only producers or exporters 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 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 and Dai Yang, we compared the interest rate POSCO and Dai Yang paid on the export financing received under this program during the POI with the interest rate each company 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 and Dai Yang on their export financing is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from POSCO's and Dai Yang's company-specific weighted-average interest rate for short-term won-denominated commercial loans. 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. 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 and Dai Yang 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 and Dai Yang were unable to segregate their export financing applicable only to 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* for POSCO, and 0.04 percent *ad valorem* for Dai Yang.

F. Reserve for Export Loss—Article 16 of the TERCL

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. This program is only available to exporters. During the POI, Dai Yang, Inchon, Samsun, Samsung, Sunkyong, and Daewoo used this program. Although POSCO did not use this program during the POI, its exports of the subject merchandise were shipped through trading companies which did use this program during the POI (Samsun, Samsung, Sunkyong, and Daewoo). Neither Inchon nor Dai Yang shipped through any trading companies that received benefits from this program, although both Inchon and Dai Yang received benefits as exporters.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the 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.

To determine the benefits conferred by this program, we calculated the tax savings by multiplying the balance amounts of the reserves as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefits, the amounts of tax savings were multiplied by the companies' weighted-average interest rates for short-term won-denominated commercial loans for the POI, 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 countervailable subsidy of less than 0.005 percent *ad valorem* attributable to POSCO, a subsidy of 0.15 percent *ad valorem* for Inchon, and a countervailable subsidy of 0.01 percent *ad valorem* attributable to Dai Yang.

G. Reserve for Overseas Market Development—Article 17 of the TERCL

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 export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise received benefits under this program during the POI: Dai Yang, Hyosung, Hyundai, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Although Inchon and POSCO did not use this program during the POI, these companies' exports of the subject merchandise were shipped through trading companies which did use this program during the POI: Inchon shipped through Hyundai, and POSCO shipped through Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Dai Yang did not ship through trading companies during the POI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the 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.

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. We used as our benchmark interest rate, each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, 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 calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI for POSCO, 0.01 percent *ad valorem* for Inchon, and 0.01 percent *ad valorem* for Dai Yang.

H. 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, the company is authorized to carry them forward for use in later tax years. During the POI, the respondents used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea*, we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, changes in the statute effective in 1995 have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return which was filed during the POI: (1) Tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. Inchon claimed or used: (1) Tax credits for investments in technology and human resources under Article 9; and (2) tax credits for investment in productivity improvement facilities under Article 25. Dai Yang also claimed or used tax credits under Articles 9 and 25.

For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.*, the

company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives 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 receive a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credit the companies deducted from their taxes payable for the 1996 fiscal year. In its fiscal year 1996 income tax return filed during the POI, POSCO deducted from its taxes payable credits earned in the years 1992 through 1995, which were carried forward and used in the POI in addition to POSCO's 1996 deduction. 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 rather than the regular 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. Neither Inchon nor Dai Yang carried forward any tax credits from previous years. Therefore, to calculate their rates we calculated the additional amount of the tax savings earned on investments in domestically-produced facilities and divided that amount by each company's total sales for the POI. On this basis, we determine a countervailable subsidy of 0.18 percent *ad valorem* to POSCO, 0.06 percent *ad valorem* to Inchon, and 0.41 percent *ad valorem* to Dai Yang from this program during the POI.

I. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that the respondents are receiving countervailable benefits in the form of utility rate discounts. The GOK reported that during the POI the government-owned electricity provider, KEPCO, provided the respondents 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. During the POI, both POSCO and Inchon participated in this program.

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 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 and Inchon 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 and Inchon. 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 and Inchon received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's and Inchon's total sales value for 1997.

On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for both POSCO and Inchon.

J. Loans From the National Agricultural Cooperation Federation

According to Dai Yang's September 10, 1998, questionnaire response, the company received a loan administered by the National Agricultural Cooperation Federation (NACF). The loan was given at an interest rate which is below the benchmark interest rate described in the ''Subsidies Valuation'' section of the notice. Moreover, under the terms of this loan, the regional government (that of Ansan City) paid a portion of the interest. Although this Ansan City-administered program is only available to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. Applications for these loans are evaluated on a point system. The applicant receives 10 out of a possible 100 ''points'' if it is a promising small and medium size business. However, the applicant can also receive 10 points if its exports comprise over twenty percent of its total sales. In addition, an applicant can garner 10 points if it is involved in overseas market development. Therefore, two of the criteria of loan approval are based upon export performance.

Under section 771(5A)(B) of the Act, an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Dai Yang did meet the criteria of having over twenty percent of sales in export markets, and so may have qualified based on these export criteria. Further, pursuant to section 351.514 of the Department's regulations (63 FR at 65381), Dai Yang did not demonstrate that it was approved to receive these benefits solely under non-export criteria. Thus, after examination of this program, we determine that Dai Yang's receipt of this loan to be a *de facto* export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by paying a portion of the interest on the loan, the actions of the Ansan City government confer a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we determine this program to be countervailable.

In the *Preliminary Determination*, we treated this loan as a short-term loan because it is rolled over annually with a revised interest rate. However, record evidence indicates that all of the interest rates for the life of the loan were set at the time the loan was approved. Thus, we believe that it is more reasonable to measure the benefit from this loan using the Department's long-term fixed rate loan methodology. We used as our benchmark the rate described in the ''Subsidies Valuation'' section of the notice, above. We divided the benefit calculated in the POI by Dai Yang's total exports during 1997. On this basis, we determine the countervailable subsidy attributable to Dai Yang during the POI to be 0.04 percent *ad valorem*.

K. POSCO's Two-Tiered Pricing Structure to Domestic Customers

In our supplemental questionnaire, we requested information from POSCO and the other respondents regarding an allegation that the GOK mandates POSCO to subsidize local manufacturers by selling them steel at 30 percent below the international market price. In response to this allegation, POSCO stated that no such program exists. However, in its response, POSCO provided information regarding its pricing structure in the domestic and export markets.

We verified that POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea; direct export prices in U.S. dollars or Japanese yen; and, local export prices in U.S. dollars. POSCO's local export prices are provided to those domestic customers that purchase steel for further processing into products that are exported. During the POI, POSCO sold hot-rolled stainless steel coil, which is the main input in the subject merchandise, to Dai Yang and Inchon, which used the coil to produce subject merchandise sold both as exports and in the domestic market. POSCO is the only Korean producer of hot-rolled stainless steel coil.

As noted earlier, POSCO is a government-controlled company. (*See* the discussion relating to government control of POSCO in the program ''Purchase of Sammi Speciality Steel Division by POSCO''.) POSCO sets different prices for the identical product for domestic purchases based upon the purchasers' anticipated export performance. Therefore, when POSCO sells hot-rolled stainless steel coil to Dai Yang and Inchon to be used to manufacture subject merchandise which is exported, POSCO charges a lower price than the price charged on the identical hot-rolled stainless steel coil sold to the companies for manufacturing subject merchandise to be sold in the domestic market. Because POSCO charges a lower price based upon export performance, this pricing policy constitutes an export subsidy under section 771(5A)(B) of the Act. Because exporters are charged a lower price, this program also provides a financial contribution to the exporters under section 771(5)(D).

The benefit from this type of export subsidy is based upon the difference in the price charged to exporters and the price charged for domestic consumption. The only exception is for pricing programs which fall under Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.[6] Item (d) allows governments to maintain a program which provides different prices based upon export or domestic consumption if certain strict criteria are met by the government. However, POSCO's dual pricing policy does not fit within the parameters of the Item (d) exception. Therefore, the benefit from this program is based upon the difference between the prices charged by POSCO for export and the prices charged by POSCO for domestic consumption.

To determine the value of the benefit under this program, we compared the monthly weighted-average price charged by POSCO to Dai Yang and Inchon for domestic production to the monthly weighted-average price charged by POSCO to respondents for export production, by grade of hot-rolled coil. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that Dai Yang received a countervailable subsidy of 0.87 percent *ad valorem* from this program, and that Inchon received a countervailable subsidy of 2.36 percent *ad valorem* from this program during the POI.

*II. Programs Determined To Be Not Countervailable*

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

KEPCO provided three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate

[6] A subsidy arises under Item (d) from the provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of export goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters.

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.

We verified 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 automatically 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 VRA discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. 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. We verified 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 benefiting 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 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. During verification, we discovered that Inchon also participated in this program.

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 and Inchon were not the only companies 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 and Inchon are only two 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 Insurance Rates Provided by the Korean Export Insurance Corporation

D. Special Depreciation of Assets on Foreign Exchange Earnings

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 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 also confirmed during our verification 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. The companies pay import duties based on the rate applicable to and the price of the imported raw material. The companies then receive 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 the respondents receive 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 the respondents have 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 the respondents appropriately factored recovered scrap into its calculated usage rates and that the duty drawback rate applicable to the respondents takes into account recoverable scrap. *See Steel Products from Korea,* 58 FR at 37349. Therefore, we determine that the respondents have not received excessive duty drawback.

*IV. Programs Determined To Be Terminated*

Based on information provided by the GOK, we determine that the following program does not exist:

*Unlimited Deduction of Overseas Entertainment Expenses*

In *Steel Products from Korea,* 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

*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, 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 contend that the issue at hand is the GOK's control over access to the foreign loans, not control of the interest rate. Petitioners further state that respondents have provided no new evidence to disprove this finding and nothing in the new law is contrary to either the Department's 1993 determination, or the determination in *Stainless Steel Plate from Korea.*

*Department's Position:* The alleged ''new'' information cited by respondents in their brief concerning interest rates on domestic foreign currency loans was considered by the Department in *Steel Products From Korea,* and again in *Stainless Steel Plate 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. 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 question and reached the opposite conclusion in *Steel Products From Korea.* The Department reiterated this conclusion in *Stainless Steel Plate from Korea,* where it also noted that independent bankers had 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 findings 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), and by the Department in its final determination of *Stainless Steel Plate from Korea.* 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: Post-1991 GOK Credit Policies: Whether POSCO Received Long-Term Loans From Korean Banks At Favorable Interest Rates*

Respondents contend that, according to the Department's own calculations in *Stainless Steel Plate from Korea,* POSCO did not receive a benefit from favorable interest rates from regulated and directed sources of credit during the 1992–1997 period, and hence there is no countervailable subsidy in this time period. Respondents propose that the ''minuscule benefits'' found are merely a result of rounding errors caused by the use of weighted-average benchmarks during a period of fluctuating interest rates. Alternatively, the insignificant benefit found in the *Stainless Steel Plate from Korea* determination may have resulted from variations in the LIBOR base rate on all of these loans. Respondents do not argue with the Department's use of three-year corporate bonds as representative of the long-term market rate for won loans in Korea.

Petitioners rebuttal argument is twofold. As an initial matter, the calculations from *Stainless Steel Plate from Korea* that are cited by respondents contain an error. When this error is corrected, it becomes apparent that there was a benefit to POSCO from its long-term won-denominated loans. Secondly, even if this benefit is minimal, it falls within the rubric of the GOK's direction of credit, and was therefore properly countervailed.

*Department's Position:* As detailed in the Credit Memo, we have determined that access to government-regulated foreign sources of credit did not confer a benefit to POSCO, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. Petitioners' argument that this decision was based on a calculation error is based on an incorrect characterization of 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 find that there was no benefit from direct foreign loans received by POSCO in 1997.

*Comment 3: 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.*[7] Respondents 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 addressed 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 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

[7] *Countervailing Duties; Final Rule,* 63 FR 65348, 65349 (November 25, 1998) (*CVD Final Rule*); SAA at 926.

addressed by the Congress through its approval of the SAA and the *CVD Final Rule*.[8] 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 63890.

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 countervailing duty regulations are equally clear on this issue: the preamble 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 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 (April 26, 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 the Department clearly rejected this argument in *Stainless Steel Plate from Korea*. While petitioners do not dispute that it is the Department's preference to use a benchmark in the same currency, the Department made clear in the final determination of *Stainless Steel Plate from Korea* that such a comparison was not appropriate when it reaffirmed its determination from *Steel Products from Korea*.

*Department's Position:* Respondents' arguments concerning the Department's methodology for measuring benefits from countervailable foreign currency-denominated long-term loans are partially correct. As stated in the *Stainless Steel Plate from Korea* determination, 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. 64 FR at 15540. 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, and were countervailable. Therefore, these sources of foreign currency credit, including overseas markets, could not serve as an appropriate benchmark, and 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; and *Stainless Steel Plate from Korea,* 64 FR at 15540.

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, 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. None of respondents' arguments in this investigation have led us to change our determination in *Steel Products From Korea,* which was reiterated in *Stainless Steel Plate from Korea*. Therefore, our finding concerning POSCO's pre-1992 foreign currency-denominated long-term loans remains unchanged in this final determination.

*Comment 5: 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

[8] Although the *CVD Final Rule* is not controlling in this investigation, it does represent a statement of the Department's practice and interpretations of the Act, as amended by the URAA.

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 (August 30, 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 incorrect. Respondents made this same argument in *Steel Products From Korea* (*see* 58 FR at 37344) and in *Stainless Steel Plate from Korea* (*see* 64 FR at 15539). In upholding the 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 both in *Steel Products From Korea* and in *Stainless Steel Plate 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; *Stainless Steel Plate from Korea,* 64 FR at 15539. 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 these prior determinations concerning direct foreign loans. Therefore, our preliminary determination remains unchanged.

*Comment 6: Post-1991 GOK Credit Policies: Whether Foreign Currency Loans from Domestic Branches of Foreign Banks are Countervailable*

Petitioners argue that, contrary to its decision in *Stainless Steel Plate from Korea,* the Department should find countervailable access to foreign currency loans extended by foreign bank branches located in Korea. Petitioners contend that the same conditions which led the Department to find the existence of direction of credit for domestic bank sources are present in the case of foreign currency loans extended by foreign bank branches in Korea. Moreover, there is no affirmative evidence to justify overturning the 1993 determination of GOK control over domestic branches of foreign banks. Petitioners assert that the Department mistakenly relied 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. According to petitioners, 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. Thus, petitioners argue that the Department does not have a basis for its determination in *Stainless Steel Plate from Korea* that foreign currency loans from branches of foreign banks in Korea are not countervailable.

Petitioners argue that pursuant to the Court of International Trade's (CIT) recent ruling in *Al Tech Specialty Steel Corp.* v. *United States,* the Department may not infer the truth of certain facts from lack of any contradictory evidence on the record, and so may not conclude that, absent evidence to the contrary, the GOK did not exert improper controls or influence over foreign commercial banks.[9] Rather, petitioners argue that 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.

Moreover, petitioners assert that what little record evidence is available demonstrates that GOK control over foreign banks in Korea is equivalent to that over Korean domestic banks. The petitioners argue that, according to record evidence, foreign commercial banks and domestic banks are on an ''equal footing,'' and must therefore be subject to the same controls. 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. Petitioners also refer to the Department's finding that the BOK and MOFE have equal authority to control and monitor all banks, and acted a manner such that, ''[t]o a significant extent, these institutions [BOK and MOFE] continued to intervene directly and indirectly in the lending activities of commercial banks.'' Directed Credit Memo at 6.

Petitioners assert that because the Department found that foreign banks were controlled indirectly by the GOK in *Steel Products from Korea,* and because the Department did not find any practical changes in the GOK's indirect role on lending rates and appointment of bank officials between 1991 and 1997, there is no evidence to support the conclusion that these controls ceased to exist for foreign banks. Specifically, petitioners argue that the GOK maintained indirect control over foreign banks in two ways: (1) By influencing lending rates; and (2) by influencing the appointment of bank officials. With regard to lending rates, petitioners argue that (as indicated in the *Presidential Report*) foreign commercial banks must be subject to the same ''window guidance'' as domestic commercial banks to prevent interest rates from increasing. *See Presidential Report* at 29. According to petitioners, risk-averse, profit-motivated foreign commercial banks would only charge such low interest rates in the Korean

[9] Slip Op. 98–136 at 9, 1998 WL 661461 (Ct. Int'l Trade Sept. 24, 1998)(''After having failed to uncover evidence to corroborate Isibar's statement on the industry standard, Commerce should then have either concluded that the claim was unverifiable or continued the investigative process until corroborating evidence was obtained'').

market if GOK policies restricted either the interest rates or borrowers' access to credit from those banks. Moreover, petitioners maintain instead that there is not sufficient evidence to determine that foreign banks were without GOK influence in the selection of bank officials at Korean branches.

In rebuttal, respondents argue that the petitioners' cite to *Al Tech* is not pertinent. The reasoning of *Al Tech* does not logically extend to this case because there is no evidence to support a conclusion of direction and control over Korean branches of foreign banks. Respondents advance that the record evidence, including meetings with commercial bankers, incontrovertibly indicates that there is no Korean government control of these banks. Rather, petitioners resort to using generalities and speculation about the operation of the Korean banking system and its provisions, which pertain neither to direction of credit to the steel industry, nor to the Department's *de facto* finding of direction of credit. Respondents also reject petitioners argument because petitioners do not present any evidence of the means by which the GOK controlled or directed the lending practices of these foreign bank branches, in contrast to the Department's findings regarding the domestic commercial banks. Rather, foreign banks' most important source of funds is their head offices; this provides them with both greater autonomy from the Korean banking system and a lower cost of funds than that available to Korean commercial banks. Respondents note that petitioners' focus on government controls on the inflow of foreign funds is misplaced, as the GOK is primarily concerned with the domestic money supply, while the inflow of foreign currency is linked to the use of these funds.

Finally, respondents point out that the GOK does not, and does not need to, influence these banks to lend to POSCO. Respondents reiterate that POSCO is one of the best companies in Korea, and, given POSCO's strong credit rating and reputation, most commercial banks would like to lend to the company.

*Department's Position:* First, we note that petitioners make the statement that because the Department found government control over domestic branches of foreign banks in our 1993 decision in *Steel Products from Korea* that it is incumbent on the Department to rely on affirmative evidence that this control has been repealed. Petitioners argue that the record evidence in this investigation provides no affirmative evidence of any such repeal. Petitioners are incorrect. First, we must make the basic point that the specific GOK control of domestic branches of foreign banks during the period 1992 through 1997, which is at issue here, was not examined in *Steel Products from Korea.* As such, there is no ''affirmative evidence'' to ''repeal.'' In addition, in *Steel Products from Korea,* our determination of GOK control was based on the entirety of the financial system in Korea as existed pre-1992. In this current investigation, we determined that the more appropriate basis of examination of direction of credit after 1991 is an analysis of GOK control with respect to each aspect of the different types of commercial banks in Korea, including domestic banks and foreign bank branches.

More importantly, with respect to petitioners' argument on this issue, as a matter of law, the countervailability of the GOK's control over domestic branches of foreign banks during the period 1992 through 1997, which was not examined in the 1993 decision in *Steel Products from Korea,* can only be based upon the information on the record in this current investigation. As detailed above and explained in the Credit Memo, the information on the record in this investigation demonstrates that while the GOK controls domestic commercial banks it does not control branches of foreign banks in Korea.

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.

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.''

Contrary to their arguments, 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.[10] 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) 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 exacerbated this problem. *See* Credit Memo at 8–9. Foreign banks in Korea, however, were not subject to this same influence. Their sources of funds were their head offices and, as respondents correctly illustrate, appointment of their senior officials was not subject to influence by the GOK. Moreover, there is no evidence that the GOK played a role in the distribution of these funds by the Korean branches. Petitioners proffer no evidence that foreign banks in Korea were

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

''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. We also note that petitioners' view of the GOK's motivation to control foreign sources of money to keep interest rates from falling is not consistent with one of the alleged methods of control, *i.e.*, limits on interest rates through ''window guidance.''

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 loans from foreign banks in Korea were a significant source of POSCO's borrowing, and credit from these banks was not controlled by the GOK.

Petitioners have correctly argued that the Department is required to support or authenticate with record evidence factual assertions relied upon in our final determinations. Indeed, section 782(i) of the Act requires the Department to verify the information used in making a final determination. In this investigation, petitioners alleged that the GOK controlled the allocation of credit in Korea during the years 1992 through 1997. Therefore, once a credible allegation was made, the responsibility of the Department was to solicit and develop factual information to determine whether the GOK was directing credit during those years. In this investigation, the Department properly examined individually the various sources of long-term credit in Korea. This examination included, among other sources, loans from foreign banks with branches in Korea.

Because of the complexity of this issue, a government's control and its allocation of credit within its borders, the Department conducted four days of meetings with commercial and investment banks and with economic and financial research institutes in Korea. During this intensive four-day period with experts in the operation of the commercial credit market in Korea, we focused on all aspects of the alleged GOK control of banks in Korea, including its alleged control of foreign banks. In these meetings we sought information on the aspects and measures used by the government in its control of credit and financial institutions in Korea. Information provided to us by these banking and financial experts on the measures used by the GOK to control banks and allocate credit in the Korean financial market was summarized in our Bankers Report.

Based in large part on the information which was gathered during these meetings, we determined that the actions of the GOK in the Korean financial system support the conclusion that the GOK controls credit through both government-owned banks, such as the Korean Development Bank, and Korean domestic banks; however, no similar control was found for foreign banks operating in Korea. As noted in the facts detailed above, and in the Credit Memo, our determination that the GOK does not control the lending decisions and allocation of credit of foreign banks operating in Korea is supported by the information on the record in this investigation.

*Comment 7: 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 assert that, as recognized by POSCO, the MOFE restricted access to foreign securities markets with the purpose of maintaining low levels of cost of funds for certain companies. Petitioners state that interest rates on foreign credit markets were five to seven percentage points lower than those on domestic foreign currency loans, and petitioners charge that the GOK's goal of preventing inflationary effects necessitated the maintenance of this interest rate differential. 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.

Respondents note that in the recent *Stainless Steel Plate from Korea* final determination, the Department determined that POSCO's alleged ''preferential access'' to regulated foreign sources of funds did not confer a benefit. They state that the record evidence in this case also supports a finding that access to foreign securities did not confer a benefit to POSCO. Respondents also 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 behavior at market-determined interest rates.

*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) the subsidy 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 access to government-regulated foreign sources of credit did not confer a benefit, because the rates obtained on foreign securities, even though access to them was limited, were not less than those on foreign currency loans available to respondent companies in Korea. As such, there is no need to address the additional comments raised by petitioners and respondents above.

*Comment 8: Whether Lending From Domestic Branches of Foreign Commercial Banks Is an Appropriate Benchmark for Long-term Financing*

Petitioners dispute the Department's decision in *Stainless Steel Plate from Korea* that because the GOK did not control or direct credit provided by the domestic branches of foreign commercial banks, the interest rate on certain such loans is an appropriate benchmark for determining the benefit from (1) foreign currency loans from Korean commercial banks extended post-1991 and (2) foreign securities offerings. Petitioners argue that since record evidence establishes the GOK's control of credit from domestic branches of foreign commercial banks, the Department must use an alternative benchmark from an uncontrolled

domestic source. Petitioners assert that the Department should instead continue to apply the methodology established in *Steel Products from Korea (1993),* and use the domestic corporate bond rate.

Respondents claim that there is substantial evidence on the record to support the Department's finding that the GOK neither controls nor directs the operations of foreign commercial banks. Therefore, loans from these banks are appropriate as benchmark commercial loans.

*Department's Position:* We have determined that the GOK does not control credit from domestic branches of foreign banks. *See Comments 5 and 6,* above. Because these uncontrolled foreign banks provided foreign currency loans, interest rates on these loans are the appropriate benchmarks to use in calculating the benefit from foreign currency loans provided to the respondents from government-owned banks and government-controlled domestic banks. For the reasons discussed in *Comment 6,* 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 9: Dai Yang's Long-Term Interest Rate Benchmark for Dollar-Denominated Loans*

Respondents argue that, absent loans by Korean branches of foreign banks, the Department should use the average interest rates charged on domestic foreign currency loans from Korean branches of foreign banks to POSCO and Inchon as a benchmark for calculating the benefit from Dai Yang's domestic foreign currency loans. Respondents note that the use of this industry-specific data would be in line with the Department's policy of using industry-specific benchmarks when company-specific benchmarks were not available. Alternatively, respondents assert that the Department may use data solely from Inchon if the Department determines that to be more appropriate.

Petitioners reject the use of an ''industry-specific'' benchmark, as proposed by Dai Yang. While respondents cite to the Department's *1989 Proposed Regulations* in support of this practice, there is no such standard established in the *1997 Proposed Regulations,* which indicates that the Department will use a national average rate absent company-specific benchmark information. Moreover, petitioners suggest the impracticality of this suggestion, as the stated purpose of a benchmark rate is to reflect the ''amount the firm would pay on a comparable commercial loan(s) that *the firm could actually obtain on the market.*'' 19 C.F.R. 351.505(a)(1) (emphasis added). Given the varied financial status of firms, there is no reason to believe that one firm's rates are an acceptable surrogate for another firm. Therefore, the Department should use the national average interest rate benchmark to determine the benefit on all long-term financing, loans and bonds.

*Department's Position:* While petitioners are correct that it is the Department's practice to use a national average interest rate benchmark when company-specific rates are unavailable, we were unable to locate a national average rate for domestic branches of foreign banks, or any other appropriate surrogate national average rate in this case. Additionally, it is the Department's long-standing practice to compare countervailable foreign currency-denominated loans to a benchmark in the same currency, as discussed in *Comment 7* above, making the use of the won-denominated interest rate benchmark, as suggested by petitioners, inappropriate in this circumstance. *See e.g., CVD Final Rule,* 63 FR at 65363; *see also, Certain Apparel from Thailand,* 50 FR at 9824 (''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 (''the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration'').

In the past, where the Department has found that a company-specific factor is a reasonable representation of industry practice, we have used such information as the most appropriate surrogate. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40477 (July 29, 1998). As stated in the Department's *CVD Final Rule,* 63 FR at 65408, section 351.505(a)(2)(i), ''* * * the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.,* fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.,* short-term v. long-term), and the currency in which the loans are denominated.'' Based on the similarities in the circumstances and structure of Inchon's and Dai Yang's lending practices, we find that the rate calculated from Inchon's loans by Korean branches of foreign banks is the most appropriate benchmark.

*Comment 10: Inchon's Long-Term Loan Benchmark*

Respondents propose that, consistent with the recent *Stainless Steel Plate from Korea* final determination and its regulations, the Department should use the interest rates on Inchon's long-term foreign currency loans from Korean branches of foreign banks to calculate a company-specific weighted-average U.S. dollar-denominated benchmark rate for Inchon. If the Department finds that Inchon's domestic foreign currency loans and direct foreign loans constitute directed credit, it should then use this calculated company-specific benchmark for calculating the benefits conferred upon Inchon.

In rebuttal, petitioners contend that the methodology used to calculate POSCO's company-specific weighted average dollar denominated benchmark interest rate, which Inchon proposes to continue using in this investigation, deviates substantially from the Department's established policy. It is the Department's practice to use a benchmark that is based on the year in which a long-term loan obligation was assumed. However, the methodology used by the Department understated the benefit to producers of subject merchandise by failing to countervail certain loans.

*Department's Position:* Consistent with the Department's long-term policy, and with the methodology established in the final determination of *Stainless Steel Plate from Korea,* it is appropriate to calculate a company-specific weighted-average U.S. dollar-denominated benchmark based on loans extended by Korean branches of foreign banks to calculate the benefit to Inchon from domestic foreign currency loans and direct foreign loans.

Petitioners argue that this is inconsistent with the Department's practice of using a benchmark based on the year in which a loan was received. While petitioners are correct that this is the Department's standard practice, in this case, annual information was not available. Moreover, it is also the Department's standard practice to compare government-regulated credit to a benchmark denominated in the same currency, if such a benchmark is available, as discussed in *Comment 7,* above. 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''). Therefore, we believe that the benchmark calculation methodology determined in *Stainless Steel Plate from Korea* is the most reasonable surrogate.

*Comment 11: Post-1991 GOK Credit Policies: Whether POSCO Received Disproportionate Benefits From GOK-Regulated Long-Term Loans*

Respondents argue the Department erred when it determined that all producers of the subject merchandise received a disproportionate share of long-term loans, in spite of POSCO's demonstration, according to the Department's own GDP test, that it did not. Respondents indicate that it is within the Department's authority to address, on a company-specific basis, those companies that may have received a disproportionate share of long-term loans; however, it is not within the Department's authority to generalize the impact of benefits received by specific companies onto an entire industry, thereby finding disproportionality against a company whose loan shares were demonstrably not disproportionate.

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 statue, 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.

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.

*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. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil,* 58 FR 37295, 37299 (July 9, 1993) (*Certain Steel from Brazil*). Indeed, this is not an unusual fact pattern for *de facto* specificity findings under, for example, 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 specific, because subsidies under a program are frequently not received on a disproportionate basis by a single 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 12: Countervailability of POSCO's Two-Tiered Pricing System*

Respondents argue that POSCO's pricing decisions are not influenced by the GOK, and that the pricing structure in question is consistent with commercial considerations and is widely used by companies in numerous industries in Korea. RespondentsThey state that two-tiered pricing has evolved as a natural response to market competition: because the competing imports are eligible for duty drawback, companies in Korea must set local export prices to compete with duty-exclusive import prices. Otherwise, respondents claim, POSCO would lose business to competing importers. Further, respondents argue that the Department's methodology used in the preliminary determination was based upon the flawed assumption that there are no major differences between different hot-rolled stainless coils, and that the Department failed to consider quality and terms-of-sale differences in its price comparisons as required under section 771(5)(E)(iv) of the Act, which sets forth the standards for determining the adequacy of remuneration.

Petitioners agree with the Department's preliminary determination that POSCO supplied exporters of subject merchandise with preferentially priced hot-rolled stainless steel coil, and that this practice constitutes a countervailable export subsidy. Petitioners state that the Department should continue to use import prices for hot-rolled stainless steel coil as the benchmark for calculating the benefit conferred by this program, consistent with the Department's practice of using the world market price as a benchmark. As an alternative, petitioners propose the use of a weighted-average of the home market prices and import prices as the benchmark price.

Petitioners rebut respondents' argument that POSCO's pricing system is consistent with commercial considerations, and disagree with respondents' claim that this pricing schemeystem is necessary in order for POSCO to compete with foreign competitors. Petitioners maintain that the attribution of commercial benefits to a subsidy program such as this one is irrelevant, as commercial considerations—such as the loss of business—do not mitigate the countervailability of such subsidies. Moreover, the language of the statute states that the adequacy of remuneration will be measured ''in relation to prevailing market conditions * * * for goods purchased in the country which is subject to the investigation.'' Therefore, POSCO's competition with imported material is also immaterial.

*Department's Position:* Because POSCO, a government-owned entity, charged lower prices to respondent companies for inputs that were used to produce subject merchandise for export, this program constitutes an export subsidy in accordance with section 771(5A)(B) of the Act. We disagree with respondents' claim that there was no GOK control or intervention in POSCO's pricing decisions. As discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have determined that the actions of POSCO are the actions of the GOK because POSCO is a government-controlled company. Respondents also indicate that POSCO has no incentive to sell to its competitors at subsidized prices. However, as discussed above, POSCO is a government-controlled company, and record evidence indicate that the GOK does influence POSCO's pricing decisions. *See* Source Document Memo.

The parties have put forth numerous arguments explaining how the benefit

from this program should be determined under the guidelines of the adequacy of remuneration standard established in section 771(5)(E)(iv) of the Act. However, the adequacy of remuneration standard is not relevant to the program at issue. The program at issue is one in which POSCO charges different prices to Korean steel manufacturers based upon export performance. This type of dual pricing program is specifically addressed in the Illustrative List of Export Subsidies (the Illustrative List) which is provided as Annex I of the Agreement on Subsidies and Countervailing Measures. Because this type of program is specifically addressed under Item (d) of the Illustrative List, the criteria to be used to determine whether POSCO's dual pricing policy is a countervailable subsidy is the criteria set forth under Item (d), not the criteria used to determine the adequacy of remuneration as argued by the parties. Indeed, the adequacy of remuneration standard used for the provision of goods and services and the criteria used to determine the subsidy based upon price preferences for inputs used in the production of goods for exports are set forth in separate regulations. *See* section 351.511 and section 351.516 of the *CVD Final Rules.*

Additionally, respondents discussed various other market conditions, *e.g.*, quality, as factors which cause differences between POSCO's prices and those of POSCO's foreign competitors. However, as discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have altered our methodology from the preliminary determination. Therefore, the products and pricing practices of only one supplier, POSCO, is considered in the Department's comparison. The Department is comparing POSCO's ''domestic'' prices to POSCO's ''local export'' prices. While factors such as quality may potentially create a price differential between different producers, these variables do not play a role in the different prices at which POSCO sells the same subject merchandise to its customers. Therefore, these arguments are not applicable.

Respondents argued that if the Department mistakenly countervailed POSCO's two-tiered pricing policy, numerous adjustments should be made to the import prices which served as the benchmark in the preliminary determination. Petitioners also put forth numerous arguments with regard to these benchmark prices. However, as discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have stated the reasons for basing our comparison on prices charged by POSCO to respondents when producing for domestic sale and the prices charged by POSCO to respondents when producing for export. Therefore, the parties' arguments with regard to the use of import prices as a benchmark are not applicable.

The parties argue about the date that should be considered the ''date of sale'' by the Department. As indicated by both petitioners and respondents, this is not a dumping investigation, and the important question is when the prices being compared were set. Therefore, we based the comparison on the months in which the prices were set, which is the month in which the order was placed. Therefore, we believe that the most reasonable comparison is a monthly one, established by the order dates of the respondent firms.

Finally, respondents argue that this pricing system is not unique to POSCO, but is used by numerous companies in a variety of industries as a market response to Korea's system of duty drawback. First we note POSCO's own statements indicate that POSCO sets local export prices at levels that are below the duty-exclusive price. *See* POSCO's October 21, 1998 questionnaire response at 2. Under the countervailing duty law, a government pricing program which provides a lower price to exporters based upon export performance is a countervailable subsidy under section 771(5A)(B) of the Act. The statute and Item (d) of the Illustrative List provide the standard to be used by the Department to determine whether a countervailable subsidy has been provided by a pricing program of the type under examination in this investigation. Once the pricing program is determined to be an export subsidy under the statute, no further analysis on the countervailability of this program is required.

*Comment 13: 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 section 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.* They argue that under the Post-Uruguay Round law and the basic standard for general infrastructure articulated in section 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, and urge the Department to continue this practice. *See Stainless Steel Plate from Korea,* 64 FR at 15547, and *Steel Products from Korea,* 58 FR at 37346–47.

*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 14: 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*, 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. The Department clearly reiterated this position in *Stainless Steel Plate from Korea*, 64 FR 15549. 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. 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.,* section 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 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 15: 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) (*IPA from Israel; Final Determination*).)

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 *IPA from Israel; Final Determination.* 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 IPA from Israel; Final Determination,* 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.'' *Certain Steel Products from Brazil* at 37300. *See also, 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. Petitioners point out that the Department specifically clarified this point in the recent final determination of *Stainless Steel Plate from Korea. See Stainless Steel Plate from Korea*, 64 FR at 15,550.

*Department's Position:* The Kwangyang Bay infrastructure subsidy under investigation in *Steel Products from Korea, Stainless Steel Plate from Korea*, and 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 should 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 16: The Department Should Exclude Dai Yang's ''Merchandise'' Sales From its Reported Sales Denominator*

Petitioners argue that the Department should exclude the amount of ''merchandise sales,'' or goods resold, from Dai Yang's sales denominator in its final analysis. Petitioners reason that these sales, which were discovered at verification, are sales of goods not produced by Dai Yang, and so should not be included in Dai Yang's sales figures.

Respondents argue that it is hypocritical for petitioners to argue, on one hand, that the ''untied'' subsidies which POSCO allegedly received from the pre-1992 infrastructure investments at Kwangyang Bay should be attributed to the production of subject merchandise, while on the other hand Dai Yang's ''merchandise'' sales should be left out of the calculation because they are ''untied.''

*Department's Position:* According to the *GIA*, it is the Department's aim to ''capture every part of the sales transaction that could benefit from subsidies'' in the total sales denominator. *GIA*, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. Following the approach outlined in *Certain Steel from France* (1993), we have applied the Department's ''tied'' analysis to this situation. *See*, GIA, 58 FR at 37236. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that Dai Yang's ''merchandise'' sales should appropriately be included in the sales denominator. We therefore determine that the appropriate sales denominator is the total of Dai Yang's domestically produced merchandise, and we have excluded Dai Yang's ''merchandise'' sales, as these are not sales of goods produced by the company.

Respondents argue that it is inconsistent to exclude ''untied'' sales while concurrently countervailing a subsidy which is ''untied'' to the production of subject merchandise. However, this position is not inconsistent. Subsidies received for infrastructure, for example, indirectly benefit production. Thus, it is reasonable to countervail such a subsidy. However, to include in the sales denominator sales of merchandise that were not produced by the particular respondent would be unreasonable, as this merchandise is clearly not part of the production process.

*Comment 17: Countervailability of Long-Term Loans Where Dai Yang Did Not Have Interest Payments Due During the POI*

Respondents state that it is the Department's methodology to calculate the benefit from long-term variable rate loans at the time the interest on the loan would be paid; hence no benefit exists on a loan if no interest was due during the POI. Respondents argue that the Department's methodology for measuring the benefit from fixed rate loans requires the same result. Therefore, respondents conclude that there is no benefit from either fixed or variable rate long-term loans if no interest payments were due on those loans in 1997.

*Department's Position:* We agree with respondents that it has been the Department's long-standing policy to calculate the benefit of a long-term fixed-rate loan assigned to a particular year by calculating the difference in interest payments for that year, *i.e.*, the difference between the interest paid by the firm in that year on the government provided loan and the interest the firm would have paid on a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act. Because our methodology is to calculate the benefit at the time the interest on the loan would be paid on the comparison loan, and because no interest payment would have been made during the POI, we find that there is no benefit to Dai Yang from these loans.

*Comment 18: The Loan That Dai Yang Received From the National Agricultural Cooperation Foundation Was Not Specific and Is Thus Not Countervailable*

Respondents argue that the Department erred in its preliminary finding that the loan that Dai Yang received from the National Agricultural Cooperation Foundation was countervailable as an export subsidy because Dai Yang had provided the wrong evaluation criteria in its questionnaire response. Respondents assert that the record evidence, in particularly the evidence gathered at verification, indicates that this loan program was generally available to small and medium size enterprises (SMEs), and that companies were not evaluated for these loans based on export performance. Respondents conclude that this loan is not an export subsidy, is non-specific, and, hence is not countervailable.

Petitioners argue that this loan should be countervailed as an export subsidy, or alternatively as a GOK policy loan. According to petitioners, the fact that this loan program was available only to SMEs is not pertinent. The evidence on the record supports the conclusion that export performance is a factor in the availability of NACF loans; that the loans are advertised as ''small and medium size company loan'' does not negate the fact that export status is a criteria for eligibility.

Respondents disagree with the assertion that Dai Yang's loan from the NACF is countervailable as a GOK-directed policy loan. It is Ansan City, and not the GOK, which funds and administers this loan program. Respondents assert that since the GOK was not involved, this program lies outside the rubric of GOK direction of credit. Rather, respondents reiterate that the correct standard is whether the program was specific within Ansan City which, as discussed above, it was not.

*Department's Position:* We disagree with respondents' assertion that the criteria for approval of lending under this program is not contingent upon

export performance. While new information was presented at verification which indicated that this program is available only to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. According to the loan approval criteria, export performance and overseas market development are two of the factors considered in the approval process. As the Department has found this program to be a countervailable export subsidy, petitioners argument that it should be countervailed as direction of credit is moot.

*Comment 19: The Department Should Not Include the Subsidy From Dai Yang's Export Industry Facility Loan in the Cash Deposit Rate*

Respondents argue that the Export Industry Facility Loan that Dai Yang had outstanding during the POI should not be countervailed because: (1) As verified, the program was terminated in 1994; and (2) Dai Yang's outstanding balance was paid off in early 1998. Hence, there can be no future benefit to Dai Yang. Respondents argue that according to the Department's regulations, such a program-wide change may be taken into account in establishing the estimated countervailing duty cash deposit rate.

In their rebuttal brief, petitioners indicate that, as outlined in the Department's new regulations, the Department's policy is to make such an adjustment if the applicable events occurred during the POI, but before the preliminary determination. In this case, the program-wide change occurred prior to the POI, and thus is inapplicable to the current investigation. Furthermore, since the benefits did not cease until after the POI, the Department should not adjust the cash deposit rate.

*Department's Position:* Petitioners are correct in their contention that the Department should not adjust the cash deposit rate. Pursuant to section 355.50(d)(1) of the Department's *1989 Proposed Regulations*, and codified in section 351.526 of the *CVD Final Rule* the Secretary will not adjust the cash deposit rate where a program is terminated and, ''the Secretary determines that residual benefits may continue to be bestowed under the terminated program.'' *See CVD Final Rule*, 63 FR at 65417. *See also, e.g., Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204. As reported by the GOK and verified by the Department, the Export Industry Facility Loan program was terminated in 1994. However, Dai Yang continued to receive countervailable benefits from this program throughout the POI.

*Comment 20: The Department's Use of the Aggregate Rate Found in Steel Products From Korea for Determining a Subsidy Benefit to Sammi*

Respondents argue that the country-wide *ad valorem* rate from *Steel Products from Korea* which was used as facts available should be modified to reflect the fact that three of the programs found countervailable in *Steel Products from Korea* were applicable only to POSCO: government equity infusions, infrastructure at Kwangyang Bay, and the exemption from dockyard fees. Petitioners maintain that the Department should exclude these benefits because (1) the petition did not allege these subsidies were provided to Sammi; and (2) the Department recently determined that POSCO's exemption from port fees was not a countervailable subsidy.

Petitioners rebut the suggestion that the facts available rate applied to Sammi be adjusted to account for POSCO-specific programs. Because the Department applied the rate from *Steel Products from Korea* as adverse facts available, the components of this rate are immaterial. None of the components of this rate are specific to Sammi; the Department chose to use this rate as an adequate surrogate for company-specific information. In support of this opinion, petitioners cite *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 792 (CIT 1993) (*Krupp Stahl*), quoting *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114,1126 (CIT 1989), *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), which said that the appropriate facts available information ''is not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information.''

Because Sammi did not cooperate in this investigation, there is no evidence that they did not receive benefits from the ''POSCO-specific'' programs, nor can the Department know what subsidies may have been uncovered had Sammi cooperated in the investigation. The Department may, therefore, make the adverse assumption that unreported subsidies may exist. The Department has broad discretion to define facts available, as stated in *Krupp Stahl* and in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185,1191 (Fed. Cir. 1993), and should use the discretion to maintain the aggregate facts available rate for Sammi.

*Department's Position:* Pursuant to section 776(b) of the Act, the Department chose to use the aggregate rate found in *Steel Products from Korea* as an adverse facts available representation of countervailable benefits conferred to Sammi by the GOK. Because this rate was based on many of the same programs alleged in this case, we consider it to be an appropriate basis for a facts available countervailing duty rate calculation.

We disagree with respondents' argument that because some of the program rates incorporated in the aggregate rate were specific to POSCO, the Department should exclude these POSCO-specific benefits. As indicated by petitioners, because Sammi chose not to participate in this investigation, the Department has no basis for concluding that Sammi has not benefitted, at a minimum, from the level of subsidies found applicable to the Korean steel industry in *Steel Products from Korea*. According to section 351.308(c) of the Department's regulations, the Department may use the rates found in a previous countervailing duty investigation in an adverse facts available situation. Therefore, we have relied upon the final determination of *Steel Products from Korea* as an appropriate source for adverse facts available.

*Comment 21: POSCO's Purchase of Sammi's Changwon Facility*

Respondents argue that the because the preliminary determination was based on a misplaced decimal in the translated version of the purchase contract, the amount of the final payment to Sammi for this facility was vastly overstated. In reality, respondents claim, the amount POSCO paid was based on the lower of the two independent third-party valuation reports. POSCO did not pay more for this facility than this study concluded that it was worth, and there was no countervailable subsidy to Sammi.

In rebuttal, petitioners point to record evidence which indicates that this sale was an attempt by the GOK to prevent Sammi's bankruptcy. Moreover, petitioners argue that the KDB's release of Sammi's collateral which enabled this purchase amounts to a grant and, hence, a financial contribution. Because this contribution was exclusive to Sammi, this subsidy meets the Department's definition of specificity. Therefore, the full purchase price paid by POSCO is countervailable as a grant.

*Department's Position:* While respondents are correct in their statement that the ad valorem rate determined by the Department in its

preliminary determination was based on a misplaced decimal in POSCO's submission, we disagree with their contention that POSCO's purchase of Sammi's Changwon does not confer a countervailable benefit. Additional evidence acquired since the preliminary determination, however, indicates that POSCO made this purchase at the request of the GOK, and, in doing so, deviated substantially from its own internal regulations on purchasing. Therefore, we determine that POSCO's purchase of this facility provided a countervailable subsidy to Sammi. For a more detailed discussion of this program, please *see* the ''Programs Determined To Be Countervailable'' of this notice.

*Comment 22: Government Financial Assistance as a Result of Sammi's Bankruptcy*

Respondents argue that, as verified by the Department, when Sammi declared bankruptcy its debts were restructured and payment schedules were established for each creditor, including the KDB. There is no evidence that Sammi received government assistance in the form of grants or debt write-offs in conjunction with its bankruptcy. Instead, the Department found at verification that the KDB ceased lending to Sammi after 1996, and that once Sammi declared bankruptcy, the KDB notified Sammi that it was closing its accounts. Respondents argue Sammi's bankruptcy was consistent with normal bankruptcy procedures; therefore, the Department should conclude in its final determination that there was no GOK financial assistance provided to Sammi in conjunction with its bankruptcy and, hence, no countervailable subsidy.

Petitioners argue that, as shown by record evidence, the GOK forced POSCO to purchase Sammi's Changwon facility to either prevent or ameliorate the effects of bankruptcy on Sammi. Absent this rescue plan, and the massive equity infusion caused by the Changwon purchase, Sammi would have entered into bankruptcy earlier and have been liquidated. Alternatively, Sammi would have defaulted on loans and had its collateral seized. Petitioners propose that the Department should countervail the full value of the loan extensions to Sammi on its KDB loans.

*Department's Position:* Petitioners argue that POSCO's purchase of Sammi's Changwon facility, and the KDB's corresponding release of collateral, constitutes emergency assistance in conjunction with Sammi's bankruptcy. While the Department agrees that the Changwon facility was purchased by POSCO at the behest of the GOK, we disagree that the KDB's release of collateral constituted bankruptcy assistance. As verified by the Department, the KDB released the collateral in question as a result of POSCO's agreement to purchase the assets held. The bulk of POSCO's payment for the Changwon facility went to pay off Sammi's outstanding loans with respect to this facility.

While Sammi chose not to cooperate in this investigation, the GOK indicated that there was no consortium, there were no grants, and that Sammi's debt was addressed in the context of normal bankruptcy proceedings. During our verification, we examined the other respondents' accounts and financial records and did not find any provision of assistance to Sammi; nor did we find evidence of such assistance during our verification of the Government of Korea. Because our investigation revealed no government assistance to Sammi in the form of grants or write-off of debt, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review. For more information regarding this program, please see the ''Use of Facts Available'' section of this notice.

*Comment 23: Calculation of the Benefit From Sammi's 1992 ''Emergency Loans'*

Respondents argue that the Department made numerous mistakes in its calculation of the countervailable benefit from the ''emergency loans'' in the preliminary determination. The Department's premise that the entire amount of 132 billion won remained outstanding during the POI, and that these were interest-free loans, is flawed. Further, Sammi's 1997 balance sheet indicates that there must have been little, if any, of these ''emergency loan'' funds outstanding during the POI, and that Sammi would have been unable to make payments on any loans from March to December 1997, since Sammi was under court receivership at this time. Respondents also argue that according to Sammi's 1996 balance sheet, Sammi had less than 132 billion won in outstanding long-term loans at the end of 1996, before the POI began.

Petitioners claim that the Department should reject this suggestion and reaffirm the methodology used in the preliminary determination, because there is not enough information on the record to justify any other course of action. The Department has no way of knowing whether the loans in question were forgiven between 1992 and 1996, which would account for the 1997 balance sheet statement. Petitioners again cite *Krupp Stahl* (*See Comment 22*) to support the idea that whether Sammi was actually subject to a subsidy of the full amount of the loans is irrelevant because of Sammi's refusal to cooperate. Because Sammi chose not to participate in this investigation, and therefore the record contains insufficient and unverified evidence, the full amount of the emergency loans should be countervailed.

*Department's Position:* As discussed in the ''Programs Determined to be Countervailable'' section of this notice, we determined that the aggregate rate from *Steel Products from Korea* which we have applied to Sammi as adverse facts available, includes a calculated subsidy rate for the GOK's direction of credit. Because the aggregate rate from *Steel Products from Korea* includes a calculated subsidy rate for the GOK's direction of credit to the Korean steel industry, we have not calculated an additional subsidy rate for this allegation that the GOK directed banks in Korea to provide loans to Sammi in 1992. Indeed, in the petition, this allegation of the provision of the 1992 loans to Sammi is included as part of petitioners' allegation of directed credit, and references our determination is Steel Products from Korea. Therefore, parties' comments with respect to the quantification of the benefit from the ''emergency loan'' package are not germane.

**Verification**

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

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each of the companies under investigation. We determine that the total estimated net countervailable subsidy rates are as follows:

| Producer/exporter | Net subsidy rate (percent) |
|---|---|
| POSCO | 0.65 |
| Inchon | 2.64 |
| Dai Yang | 1.58 |

| Producer/exporter | Net subsidy rate (percent) |
|---|---|
| Sammi | 59.30 |
| Taihan | 7.00 |
| All Others Rate | 1.68 |

We determine that the total estimated net countervailable subsidy rates for POSCO is 0.65 percent *ad valorem*, which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of stainless steel sheet and strip in coils. In accordance with section 705(c)(5)(A)(i) of the Act, we have calculate the all-others rate by averaging the weighted average countervailable subsidy rates determined for the producers individually investigated. On this basis, we determine that the all-others rate is 1.68 percent *ad valorem*.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from the Republic of Korea which were entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our preliminary determination in the **Federal Register**. Since the estimated net countervailing duty rates for POSCO and Dai Yang were *de minimis*, these companies were excluded from this suspension of liquidation. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after March 17, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and March 16, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. Because the estimated net countervailing duty rate for POSCO is *de minimis*, this company will be excluded from the suspension of liquidation.

### 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, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

### Destruction of Proprietary Information

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

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

Dated: May 19, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–13769 Filed 6–7–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–834]**

### Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

**EFFECTIVE DATE:** June 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak (POSCO), Brandon Farlander (Inchon) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–1082 or (202) 482–3818, respectively.

### The Applicable Statute

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

### Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

### Case History

Since the preliminary determination, issued on December 17, 1998, (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils (''SSSS'') from the Republic of Korea* (''*Preliminary Determination*''), 64 FR 137 (January 4, 1999)), the following events have occurred:

On December 17, 1998, the Department postponed the final determination to 135 days after publication of the preliminary determination (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils (''SSSS'') from the Republic of Korea* (''*Preliminary Determination*''), 64 FR 137 (January 4, 1999)). On December 28, 1998, respondent Pohang Iron & Steel Co., Ltd., (''POSCO'') alleged ''significant ministerial errors'' made in the Department's margin calculation for the preliminary determination. After reviewing POSCO's allegations, the Department agreed that it had inadvertently used daily rates instead of a weighted-average exchange rate, that sales made to unaffiliated companies were erroneously excluded from the calculation of normal value, and that deductions for inland freight from plant to warehouse and warehousing expenses were inadvertently excluded from the calculation of normal value. Because these errors taken together constitute a significant ministerial error, as defined in 19 CFR 351.224(g), we amended our preliminary determination. On January 26, 1999 the Department published its amended preliminary determination (*see Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 3928)), amending