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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum: Final Affirmative
Countervailing Duty Determination: Certain Cold-Rolled Carbon
Steel Flat Products from the Republic of Korea

Summary

We have analyzed the comments and rebuttal comments of interested parties in the final determination of the above-mentioned countervailing duty (CVD) investigation covering the period of investigation (POI), calendar year 2000. As a result of our analysis, we have made certain modifications to our Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 9685, at 9686 (March 4, 2002) (Preliminary Determination). Below are the “Methodology and Background Information” and “Analysis of Programs” sections of this memorandum that describe the decisions made in this CVD investigation with respect to Dongbu Steel Co., Ltd. (Dongbu), Hyundai Hysco (HYSCO), Pohang Iron & Steel Co., Ltd.¹ (POSCO), and Union Steel Manufacturing Co., Ltd. (Union), the producers/exporters of subject merchandise covered by this segment of the proceeding. Also below is the “Analysis of Comments” section in which we discuss the issues raised by interested parties. We recommend that you approve the positions we have developed below in this memorandum.

¹ Pohang Coated Steel Co., Ltd. (POCOS), a wholly-owned subsidiary of POSCO which also produces and exports subject merchandise, submitted a questionnaire response. Because POCOS is a wholly-owned subsidiary of POSCO, we have included the benefits received by POCOS in our calculation of POSCO’s rate and have used POSCO’s consolidated sales as our denominator. Reference to POSCO throughout this notice will also include POCOS.

Methodology and Background Information

I. The Net Subsidy Rate Attributable to Union Steel Manufacturing Co., Ltd. (Union)

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act require the use of facts available when an interested party withholds information that has been requested by the Department of Commerce (the Department) or when an interested party fails to provide the information requested in a timely manner and in the form required. As described in the Preliminary Determination, we found that Union failed to respond to the Department's questionnaire. Consequently, we used facts otherwise available. Because Union failed to provide any requested information, the Department did not consider the application of sections 782(d) and (e) of the Act.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. In this investigation, the Department requested that all producers/exporters in Korea that shipped subject merchandise to the United States during the POI submit the information requested in our initial questionnaire. However, Union, a producer/exporter that shipped subject merchandise to the United States during the POI, did not participate in the investigation.

The Department finds that by not providing the necessary information specifically requested by the Department and by failing to participate in any respect in this investigation, Union has failed to cooperate to the best of its ability. Therefore, in selecting facts available, the Department determines that an adverse inference is warranted.

Section 776(b) of the Act states that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. See also 19 CFR 351.308(c). As adverse facts available in the Preliminary Determination, for Union's net subsidy rate, we used a subsidy rate from Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 at 30639 (June 8, 1999), (Sheet and Strip). This rate was used as adverse facts available for a company in that final determination pursuant to 19 CFR 351.308(c)(ii). This rate represented a composite of programs used in Korea, based on the adverse inference of a company's use of such program. While no comments were raised, we have modified our preliminary determination.

The Statement of Administrative Action accompanying the URAA states that information from the petition and prior segments of the proceeding, as well as other sources, are "secondary information." See Statement of Administrative Action, accompany H.R. 5110 (H.R. Doc. No. 193-316) (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 that the Department will satisfy itself that the secondary information to be used has probative value.

We did not receive any information from Union in this investigation. Therefore, for each program examined and found to be providing countervailable benefits, unless the record information made it clear that Union could not have received benefits from the program, we made the adverse inference that Union benefitted from the program. In each case, our finding was that the program provided countervailable benefits to the steel industry and in no case did we determine that the program was tied to the production of subject merchandise. Then, in order to establish the countervailing duty rate for each of these programs, we examined the company-specific, program-specific rates established in this investigation and in the most recent segment of these proceedings: Certain Steel Products, Plate in Coils, Sheet and Strip, CTL Plate and Structural Beams. See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, 58 FR 37338, 37339 (July 9, 1993) (Certain Steel Products), Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (March 31, 1999) (Plate in Coils), Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73276 (December 29, 1999), and Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (Structural Beams). We considered these additional proceedings because, as noted above, each of the considered programs was available to the steel industry and none of the programs were tied to the production of a particular steel product. As adverse facts available, we selected the highest company-specific, program-specific rate available from these sources. Based on this approach, we have established a total ad valorem rate of 3.43 percent as adverse facts available for Union.

II. Subsidies Valuation Information

A. Allocation Period

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

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, in the Preliminary Determination, we used an allocation period of 15 years, which is the average useful life corresponding to the steel industry, as indicated by the IRS depreciation tables. See 67 FR at 9686. No party contested the Department's use of a 15-year AUL in the Preliminary Determination. Therefore, in accordance with section 351.524(d)(2) of the CVD regulations, we have allocated all non-recurring subsidies over 15 years.

B. Benchmarks for Loans and Discount Rate

Benchmarks for Short-term Financing:

In the Preliminary Determination, for those programs requiring the application of a short-term won-denominated interest rate benchmark, in accordance with section 351.505(a)(2)(iv) of the CVD regulations, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POI. See 67 FR at 9687.

Benchmarks for Long-Term Loans and Discount Rates:

During the POI, 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. Some loans were received prior to 1992. In the 1993 investigation of Certain Steel Products, and in Structural Beams, the Department determined that, through 1991, the Government of Korea (GOK) influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. In both investigations, 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. In the Preliminary Determination, we used the three-year corporate bond rate as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI. As we received no comments on this issue we will continue to follow our methodology used in Preliminary Determination.

In the Plate in Coils, Sheet and Strip, and in the Benchmark Interest Rates and Discount Rates section of the Issues and Decision Memorandum that accompanied Structural Beams, we examined the GOK's direction of credit policies for the period 1992 through 1998. Based on information gathered during the course of those investigations, the Department also determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1998. In the current investigation, based upon these earlier findings and updated information, we determine that the GOK still exercised substantial control over lending institutions in Korea during the POI.

In the previous investigations the Department determined that the GOK controlled access to foreign securities and direct foreign loans. Therefore, the Department found that foreign securities and foreign loans from outside of Korea were directed by the GOK and countervailed. See Plate in Coils, 64 Fr 15533. During the course of the instant investigation the Department collected additional information on the law and functioning of foreign securities and direct foreign loans. The Department finds in this final determination that foreign securities and direct foreign loans given after April 1999 are not countervailable and thus now represent an appropriate benchmark. For further discussion of the Department's finding, see the Direction of Credit section below.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the "Direction of Credit" section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained since 1992, and which are still outstanding during the POI:

(1) For countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average foreign-denominated interest rates on the companies' loans from foreign bank branches in Korea, foreign securities and direct foreign loans received after April 1999. If such a benchmark was not available, then, as facts available, we had to rely on the lending rates as reported by the IMF's International Financial Statistics Yearbook.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' won denominated public and private bonds. We note that this benchmark is based on the decision in Plate in Coils, 64 FR 15530, 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year won-denominated corporate bonds as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in Plate in Coils, 64 FR 15530, 15532, in which we determined that, absent company-specific interest rate information, the won-denominated corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea.

We are also using, where available, the company-specific won-denominated corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 2000. Where unavailable, we are using the national average of the three-year Korean won corporate bond rate.

C. Treatment of Subsidies Received by Trading Companies

We required responses from trading companies with respect to the export subsidies under investigation because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailing duty rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. See 19 CFR 351.525.

During the POI, Dongbu exported the subject merchandise to the United States through one trading company, Dongbu Corporation (Dongbu Corp). POSCO exported subject merchandise through two trading companies, Daewoo International Corporation (Daewoo) and POSCO Steel Service & Sales Co., Ltd. (Posteel). Dongbu Corp, Daewoo, and Posteel responded to the Department's questionnaires with respect to the export subsidies under investigation.

Under 19 CFR 351.107, when 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, we determined that it is not appropriate to establish combination rates. This determination is based on two main facts. First, the majority of 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 subject merchandise is insignificant. Thus, combination rates would serve no practical purpose because the calculated subsidy rate for any of the producers and a combination of any of the trading companies would effectively be the same rate. Instead, we continue 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 trading companies, we calculated the benefit attributable to the subject merchandise. In each case, we determined the benefit received by the trading companies for each of the export subsidies. Next we 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 to the relative share of direct exports of the producer of 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.

Analysis of Programs

I. Programs Conferring Subsidies

A. GOK Directed Credit

We determined in Plate in Coils that the provision of long-term loans via the GOK's direction of credit policies was specific to the Korean steel industry through 1991 within the meaning of section 771(5A)(D)(iii) of the Act, and resulted in a financial contribution, within the meaning of sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively.

In Plate in Coils, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. In CTL Plate, the Department continued to find that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. In the final determination of CTL Plate, the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998. See CTL Plate, 64 FR at 73180. Further, the Department determined in that investigation that these regulated loans conferred a benefit on the producers of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act. In 1999 Sheet and Strip, we determined that the GOK continued to control credit through 1999. See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 67

FR 1964 (January 15, 2002) (1999 Sheet and Strip). We provided the GOK with the opportunity to present new factual information concerning the government's credit policies in 2000, the POI, which we would consider along with our finding in the prior investigations. Respondents did not provide any new information on the GOK lending policies for domestic banks. Therefore, based upon the determinations in these cited cases, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable.

With respect to foreign sources of credit, in Plate in Coils and Sheet and Strip, we determined that access to foreign currency loans from Korean branches of foreign banks (*i.e.*, branches of U.S. and foreign-owned banks operating 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 the respondent from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in Plate in Coils and Sheet and Strip, we determined that respondent's loans from these banks could serve as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. As such, lending from this source is not countervailable, and, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

We collected certain information during this investigation regarding access to direct foreign loans and foreign securities. We verified that with respect to access to direct foreign loans (*i.e.*, loans from offshore banks) and the issuance of offshore foreign securities by Korean companies, the GOK has replaced the Foreign Exchange Management Act (FEMA), with the Foreign Exchange Transaction Act (FETA). Under FEMA, companies seeking direct foreign loans or foreign securities were required to get approval from the GOK. Under this scheme we found that the GOK controlled access to these type of lending activities. However, in April 1999, when FETA came into effect, the positive approval system was replaced with a negative system. Under FETA, a company must notify the Ministry of Finance and Economy (MOFE) of any foreign exchange transaction but it does not require approval. We verified that companies no longer need approval from the GOK to access foreign loans or to issue foreign securities. We therefore find that any foreign security and direct foreign loans received after April 1999 are not countervailable and, where available, will serve as an appropriate benchmark.

Dongbu, HYSCO, and POSCO received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the POI. In order to determine whether these GOK-directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Information" section of this notice.

For variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate methodology.

In the Preliminary Determination at 9688, we calculated a benefit for countervailable fixed-rate loans using the "grant equivalent" methodology as described in section 351.505(c)(3) of the CVD Regulations. Regarding the calculation of the benefit on countervailable, fixed-rate loans, in past cases the Department has employed the "grant equivalent" methodology, as

described in section 351.505(c)(3) of the CVD Regulations, when the government-provided loan and the comparison loan have dissimilar grace periods or maturities, or where the repayment schedules have different shapes (e.g., declining balance versus annuity style). See, e.g., Sheet and Strip, CTL Plate, and H-Beams.

In this final determination, the Department is revising its application of the grant equivalent methodology discussed in 351.505(c)(3) of the CVD Regulations. We note that section 351.505(c)(2) of the CVD Regulations states that the Department “will normally calculate the subsidy amount to be 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 the comparison loan).” We also note that, in reference to paragraph (c)(2), the Preamble of the Department’s CVD Regulations states that in situations where the benefit from a long-term, fixed rate loan stems solely from a concessionary interest rate, it is not necessary to engage in the grant equivalent methodology. See 63 FR at 65369. Thus, the CVD Regulations and the Preamble direct the Department to default to a simple comparison of interest payments made during the POR when calculating the benefit from a long-term, fixed rate loan.

The Preamble goes on to describe those situations in which the Department shall deviate from the “simple, default methodology,” and instead employ the grant equivalent methodology. The Preamble states that, “[b]ecause a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate,” the Department will calculate the benefit using the “grant equivalent” methodology. See 63 FR at 65369.

There is no information on the record that indicates that the companies derived a benefit from any special repayment terms (i.e., abnormally long grace periods or maturities, etc.) on its long-term, fixed-rate loans. Therefore, in accordance with section 351.505(c)(2) of the CVD Regulations, we are calculating the benefit that Dongbu, HYSCO, and POSCO received on their long-term, fixed-rate loans by comparing the amount of interest paid on the loan during the POI to the amount of interest that would have been paid during the POI on a comparable, commercial loan.

Therefore, to calculate a benefit we used the above mentioned methodology, and summed the benefit amounts from all countervailable loans. We then divided the total benefit by the respective company’s total f.o.b. sales value during the POI. On this basis, we determine the net countervailable subsidy to be 0.10 percent ad valorem for Dongbu, 0.25 percent ad valorem for HYSCO, and 0.05 percent ad valorem for POSCO.

B. GOK Infrastructure Investment at Kwangyang Bay Through 1991

In Certain Steel Products, 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 Certain Steel Products, 58 FR at 37346.

In the Preliminary Determination, we found that the GOK's infrastructure investments at Kwangyang Bay over the period 1983-1991 were countervailable. 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, we continue to determine that POSCO benefits from the GOK's investments during the POI. To calculate the benefit from these grants, we relied on the calculations performed in the 1993 investigation of Certain Steel Products, which were placed on the record of this investigation by POSCO.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. See the allocation period discussion under the "Subsidies Valuation Information" section, above. Using the 15 year allocation period, POSCO continues to receive benefits under this program from GOK investments made during the years 1986 through 1991. To calculate the benefit from these grants, we used as our discount rate the three-year corporate bond rate on the secondary market as used in Certain Steel Products. We then summed the benefits received by POSCO during the POI from each of the GOK's yearly investments over the period 1986-1991. We then divided the total benefit attributable to the POI by POSCO's total f.o.b. sales for the POI. Accordingly, the net subsidy under the GOK's infrastructure investments at Kwangyang Bay over the period 1986-1991 is 0.15 percent ad valorem for POSCO for the POI.

C. Research and Development (R&D)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), Ministry of Science and Technology (MOST), the Ministry of Environment (MOE), and the Ministry of Construction and Transportation (MOCAT), provides R&D grants to support numerous projects undertaken by the steel industry.

These grants are designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) a company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of Small and Medium Enterprises (SMEs) established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount. In CTL Plate, we determined that this program was countervailable. See CTL Plate, 64 FR 73185. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine that this program is countervailable.

To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percentage to the

GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total f.o.b. sales. To determine the benefit from the grants provided directly to the companies, we divided the amount of the grant by each company's respective total f.o.b. sales. Based upon this methodology, we determine that POSCO received a countervailable subsidy of 0.08 percent ad valorem and that Dongbu received a countervailable subsidy of less than 0.005 percent ad valorem. HYSCO did not use this program.

D. Provision of Land at Asan Bay

In the instant investigation and in CTL Plate, petitioners alleged that the GOK provided land at Asan Bay to the steel industry for less than adequate remuneration. The GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by Koland. In CTL Plate, we found that steel companies received price discounts on purchases of land at Asan Bay, and found this program countervailable. See CTL Plate, 64 FR 73184.

We verified that the GOK, in setting the price per square meter for land at the Kodai industrial estate, removed the ten percent profit component from the price. Therefore, we determine that the exemption from the profit provides a benefit to Dongbu. We then calculated this ten percent price discount by the number of square meters purchased by Dongbu. In addition to this price discount, the GOK provided an adjustment to Dongbu's final payment to account for "interest earned" by the company for pre-payments. Companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. The GOK provided a financial contribution to Dongbu under section 771(5)(D)(i) of the Act when it refunded the interest earned on the advanced payments. This interest earned refund is specific to Dongbu under section 771(5A)(D)(iii)(I) of the Act, as being limited to Dongbu. Therefore, we find that this additional credit on the final payment made by the GOK to Dongbu also provides a countervailable benefit to the company. The land price discount and the interest earned refund are non-recurring subsidies.

Under section 351.524(b)(2) of the CVD Regulations, non-recurring benefits which are less than 0.5 percent of the company's relevant sales are expensed in the year of receipt. We performed the 0.5 percent test, and we find that the land price discount and the interest earned refund exceeded 0.5 percent of the sales for the respective year; therefore, to calculate the benefit conferred during the POI on the land price discount and the interest earned refund, we applied the Department's standard grant methodology and allocated the benefit provided by this program over a 15-year allocation time period. See the allocation period discussion under the "Subsidies

Valuation Information” section, above. We then divided the total benefit attributable to the POI by Dongbu’s total f.o.b. sales for the POI. On this basis, we determine a net countervailable subsidy of 0.47 percent ad valorem for the POI.

For further information, see Comment 7: Provision of Land at Asan Bay in the “Analysis of Comments” section, below.

E. POSCO’s Exemption of Bond Requirement from Port Use at Asan Bay

As noted above, the GOK has developed industrial estates at Asan Bay. In CTL Plate, we determined that the GOK built port berths #1, #2, #3, and #4 in the Poseung area. In September 1997, POSCO signed a three-year lease agreement with the Incheon Port Authority (IPA) for the exclusive use of port berth #1, which the GOK constructed. The GOK also entered into a lease agreement in 1997 for the exclusive use of port berths #2, #3, and #4, with a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1.

In CTL Plate, we found this program countervailable. See CTL Plate, 64 FR 73183-73184. We determined that the waiver of the bond purchase was only provided to POSCO, and was therefore specific under section 771(5A)(D) of the Act. In addition, we determined that the GOK’s waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO conferred a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determined that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. During verification we were informed that POSCO made an annual renewal of its lease. See June 17, 2002, Memorandum to Melissa G. Skinner, Director: Verification Report for Pohang Iron & Steel Co., Ltd. (POSCO), Pohang Coated Steel Co., Ltd. (POCOS), and POSCO Steel Service & Sales Co., Ltd. (POSTEEL) in the Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Korea at page 6, (POSCO’s Verification Report). No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to find this program countervailable.

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

F. Investment Tax Credits

Under Korean tax laws, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they

are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the Tax Reduction and Exemption Control Act (TERCL). On that date TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

During the POI, Dongbu earned or used the following tax credits for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA Article 11, previously TERCL Article 10); (2) Investments in Productivity Increasing Facilities (RSTA Article 24, previously TERCL Article 25); (3) Investments in Specific Facilities (RSTA Article 25, previously TERCL Article 26); and (4) Equipment Investment to Promote Worker's Welfare (RSTA Article 94, previously TERCL Article 88).

POSCO used the following tax credits during the POI: (1) Investments in Productivity Increasing Facilities (RSTA 24); and (2) Investments in Specific Facilities (RSTA 25). In addition, POSCO earned a tax credit under Investments in Equipment to Develop Technology and Manpower (RSTA 11), but did not receive a countervailable benefit during the POI from this tax credit.

HYSCO had outstanding investment tax credits during the POI. However, due to the net tax loss for the income tax return filed during the POI, the company could not use and did not claim any investment tax credits during the POI.

If a company invested in foreign-produced facilities (*i.e.*, facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.*, facilities produced in Korea), it received a 10 percent tax credit. Under the tax credit for Equipment Investment to Promote Worker's Welfare, a tax credit could only be claimed if a company used domestic machines and materials. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. We determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act in CTL Plate, because Korean companies received a higher tax credit for investments made in domestically-produced facilities. In addition, because the GOK forwent the collection of tax revenue otherwise due under this program, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable in CTL Plate. See CTL Plate at 73182.

We verified that changes have been made in the manner in which these investment tax credits are determined. Pursuant to amendments made to TERCL which occurred on April 10, 1998, the distinction between investments in domestic and imported goods was eliminated for the tax credits for Investments in Equipment to Develop Technology and Manpower (RSTA 11), Investments in Productivity Increasing Facilities (RSTA 24), and Investments in Specific Facilities (RSTA 25). We verified that, prior to April 10, 1998, the tax credit for these investments was ten percent for domestic-made facilities and three percent for foreign-made facilities. However, for investments made after April 10, 1998, there is no difference between domestic-made and foreign-made facilities. The current tax credit is five percent for all of these investments.

Because the distinction between investments in domestic and foreign-made goods was eliminated for investments made after April 10, 1998, we determine the tax credits received pursuant to these investment programs for investments made after April 10, 1998 to be no longer countervailable. However, companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998 amendment to the tax law. In addition, the tax credits for Equipment Investment to Promote Workers' Welfare (RSTA 94) are still only available for companies using domestic machines and materials. Therefore, we continue to find the use of investment tax credits earned on Equipment Investment to Promote Workers' Welfare countervailable. We also continue to find countervailable the use of investment tax credits earned on investments made before April 10, 1998, under the other three investment tax programs.

We verified that the tax credits earned by Dongbu for Investments in Equipment to Develop Technology and Manpower (RSTA 11), Investments in Productivity Increasing Facilities (RSTA 24), and Investments in Specific Facilities (RSTA 25) were not based on a tax credit differential between purchasing domestic facilities and imported facilities. In addition, we verified that the tax credit earned during the POI for Equipment Investment to Promote Workers' Welfare (RSTA 84) was not used to reduce taxes payable during the POI because the entire tax credit was carried forward to future years. Therefore, we determine that Dongbu did not benefit from this program during the POI.

POSCO did use investment tax credits under this program that originated from tax credits earned based upon the differential between purchasing domestic facilities and imported facilities. To calculate the benefit from these investment tax credits, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1999 fiscal year income tax return, which was filed during the POI. We first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total f.o.b. sales during the POI. On this basis, we determine a net countervailable subsidy of 0.35 percent ad valorem for POSCO.

G. Reserve for Export Loss – Article 16 of the TERCL

Under Article 16 of the 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. We verified that this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu also had an outstanding balance in this reserve during the POI. HYSCO returned the remaining balance of this reserve fund to income during the POI.

In Sheet and Strip, 64 FR 30636, 30645, we determined that this program constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determined that this program provided a financial contribution within the meaning of section 771(5)(D) of the Act. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we determine that this program constitutes a countervailable export subsidy.

Under our traditional methodology used to calculate a benefit from this tax reserve, the Department considered that this program provided only a deferral of tax liability. That is, this program allowed a company to shift its tax payment on the funds in the reserve from year 1 to years 4, 5, and 6. For example, in Year X a company places funds into a reserve account and these funds are, therefore, not taxed in Year X. However, four years later when one-third of the funds in the tax reserve are returned to taxable income, then income taxes are paid on these funds in Year X plus four. Therefore, because the company received a deferral of income taxes on those funds, we considered the tax savings on these funds for those four years to benefit the company in the form of an interest-free loan. That is, the company had money it otherwise would not have had absent this program. The amount of the interest-free loan was based upon the tax savings on the balance in the tax reserve. We also determined that if a company had a tax loss during the POI, then there was no benefit from this tax reserve because the company had no tax liability during the POI. We did not calculate a benefit on the portion of the tax reserve which was returned to taxable income during the POI.

In the Preliminary Determination, we indicated that we were reviewing this methodology to determine whether we were accurately calculating the benefit conferred by these tax reserves. Based upon our review, we have determined that we need to revise our benefit calculations. In the past, we did not calculate a benefit from the reserve balances in years in which a company was in tax loss and did not incur tax payments. Upon further review, we determine that the time in which the deferral of tax liability took place was in the year in which funds from the company's income were placed into the tax reserve. Therefore, regardless of whether the company is in a tax loss during the POI, the balance in the tax reserve is still providing the company with an interest-free loan. This methodology treats the tax reserves as a deferral of tax liability and therefore, the benefit lies in the amount of the reserve deferred. A company receives a benefit when it defers a certain amount of taxable income; however, the benefit ceases once the company returns the reserve to taxable income and pays taxes on this amount.

In addition, we also recognize that a company is benefitting when it returns funds from the reserve back into income during those years in which the company is at a tax loss. If the company is in a tax loss situation and does not pay any taxes on income in the year in which the funds are refunded to the income account, the funds that were placed into the tax reserve are never taxed. Under this scenario, the company, instead of being provided with a deferral of tax liability on these reserve funds, has also been provided with a complete exemption of tax liability

on this income. When a company is in a tax loss position and returns its reserves and does not have to pay taxes, this confers a benefit in the form of a tax forgiveness. Furthermore, a financial contribution is provided as the GOK does not collect revenue that was otherwise due.

As noted above, Dongbu and Dongbu Corp had outstanding balances in this reserve during the POI. To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, as filed during the POI, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for Dongbu and Dongbu Corp by their respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the “Subsidies Valuation Information” section, above. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the “Subsidies Valuation” section of this notice, we calculated a benefit for Dongbu Corp attributed to Dongbu.

As noted above, HYSCO returned the remaining balance of this reserve fund to income during the POI. However, the company was in a tax loss and did not pay taxes during this year. Therefore, HYSCO received a complete tax exemption under this program. To calculate the benefit, we treated the reversed amount returned to income as a tax forgiveness. We first determined the reserve amount returned to income, next we calculated the tax savings on that amount. We then divided the benefit by the respective total export sales.

On this basis, we calculated a countervailable subsidy of 0.07 percent ad valorem for Dongbu and 0.03 percent ad valorem for HYSCO.

H. Reserve for Overseas Market Development Under TERCL Article 17

Article 17 of the TERCL 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 income 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. This program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu and Posteel, a trading company used by POSCO, also had outstanding balances in this reserve during the POI.

In Sheet and Strip, 64 FR 30636, 30645, we determined that this program constituted 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 provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. No new information

or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we determine that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program under Article 16 of the TERCL. 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, as described in the "Subsidies Valuation Section" above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the "Subsidies Valuation" section of this notice, we calculated a benefit attributable to each respective producer. On this basis, we calculated a countervailable subsidy of 0.04 percent ad valorem for Dongbu and a countervailable subsidy of 0.02 percent ad valorem POSCO.

I. Asset Revaluation Under Article 56(2) of the TERCL

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. In CTL Plate, we found this program countervailable. See 64 FR 73176, 73183. No new information, evidence of changed circumstances, or comments from interested parties were presented in this **investigation to warrant any reconsideration of the countervailability of this program**.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. To calculate the benefit under this program, we used the additional depreciation in the tax return filed during the POI, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit for each company by their respective total sales. On this basis, we determine a net countervailable subsidy of 0.04 percent ad valorem for POSCO. HYSCO received no benefit from this program because it had a net tax loss. Dongbu did not use this program.

J. Tax Reserve for Balanced Development under RSTA Article 58 (TERCL Article 41)

TERCL Article 41 allowed a company that planned to relocate its facility from a large city to a local area to establish a reserve equal to 15 percent of the facility's value. The balance in the reserve was not subject to corporate income tax in that year but all monies in the reserve must eventually be returned to the income account and are then subject to tax at the expiration of the grace period. The reserve amount equivalent to the amount incurred from the relocation of its facilities from the large city to a local area will be included in taxable income after a two-year grace period and over a three-year period. If the reserve amount is not used for the payment of relocation, this unused amount is included in the company's taxable income, after the two-year grace period. This program was replaced by Article 58 of RSTA. Subsequent to the

establishment of Article 58 of RSTA, the program was terminated and the last date that this reserve could be established was August 31, 1999. Dongbu was the only company which established a reserve under this program before the program's August 31, 1999 termination. Dongbu still had an outstanding balance under this reserve during the POI.

In the Preliminary Determination, we determined that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. Because the deferral of taxes owed provided under this program amounts to an interest-free loan equal to the company's tax savings, we also determined that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act as revenue foregone that the GOK would have otherwise collected. We also find that under section 771(5)(E)(ii) of the Act, Dongbu received a benefit in the form of a loan.

To determine the benefit conferred by this program to Dongbu, we employed the same methodology described in the Reserve for Export Loss Program, above. We calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See section 351.509 of the CVD Regulations. Accordingly, to determine the benefit, we multiplied the amount of tax savings by Dongbu's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the "Subsidies Valuation Information" section, above. We then divided the benefit by the company's total f.o.b. sales. On this basis, we calculated a countervailable subsidy of 0.02 ad valorem for Dongbu.

In the Preliminary Determination we invited interested parties to comment on this issue. Specifically, we invited interested parties to comment on whether the methodology the Department has traditionally applied to these types of Korean tax programs accurately quantifies the benefit conferred by these tax reserves. For further information, see Comment 5: Tax Programs of the "Analysis of Comments" section of this Decision Memorandum.

K. Short-term Export Financing

In Certain Steel Products, the Department determined that the GOK's short-term export financing program was countervailable. See 58 FR at 37350. **Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.** During the POI, both HYSCO and POSCO used export financing.

To determine whether this export financing program confers a countervailable benefit, we compared the interest rate HYSCO and POSCO paid on the export financing received under this program during the POI with the interest rate they 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.

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 benchmark interest rate. We then divided the benefit derived from all of HYSCO's and POSCO's export loans by the value of the companies' total export sales. On this basis, we determine a net

countervailable subsidy of 0.07 percent ad valorem for HYSCO and less than 0.005 percent ad valorem for POSCO.

L. Local Tax Exemption on land outside of Metropolitan area

At verification the Department found that HYSCO and POSCO were exempt from paying registration and acquisition taxes for their industrial land located outside of a metropolitan area. Dongbu received these exemptions on the purchase of land at Asan Bay, however, these exemptions were received prior to the POI. Under Korean tax law, companies are exempt from the registration and acquisition taxes on industrial land outside of a metropolitan area.

The Department finds that these exemptions are regionally specific under section 771(5A)(D)(iv) of the Act, as being limited to an enterprise or industry located within a designated geographical region. See e.g. Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 21, 2001). A financial contribution is provided, as the GOK foregoes revenue that it would otherwise collect. A benefit is conferred in the form of a tax exemption.

To calculate the benefit, we took the amount of each companies' tax exemption and divided that tax savings by the companies' respective total f.o.b. sales. Using this methodology, we calculated a net countervailable subsidy rate of 0.01 percent ad valorem for HYSCO and 0.04 percent ad valorem for POSCO.

M. Electricity Discounts under the Requested Load Adjustment Program

The GOK introduced an electricity discount under the Requested Load Adjustment (RLA) program in 1990, to address emergencies in the Korea Electric Power Company (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.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. 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 POSCO electricity discounts under this program.

In Sheet and Strip, the Department found this program specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during

the POI. We then divided that amount by POSCO's total f.o.b. sales value for the POI. On this basis, we determine a net countervailable subsidy of less than 0.005 percent ad valorem for POSCO.

N. POSCO's Provision of Steel Inputs at Less than Adequate Remuneration

POSCO is the only Korean producer of hot-rolled stainless steel coil (HRC), which is the main input into the subject merchandise. During the POI, POSCO sold HRC to Dongbu to produce subject merchandise. We verified that HYSCO did not purchase HRC from POSCO to produce subject merchandise. In CTL Plate, the Department determined that the GOK, through its ownership and control of POSCO, set prices of steel inputs used by the Korean steel industry at prices at less than adequate remuneration, and also found this program countervailable. See 64 FR at 73184.

Under section 351.511(a)(2) of the CVD Regulations, the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, Dongbu imported HRC; therefore, we are using Dongbu's actual imported prices of HRC as our basis of comparison to the price at which POSCO sold HRC to Dongbu. Based upon this comparison, we determined that POSCO sold HRC to Dongbu at less than adequate remuneration. As a result, a benefit is conferred to Dongbu under section 771(5)(E)(iv); therefore, we continue to find this program countervailable. Because HYSCO did not purchase HRC from POSCO to produce subject merchandise, we determine that HYSCO did not receive a benefit under this program.

In the Preliminary Determination, the Department stated that during verification we would closely examine whether or not the GOK continues either directly or indirectly to control POSCO's pricing policy in the Korean domestic market. We received numerous comments from both the petitioners and respondents on this issue. The results of verification and our analysis of the comments submitted by respondents and petitioners have not led the Department to change its decision in the Preliminary Determination that this program is countervailable for this POI. The comments on this issue have been addressed in the comments section of this notice. See Comments 1 and 2, below.

To determine the value of the benefit under this program, we compared the monthly delivered weighted-average price charged by POSCO to Dongbu for HRCs to the monthly delivered, duty-inclusive weighted-average price Dongbu paid for imported HRCs. We made due allowances for the different specifications of HRCs, thus allowing the Department to compare a single product. In addition, we made an adjustment to the imported price for duty drawback. Under duty drawback a company receives a portion of the duty paid for importing when it reexports merchandise manufactured using that import. We verified that Dongbu received drawback of a portion of the duties it paid on imported HRC. Therefore, we adjusted the monthly weight-averaged import price to account for that portion of import duties which were drawn back. Next, we multiplied this price difference by the quantity of HRC that Dongbu purchased from POSCO during the POI. We then divided the amount of the price savings by the

f.o.b. sales value of subject merchandise. On this basis, we determine that Dongbu received a countervailable subsidy of 0.37 percent ad valorem from this program during the POI.

O. Dongbu's Excessive Exemptions under the Harbor Act

Under the Harbor Act, companies are allowed to construct infrastructure facilities at Korean ports; however, these facilities must be deeded back to the government. Because the ownership of these facilities reverts to the government, the government compensates private parties for the construction of these infrastructure facilities. Because a company must transfer to the government its infrastructure investment, under the Harbor Act, the GOK under grants the company free usage of the facility and the right to collect fees from other users of the facility for a limited period of time. 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. In Sheet and Strip, we determined that this program was not countervailable because it was not specific under section 771(5A)(D)(iii) of the Act.

During verification of the instant investigation, the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port. We verified that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program. Furthermore, Koland official have stated that any roads built by companies at Asan Bay are built at the company's expense. Moreover, given the length of the exemption period provided to Dongbu, the company received more than just a limited exemption on its harbor fee. It also received compensation which lasted longer than the useful life of the constructed assets. However, under this program, Dongbu is being reimbursed for the roads which it constructed and received additional exemptions of fees by the GOK under the Harbor Act. As only Dongbu has received a 70 year exemption period, we find that this excessive exemption period is specific to Dongbu under section 771(5A)(D)(iii)(I) of the Act. Moreover, we find that the GOK is foregoing revenue that it would otherwise collect by allowing Dongbu to be exempt from port charges for up to 70 years.

During verification we were able to determine the average yearly amount of harbor fees exemptions provided to Dongbu as a result of this program. To calculate the benefit we took the average yearly amount of exemptions and divided that amount by Dongbu's total f.o.b. sales for the POI. Using this methodology, we calculated a countervailable net subsidy rate of 0.03 percent ad valorem for Dongbu under this program.

P. Exemption of VAT on Imports of Anthracite Coal

The Department investigated an allegation that the GOK provided anthracite coal to the steel industry for less than adequate remuneration. At verification the Department determined that POSCO did not purchase any anthracite coal from the GOK. However, we did verify that imports of anthracite coal were exempt from paying VAT, and that POSCO imported anthracite coal during the POI. (See POSCO's Verification Report page 4). We also verified that VAT is paid on imports of non-anthracite coal.

Based on information on the record, the GOK allows for only a few items to be exempt from VAT, a substantial majority of items must pay VAT when being imported. We determine that this program is specific under section 771(5A)(D)(i) of the Act, as the items allowed to be imported without paying VAT are limited. We also find that a financial contribution is provided under section 771(5)(D)(ii) of the Act, as the GOK is not collecting revenue otherwise due. POSCO imported anthracite coal during the POI, therefore, it received a benefit in the amount of the VAT that it would have otherwise paid if not for the exemption. Therefore, we find this program countervailable, and find a net countervailable subsidy rate of 0.03 percent ad valorem for POSCO.

II. Programs Determined To Be Not Countervailable

A. GOK Infrastructure Investments at Kwangyang Bay Post-1991

Petitioners alleged that the GOK made infrastructure investments during the POI for POSCO at Kwangyang Bay. In Plate in Coils, we determined that the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. See 64 FR 15536. We verified that the only new GOK expenditures made at Kwangyang Bay were for the container terminal. We determined in Plate in Coils that the GOK's investments in the container terminal did not provide a benefit to POSCO because POSCO does not use the container terminal. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine that this program is not countervailable.

B. R&D Aid for Anthracite Coal Technology

This program refers to the project "Technology for Sintered Anthracite Coal" in the August 1996 report prepared by the Korea Iron and Steel Association (KOSA). This project was solely financed by POSCO from the company's own funds. Because the GOK did not provide any funds for this project, we determine that this program is not countervailable.

C. Asan Bay Infrastructure Subsidies

Petitioners alleged that the GOK provided infrastructure subsidies related to roads, piers, distribution facilities, and industrial water supplies to steel companies located at Asan Bay. Based upon the information on the record of this investigation and in the CTL Plate remand redetermination, we determine that no benefit was provided under this program. Therefore, we find this program not countervailable.

The roads located in and around the Asan Bay area can be divided into three different categories. The first category is roads that are located within the industrial estates which were built by Koland, the government agency which developed and sells the land at the Asan Bay industrial estates. The construction costs incurred by Koland for these roads are included as part of the land purchase price charged to companies purchasing land in the industrial estates. The second category is roads that are built on an individual company's site within the industrial estate

which are built and paid for by the companies themselves. The third category of roads is the main roads and highways that are located around the Asan Bay area and which are used by the general public. Generally, the construction of toll free roads is handled by the Ministry of Construction and Transportation (MOCAT) and are built using funds from the GOK budget. These roads are part of the country's general road and highway system. The costs for construction and operation of toll roads are paid from the GOK budget and by the Korea Road Corporation (KRC). The construction costs of the KRC are recovered through the collection of tolls from users. The major highway that serves the Asan Bay area is the West Coast Highway, which is part of the National Highway system.

With respect to the allegation that companies located in Asan Bay industrial estates benefit from the GOK's provision of roads, we determine that: (1) the roads build by the GOK within the industrial estate do not provide a benefit because the cost of road construction is included in the purchase price of the land; (2) the additional roads within the industrial estate on individual company sites do not provide a benefit because these roads are build and paid for by the company; and (3) the West Coast Highway and other national roads within the Asan Bay area are part of the country's national road system and thus constitute general infrastructure, and therefore do not provide a countervailable benefit.

With respect to the allegation of industrial water facilities, sewage facilities, and electric power facilities, the GOK states in its response that the companies located in the Asan Bay industrial estates pay for these services. The fees charged to these companies for these services are based on the general published tariff rates for each of these services. In addition, the connections from the main water pipe to the user are constructed and paid for by the user; individual lines from the main electricity transformers to each companies' individual facility are constructed and paid for by the company; and sewage facilities located within an individual company's facility as well as the connection to the main sewage facility are constructed and paid for by the individual company. Because companies within the industrial estate pay for the construction of these facilities and pay the published tariff rates for industrial services, we determine that no benefit is provided by the GOK by the provision of these goods and services. There are no distribution depots at Asan Bay.

We note that with respect to this program, the Department was required to conduct verification of the provision of infrastructure at Asan Bay in a recent remand of CTL Plate. The Departments's remand redetermination of CTL Plate is in litigation, and thus, serves as no legal precedent in this instant investigation. However, factual information gathered in the course of the CTL Plate remand may be placed on the record of this investigation and considered in this determination. Therefore, we have placed the public verification reports for both the GOK and POSCO from the CTL Plate remand on the record of this current investigation. See "Remand Verification Report for the Government of Korea (GOK) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea" and "Remand Verification Report for Pohang Iron and Steel Co., Ltd. (POSCO) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea." Both of these public verification reports are dated November 26, 2001, and have been placed in the public file in the CRU. The information in the verification reports substantiates the information provided in the responses.

The petitioners also alleged that the companies located in the Asan Bay industrial estates benefit from the provision of port facilities. The port facilities at Asan Bay are not part of the industrial estates. The port facilities located at Asan Bay are owned and administered by the Incheon Port Authority (IPA), a division of the Ministry of Maritime and Fisheries (MOMAF). Furthermore, with respect to the provision of port facilities, we have previously found this program not countervailable in Sheet and Strip. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine the provision of port facilities to be not countervailable.

D. Reserve for Energy-Saving Equipment (RSTA Article 30)

Under TERCL article 29, all domestic companies are able to establish a reserve for investment in energy-saving facilities amounting to 15 percent of the total investment value of the facility. The balance in the reserve is not subject to corporate income tax in the year it is invested or the following two years; afterwards, it is returned to income and is subject to taxation. This article was replaced with RSTA article 30 on December 28, 1998.

Information on the record demonstrates that this program is not limited to any industry and is therefore not specific, as required under section 771(5A) of the Act. We received no comments on this program and, as it is not specific, we find that this program is not countervailable.

III. Programs Determined To Be Not Used

A. Anthracite Coal for Less than Adequate Remuneration

Petitioners alleged that the GOK provides anthracite coal to steel producers at suppressed prices. Petitioners claim that these suppressed prices are part of a GOK price stabilization program where steel producers are receiving anthracite coal at less than adequate remuneration. This program is designed to support and maintain the domestic coal industry in Korea by managing anthracite and briquette prices and is administered by MOCIE and the Coal Industry Promotion Board (CIPB). The GOK fixes the highest selling price of anthracite and briquette and then provides funds to the mining companies and briquette manufacturing companies for the difference between their costs of production and sales prices through the coal industry stabilization fund. Thus, the GOK controls prices of anthracite coal mined in Korea.

POSCO was the only respondent to use anthracite coal. However, during the POI, POSCO used only imported anthracite coal and thus did not use this program. Based on the fact that POSCO had no purchases of domestic anthracite coal, we determine that POSCO did not use this program during the POI.

B. Grants to Dongbu

We verified that these grants which were contained in Dongbu's 1996 Financial Statement related to R&D projects that Dongbu participated in between 1991 and 1995. These grants equaled less than 0.5 percent of Dongbu's sales in 1996. Thus, under section

351.524(b)(2) of the CVD Regulations, these grants are expensed in the year of receipt. Therefore, because no benefit was conferred to Dongbu from these grants during the POI, we determine that this program was not used.

C. Technical Development Fund (RSTA Article 9, formerly TERCL Article 8)

On December 28, 1998, the TERCL was replaced by RSTA; pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

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

In CTL Plate, we determined that this program is countervailable because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determined in CTL Plate that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. See CTL Plate at 73181. While we continue to find this program countervailable, Dongbu only contributed funds to this reserve at the three percent rate; therefore, we find that the company did not benefit from this program. Thus, the countervailable aspect of this program was not used.

D. Export Insurance

IV. Total Ad Valorem Rate

The net subsidy rates for producers/exporters of subject merchandise are as follows:

Producer/Exporter	Net Subsidy Rate
Dongbu Steel Co., Ltd. (Dongbu)	1.09 percent <u>ad valorem</u>
Hyundai Hysco (HYSCO)	0.36 percent <u>ad valorem</u>
Pohang Iron & Steel Co., Ltd. (POSCO)	0.76 percent <u>ad valorem</u>
Union Steel Manufacturing Co., Ltd. (Union)	3.43 percent <u>ad valorem</u>
All Others Rate	1.09 percent <u>ad valorem</u>

V. Analysis of Comments

Comment 1: *GOK Control of POSCO*

Petitioners contend that, for reasons outlined below, the Department should continue to countervail the benefit to Dongbu from POSCO's provision of steel inputs at less than adequate remuneration. Specifically, petitioners argue that, despite POSCO's September 2000 privatization, the GOK continued to control POSCO during the POI through holding shares in POSCO, holding superior voting rights, and exercising control over leadership of the corporation. Petitioners maintain that the GOK continues to hold shares in POSCO through the government-owned Industrial Bank of Korea (IBK), as well as other government-owned entities. Petitioners argue that the IBK owned 4.12 percent of POSCO as of December 31, 2000. Moreover, petitioners contend that the Korea Development Bank (KDB) held 10 percent of the shares in POSCO until October 6, 2000. Additionally, petitioners argue that the National Pension Corporation (NPC), a government-owned entity, held more than one percent of POSCO's shares throughout the POI.

Furthermore, petitioners argue that the GOK continued to hold superior voting rights during the POI. Petitioners dispute respondents' assertion that all of POSCO's shares are common shares and thus no shareholder has superior voting rights. Petitioners maintain that any restrictions on the acquisition of shares were in place during the POI, and, therefore, POSCO's statement is irrelevant that amendments to its bylaws during the course of privatization lifted restrictions on the acquisition of shares. Petitioners also assert that general voting rights were still limited by law until September 26, 2000, the majority of the POI, and the effect was not lifted until March 2001 when POSCO could modify its Articles of Incorporation to implement the change. Further, petitioners argue that the GOK's recognition of POSCO as a "public company" continued after privatization, as evidenced by the fact that POSCO was subject to the supervision of the Korean Board of Audit and Inspection (KBAI), a governmental agency that regulates other governmental bodies, throughout 2000.

Additionally, petitioners assert that the GOK continued to exercise control over POSCO's leadership during the POI. As evidence, petitioners point to the fact that at least two former government officials served on POSCO's board of directors (BOD) until spring 2000, and at least four of POSCO's eight outside directors during the POI had direct government or government-related service. Petitioners also point to the Department's verification report of POSCO, which they claim provides further evidence that under procedures in place until March 2000, five of POSCO's eight outside directors were recommended to the board by the top five largest shareholders, with the KDB and the IBK each selecting one director. Petitioners state that the verification report confirmed that two of the eight outside directors are still ex-appointees of government banks. Petitioners maintain that at least four of POSCO's outside directors have had former government experience, and, during the POI, half of POSCO's outside directors had government ties. In addition, petitioners assert that the appointment of POSCO's current top management is a direct result of the GOK's continued control of the company.

Respondents rebut petitioners' argument that POSCO is controlled by the GOK. Respondents state that the limited evidence provided by petitioners is not sufficient to find a direct subsidy, which requires a demonstration that POSCO is a public entity. Respondents

argue that under the Statement of Administrative Action (“SAA”), a direct subsidy can only be provided by the government itself or a public entity or public body. Respondents maintain that the fact that the IBK, the KDB, and the NPC held a small percentage of POSCO’s shares during the POI does not prove that POSCO was a government-controlled company. Namely, respondents argue that the Department verified that the IBK has no incentive to use its ownership interest to direct or influence POSCO to sell HRC at artificially low prices since the IBK would suffer from any decision that negatively affected POSCO and its share price. Regarding the KDB’s ownership interest in POSCO, respondents maintain that these shares were originally to be sold by the end of 1999 as part of POSCO’s privatization, but due to poor equity market conditions in Korea, this target date was not met until September 29, 2000. While the KDB was still holding shares of POSCO during the POI, respondents assert that the KDB was a passive investor waiting for a financially beneficial time to sell its shares of POSCO. Respondents further argue that the NPC is administered by the Ministry of Health and Welfare, who uses a committee to make investment decisions for the Pension Fund, and there is no evidence that the GOK controls this committee or directs it to make decisions.

Moreover, respondents argue that the Department verified that POSCO’s designation as a “public company” and the restrictions on voting rights were both removed during the POI. Respondents maintain that any restrictions on an individual shareholder’s voting rights or ownership in POSCO were removed as of September 26, 2000, and the fact that POSCO’s Articles of Incorporation were not amended until the next general meeting of shareholders is irrelevant as a matter of law. The removal of legal restriction, not the formality of amending POSCO’s Articles of Incorporation, is what matters, argue respondents. In addition, respondents assert that even if the KBAI did “regulate” POSCO during part of the POI by virtue of its ability to audit POSCO, petitioners have pointed to no specific evidence that demonstrates that POSCO was subject to such supervision after the removal of POSCO designation as a public company.

Respondents further rebut petitioners’ arguments that the GOK continued to exercise control over the leadership of POSCO during the POI. Respondents state that the GOK has no direct involvement in appointing POSCO’s leadership and that only two outside members of POSCO’s BOD were appointed by GOK-owned entities. Respondents state that during the POI none of POSCO’s standing directors were former government officials or employees. Regarding outside directors, respondents assert that only two of the eight are former government officials or employees, not four, as petitioners state. Additionally, respondents argue that these officials’ government service ended 33 years and 9 years ago. Regarding the other two outside directors that petitioners allude to, respondents argue that they were not government employees or officials but were instead unpaid outside consultants on various government commissions and committees. Respondents maintain that petitioners have offered no evidence that all of POSCO’s shareholders are controlled by the GOK and that they voted in accordance with GOK policy.

Petitioners maintain that even if POSCO were fully privatized, the GOK continues to entrust or direct the company to provide a financial contribution. Petitioners cite to the

Department's recently completed administrative review of 1999 Sheet and Strip,² in which the Department found that there was insufficient evidence on the record to conclude that the GOK has not directed POSCO to make a financial contribution. Petitioners further argue that although the GOK states that its dual pricing policy was terminated in 1999, record evidence demonstrates that the scheme to provide preferentially-priced inputs to exporters remains in place through the use of preferential credit terms. Petitioners assert that, as the Department found in 1999 Sheet and Strip, the distinction between the dual pricing system and the favorable credit system which replaced it has no bearing on whether the GOK, through POSCO, sold inputs for less than adequate remuneration. Petitioners maintain that in the spring of 1999, before POSCO's privatization, the dual pricing system was terminated and immediately replaced with the use of letters of credit that provided favorable financing terms. Therefore, petitioners conclude, the GOK, through its ownership and control of POSCO, set prices of steel inputs for sale to Korean steel producers at less than adequate remuneration.

Respondents rebut petitioners' assertions that the GOK has entrusted or directed POSCO. First, respondents argue that petitioners can point to no specific evidence that supports its claim that GOK exercised any control over POSCO nor any evidence of a causal nexus between the program and the benefit. Furthermore, respondents argue that petitioners' reference to Sheet and Strip fails to provide persuasive evidence, as that decision was based on evidence from a previous period of review, POSCO was not a respondent in that review, and no verification was conducted. Furthermore, respondents argue that even assuming *arguendo* that POSCO were providing discounts to its competition using a favorable credit system, this alone does not constitute an indirect subsidy or any subsidy. Without any evidence that the GOK entrusted or directed POSCO to sell HRC at artificially low prices, petitioners' indirect subsidy claim fails, according to respondents.

Respondents argue that the Department can no longer rely upon the GOK's minor ownership of POSCO as support for its determination that the GOK controlled and set POSCO's prices of HRC at less than adequate remuneration. Respondents maintain that the GOK's ownership of POSCO was greatly reduced during the POI, and the GOK is no longer the single largest shareholder. Respondents assert that by the end of the POI, the IBK's ownership of POSCO was reduced to 4.12 percent. All of these shares are common shares with normal voting rights which are held by the IBK. Respondents point out that the single largest block of POSCO's shares consist of American Depository Receipts (ADRs), which trade on the New York Stock Exchange. Additionally, respondents quote to the Department's verification report with private parties, reiterating that the Department learned at verification that the IBK most likely is not influencing POSCO's pricing policy because it lacks any incentive to direct POSCO's pricing policy of HRC or other products and it wants POSCO to be profitable. Furthermore, respondents affirm that the KDB, previously POSCO's largest shareholder and the basis for finding GOK ownership and control, held no shares at the end of 2000.

² See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review, 67 FR 8229 (February 22, 2002) (1999 Sheet and Strip) and the accompanying Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea (January 8, 2002).

Petitioners rebut respondents' claim, arguing that it is undisputed that GOK-controlled entities held a substantial stake in POSCO throughout the POI. Petitioners maintain that regardless of whether GOK-owned banks had reduced their holdings or the GOK was the single largest shareholder, a reduced or second-largest stake can still afford effective control, as the Department found in 1999 Sheet and Strip. Moreover, petitioners argue that ADRs do not constitute a single stake, as they are held by numerous investors. Petitioners assert that the question is not who else owns a stake in POSCO, but what the GOK owns and what other means it has to influence POSCO's behavior. Petitioners point to a report by Merrill Lynch that was placed on the record and that reveals the potential for government influence over POSCO's affairs. Furthermore, petitioners rebut respondents' argument that the GOK has no incentive to exert influence over POSCO through the IBK because it wants POSCO to be profitable, stating that the desire for POSCO to be profitable has never been an impediment to the GOK using POSCO to bestow subsidies.

Respondents assert that POSCO's designation as a "public company" has been mischaracterized by petitioners and the Department. Respondents cite to AK Steel v United States, 192 F. 3d 1367 (CAFC 1999), arguing that the Court of Appeals for the Federal Circuit noted that the fact that a company is designated as a public company does not in itself provide the GOK with control over the business decisions of the company. Respondents maintain that on September 26, 2000, the Minister of the MOFE removed POSCO's designation as a "public company" and simultaneously revoked the restriction that no individual shareholder other than the GOK could exercise voting rights in excess of three percent of the company's common shares. Respondents conclude that any restrictions placed on an individual shareholder's voting rights or ownership in POSCO were removed as of POSCO's privatization, and, therefore, the Department can no longer rely upon these restrictions as support for its finding that the GOK controlled POSCO and used this control to set POSCO's prices for HRC at less than adequate remuneration.

Petitioners rebut respondents' argument, stating that although the official designation was lifted in 2000, the legal consequences associated with it, including statutory restrictions on voting rights for POSCO's shareholders and GOK involvement in POSCO's decision making, continued through the POI. Petitioners maintain that stock voting restrictions existed for all or most of the POI. Moreover, petitioners argue that respondents have the burden to demonstrate that the lifting of the public company designation rendered stock voting restrictions null and void and they have not done so. Petitioners maintain that the verified evidence illustrates that voting restrictions remained in place during the POI. Additionally, petitioners argue that respondents' citation to AK Steel is misplaced. Petitioners argue that the court said nothing about the connection between public company and government control. Moreover, they maintain that by the same reasoning made by respondents, the removal of the public company designation did not reduce or eliminate government control.

Respondents assert that the Department can no longer rely on the obsolete fact that POSCO's chairman and BOD were appointed by the GOK. Specifically, respondents state that beginning in March 1999, POSCO revised its Articles of Incorporation to establish new procedures for selecting members of its BOD and to assure the independence and transparency of the selection process. These new procedures included reducing its standing directors from nine to seven and outside directors from ten to eight. In addition, at the General Meeting of

Shareholders on March 17, 2000, two outside directors who were former government employees resigned. Respondents maintain that the composition of the BOD during the POI is a result of these new procedures. Respondents assert that none of POSCO's standing directors are either current or former government employees. Moreover, only two of the eight directors have any prior government affiliation. Additionally, respondents point out that since the POI, no directors have been appointed by the GOK or the KDB. Respondents further state that the Department confirmed at verification that apart from one outside director who did some consulting work with MOFE and one who formerly worked with MOCIE, none of the other BOD members had any government affiliation listed on their resumes. In sum, respondents argue that POSCO's BOD was independent and free of GOK influence during the POI.

Petitioners rebut respondents' claim that the GOK did not influence POSCO's leadership during the POI. Petitioners argue that respondents have provided no evidence that would alter the Department's finding in CTL Plate and Sheet and Strip that the President of Korea selected the chairman of POSCO. Petitioners state that the Presidentially-selected chairman served throughout the POI and continues to hold his post. Petitioners argue that the new procedures by which future leaders of POSCO are to be appointed by resolution of the BOD has no bearing on what occurred during the POI. Additionally, petitioners assert that these new selection procedures have not freed POSCO or its BOD from the GOK's control.

Respondents argue that POSCO's pricing is not influenced by the GOK. In fact, respondents contend that the Department has pointed to no evidence on the record that the GOK actually exercised control to force POSCO to sell HRC to Dongbu for less than adequate remuneration. On the contrary, respondents argue that the record indicates that POSCO's hot-rolled pricing decisions are made based on ordinary commercial considerations. As evidence, respondents point to POSCO's new single pricing system, which replaced the two-tiered pricing system, whereby POSCO establishes its domestic prices based on its own judgement of market conditions, including import competition. POSCO revises its HRC prices quarterly, based upon market conditions, through quantity discounts, market discounts, import competition prices, and payment terms. In addition, respondents point to the fact, verified by the Department, that POSCO is being investigated by the Korean Fair Trade Commission (KFTC) for refusing to increase supplies of HRC to HYSKO, as further evidence that POSCO's pricing is not influenced by the GOK. Finally, respondents assert that the Department's meetings with private parties in Korea further support a finding that POSCO is a private company that sets its prices based on ordinary commercial considerations.

Petitioners rebut these arguments, stating that to the extent that POSCO remains in effect a government seller of inputs, the only remaining question is whether the price charged is equal to or greater than the applicable benchmark price. They assert that to the extent that the Department relies on an 'entrusts or directs' analysis, the burden rests on respondents to prove that the difference between the price charged and the adequate remuneration price is exclusively due to factors other than government influence. That POSCO takes other factors, such as market conditions, into account in its pricing decisions does not demonstrate an absence of GOK intervention, argue petitioners. Additionally, petitioners argue that the Department's discussions with private parties cannot be considered as verified information. Furthermore, petitioners argue that the KFTC investigation does not support respondents' claim that the GOK asserts no control over POSCO. Petitioners assert that the product at issue in the KFTC investigation is a

specialized type of HRC that would not be exported in large quantities. Petitioners contend that the GOK influencing POSCO directly in the current situation while taking a more indirect approach (i.e., a KFTC investigation) to deal with an internal problem (i.e., POSCO's sales of HRC to HYSCO) is consistent with the GOK's past efforts to benefit POSCO's exporting customers.

Finally, respondents assert that even if the Department finds a subsidy from Dongbu's purchase of HRC inputs from POSCO, it should conclude that the subsidy ended with the completion of POSCO's privatization in October 2000. Without the means to influence POSCO, either through selected representatives on POSCO's BOD or through the exercise of voting rights as shareholder, the GOK cannot direct POSCO to provide inputs to its customers for less than adequate remuneration, argue respondents. Therefore, respondents maintain, the Department must find that any subsidy ended by October 2000 and must calculate Dongbu's cash deposit rate on any future entries by deducting the subsidy found with respect to this program during the POI.

The Department's Position

In Sheet and Strip, the Department first determined that the actions of POSCO should be considered the actions of the GOK because it was a government-controlled company during 1997. See 64 FR 30642. We reaffirmed this decision in CTL Plate for 1998 and 1999 Sheet and Strip for 1999. As such, we found that POSCO's sales of inputs to Korean steel producers constituted a subsidy because these sales were made for less than adequate remuneration. In Sheet and Strip, the Department based its decision on six main factors: (1) GOK as largest shareholder, (2) law restricting voting rights for public companies, (3) restriction in POSCO's Articles of Incorporation of voting rights for individual shareholders, (4) POSCO's designation as a public company, (5) appointment of POSCO's Chairman by the President of Korea, and (6) half of POSCO's outside directors were appointed by the GOK and KDB.

In the instant investigation, record evidence demonstrates that many of the factors cited above have changed in whole or in part. First, in 1997, the GOK owned 33 percent of POSCO's shares and was the largest shareholder; by 1999, and through the beginning of 2000, the GOK reduced its shares to 15 percent. It further reduced its shares to 4.12 percent by October 2000, and by March 2001, it held 3.02 percent of POSCO's shares. By March 2001, shortly after the POI, the GOK was no longer the largest shareholder; however, it remained the largest shareholder during the POI.

Second, on September 26, 2000, the GOK removed POSCO's "public company" designation and thus terminated the provision of the law which restricted the voting rights for any individual shareholder to exceed 3 percent of POSCO's common shares. While the GOK eliminated the law which restricted POSCO's voting rights, POSCO did not remove the clause mirroring this restriction from its Articles of Incorporation until March 2001, at the annual shareholder's meeting, held outside of the POI. The Department notes that in the POI addressed in Sheet and Strip, the President of Korea appointed POSCO's Chairman, and that he remained the chairman throughout the present POI. He was subsequently appointed by the shareholders as a whole, rather than the GOK, at the shareholders meeting in March 2001. As for the last factor that the Department earlier relied upon as evidence of the GOK's control of POSCO, half of the outside directors being appointed by the GOK, in the current POI the number of outside directors

was reduced from four to two. Also, the voting process was revised so that large government-controlled shareholders could no longer automatically appoint a director.

While we recognize that both the GOK and POSCO have made substantial changes to the ownership, voting rights and board membership, the Department is not convinced that during the POI, POSCO acted on its own volition and was not government-controlled. While the GOK reduced its shares from 15 percent to 4 percent during the POI, it was still the largest shareholder and the primary reduction in shareholding came only in October 2000 near the end of the POI. In addition, throughout the POI and until March 2001, POSCO's Articles of Incorporation included the individual shareholders' voting rights restriction set forth by the GOK. Also, the Chairman presiding over POSCO throughout the POI was appointed by the GOK. Therefore, we disagree with respondents' argument that during the POI, POSCO acted entirely without GOK direction.

Respondents also argued that there is no evidence that the GOK is directing POSCO to sell inputs of HRC to other steel companies for less than adequate remuneration. They argue that, not only do petitioners not make a convincing argument, there is no evidence on the record supporting the finding of GOK-control or even a causal nexus for an indirect subsidy. Respondents argue that POSCO's pricing decisions are based on "ordinary" commercial considerations, including market conditions such as import competition. They cite to the June 26, 2002, Memorandum to Melissa G. Skinner, Director: Meeting with Private Parties regarding the Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Korea and Second Administrative Review of Stainless Steel Sheet and Strip from Korea (Private Meetings Verification Report), where an analyst stated that, "POSCO used to provide HRC at a low price, now they do not." The analyst further stated that POSCO's prices are now related to the international market price. Respondents also cite to an antitrust case between POSCO and the GOK. The GOK investigated POSCO under the antitrust law for not selling high-quality HRC to HYSCO, a competitor of POSCO, for downstream cold-rolled products. In the antitrust case, the GOK argued that POSCO is abusing its dominant position in the market by not selling to HYSCO. The Korean Fair Trade Commission (KFTC) recently ruled in favor of the GOK, and imposed fines. POSCO has signaled its intent to appeal. Respondents argue that if the GOK controlled POSCO, then POSCO would have sold to HYSCO and the GOK would not have to sue under its antitrust law to get POSCO to sell to HYSCO. We disagree with respondents' argument that by POSCO taking into account market conditions, such as import competition, in its pricing decision, it demonstrates that the GOK does not direct or control POSCO. While POSCO may take into consideration certain market conditions, petitioners argue that respondents must prove that the difference between the price charged and the adequate remuneration price is exclusively due to factors other than government influence. We agree with petitioners that POSCO's taking into account market considerations does not, by itself, demonstrate an absence of GOK control. We also disagree with respondents' claim that POSCO's antitrust case positively affirms POSCO's privatization. We find that this argument is not a definitive factor demonstrating that the GOK does not control or direct POSCO. For instance, one could equally conclude that POSCO has taken a benign approach to its monopolistic position in the HRC market, unless it meets competition with a downstream competitor, where it takes advantage of its monopolistic position and refuses to sell to the competitor. Likewise, there may be legal or other reasons why the KFTC, as one arm of the government, would need to respond to a complaint regarding price or market dominance behavior, and these are not evidence of a lack of

control otherwise of POSCO. The argument that if the GOK was controlling POSCO it would not take up an antitrust case is not a persuasive indication that POSCO is not being controlled by the GOK.

We recognize that substantial changes have occurred since our 1999 Sheet and Strip determination, including notable developments in the period following the POI. However, the record of the period subject to this investigation, 2000, shows continued GOK control over POSCO for the entire period. This is particularly the case given that the GOK retained a substantial shareholding until late in the POI and that some other aspects of government control were not revised until after the POI. It is on the basis of these facts that we must make our determination. Accordingly, we find that POSCO continued to be controlled by the GOK during the entire POI.

Comment 2: *POSCO's Provision of Hot-rolled Coil at Less than Adequate Remuneration*

In addition to constituting a financial contribution, petitioners argue that the provision of HRC at less than adequate remuneration confers a benefit that is specific. Petitioners assert that this program constitutes an automatically specific export subsidy under 19 U.S.C. 1677(5A)(B) because cold-rolled producers pay POSCO less for HRC inputs if the finished product is exported. Specifically, petitioners maintain that the evidence demonstrates that purchasers who export a finished good incorporating POSCO's HRC pay less than purchasers whose finished product is sold domestically. Therefore, petitioners argue this constitutes an export subsidy and urge the Department to allocate the benefit solely to exports, as it did in CTL Plate. Furthermore, petitioners advocate that, when comparing the subsidized prices to the benchmark prices, the Department ensure that the terms of delivery used in the benchmark match the subsidized prices. Petitioners maintain that when imports are used as the benchmark, as in the instant case, the Department's methodology is to use the subject company's actual cost of imports for comparison purposes. Thus, petitioners argue, the benchmark includes all delivery charges and import duties. Petitioners maintain that although section 771(5)(E)(iv) of the Act dictates the use of delivered prices as the basis of comparison, the Department failed to follow this requirement of parallelism in its Preliminary Determination because it compared f.o.b. prices of imports with delivered prices for purchases from POSCO.

Respondents rebut petitioners' statements, arguing that should the Department continue to find this program countervailable, the correct denominator for measuring the benefit is sales of all products made with HRC. Respondents state that petitioners have provided no evidence that would support the finding that this program constitutes an export subsidy. Moreover, respondents point out that in CTL Plate, POSCO was still employing a two-tiered domestic pricing scheme and the Department found an export subsidy with respect to local export prices and compared purchases from POSCO at the local export price to prices of imports.

Respondents maintain that in the Preliminary Determination, the Department changed its analysis to reflect POSCO's elimination of its two-tiered pricing policy and treated this program as a domestic subsidy, comparing all purchases of HRC from POSCO to imports of HRC. Therefore, argue respondents, the appropriate denominator is all sales of products made from HRC, not exports of subject merchandise. In addition, respondents argue that petitioners do not explain how the fact that POSCO has different payment terms for domestic and local export

purchases results in a benefit or an export subsidy. According to respondents, a closer look at the alleged discount that exporters receive in the form of favorable payment terms fails to reveal how purchasers at the local export price have the more favorable payment terms.

Respondents also rebut petitioners' contention that the Department failed to use comparable prices when determining if Dongbu's purchases of HRC from POSCO were for less than adequate remuneration. Respondents state that all freight charges incurred in shipping the imported merchandise to Dongbu are included in the total price, and, therefore, the Department's calculations in the Preliminary Determination did follow the requirement of parallelism and compared Dongbu's delivered prices for imports with Dongbu's delivered prices from POSCO.

Respondents argue that, should the Department continue to determine that POSCO is selling HRC for prices at less than adequate remuneration, it must adjust the import prices used as a benchmark for calculating the benefit to Dongbu to account for the impact of Dongbu's receipt of duty drawback. Respondents state that the Department verified that Dongbu received a duty drawback for duties paid on imports of HRC during the POI, and since the Department treated Dongbu's input purchases from POSCO as a domestic subsidy, it must make an adjustment to the monthly average unit prices it calculated for imports to take into account the fact that Dongbu receives duty drawback on a majority of the import duties it pays. Respondents maintain that comparing a duty-inclusive import price to POSCO's domestic price would ignore commercial reality and would have the effect of improperly inflating the amount of the subsidy. Therefore, respondents urge the Department to apply the metric ton duty drawback actually received by Dongbu during the POI and deduct it from the previously-calculated monthly benchmarks to determine the amount of price differential between Dongbu's purchases from POSCO and its import purchases.

In addition, respondents purport that the appropriate sales denominator is all products sold by Dongbu that are produced using HRC since the Department measured the benefit to Dongbu bases on all of its purchases of HRC from POSCO.

Petitioners rebut this argument by respondents, asserting that the Department should tie the benefit to all exports of cold-rolled steel. Petitioners maintain that in the Preliminary Determination, the Department stated that it intended to continue to find this program tied to subject merchandise; however, it did not do so. Petitioners argue that record evidence supports tying the benefit to exports, as was done in CTL Plate. Petitioners argue that there is no basis for allocating the subsidy to products other than cold-rolled steel. They assert that the Department cannot assume that Dongbu internally transferred the subsidized cold-rolled products at below market value, thereby passing a portion of the benefit to other downstream flat-rolled products. Therefore, petitioners assert that the denominator must be restricted to coll-rolled products if it is not restricted to exports.

The Department's Position

Petitioners are correct in their characterization of CTL Plate, where the Department attributed the benefit found over export sales of subject merchandise. However, in a subsequent case, 1999 Sheet and Strip, the Department found that POSCO removed its two-tier pricing policy and therefore, the Department compared all purchases from POSCO, not just local export purchases. Therefore, the Department determined that it was more appropriate to compare all

purchases of HRC from POSCO to all import purchases of HRC. These purchases were not tied to either subject merchandise or export of subject merchandise, but rather, to all products produced using HRC. We find that the proper denominator for this program is Dongbu's total f.o.b. sales of merchandise using HRC.

In calculating the benefit that Dongbu received from purchasing HRC from POSCO at less than adequate remuneration, section 351.511(a)(iv) of the CVD Regulations directs the Department to compare delivered prices. Petitioners claim that the Department did not do this in the preliminary determination. The Department agrees with respondents that the import prices used to compare purchases of HRC from POSCO included freight charges. Therefore, the Department will continue to calculate the benefit of this program by comparing delivered purchases from POSCO by import purchases inclusive of freight.

Respondents claim that the Department erred in the calculation of this program's subsidy rate for the Preliminary Determination, by not making an adjustment for the duty drawn back for items exported which included the imported HRC. Respondents state that the import prices include duties paid, which duties the company subsequently receives back when it exports.

We agree with respondents. Adjusting for the drawback of import duties is consistent with section 771(5)(E)(iv) of the Act which states that the adequacy of remuneration will be determined in relation to prevailing market conditions which include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. The availability and use of duty drawback in Korea is a condition of sale in Korea. Imports into Korea which are subsequently exported are entitled to duty drawback. We verified that a large portion of the import duties which are paid by Dongbu are drawn back by Dongbu. In calculating a benefit, the goal is to derive net prices paid by Dongbu for both its purchases from POSCO and its import purchases in order to make an appropriate comparison, we therefore find it necessary to apply this adjustment to the import price to account for that portion of the import duties which are refunded (or drawn back).

Comment 3: *Exemption of VAT*

Petitioners state that the Department is required to countervail subsidies discovered in the course of an investigation, and they maintain that transactions of goods under a local letter of credit that were discovered during verification to be exempt from VAT regulations constitute such a new subsidy.

Respondents rebut the contention made by petitioners that transactions of goods under a local letter of credit that are exempt from VAT regulations constitute a new subsidy. Respondents state that since it is well established that the exemption of the VAT on exports is not a subsidy, the exemption of the VAT on exported products manufactured using HRC is not a subsidy.

Department's Position:

Goods in Korea which are sold under a local export letter of credit are exempt from VAT because these goods are destined for export. It is a well established tenet of the countervailing duty law that VAT or sales tax exemptions on exported goods are not countervailable subsidies.

Comment 4: *Direction of Credit*

Petitioners argue that the Department should continue to countervail loans provided to Dongbu, HYSCO, and POSCO, because such loans are inconsistent with commercial considerations. Specifically, petitioners urge the Department to continue to countervail the benefits derived from loans respondents received from domestic, privately-owned Korean banks and GOK-owned banks because such loans are extended on government direction of low-cost credit.

Additionally, petitioners argue that the Department should continue to countervail the benefits arising from direct foreign loans and the issuance of offshore securities by Korean companies. Petitioners maintain that the GOK has failed to demonstrate that it no longer controls access to the loan market and, instead, the record illustrates that the GOK continued to control access to foreign sources of credit during the POI. Petitioners claim that the Foreign Exchange Transaction Act (FETA) does little to liberalize access to foreign loans and the in-advance reporting system provision of the law differs little from the prior approval system that it replaced. Prior approval is still required for certain categories of transactions (*e.g.*, short-term loans with a maturity of less than one year, depending on the credit rating of the borrower), according to petitioners, and even under the in-advance reporting system, the GOK continues to control access to foreign credit sources. Petitioners argue that the GOK admits that a notification and registration process for all direct foreign currency loans and foreign securities continues to exist. Moreover, petitioners declare that the Department's verification report of the GOK confirms that all long-term transactions greater than US \$30 million must be registered prior to the contract taking force and the withdrawal of funds. Petitioners claim that although respondents have characterized the in-advance reporting system as a formality, the new system appears no different from the in-advance reporting system found countervailable in CTL Plate. See 64 FR 73176. In addition, petitioners conclude that the fact that the steel industry's borrowings from commercial banks may have declined is not evidence, as respondents assert, that the GOK is no longer allocating credit.

Respondents rebut this position, arguing that the Department verified that unless the FETA specifically lists the activity as one requiring approval, it is allowed without any GOK approval. Respondents further maintain that since the FETA went into effect in April 1999, there were no direct foreign loans or foreign securities issued that required GOK approval. Moreover, respondents argue that petitioners' reference to certain transactions that still require GOK approval is purely theoretical, ignoring the fact that, in practice, no foreign loans or foreign securities required approval during the POI. Respondents further refute petitioners' statements regarding the notification and registration process, arguing that the GOK went on to state that registration of direct loans or foreign securities does not limit access to such funds. Respondents assert that the only limitation on any company who wishes to obtain direct foreign loans and foreign securities is the company's own business strength and creditworthiness.

Petitioners, in their rebuttal briefs, point to the fact that respondents do not contest the Department's decision to countervail the loans from GOK-owned banks and private Korean banks as evidence that respondents implicitly accept the underlying findings of directed credit. Petitioners argue that the facts leading to earlier findings of GOK control have not changed, and respondents have not demonstrated that the GOK no longer controls access to the foreign loan market. Petitioners note that in the Preliminary Determination, the Department stated that the new legislation, while it shows that the GOK is making strides, was not sufficient to warrant a reconsideration of the direction of credit determination at that time. Petitioners maintain that respondents have not provided evidence sufficient to overcome the Department's prior findings.

Department's Position:

In the Preliminary Determination, we stated that at verification we would closely examine access to direct foreign loans (*i.e.*, loans from offshore banks) and the issuance of offshore foreign securities by Korean companies with respect to the 2000 period. At verification, we reviewed the FETA and learned that when the FETA became effective in April 1999, the main change governing foreign exchange transactions was the adoption of a negative system, whereby companies can access foreign sources of funds unless certain limited restrictions apply. Under the old positive approval system, a company could not obtain direct foreign loans or issue foreign securities without obtaining GOK approval (*see* June 26, 2002, Memorandum to Melissa G. Skinner, Director: Verification Report for the Government of Korea (GOK) and the Korea New Iron & Steel Technology Research Association (KNISTRA) in the Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Korea at page 1 (GOK Verification Report at 1). Moreover, all long-term transactions under \$30 million can be handled directly with a foreign exchange bank, while long-term transactions greater than \$30 million must be registered with, although not approved by, MOFE (*Id.*).

We disagree with petitioners' contention that the GOK continues to control access to foreign sources of credit. We do find that the new system under the FETA differs significantly from the approval system found countervailable in prior cases, including CTL Plate. In CTL Plate, we found that under the old law, access to direct foreign loans still required the approval of the MOFE (*see* 64 FR 73176 at 73179). Evidence collected at verification of the instant investigation reveals that this type of system is no longer in place. Regarding petitioners' comments about the notification and registration process, we do not find this system evidence of government control; rather, it is common practice for any Central Bank to be notified of large foreign currency transactions. More importantly, we verified the fact that the approval system has been terminated. With the change in the law, companies now merely notify the government that they are issuing offshore foreign securities or borrowing funds from offshore banks. We also verified that these notifications are automatically registered by the government without government approval. Therefore, due to the change in legislation, we determine that access to direct foreign loans (*i.e.*, loans from offshore banks) and the issuance of offshore foreign securities by Korean companies is no longer controlled or directed by the GOK and no longer countervailable.

Although, we learned that some short-term (*i.e.*, less than one year) transactions still require prior approval from MOFE, petitioners' comments on the approval of short-term loans is

not germane to this issue. This is because the program in question is the government's direction of long-term credit. MOFE officials stated that they still require approval on these short-term loans because it was these types of short-term loans used by Korean companies to finance capital investment which helped to trigger the 1997 financial crisis.

Comment 5: Tax Programs

Petitioners argue that the Department should continue to countervail the benefits received by respondents under investment tax credits, RSTA Articles 24 and 25. Petitioners state that the benefit is the reduction in taxes payable and should be calculated based on the entire tax credit claimed for the POI. Furthermore, petitioners maintain that the calculation should fully reflect POSCO's revised data submitted on April 4, 2002. In addition, petitioners assert that the Department failed to countervail the entire amount of tax credits claimed under RSTA Articles 11 (Investments in Equipment to Develop Technology and Manpower) and 24 (Investments in Productivity Increasing Facilities) for POSCO and Dongbu, and 25 (Investments in Specific Facilities) for POSCO after the removal of the import substitution eligibility criterion in April 1998. Petitioners argue that the removal of the import substitution eligibility criterion does not necessarily eliminate the specificity of the subsidy under RSTA Article 25, and demonstrating that the legal eligibility for the tax reserve article has changed is not adequate to show non-specificity. Additionally, petitioners state that respondents have provided no evidence of the actual distribution of benefits for any of the tax articles. Therefore, petitioners maintain, given respondents' refusal to provide this data, the Department must resort to facts otherwise available and continue to find these benefits specific.

Respondents counter that the Department verified that for RSTA Articles 11, 24, 25, and 26, the GOK had eliminated the differential tax treatment between foreign and domestic goods effective April 10, 1998, thereby eliminating prohibited subsidies and making the programs consistent with WTO requirements. Respondents assert that the amount of the countervailable subsidy found by the Department was only for those additional tax credits that were earned as a result of the differential between the rates of tax credit on domestic and foreign goods (*i.e.*, the import substitution element), not the entire tax credit. Respondents point out that the basis for the Department's finding that only the amount of tax credit earned as a result of the import substitution element of these programs was countervailable was that the tax credit programs were otherwise non-specific. Respondents indicate that the Department determined in CTL Plate that these benefits were non-specific, and note that petitioners have provided no new evidence in this investigation to suggest that tax credits earned by companies under these RSTA articles can result in a specific benefit when the tax credits did not result from the differential in tax credit rates between domestic and foreign goods.

Furthermore, petitioners assert that the Department must countervail respondents' use of tax reserves. Petitioners state that while TERCL Articles 16 (Reserve for Export Loss) and 17 (Reserve for Overseas Market Development) have been repealed as of April 1998, companies may still carry forward benefits under these articles. Thus, petitioners maintain that the Department must continue to countervail these articles. Moreover, with respect to RSTA Article 9 (Technical Development Reserve Fund), petitioners argue that the Department erred by not countervailing Dongbu's benefits in the Preliminary Determination. Petitioners state that the

Department assumed that Dongbu had not used this program because the company contributed during the POI to its reserve account only at a three percent rate rather than at the higher five percent rate available to firms in the capital goods sector. Petitioners argue that this was a mistake because while Dongbu's tax documents show that its 1999 additions to this reserve account may have been based on the three percent rate, Dongbu's tax documents and other information on the record do not support this conclusion. In addition, petitioners assert that the benefits from using this reserve at the three percent rate would still be countervailable unless verified by the Department to be de facto non-specific. Petitioners assert that because the Department asked the GOK to provide data, by industry and region, on companies who have benefitted from each RSTA article and the GOK stated that such data is not compiled in a database, the Department must apply the facts available. The facts available, according to petitioners, are that the benefits to Dongbu are specific, as previously found in CTL Plate.

Respondents rebut this position, arguing that Dongbu made no additions to its Technical Development Reserve Fund under RSTA Article 9 during the POI; it only reversed back to income the scheduled portions of prior year contributions to this reserve. Respondents are clear that in filing its tax return, Dongbu identified that it contributed to the reserve at the 3 percent rate, leaving no room for petitioners' claim that in prior years Dongbu may have contributed at a higher rate because the form itself addressed only contributions made in those prior years and unambiguously stated the applicable tax rate. Additionally, respondents assert that, as the Department found in CTL Plate, petitioners have provided no additional evidence or information that would alter the finding that this program is non-specific.

Petitioners further argue that HYSCO, which claims it did not benefit from the tax reserve articles during the POI because it was in a tax loss situation in 1999, effectively received a complete tax exemption resulting from its emptying of reserve accounts in the net loss year. Petitioners contend that in tax year 1999, because it was facing a net loss financial position, HYSCO returned its entire remaining balance, accumulated during the years prior to 1999, from the reserve accounts to an income account. Instead of triggering an income tax liability, however, HYSCO paid no tax on the amounts reverted because the company's overall net loss in 1999 was greater than the amount reverted to the income accounts. Therefore, petitioners conclude, HYSCO was able not only to defer tax payments but to avoid taxation altogether on income that was earned in profitable years. Petitioners state that when measuring benefits associated with tax reserve programs, the Department has traditionally relied on the methodology it used in Cooking Ware,³ in which the Department treated the benefits arising from the use of tax reserves as interest-free short-term loans because they provide a deferral of direct taxes. Petitioners state that since 19 CFR §351.509 does not provide specific guidelines relating to a tax benefit that arises in a tax loss year, the Department must countervail the difference between the actual taxes paid and the taxes paid under normal circumstances. Under normal circumstances (i.e., absent the tax program), argue petitioners, HYSCO would have paid taxes on the income regardless of when it was reverted and would have paid its 1999 year-end outstanding corporate taxes associated with the reserve programs in 2000. In the case of HYSCO, petitioners assert, where a tax exemption is conferred, the Department should countervail the entire amount of tax

³ See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from the Republic of Korea, 51 FR 42867 (November 26, 1986) (Cooking Ware).

liability that is returned to an income account during the POI. Thus, this would effectively amount to treating the amount of the deferred and then exempted tax as loan forgiveness, argue petitioners.

Respondents counter that there was no revenue forgone by the government with respect to HYSCO's use of RSTA Article 9 and TERCL Article 16 tax reserves during the POI because, regardless of its use of the programs, HYSCO had no income tax liability in fiscal year 1999. Respondents assert that HYSCO did nothing more than what was required under the law concerning these programs when it reverted the remaining tax reserves to income in fiscal year 1999. Moreover, respondents explain that HYSCO will not be able to avoid taxation altogether on income earned in profitable years, as petitioners allege. Instead, respondents declare, by including as income in fiscal year 1999 the amounts of the reserves reverted to income, HYSCO reduced its net tax loss for fiscal year 1999 and thus reduced the amount of tax loss carried forward for future years. Therefore, at a future date, HYSCO's tax liability will be higher as a result of the lowering of its tax loss for fiscal year 1999. Regarding HYSCO's use of RSTA Article 9, respondents refute petitioners' claim that there is a countervailable subsidy to HYSCO, arguing that there is no evidence on the record to indicate that HYSCO accrued its reserve at the 5 percent rate, and even if it did, the only benefit would be from that portion of the reserve that was accrued above the 3 percent rate.

Department's Position:

The Department agrees with petitioners that for the final calculations the Department will use revised data, either submitted after the original questionnaire response or collected during verification. The Department disagrees with petitioners' allegation that it did not properly calculate Dongbu and POSCO's benefits received under RSTA Articles 11, 24, and 25. We disagree with petitioners' argument that the removal of the import substitution criterion in April 1998 does not eliminate the specificity of these credits. In fact, the Department finds that the change of law eliminating the import substitution criterion makes this program no longer specific. The Department continues to find that any credits received prior to April 1998 and at a rate that differentiates between domestically-produced facilities and foreign facilities is still countervailable. Therefore, for the final determination the Department will countervail the difference between tax credits received under the import substitution scheme.

We agree with petitioners that under tax reserves articles 16 and 17, any outstanding balance is specific under section 771(5A)(A) of the Act. We disagree with their assertion that we erred in the Preliminary Determination by not countervailing RSTA article 9 for Dongbu. In CTL Plate, we determined that RSTA 9, former TERCL article 8, was specific as the capital goods industry was able to claim a higher rate than other industries. See 64 FR 73192. However, record evidence demonstrates that Dongbu did not claim the reserve at the capital goods industry rate, therefore, the Department continues to find that Dongbu did not use this program.

The Department disagrees with respondents' assertion that HYSCO did not receive a benefit under RSTA article 9 and TERCL article 16. We invited parties to comment on the methodology applied to calculate a benefit for tax reserves. The tax reserves allow a company to defer certain amounts of tax liabilities until a future date. The Department continues to find that

this methodology is appropriate. However, when a company is at a tax loss and is able to return to taxable income part of the reserve amount, and does not pay taxes on it, that company is receiving a tax exemption. Therefore, as noted earlier, we found that HYSCO received a countervailable subsidy by being exempt from paying taxes on the amount that it reversed to taxable income for the tax year covered during the POI.

Comment 6: *Research and Development (R&D) Subsidies*

Petitioners explain that in CTL Plate, the Department countervailed R&D subsidies provided through KNISTRA. Petitioners assert that the Department should continue to countervail these subsidies, as it did in the Preliminary Determination, and must ensure that its final calculation includes all KNISTRA-related projects discovered during the instant investigation.

In addition, petitioners urge the Department to apply facts available to countervail the benefits respondents received from other R&D subsidies beyond those countervailed in CTL Plate. Petitioners state that, to the extent that respondents benefitted from R&D programs beyond those CTL Plate, the Department is fully justified in finding these benefits specific based on facts available, since the GOK did not provide the requested data. For example, petitioners state that although the evidence demonstrates that POSCO participated in an array of government-sponsored R&D projects, underwritten by various government agencies including MOCIE, MOST, MOE, and MOCAT, the GOK failed to disclose these programs and POSCO provided partial information. Petitioners argue that many of the programs are steel specific and must be countervailed at the final.

Respondents rebut petitioners' suggestion that the Department countervail unreported R&D subsidies on a facts available basis. Respondents assert that the R&D projects discussed at verification were listed in respondents' questionnaire responses. Regarding the Coal-based Smelting Reduction Technology Development Project, also known as FINEX, respondents maintain that the Department examined this program at verification and found that there were no government contributions to this project during the POI. In addition, respondents maintain that the Department verified each company's R&D projects and accounts, as well as the government agencies that provided the benefits, and found no discrepancies in their responses. Respondents further argue that the Department fully verified all of POSCO's government-supported R&D projects and found no unreported benefits or discrepancies in POSCO's responses. Regarding this program that petitioners argue POSCO did not report, respondents argue that it was reported in CTL Plate and the reason no benefit was reported during the POI was that the GOK's contributions ended before the POI. Furthermore, respondents assert that the Department examined R&D assistance to POSCO from years prior to the POI to determine whether any grants should be allocated over time (including FINEX) and found that due to their small size, these grants should be expensed in the year of receipt.

Department's Position:

At verification, we examined all R&D assistance POSCO received, specifically from MOCIE, MOST, MOE, and MOCAT and the FINEX project (see POSCO Verification Report at

3-4). We verified that all support received from those agencies was reported by respondents (see GOK Verification Report at 8-9). We found no discrepancies. We also verified that grants provided in support of the FINEX project were all received before the POI and would have been expensed in the year of receipt (see POSCO Verification Report at 4). Therefore, we determine that we have countervailed all outstanding R&D assistance received by POSCO as well as the other respondents.

Comment 7: *The GOK's Provision of Infrastructure at Kwangyang Bay*

Petitioners state that, in Certain Steel Products, the Department found that the GOK provided countervailable infrastructure subsidies at Kwangyang Bay that benefitted POSCO. Petitioners assert that since respondents have not provided any new evidence or information, these subsidies should continue to be countervailed using the previously calculated benefit stream. Additionally, petitioners argue the GOK continued to provide countervailable infrastructure subsidies at Kwangyang Bay from 1991 to the present, including in 1997 the construction of a new port that involved a government financial contribution in the form of a direct transfer of funds. Petitioners point out that in Certain Steel Products and CTL Plate, the Department treated the GOK infrastructure expenditures at Kwangyang Bay as non-recurring grants to POSCO and applied its standard grant methodology. Petitioners maintain that the Department should continue to apply the same methodology in the instant investigation and countervail the GOK's construction outlays for Phase 2 (1995-2003) at Kwangyang Bay. Petitioners maintain that the benefit associated with the infrastructure is specific because it is limited to, or at least disproportionately enjoyed by, the steel sector. Petitioners state that this is evident because the steel industry is one of only a few industries with operations at Kwangyang Bay and the Department has previously determined that the steel industry is the enterprise around which the rest of Kwangyang Bay was built.

Respondents agree with petitioners observation that the GOK has made substantial investments at Kwangyang Bay; however, they disagree with petitioners' claim that POSCO uses or benefits from the container port. Respondents note that while POSCO is located in the general area, there is a physical separation between the new container port and the port facilities used by POSCO. They point to a map that was collected at verification to demonstrate that there is a physical separation between the port facilities found countervailable and the new container port facilities. (See GOK Verification Exhibit 6). Respondents argue that there is no basis for the Department to conclude that POSCO received any benefit from the GOK's container project at Kwangyang Bay. Therefore, the Department should not follow petitioners' recommendation of finding the GOK's investments as being directed towards POSCO.

Department's Position:

The Department finds that no new information has been presented during this investigation to warrant a change in the previous determination that POSCO received a benefit from the GOK's infrastructure subsidies at Kwangyang Bay until 1991. Therefore, the Department continues to find this program countervailable. However, the Department disagrees with petitioners' allegation that POSCO received a benefit from the GOK's construction of

container ports at Kwangyang Bay. In Plate in Coils, we verified and determined that neither steel inputs nor steel products are shipped through the container terminal at Kwangyang Bay. We found that the GOK's expenditures at the container terminal did not provide a benefit to POSCO. See Plate in Coils at 15536. Based on the Plate in Coils finding and no new information on the record, we determine that the GOK's additional expenditures for the container terminal provided during the POI do not confer a benefit to POSCO.

Comment 8: *The GOK's Provision of Infrastructure at Asan Bay*

Petitioners assert that the Department must countervail infrastructure subsidies at Asan Bay. These subsidies, according to petitioners, include outlays at Asan Bay for the development of roads, berths, and estate development, and GOK commitments to expand the seaport at Asan Bay prior to 1995 and to support infrastructure projects related to the Tangjin ironworks, including money for roads, industrial water facilities, distribution depots, and electric power stations. Petitioners assert that the infrastructure assistance at Asan Bay confers a benefit on producers of cold-rolled steel, specifically Dongbu. Petitioners argue that the Department erred in its Preliminary Determination when it stated that the cost of road construction is included in the purchase price of the land. Petitioners argue that the infrastructure subsidies at issue are wholly distinct from the provision of land at less than adequate remuneration. Petitioners claim that the Department cannot collapse these subsidies or treat the purchase price for land as an offset to an infrastructure subsidy. Finally, petitioners assert that the benefits conferred are specific, as evidenced by the fact that steel companies dominate the Kodai region in Asan Bay. Moreover, petitioners state that the record demonstrates that only a limited number of companies and industries were invited to operate at Asan Bay, and, therefore, the benefits from this subsidy are specific.

Respondents counter that there were no infrastructure subsidies provided to Dongbu. They note that the Department investigated these expenditures in the CTL Plate remand determination and found that the roads built in Asan Bay were part of the country's general highway and road system, and were found to be general infrastructure, thus not countervailable.

Respondents also address the GOK's expenditures with respect to Asan Bay's estate development. The actual costs of the industrial sites were recovered through the sale of land to various companies. Respondents point out that Dongbu did not use any port berths constructed by the GOK; rather, Dongbu constructed its own port berth which was subsequently reverted back to the GOK. Dongbu paid the appropriate tariff rate for water, electricity, and sewage. They note that the facilities providing water to Dongbu also provide water to a substantial area, and that the sewage disposal facilities were located in the Poseung industrial site, which is across from Dongbu's site in the Kodai industrial site. Respondents support the Department's finding in the Preliminary Determination that the GOK did not provide countervailable infrastructure benefits at Asan Bay. See, 64 FR 9694-95.

Department's Position:

The Department affirms its Preliminary Determination, where it found that the GOK did not provide a financial contribution as the cost of roads are included in the price of the land. The

Department also verified that Dongbu built and paid for any additional roads within its industrial site, and therefore the GOK did not provide a financial contribution. Consistent with our CTL Plate remand redetermination, we continue to find that the construction of the water, sewage and electricity facilities were not specific to Dongbu or the steel industry. Therefore, we find that Dongbu did not receive countervailable subsidies from the GOK's provision of infrastructure at Asan Bay. We also verified that Dongbu paid the appropriate tariff rate for the water, electricity, and sewerage services used at Asan Bay.

Comment 9: *Provision of Land at Asan Bay: Land Price and Benchmark*

Petitioners argue that in its Preliminary Determination, the Department correctly countervailed Dongbu's land purchases at Asan Bay. Petitioners point to the fact that the Department verified that Dongbu contracted with Koland to purchase land at the Kodai Industrial Estate at Asan Bay and assert that this sale of land constitutes a financial contribution under the statute. Moreover, petitioners maintain that, as the Department preliminarily found, the transfer occurred at a price below market value and therefore conferred a benefit. Petitioners affirm the Department's calculation of the benefit associated with these land discounts and state that the Department should continue to apply its standard grant methodology at the final. Petitioners also declare that the Department correctly found that the benefits are limited to Dongbu and are therefore specific. Additionally, petitioners maintain that the Department correctly countervailed the adjustments to Dongbu's final purchase price to reflect interest earned by the company's prepayments for the land. Alternatively, petitioners suggest that the Department could consider the interest rebate, the sum the GOK paid to Dongbu for payments Dongbu had previously made to the GOK, a distinct financial contribution in the form of a direct transfer of funds.

Respondents assert that petitioners ignore information provided by the GOK, Dongbu and the Department's verification findings with respect to the issues of: the contract price reduction and the interest rebate by the GOK at the closing of the land deal. Respondents disagree with petitioners' contention that the price originally advertised and announced by Koland represents "fair market value." Respondents state that the original-published prices for the industrial land sites at Asan Bay were proposed prices for the land, estimates which were to be revised based on the actual development costs as determined at the time of settlement. Respondents assert that a more appropriate way of characterizing the initial price announcement is as a "cost-plus" price (i.e., the final actual costs plus 10 percent profit). By the time of settlement, Koland's profit component had been explicitly eliminated from the final price. Respondents concede that Koland's removal of the 10 percent profit component constitutes a subsidy.

Respondents state that the Department improperly calculated and vastly overstated Dongbu's benefit from its purchase of land at Asan Bay. For one, respondents maintain that the land price discount was not in fact a discount; instead, it was simply an adjustment to the final purchase price reflecting the lower actual development costs incurred. Respondents state that the Department verified that the final calculated price per square meter for land at the Kodai industrial site included various direct costs and indirect expenses, including capitalized expenses, which reflect the cost of capital (i.e., interest) on the GOK's expenditures up to December 31, 1998, the settlement date. The Department also verified the revisions in Dongbu's land purchase contracts as a result of the changes in land development costs and the cost changes that occurred

between the time of Dongbu's revised contracts and the settlement date, respondents state. Respondents maintain that the capitalized expenses were not actual expenses incurred in the development of the Kodai site but instead reflect the time value of Koland's development costs incurred during the period of development so that the final settlement price reflected the present value of Koland's expenditures as of the settlement date. Therefore, respondents argue, the original published price was only a proposed price that both parties understood was subject to change based on the GOK's actual development costs. The GOK's actual development costs were lower than the original proposed price, and, explain respondents, it is for this reason the price paid by Dongbu was lower than the original published price. Respondents assert that in using the original proposed selling price as the benchmark and treating any amount that Dongbu paid below this benchmark as a discount, the Department ignored the commercial reality of the transaction and overstated Dongbu's benefit. Respondents urge the Department to use the actual verified development costs as the benchmark.

Petitioners rebut respondents' argument that the published land price is not an appropriate benchmark. They provide three points on why this argument is without merit: (1) it is not supported by fact; (2) it requires a cost-to-government standard; and (3) it provided no evidence that the published price was just a starting price. First, petitioners maintain that respondents' argument is not supported by the facts on the record. They point to the record which states that Koland established its published price at Asan Bay by asking an appraisal association to select three appraisal companies to appraise the cost and the value of the land. Then Koland went through a three step-process to sell the land. It acquired the land, announced the sale of the land, and then negotiated a contract with the company. Petitioners contend that the GOK deliberately established the list price of land sites at Asan Bay, and that the list price was much more than a mere "offer price." Second, petitioners take issue with respondents' cost-to-government standard. Petitioners state that while the cost may have been low to the GOK, that does not mean that the benefit to Dongbu was also limited. Petitioners assert that as a matter of law, the benchmark used cannot be based on the GOK's cost; rather, the Department must apply a market benchmark. Petitioners also note that respondents have not offered an alternative benchmark. Petitioners maintain that this published price comports with the benefit-to-recipient mandate reflected in the statute. See section 771(5)(E) of the Act. Lastly, petitioners contend that if the published land price was not a valid benchmark, then respondent had the opportunity to supply evidence that this was the case. For instance, respondents could have demonstrated that other land sale contracts at Asan Bay were merely starting points, and that Dongbu, relative to other land buyers, received no special treatment. Petitioners also point to the Department's finding in CTL Plate where it used as the benchmark Koland's published land price for Asan Bay.

Petitioners discuss the Department's hierarchy of benchmarks for the provision of less than adequate remuneration under section 351.511 of the CVD Regulations, noting that no private sellers exist for use as an established market benchmark. As there is no private benchmark, the Department is directed under section 351.511(a)(2)(iii) to determine whether the government generally applied "market principles" in setting prices for the good or service in question. Petitioners contend that the land price in question includes non-commercial factors like the GOK's waiver of profits and periodic lowering of the agreed contract price. Petitioners support the Department's Preliminary Determination, where it used Koland's advertised land price as the benchmark.

Petitioners further argue that respondents' reliance on the contracts as evidence that the price of the land was readjusted to reflect the GOK's actual cost does not fulfill the statutory and regulatory requirements. Petitioners assert that the advertised list price is the proper benchmark and that the GOK's costs are legally irrelevant. Petitioners also argue that the Department should ignore respondents' claim that Dongbu's benefit was limited to the amount of profit waived by the GOK.

In the Preliminary Determination, the Department calculated a benefit for two separate subsidies, the land price discount and the interest-earned refund. Respondents argue that an examination of the verified record reveals that the interest-earned refund did not provide Dongbu with a specific subsidy. Respondents maintain that the Department improperly treated the interest-earned refund as a specific subsidy to Dongbu, ignoring the fact that this interest-earned refund was an integral part of the whole pricing formula for determining the final settlement price of land at Asan Bay. Respondents profess that this refund for interest earned on prepayments was specifically provided for in the contract and did not result in a lowering of the price Dongbu paid for the land; instead, it was an adjustment made to account for the time value of money that Dongbu had prepaid so that the amount Dongbu paid the GOK at settlement reflected the present value of Dongbu's payments as of the settlement date. Respondents assert that the amounts of interest earned on Dongbu's advance payments were treated as part of its total payments and were applied to the total price for each site to determine the net amount due from Dongbu at the final settlement. Furthermore, respondents state that this adjustment was provided to both parties, as the GOK also received a similar credit by including its capitalized expenses as part of the purchase price. For these reasons, argue respondents, the credit for interest earned on advance payments did not provide a specific benefit to Dongbu and should not be treated as a countervailable subsidy.

As noted above in petitioners' case briefs, they contend that the Department should continue to find that the adjustments made to Dongbu's final purchase price are countervailable for the final determination. Petitioners argue the interest rebates further deepen the countervailable benefit to Dongbu from the purchase of land. Petitioners also argue that the Department could find that the interest rebates are a distinct financial contribution in the form of a direct transfer of funds. Moreover, petitioners cite to the CTL Plate remand redetermination, where the Court of International Trade (CIT) directed the Department to reconsider its original finding where the interest rebates were found not to be countervailable. See 64 at 73184. In the CTL Plate remand redetermination, the Department found that the interest rebate provided a countervailable benefit to the company, and that the GOK provided a financial contribution as revenue foregone, and that it was specific to a limited amount of users. Petitioners counter respondents' assertion that the interest rebate was paid pursuant to provisions in the land sale contract, with the argument that a contract cannot insulate a subsidy from being countervailed.

Department's Position:

The Department in the Preliminary Determination determined that Dongbu purchased land at Asan Bay for less than adequate remuneration. We affirm that decision in this final determination, however, based upon the results of verification we have modified the benchmark price used to quantify a portion of the benefit conferred under this program.

In our Preliminary Determination, we used Koland's published price as our benchmark and compared that price to the actual price paid by Dongbu. During verification we found that the published price in the original sales announcement was only an estimated price and that the sales contracts for land specify that the land price is subject to change. See GOK Verification Report at page 9 and 10. We verified that the published price of land in the original sales announcement included the costs of the land and the costs of land development expenses. Id. We also verified that there were several revisions of the sales price between Koland and Dongbu. Some of the revisions were due to the fact that a portion of the land development, which was included in the original published price, was deducted from the sales price because Dongbu decided to contract out this portion of the land development to a private company rather than pay Koland to perform this land development. See Dongbu Verification Report at page 5. However, Koland still provided some of the land development expenses which were included in the published price. These land development activities included constructing roads and laying pipes and water lines. The estimated costs of these land development expenses were included in the published price. However, our review of Koland's budget records during verification demonstrated that the final costs of the land development incurred by Koland were lower than the estimated land development costs included in the original published land price. Therefore, there were revisions to the published price to account for these lower, actual land development costs. See GOK Verification Report at 9 and 10. For purposes of this final determination, we are not using the published price as our benchmark because we verified that the published price was estimated. We are instead basing our benchmark price on the final revised price charged to Dongbu for the land. However, adjustments are required in order to calculate our benchmark.

Under section 771(5)(E)(iv) of the Act, the determination of the adequacy of remuneration is determined based upon prevailing market conditions. To determine whether a subsidy was provided when Koland sold land at the industrial site at Asan Bay, the first preference under the CVD Regulations for a benchmark would be the price of land in that area as set by a private party. In this case, the only industrial land for sale is by the government. Although there were no private sellers of industrial land at Asan Bay, Dongbu contracted with a private party for land development. During verification, we determined that the price charged to Dongbu for land development was based upon the private land developer's costs plus ten percent to account for profit. We verified that although Koland included its full costs in its final price charged to Dongbu, Koland did not include any profit in its price. Because the prevailing market conditions include a profit factor of ten percent, we have calculated a ten percent profit factor and added that profit factor to the final land price charged to Dongbu in order to calculate our benchmark.

We disagree with petitioners' argument that the use of this benchmark constitutes a cost-to-government analysis. Under section 771(5)(E) of the Act, the Department will determine that "a benefit shall normally be treated as conferred where there is a benefit to the recipient." In this case, the Department is not concerned with the cost that the GOK incurred, but rather, it is concerned with the amount of the benefit that Dongbu received from purchasing land at Asan Bay. We verified that prevailing market conditions for the price of land at Asan Bay includes both costs and profit. We verified that the government accurately determined the costs for land and land development in its final price charged to Dongbu for land at the industrial estate at Asan Bay but that the government did not include profit in that price. Therefore, we included a profit

component in our benchmark price. This benchmark does calculate the benefit based upon the benefit to the recipient because Dongbu, if it had purchased the land from a private party, would have paid a price based on the costs of the land (and land development) plus a profit of 10 percent. Our benchmark price includes both the costs of the land plus 10 percent profit. The fact that the costs are derived from the actual expenses incurred by the government does not mean that we have constructed a price based on a cost-to-government analysis rather than using a market-based standard. That statement would only be true if we based our benchmark price solely on the government's costs without making an adjustment for profit. We also note that the cost of the land to Koland was not determined by the government but was set by independent appraisal companies. See GOK Verification Report at 9.

The Department also affirms its Preliminary Determination finding that the "interest earned" on advanced payments is countervailable. We find that Dongbu received a benefit by being reimbursed for payments made prior to the final settlement; moreover, we find that a financial contribution was provided by the GOK as revenue foregone. During verification, we determined that Dongbu was able to commence construction on the site before final payment was made and that construction had begun after the first payment. Therefore, Dongbu had full use of the land at the time the first payment was made, not when the final payment was made. It is standard commercial practice that payments for land may be paid over time. However, it is not standard commercial practice that at the time of the final payment, the purchaser of land is credited and reimbursed for earlier payments made before that last payment. Dongbu contracted a private party to undertake certain land development on its land at Asan Bay. Like the payment schedule set forth in the land purchase contract between Koland and Dongbu, the private party required payments over time for its land development activities. Thus, payments were required while the private party was undertaking land development activities for Dongbu, not when the land development was completed. However, the private party did not make an "interest earned" deduction on the final settlement to account for Dongbu's payments made before the final payment of the contract was made. Therefore, an adjustment for earlier payments at the time of final settlement is inconsistent with prevailing market conditions, and thus this adjustment made by the government to Dongbu's final settlement payment is countervailable.

Comment 10: *Provision of Land at Asan Bay: Fees Waived*

Petitioners argue that waivers of any fees associated with the land purchase at Asan Bay amount to a financial contribution in the form of revenue forgone and must be countervailed as a grant, as they were in CTL Plate. Petitioners state that the benefit is the full amount of the contractual payment not made.

Respondents note that petitioners were correct in their analysis that the management fees associated with Dongbu's land contract were revised with each land contract revision. However, respondents point out that this issue has not been properly reviewed by the Department, either through supplemental questionnaires, the Preliminary Determination, or during verification. Therefore, they maintain that it is difficult to respond to petitioners' late allegation. Respondents deduce from the various contracts that: (1) the management fee is separate from the purchase price of the land; (2) for Kodai site 1-2, 1-2-1, the management fee was reduced with each contract, when Dongbu Corp. took over land development from Koland; and (3) the last contracts

signed in June 1997, were based on revised cost estimates as of April 30, 1997, which contained additional revisions to the management fees. Respondents note that during verification the Department focused on Koland's calculation of the final land price and Dongbu's payments and not on when the management fees were due. They further stress that nowhere on the record is there any indication of when or whether Dongbu paid any management fees in relation to the two Kodai sites. Respondents dispute petitioners' assumptions that: (1) Koland had no independent right to reduce or eliminate the management fees even though circumstances had changed substantially from the time of the first contract to the conclusion of the settlement; (2) the management fees were a necessary part of the total price and that a reduction or elimination constitutes a financial contribution in terms of revenue foregone; and (3) the lack of record evidence demonstrating that management fees were paid, when not being investigated, indicates that no payment were made. Also, respondents note that the publication price that the Department used as the benchmark in the Preliminary Determination does not make any mention of management fees. Respondents further state that it is not apparent that there is a legal obligation for Koland to collect such a fee. Moreover, respondents claim that petitioners have proffered no reason for the Department to conclude that Koland was required to collect a management fee; therefore, there is no basis for the Department to determine that Dongbu received a countervailable benefit.

Department's Position:

As noted above, the determination of the adequacy of remuneration is determined upon prevailing market conditions. To determine whether a subsidy was provided when Koland sold land at the industrial site at Asan Bay, the first preference for a benchmark would be the price of land in that area as set by a private party. In this case, the only industrial land for sale is by the government. Although there were no private sellers of industrial land at Asan Bay, Dongbu contracted with a private party for land development. During verification, we determined that the price charged to Dongbu for land development was based upon the private land developers costs plus ten percent to account for profit. There is no information on the record indicating that the private land developer charged Dongbu any other fees, such as management fees. Because the private party did not charge Dongbu a management fee for development of the land at Asan Bay, we have no basis for finding that the lack of charge or collection of a similar fee for the purchase of that land at Asan Bay constitutes a subsidy.

Comment 11: *Exemption of Port Fees under the Harbor Act*

Petitioners maintain that the non-commercial nature of this program is demonstrated by the lengthy fee waivers negotiated under the Harbor Act. Due to the fact that only companies constructing facilities under the Harbor Act are eligible for this scheme, petitioners state the benefit is specific.

Regarding petitioners' claim that a new subsidy exists with respect to the exemption of port fees as compensation for construction costs to companies that build port berths and revert them to the GOK when the compensation cost includes a profit to the developer, respondents contend that petitioners' claim is illogical. Respondents disagree with petitioners' dual positions

that Dongbu received a subsidy because Koland did not include in its purchase price a profit with respect to the costs incurred for the land that Dongbu purchased, where a commercial developer would, and that as a commercial developer (of the port berth), Dongbu should not receive a 10 percent profit in the total development costs of the reverted port for which it is being compensated. Respondents argue that petitioners cannot have it both ways; either Dongbu received a subsidy when Koland did not act in accordance with commercial reality by not including a 10 percent profit or Dongbu received a subsidy because the GOK allows Dongbu, commercial developer, to earn a 10 percent profit as compensation for constructing a port. Respondents concede that the absence of the profit element in the land price provides a subsidy, and, therefore, advance that the Department should find that the profit element in the compensation equation is not countervailable.

Respondents also rebut petitioners' argument that the waivers are unusually lengthy. Respondents restate that Dongbu, not the GOK, incurred the costs for building the port facilities, and even with the reversion of the port to the GOK, the GOK owns additional infrastructure for which it did not incur costs to build. The GOK does not build the infrastructure; instead, those companies (Dongbu) that need the infrastructure build it, incur all costs, and receive exemptions for fees that would normally be due to the GOK. Respondents also remark that the idea of compensation is only a relative term. For example, they note that while Dongbu paid VAT on the costs incurred in constructing the port berth, VAT is not included in the calculation of the amount of compensation due to Dongbu. They also state that the compensation amount is calculated in nominal terms, and, therefore, the amount of fees exempted anytime in the possible 70 years that Dongbu may receive exemptions will offset Dongbu's costs at their face value. The calculation does not take into account the time value of Dongbu's costs incurred years earlier. Respondents maintain that a realistic assessment is not that Dongbu received a subsidy, but rather, that Dongbu will never fully be compensated for the costs it incurred in constructing the port facilities that it reverted to the GOK.

Department's Position:

In Certain Steel Products, the Department found that POSCO was exempt from paying fees for the use of the port berths, after building it and reverting it to the GOK. As POSCO was the only company entitled to use the berths at the port facility free of charge, the Department found that this program was limited in number and was therefore specific. See 58 FR 37347-48. In Sheet and Strip the Department revised this determination, and found that the Harbor Act was not specific under section 771(5A)(D)(iii) of the Act, as it was not limited in number; rather, it was open to a large range of industries. It is the Department's practice not to revisit prior determinations unless new information has been presented. However, the information on the record for this case warrants revisiting this issue with respect to the excessive exemption period provided to Dongbu.

As established in Sheet and Strip, it is normal for a company that builds a port berth and reverts it to the GOK, not to pay usage fees and to collect fees until the company has been fully compensated for its construction costs. The Department finds that in this case, Dongbu actually will be exempt from paying usage fees for up to 70 years. The actual useful life and depreciation period of these assets is much less than 70 years. Thus, we find that Dongbu is receiving a

benefit from the GOK by not having to pay usage fees for the use of the port berth for such an extended time period. Therefore, we find that the GOK is providing a financial contribution in the form of revenue foregone and that it is specific to Dongbu. As noted earlier, the benefit is the full amount of the yearly exemption provided to Dongbu under this program.

We also note that respondents' statement with respect to the treatment of profit under this program and under the provision of land at Asan Bay is incorrect; just because profit is included as part of the price benchmark in the Asan Bay program does not mean that a profit component should be included in the compensation being provided to the respondent. The determination of the benefit for the provision of land at Asan Bay is based upon the adequacy of remuneration which is determined on prevailing market conditions. Therefore, as agreed by all parties, land transactions from private parties include an element of profit. Because the government did not include profit in the price of industrial land sold to Dongbu, then Dongbu received a benefit based on the amount of profit which would have been paid by Dongbu if it had purchased the land from a private party.

With respect to the compensation determined by the GOK under the Harbor Act, the calculation of the benefit is still determined based upon the benefit to the recipient. Set aside the fact that the full amount of exemption provided to Dongbu is countervailable because of the excessive exemption period it received under this program. Assume that the only difference between Dongbu and all the other uses of this program is that the GOK rebates to Dongbu not only the costs the company incurred but also a ten percent profit which is not provided to any other recipient. Respondents would argue that the profit component would not be countervailable because the market dictates that profit should be included in a market price. However, that logic does not follow in this situation. This is because the original purpose of the program is to compensate Dongbu for its construction costs of infrastructure at Asan Bay. In constructing these facilities, Dongbu did not pay profit to itself. Therefore profit is not an expenditure which was incurred by Dongbu. Its reimbursement is limited to its actual expenditures incurred by the company; profit not being one of these. If the government included a ten percent profit factor, then the government is over-compensating or over-rebating Dongbu, which provides Dongbu with a countervailable benefit.

Comment 12: *POSCO's donation to POSTECH*

Petitioners state that POSCO received another countervailable tax subsidy, which the Department must countervail in the final determination. This subsidy, which petitioners state that the Department discovered at verification, is a tax benefit in the form of a tax deduction for a donation that POSCO made to POSTECH, a university affiliated with the company. Petitioners state that although the benefits associated with charitable contributions are not generally considered countervailable, the self-dealing nature of this transaction demonstrates that it is countervailable. Petitioners maintain that in exchange for its donation, POSCO received a stock buy-back and an interest in future royalty payments. Petitioners argue that this benefit is specific because the record holds no evidence of similar companies receiving tax benefits for their stock buy-backs or royalty purchases. Petitioners state that the Department should apply POSCO's nominal tax rate to the donation in order to calculate the benefit of POSCO's tax savings.

Respondents disagree with petitioners contention that POSCO's donation to POSTECH was extraordinary self-dealing and is therefore countervailable. Respondents discuss the facts of this issue. First, respondents argue that POSCO made a donation of cash to POSTECH. POSTECH used part of this donation to purchase POSCO stock. Both parties (POSCO and POSTECH) agreed that as a result of the donation, POSCO would receive certain rights to royalties if POSTECH invested salable items as a result of the donation. Second, respondents point to POSCO's Board of Directors Meeting where the approval of the donation makes it clear that POSCO considered the donation as both a contribution to the development of the national economy and the research capabilities of a leading university, as well as an investment that could have future payoffs. Respondents disagree with petitioners' allegation that this action provided a subsidy. Respondents argue that as the donation was cash, there was no condition applied that POSTECH must purchase POSCO's stock, and, therefore, there was no stock buyback subsidy. Moreover, respondents note that it makes good financial sense that POSTECH would invest part of the large sum it received in one of the most attractive and low-risk stocks in Korea to form part of its endowment. Respondents also dispute petitioners' assumption that any royalty payments to POSCO would not be taxable. As royalties are income and taxable like any other form of income, there is no basis for such a conclusion. Therefore, respondents urge the Department to dismiss petitioners' subsidy allegation and find this not countervailable.

Department's Position:

The Department disagrees with petitioners that this program provides a countervailable subsidy. There is no evidence on the record to show that charitable donations are specific under the Act. Charitable donations are a standard deduction available to all persons in Korea. Therefore, we find that this program does not provide a countervailable subsidy. In addition, regardless of whether POSCO made this donation to POSTECH, used these funds to conduct its own research and development, or used these funds for other capital investments, each of these activities produce expenditures which are equally used to offset taxable income.

V. Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the determination in the Federal Register.

Agree

Disagree

Faryar Shirzad
Assistant Secretary
for Import Administration

Date