above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination.

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

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, unless otherwise informed by the Department, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than five days from the date of filing of the case briefs. An interested party may make an oral presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 13, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–9861 Filed 4–19–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–810]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From South Africa

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

EFFECTIVE DATE: April 20, 2001.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482–0162, Mark Hoadley at (202) 482–0666, or Julio Fernandez at (202) 482–0190, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain hot-rolled carbon steel flat products from South Africa. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, Independent Steelworkers Union, and the United Steelworkers of America (collectively, the petitioners).

Case History

We initiated this investigation on December 4, 2000. *See Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, South Africa, and Thailand,* 65 FR 77580 (December 12, 2000) (*Initiation Notice*). Since the initiation, the following events have occurred. On December 8, 2000, we issued a questionnaire to the Government of South Africa (GOSA), requesting the GOSA to forward the questionnaire to the producers/exporters of the subject merchandise. The GOSA identified three producers which exported subject merchandise to the United States during the period of investigation: Highveld Steel and Vanadium Corporation Limited (Highveld); Iscor, Ltd. (Iscor); and Saldanha Steel (Pty.) Ltd. (Saldanha). We received a response from Highveld on January 26, 2001, and from Iscor, Saldanha, and the GOSA on February 5, 2001.

On January 18, 2001, we issued a partial extension of the due date for this preliminary determination from February 7, 2001 to March 26, 2001. *See Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, South Africa, and Thailand: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* (*Extension Notice*) 66 FR 8199 (January 30, 2001). On December 22, 2000, petitioners alleged that additional subsidies were conferred by the GOSA. On January 10, 2001, Saldanha objected to the new allegations. On January 29, 2001, the Department decided to investigate the newly alleged subsidies. *See Memorandum from Barbara E. Tillman for Joseph A. Spetrini,* dated January 29, 2001. On January 31, February 20, and February 27, 2001, we issued supplemental questionnaires to the GOSA and all three producers/exporters. We received responses from the three producers/exporters and the GOSA on February 16, February 20, March 5, March 6, March 8, and March

14, 2001. On March 26, 2001, we amended the *Extension Notice* to take the full amount of time to issue this preliminary determination. The extended due date is April 13, 2001. *See Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, South Africa, and Thailand: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 17525 (April 2, 2001).

Scope of the Investigation

The merchandise subject to this investigation is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

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

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

In the scope section of the *Initiation Notice* for this investigation, the Department encouraged all parties to submit comments regarding product coverage by December 26, 2000. The Department is presently considering a request to amend the scope of these investigations to exclude a particular specialty steel product. We will issue our determination on this request prior to the final determination.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Injury Test

Because South Africa is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from South Africa materially injure, or threaten material injury, to a U.S. industry. On January 4, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from South Africa of subject merchandise (66 FR 805). The views of the Commission are contained in USITC Publication 3381 (December 2000), *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine; Investigation Nos. 701–TA–404–408*

(Preliminary) and 731–TA–898–908 (Preliminary).

Alignment with Final Antidumping Duty Determinations

On March 23, 2001, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determinations of the antidumping duty investigations of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the companion antidumping investigations of certain hot-rolled flat products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine.

Period of Investigation

The period for which we are measuring subsidization (the period of investigation or POI) is the companies' most recently completed fiscal year.

Industrial Development Corporation

The Industrial Development Corporation (IDC) is an investment and financing entity which is wholly-owned by the GOSA. In its questionnaire responses, the GOSA has stated that the IDC, along with its operating units, functions independently of government action, and has independent budget and decision-making powers. In order to assess whether an entity like the IDC should be considered to be the government for purposes of countervailing duty investigations, the Department has in the past considered facts such as the following significant: (1) government ownership, (2) the government's presence on the entity's board of directors, (3) the government's control over the entity's activities, (4) the entity's pursuit of governmental policies or interests, and (5) whether the entity is created by statute. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992); *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301, 3302, 3310 (Feb. 3, 1987); *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30642–43 (June 8, 1999) (*Korean Sheet and Strip*).

Regarding point (1), the IDC's annual reports indicate that ''The IDC is a wholly owned State Corporation established by Act No. 22 of 1940.'' Regarding point (2), the GOSA has the right to appoint the majority of IDC's board of directors, pursuant to the IDC's Act of Incorporation. The GOSA's Minister of Trade and Finance appoints the board's chairman and managing director. *See* the GOSA's February 5th response, at Annexure F. Regarding points (3) and (4), besides controlling the IDC's activities through board appointments, the IDC's annual reports acknowledge it operates under GOSA constraints, at least to a certain degree. For example, the 1998 Annual Report, at page 64, states that the IDC's ''mandate, policy framework and objectives are in accordance with the guidelines put forth by its shareholder, the South African Government.'' Additionally, the IDC pursued GOSA interests and policies by performing tasks on behalf of the GOSA, such as serving on the Technical Committee that granted Section 37E benefits. *See* the GOSA's February 5th response, at 49. Regarding point (5), the Industrial Development Act provides for the IDC's incorporation and continued operation. *See* the GOSA's February 5th response, at Annexure F. Moreover, as stated in the preamble to the regulations, ''* * * we intend to continue our long standing practice of treating most government-owned corporations as the government itself,'' and we have done so in cases like *Korean Sheet and Strip. See* Countervailing Duties; Final Rule, 63 FR at 65402 (Nov. 25, 1998) (CVD Final Rule). The information on the record provides no basis for departing from this long-standing practice.

While the GOSA emphasizes the fact that the IDC is self-funding, theoretically, an entire government is self-funding and the statute does not direct us to consider how the government funds the assistance provided by the government action; rather it directs us to determine whether there is a financial contribution by the government and a benefit is thereby conferred. We note that we have treated the IDC's actions as constituting the conferral of financial contributions by a governmental authority in the past. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa*, 64 FR 15553 (March 31, 1999) (*SSPC Final*).

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the Department's regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, 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.

The applicable AUL listed in the IRS tables for the steel industry, and used in the most recently completed investigation for South African steel companies, is 15 years. *See SSPC Final*, 64 FR at 15555. While Highveld did not argue for anything other than the IRS tables' AUL of 15 years, Iscor and Saldanha did. Both claim that 15 years does not reasonably reflect the AUL of their assets, and both companies submitted information regarding their annual depreciation and book values. We have not found Iscor to be the direct recipient of non-recurring subsidies and, therefore, have made no determination as to the applicable AUL for its assets. However, because we have preliminarily determined that Saldanha has received non-recurring subsidies, we have examined the information provided by Saldanha for purposes of establishing a company-specific AUL. To calculate its company-specific AUL, Saldanha submitted its opening and closing book values, and depreciation expense, for fiscal year 2000.

Section 351.524(d)(2)(iii) of our regulations states that a company-specific AUL is ''calculated by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary.'' The Department's practice has been to use a ten-year period. While a ten-year period is not required by statute or our regulations, one year cannot reasonably serve as a basis for calculating a company-specific AUL. Moreover, we note that Saldanha reduces its depreciation to account for less than full production, and that its plant was not at full production during the year for which information was submitted; thus, even this one year's worth of information is not representative. Therefore, we preliminarily determine that Saldanha has not satisfied the requirements of section 351.524(d)(2)(iii) of our regulations. Thus, the Department is using, in accordance with section 351.524(d)(2)(i), the IRS tables to determine the AUL period. We note that Saldanha did not submit other information to substantiate its claim of an AUL longer than 15 years, except for its annual report and financial statement for fiscal year 2000, which state that plant and equipment have an estimated maximum useful life of 25 years; however, for the reasons stated above, this does not serve as a sufficient basis for determining a company-specific AUL.

Issue Pertaining to the Realignment of the Benefit Stream from Non-Recurring Subsidies

The Department's normal practice is to begin the benefit stream for non-recurring subsidies in the year of receipt of the subsidy. *See* CVD Final Rule, 63 FR at 65397. Petitioners argue that, for non-recurring subsidies in this case, we should begin the benefit stream for Saldanha in the year in which production commences, fiscal year 1999, rather than in the year of receipt as allowed under section 351.524(d)(2)(iv) of our regulations. Petitioners emphasize our commentary in the Preamble to this regulation in which we stated that such a realignment of the benefit stream would be considered for subsidies provided ''* * * to develop certain new technologies, or to fund extraordinarily large development projects that require extensive research and development * * *'' CVD Final Rule, 63 FR at 65397. Petitioners contend that Saldanha's Corex smelting process, Midrex direct iron reduction shaft, and Cornac steel furnace are innovative technologies and that the project was indisputably large. They rely on statements by the GOSA and Iscor placed on the record of this investigation and *SSPC* to demonstrate the belief of those parties in the extraordinarily large size and innovative quality of the Saldanha project. Petitioners point out, for example, that in its *SSPC* case brief the GOSA stated: ''The Department's finding of de facto specificity rests solely on the value of the financing provided to the fabricated metal products and basic metal manufacture industries. But this value includes three mega projects in the basic metal manufacture industry, concerning basic iron and steel, stainless steel and aluminum. These mega projects are both huge and extraordinary.'' As another example, petitioners point to Iscor's 2000 Annual report which refers to the use of surplus Corex off-gas as a reducing agent in the Midrex direct iron reduction shaft as a ''world first.''

After reviewing all of the information on the record, we preliminarily determine that a change in the starting date for the benefit stream is not warranted, and we are following our normal practice of beginning the benefit stream for all non-recurring subsidies in the year in which they are first conferred. Section 351.524(d)(2)(iv) states that the Secretary will consider starting the benefit stream at a date other than the date on which the subsidy is bestowed only in ''certain extraordinary circumstances.'' The information on the record does not demonstrate that extraordinary circumstances exist in this case. In our commentary discussing the type of situation to which subsection 351.524(d)(2)(iv) might apply, we stated: ''The assets needed to develop new technologies, or to produce a new product may not even have been designed yet, and certainly the product is not yet developed.'' CVD Final Rule, 63 FR at 65397. The steel produced by Saldanha is not a new product, and, although the production technology may be relatively new, it had already been developed and was simply being transferred to a new company in South Africa. Petitioners have not demonstrated that there was more of a lag time between R&D and production in Saldanha's case than that which would occur in the construction of any greenfield mill using more conventional technologies. In addition, petitioners did not claim that the size of the Saldanha mill is unusual for a greenfield project. Even though the GOSA considers it ''huge'' in terms of development projects within South Africa, the language in the Preamble concerning funding of development projects cites, in relevant part, subsidies ''* * * to fund extraordinarily large development projects that require extensive research and development * * *'' The Saldanha project may be quite large in South Africa, but it did not entail, as discussed above, extensive research and development. Accordingly, we preliminarily determine that the benefit stream for non-recurring subsidies should not be realigned.

Calculation of Discount Rates and Benchmark Loan Rates

Saldanha is the only respondent to have received IDC (i.e., GOSA) long-term loans and other non-recurring subsidies. Saldanha proposed two loans to be used as benchmark loans in evaluating the IDC loans and in calculating discount rates. As discussed in the ''Creditworthiness'' section below, we find that neither loan proposed by Saldanha meets the requirements for comparable commercial loans in section 351.505(a)(2). No other long-term commercial interest rates were submitted. Section 351.505(a)(3)(ii) states that, if there are no comparable commercial loans, then the Department ''may use a national average interest rate for comparable commercial loans.''

Therefore, for the years 1996 through the POI, we calculated the discount rates and benchmark loan rates by averaging the ''Lending'' rate and ''Government Bond Yield'' rate for each year as found in the International Financial Statistics published by the International Monetary Fund. This is the same methodology employed in the last CVD investigation of the South African steel industry. *See SSPC Final,* 64 FR at 15554.

Saldanha objects to the use of the Lending rate, and argues that the Department should use the RSA 150 government bond rate, plus a risk premium of between 1.8 and 2 percent, as the benchmark rate. The proposed risk premium is the result of a study undertaken by Saldanha concerning the rate at which it might issue commercial paper. Saldanha argues that the RSA 150 government bond rate is superior to the Lending rate because the South African central bank increased the prime rate in response to a 1998 currency crisis, and because the commercial paper study concluded Saldanha could sell commercial paper at the RSA 150 rate plus the 1.8 to 2 percent risk premium.

We rejected the government bond rate in *SSPC Final,* which we had used in the preliminary determination of that case, and adopted the blended rate described above. We stated:

> Although we discussed commercial interest rates at length during our meetings with the IDC, the South African Reserve Bank, and commercial bankers, no information was provided that would enable us to determine a commercial long-term interest rate that could be used as the discount rate. As such, because the government bond rate does not represent a commercial rate, for purposes of this final determination, we have constructed a discount rate which we believe is more

appropriate. For each of the years 1993 through 1997, we have averaged the government bond rate as reported by respondents with the ''Lending Rate'' reported in International Financial Statistics, December 1998, published by the International Monetary Fund. This publication indicates that the ''Lending Rate'' represents financing that ''meets the short- and medium-term needs of the private sector.'' By averaging these two rates, we believe that we have identified a rate more appropriate than the rate used for the purposes of the preliminary determination, a rate which includes the necessary characteristics of both long-term borrowing and commercially-available interest rates.

SSPC Final, 64 FR at 15554. We see no reason to change our stance on the proper benchmark for long-term South African loans in this case. Saldanha did not explain why the currency crisis and ensuing rate hike would have affected lending rates differently than government bond rates. Regarding the commercial paper study, we note that the commercial paper apparently was never issued, and, therefore, that the study does not appear to be relevant.

Creditworthiness

We investigated whether Saldanha has been uncreditworthy since its inception in 1996. As discussed in ''The IDC's Equity Infusions in Saldanha'' and the ''Industrial Loan Financing Provided by the IDC and Findevco Ltd.'' sections below, the years for which we are analyzing the benefits from equity infusions and the IDC loans are fiscal years 1998, 1999, and 2000. Therefore, we have limited our creditworthiness analysis to those years.

We preliminarily have determined that Saldanha was uncreditworthy during fiscal years 1998 through 2000. The primary bases for this determination are: (1) an absence of long-term commercial loans, provided by commercial lending institutions, that were not guaranteed by the IDC; and (2) our examination of Saldanha's ability to meet its costs and fixed financial obligations with its cash flow.

In its questionnaire response, Saldanha stated that it had ''significant credit exposure'' provided by local banks which were unaffiliated with the GOSA. *See* Saldanha's February 5, 2001 response, at 51. Saldanha confirmed in its supplemental questionnaire response that all of this credit was short-term. *See* Saldanha's March 6, 2001 response, at 36. Saldanha also noted an amount provided on an open account basis by trade creditors. Section 351.505(a)(4)(i) of the Department's regulations, however, specifies that a creditworthiness determination must be based on the receipt of long-term commercial loans.

Saldanha points to two long-term loans, unguaranteed by the IDC, as proof that it has been creditworthy. However, as explained in our discussion of the Findevco and IDC loans below, we have determined that one of these loans was from a foreign, state-controlled development bank, and the other was credit provided by a supplier. Section 351.505(a)(2)(ii) of the regulations defines ''commercial'' loans, which are the focus of this analysis, as loans ''* * * taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market,'' and states that we will not ''* * * consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank to be a commercial loan * * *'' Thus, neither the supplier credit nor a loan provided by a foreign development bank meets our definition of a commercial loan.

In addition to an absence of long-term commercial loans which could provide evidence of Saldanha's creditworthiness, Saldanha does not appear able to meet its financial obligations without difficulty. While it would not be unexpected for a greenfield mill to experience some difficulty in meeting its debt obligations in its initial years, Saldanha was still unable to meet its interest obligations by 1998 and beyond. Saldanha states in its questionnaire response that ''there was never at any time any instance whatsoever that the company was not able to meet its financial obligations such as interest and capital redemption.'' *See* Saldanha's February 5, 2001 response, at 54. While there is no indication that Saldanha ever defaulted on its obligations, the IDC did restructure the Findevco loan in 1998 (*see* section on ''Industrial Loan Financing Provided by the IDC and Findevco Ltd.'' below), giving it a new loan repayment schedule and a different interest rate structure. The Department, after examining the proprietary details of the transaction, considers the restructuring to amount to a deferral. Proprietary information also indicates that Saldanha had obtained additional GOSA financing through a later loan in order to meet its debt obligations. *See Memorandum from Mark Hoadley through Sally Gannon to Barbara E. Tillman Regarding Business-Proprietary Analysis of Saldanha Steel Ltd.* (April 13, 2001) (*Saldanha Analysis Memo*) (public version on file in the Department's Central Records Unit).

Finally, we note that, while Saldanha is a greenfield mill, and thus there is not a significant history of financial data to examine, financial statements from fiscal years 1999 and 2000 indicate that Saldanha has been highly leveraged over the period examined. Saldanha's financial statements and history are discussed in the *Saldanha Analysis Memo.*

Because we have preliminarily determined that Saldanha has been uncreditworthy from fiscal year 1998 onward, we adjusted both the loan benchmark rate and the discount rate by adding a risk premium, calculated according to the methodology described in section 351.505(a)(3)(iii) of our regulations, for those subsidies conferred during fiscal years 1998 through 2000.

Cross-Ownership and Attribution of Subsidies

Because Iscor owns 50 percent of Saldanha, we have examined whether cross-ownership exists between the two companies within the meaning of section 351.525(b)(6) of our regulations. Section 351.525(b)(6)(vi) of the regulations defines cross-ownership as existing ''* * * where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.'' The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' CVD Final Rule, 63 FR at 65401; *See also Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 65 FR 5536, 5544 (Feb. 4, 2000).

Iscor controls 50 percent of the voting ownership in Saldanha. There is only one other shareholder, the IDC, which owns the other 50 percent. Thus, there is no ''majority ownership'' *per se.* However, the Department's regulation uses the term ''normally,'' meaning that cross-ownership may be found even where majority voting ownership is not present if other factors demonstrate control by one corporation of the other corporation's assets. Because much of the information pertaining to Iscor's relationship with Saldanha is business proprietary, we have analyzed the cross-ownership issue in a business proprietary *Memorandum to the File*

From Julio A. Fernandez through Sally Gannon to Barbara E. Tillman Regarding Cross-Ownership of Iscor, Ltd., in Saldanha Steel Ltd. (April 13, 2001) (*Cross-Ownership Memo*) (public version on file in the Department's Central Records Unit).

Facts outlined in the *Cross-Ownership Memo* demonstrate that, in addition to owning 50 percent of the voting rights in Saldanha, Iscor is in a position to exercise control over Saldanha's assets. Given this evidence of cross-ownership, and the fact that both companies produce the subject merchandise, we preliminarily determine that cross-ownership exists and that subsidies received by either or both corporations will be attributed to the products sold by both corporations in accordance with section 351.525(b)(6)(ii) of the Department's regulations. Thus, for purposes of this preliminary determination, we have calculated one subsidy rate for Saldanha/Iscor for each program by adding together their countervailable subsidies during the POI under each program and dividing that amount by the sum of the two companies' total sales (domestic subsidies), or appropriate export sales (export subsidies) during the POI.

Trading Companies

Section 351.525(c) of the regulations requires that the benefits from subsidies provided to a trading company which exports subject merchandise be cumulated with the benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company, regardless of their affiliation. In their questionnaire responses, Highveld and Iscor indicated that they sell subject merchandise through trading companies. Based on information provided in the questionnaire responses, the South African trading companies, through which Iscor and Highveld exported subject merchandise during the POI, did not receive benefits under the programs subject to investigation. Therefore, we have determined that the subsidy rates calculated for each producer will be attributable to the merchandise exported either directly or through a trading company by that producer.

Programs Preliminarily Determined to be Countervailable

1. Section 37E Tax Allowances

The GOSA enacted Section 37E of the Income Tax Act in 1991. The program was limited to investments approved between September 1991 and September 1993. For projects approved as valued-added processes, Section 37E allows for depreciation of capital assets and the deduction of pre-production interest and finance charges in advance, that is, in the year the costs are incurred rather than the year the assets go on line. The program also allows taxpayers in loss positions to receive ''negotiable tax credit certificates'' (NTCCs) in the amount of the cash value of the Section 37E tax deduction (i.e., deduction multiplied by the tax rate). The NTCCs can be sold (normally at a small discount, which Saldanha reports as 0.5 percent) to any other taxpayer, who can use them to pay taxes. The program does not provide for accelerated depreciation, nor does it provide for additional finance charge-related deductions beyond those available under other provisions of the South African tax code. The advantage to users of this program is the receipt of these tax deductions in advance, i.e., when the expenses are incurred rather than when the equipment is put into use.

According to the GOSA's questionnaire response, eligibility for Section 37E benefits was determined on a project-by-project basis by a committee appointed by the Minister of Finance, in concurrence with the Minister of Trade and Industry, and of which the IDC is a member charged with investigating and evaluating applications. (*See* the GOSA's February 5, 2001 response, at 49.) To demonstrate that their projects qualified under Section 37E, applicants were required to show: (1) That investments were made in new machinery, plant, or building to be used in the value-added process; (2) that the value-added process must have added at least 35% to the value of the raw material or intermediate product that underwent the processing; and, (3) that the investment must have been approved by a governmental committee between September 12, 1991 and September 11, 1993. (*See* the GOSA's February 5, 2001 response, at 47.) In this case, although construction at Saldanha did not begin until early 1996, an application for the Saldanha project was submitted, and approval was granted, prior to the September 11, 1993 deadline. Saldanha received all of its Section 37E benefits in the form of NTCCs. Highveld and Iscor reported that they did not receive Section 37E benefits during the POI.

When determining whether the government has provided a countervailable subsidy, we must examine whether the government has provided a financial contribution to a person and a benefit is thereby conferred. *See* Section 771(5)(B)(iii) of the Act. In addition, we must determine whether the subsidy is specific. *See* Section 771(5A) of the Act.

We find that Section 37E constitutes a financial contribution by the GOSA because the GOSA has foregone revenue in allowing for these tax deductions sooner rather than later within the meaning of Section 771(5)(D)(ii) of the Act. We further find that Saldanha received a benefit by receiving the NTCCs up to four years earlier than it could have received deductions under the standard provisions of the income tax code, which allow for the deductions to be made only after the relevant assets have been put into use.

With respect to specificity, we have examined whether Section 37E benefits are specific under section 771(5A) of the Act. Based upon our analysis of the approval package, we preliminarily determine that the approval for Section 37E benefits was contingent upon export performance, and, as such, that the Section 37E benefits to Saldanha are specific as an export subsidy under sections 771(5A)(A) and (B) of the Act. Because much of the information analyzed to determine specificity with respect to this program is business proprietary, a complete discussion of the documentation and the bases for our conclusions are set forth in the *Memorandum Regarding Section 37E of the South African Income Tax Act* (April 13, 2001) (*37E Memo*) (public version on file in the Department's Central Records Unit).

Since the Section 37E program reduces a company's capital requirements, and because the receipt of Section 37E benefits required express government approval, we determine that it is more appropriate to treat the benefits provided under Section 37E as a non-recurring subsidy. *See* 19 CFR 351.524(c)(2); *see also, SSPC Final*, 64 FR at 15556.

To determine the benefit, we calculated the time value of obtaining the certificates in advance of the allowance, in this case by up to four years, by discounting the cash value of each allowance. The difference between the value of the certificates and the discounted value of the allowances is the benefit to Saldanha. Finally, because we consider that these Section 37E benefits should be allocated over time as a non-recurring subsidy, we treated each year's benefit as a non-recurring grant using our standard grant methodology. *See* 19 CFR 351.524(d). Since we have determined that Saldanha's Section 37E benefits constitute an export subsidy contingent upon exportation of hot-rolled steel, we have divided the benefits allocable to the POI from this program by the combined total exports of hot-rolled steel by Saldanha/Iscor during the POI. (*See* ''Cross-Ownership and Attribution of Subsidies'' section above.) On this basis, we preliminarily determine the countervailable subsidy to be 5.80 percent ad valorem for Saldanha/Iscor.

2. The IDC's Equity Infusions in Saldanha

In 1988, the IDC and Iscor together began to examine the possibility of using the Corex process to take advantage of South Africa's iron ore supply, particularly ore from Iscor's Sishen mine, without incurring the costs of a blast furnace. The environmental benefits of the Corex process were also a consideration. The IDC's feasibility studies culminated in reports to the IDC's and Iscor's boards of directors in the fall of 1994. Each partner's board agreed to the project in November 1994 and Saldanha was incorporated on January 25, 1995.

Environmental concerns and site location resulted in a one-year deferral of the project's start date. As a result of these delays, the feasibility studies were revised in the fall of 1995, revealing increased costs. In response to these changed circumstances, Iscor withdrew from the project. According to the IDC's 1995 annual report:

> As a consequence of the inordinate delay in the commencement of construction and the placing of orders with suppliers of equipment, the anticipated peak funding requirements of the project has increased substantially and the project return has decreased.
>
> Subsequent to the financial year end, Iscor has withdrawn from the project in its present form and the IDC is evaluating alternative processes and financial structures in order to facilitate the implementation of the project.

Saldanha's questionnaire response offers the following description of the IDC's reaction to Iscor's withdrawal:

> All of the environmental concerns were fully addressed and revised investment proposals were submitted to IDC's Board and approved in September 1995 and revised again in November 1995. These proposals confirmed the economic viability of the project with an acceptable real return (i.e. inflation adjusted) on IDC's and Iscor's investment.

As a result of the revised investment proposals and the November 1995 feasibility study, which incorporated the revised financial structure, Iscor returned to the project a short time after its withdrawal. The IDC and Iscor concluded a shareholders' agreement in 1996, including the terms of the revised financial structure agreed to in the fall of 1995. Construction began in early 1996.

The shareholders' agreement committed each of the two partners to provide half of the initial equity investment. IDC and Iscor agreed to provide another equity investment in fiscal year 1999. Both of the IDC's equity investments were through conversion of a portion of earlier loans made by the IDC to Saldanha. *See* the *Saldanha Analysis Memo* for details on the dates and manner of the equity investments, loan conversions, and the feasibility studies. Almost the entire amount of the equity contributions is classified as ''shareholders' loans'' in Saldanha's financial statements, except for a nominal amount exchanged for share certificates. The IDC and Iscor, the only two shareholders, each hold 1000 share certificates with a par value of one rand each. While the infusions are characterized as ''shareholders' loans'' in Saldanha's financial statements, we preliminarily determine that these contributions constitute equity investments (*see* CVD Final Rule, 63 FR at 65349; *see also General Issues Appendix: Certain Steel Products from Austria* (GIA), 58 FR 37062, 37254 (July 9, 1993)). The first criteria in the hierarchy set out in the GIA is ''Expiration/Maturity Date/Repayment Obligation.'' The appendix states that once a criteria is clearly indicative of debt or equity, we will stop our analysis. These ''shareholders' loans'' carry no repayment terms nor is interest charged on them. They are reported in Saldanha's financial statements as equity and not as liabilities. None of the parties describes them as loans; rather they are described as equity by the owners. Based on this analysis, we conclude that these contributions should be considered equity infusions by the IDC.

To determine whether a benefit exists from equity infusions, the Department must examine whether ''* * * the investment decision is inconsistent with the usual investment practices of private investors * * *'' (*see* section 771(5)(E)(i) of the Act). However, even if private investors exist, they may not always provide appropriate benchmarks. As we stated in *Final Affirmative Countervailing Duty Determination: Certain Corrosion-Resistant Carbon Steel Flat Products from New Zealand,* 58 FR 37366, 37368 (July 9, 1993) (*CORE from New Zealand*):

> The Department has in the past considered the presence of private investment made at the same time as the government's investment indicative of the commercial reasonableness of the government investment. However, the facts of each case must be carefully examined in order to make such a determination. Although NZS was a private investor in this joint venture project, it is clear from the record that NZS could not have undertaken this project without outside investors, and that, absent the government's commitments in the Formation Agreement and Planning Memorandum, no reasonable outside private investor would have undertaken this project. Thus, the participation of NZS is not dispositive that the GONZ's investment was consistent with commercial considerations.

Our analysis of the feasibility studies, the shareholders' agreement, and various internal memoranda generated by the IDC and Iscor indicates that the economic viability of the Saldanha project was predicated on the expected receipt of subsidies from the GOSA. The Saldanha project, like the joint venture project in *CORE from New Zealand,* was a greenfield mill project, and based on our analysis as well as certain statements in the feasibility studies themselves, no reasonable private investor would have undertaken this project absent the projected receipt of government subsidies.

The fact that the feasibility studies submitted by the IDC predict positive rates of return does not change our conclusion. As we stated in *CORE from New Zealand,* 58 FR at 37368:

> Our analysis of the feasibility studies shows that the studies relied on the implementation of specific commitments by the GONZ, such as the assurance of certain financing, domestic market share, supply of raw materials and favorable tax treatment, in their projection of the revenues of the project. Therefore, we find that the studies did not provide an objective assessment of the viability of the project, based on market conditions.

The feasibility studies conducted by the IDC, in combination with the other documentation mentioned above, have led us to conclude that, absent the receipt of expected government subsidies, all of the projected rates of return would have fallen well below the benchmark set by the private investor for participation in the project. Because most of the information upon which our determination relies is business proprietary, our more detailed analysis is set forth in the *Saldanha Analysis Memo.* Therefore, we preliminarily determine that the IDC's equity investments into Saldanha were inconsistent with the usual investment practice of private investors in South Africa.

Because we have found that these equity infusions were inconsistent with the usual investment practice of private investors in South Africa, we find that benefits were provided to Saldanha in the amount of the two equity infusions, and that these infusions should be treated as grants, in accordance with sections 351.507(a)(6) and (7)(b) of our regulations. We also determine that these equity infusions are specific in accordance with section 771(5A)(D) of the Act because they were provided to a specific enterprise, Saldanha.

We allocated the amount of the grants over the AUL in accordance with section 351.507 (7)(c) of our regulations using the discount rate discussed above in the section ''Calculation of Discount Rates and Benchmark Loan Rates.'' Because we have preliminarily determined that Saldanha was uncreditworthy in the years in which these infusions were made (*see* ''Creditworthiness'' section above), we added a risk premium to the discount rate in accordance with section 351.505(a)(3)(iii) of the regulations. We then divided the combined amounts allocated to the POI by Saldanha/Iscor's total sales during the POI. (*See* ''Cross-Ownership and Attribution of Subsidies'' section above.) Accordingly, we preliminarily determine the countervailable subsidy to be 3.97 percent *ad valorem* for Saldanha/Iscor.

3. Industrial Loan Financing Provided by the IDC and Findevco Ltd.

The IDC and its wholly-owned subsidiary, Findevco, Ltd., provide industrial loan financing geared towards the establishment of new industrial facilities, or the expansion or modernization of existing facilities. The IDC has been providing such financing since its inception in 1940, and any South African company interested in obtaining loan financing through this program may apply through the IDC.

According to its questionnaire responses, Saldanha received a loan under the Findevco program (''the Findevco Loan'') in accordance with the shareholder agreement between the IDC and Iscor. The terms of this loan in the original agreement involved a lag between disbursement and payment, with interest capitalized. Part of the loan amount was later offset through a separate IDC–Saldanha transaction in a manner consistent with the original loan agreement. The remaining portion of the Findevco loan was restructured in a manner the Department considers to constitute a new loan, including new payment terms, and a later deferral of principal and interest as mentioned above in the ''Creditworthiness'' section. (Further details of the provision of this loan, the ''deferral,'' and the feasibility studies are mainly of a business proprietary nature and can be found in the *Saldanha Analysis Memo*). The IDC provided Saldanha with a second loan (''the IDC Loan''), without the involvement of Findevco. *See* the *Saldanha Analysis Memo.* Highveld and Iscor did not receive any Findevco or IDC loans that were outstanding during the POI.

Loans provide a financial contribution under section 771(5)(D)(i) of the Act in the form of a direct transfer of funds from the IDC, or its subsidiary Findevco, to Saldanha. To determine whether there is a benefit, we compared the interest rates charged on the Findevco/IDC loans provided to Saldanha to the benchmark rate described in the ''Subsidies Valuation Information'' section above. Based on this comparison, there is a difference between the amount paid by Saldanha on these loans and the amount Saldanha would have paid on a comparable commercial loan obtained on the South African market. Thus, the loans provided by Findevco and the IDC provide a benefit under section 771(5)(E)(ii) of the Act.

In addition to determining the existence of a financial contribution and a benefit, when determining whether a program is countervailable, we must examine whether it is specifically provided under section 771(5A) of the Act. There is no law explicitly limiting eligibility for IDC loans, or loans from the IDC subsidiary Findevco, to exporters or to an enterprise, industry, or group thereof. Thus, these loans are not *de jure* specific, and we must analyze whether the program meets the *de facto* criteria defined under section 771(5A)(D)(iii) of the Act. We examined IDC annual reports provided by the GOSA and found that, since 1993, the steel and metals industries have been predominant recipients of loans and loan guarantees provided by the IDC and Findevco. Information regarding Findevco's loans is consolidated with information on the IDC's loans in the IDC's annual reports. Specifically, since 1993, as much as 84 percent of IDC/Findevco financing has gone to the basic iron and non-ferrous metals industries. In addition, Findevco's financial statements indicate that the Saldanha loan constituted a disproportionate amount of its lending in the year of its disbursement. Likewise, the IDC's financial statements indicate that its financing disproportionately favored Saldanha. Therefore, we preliminarily find that these loans are *de facto* specific, within the meaning of section 771(5A)(D)(iii) of the Act, because a disproportionate share of the financing is provided to a group of industries, the basic iron and non-ferrous metals industries. Accordingly, we preliminarily determine that IDC/Findevco loan financing constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we used the Long-Term Benchmark rate discussed in the section ''Calculation of Discount Rates and Benchmark Rates'' above. Saldanha provided information regarding two commercial loans as potential benchmarks for its Findevco loan. One of these loans was obtained from a foreign government-owned development bank. The second loan is a supplier finance loan for services provided to Saldanha. Neither of these, however, is acceptable under our regulations. (*See* the ''Creditworthiness'' subsection of the ''Subsidies Valuation Information'' section above for a more detailed discussion.) Because we have preliminarily determined that Saldanha was uncreditworthy in the years in which it received these loans, we added a risk premium to the benchmark in accordance with section 351.505(a)(3)(iii) of the regulations.

For the Findevco Loan, because we have determined that Saldanha received a deferral, we applied the allocation methodology of section 351.505(c)(3) of our regulations for the comparison of loans with different repayment schedules. Section 351.505(c)(3)(i) of our regulations requires that we take the difference between the net present value of payments under the deferred schedule with the IDC interest rate and the net present value of payments under a normal repayment schedule for a commercial loan with the benchmark interest rate and uncreditworthiness risk premium. We then assigned a portion of this difference to the POI in accordance with section 351.505(c)(3)(ii) of the regulations. For the IDC Loan, we followed the standard benefit calculation methodology of 351.505(c)(2) for long-term variable-rate loans. We summed the benefits allocable to the POI from this program and divided this amount by the combined total sales of Saldanha/Iscor during the POI, as discussed in the ''Cross-Ownership and Attribution of Subsidies'' section above. On this basis, we preliminarily determine the countervailable subsidy to be 3.20 percent *ad valorem* for Saldanha/Iscor.

4. Loan Guarantees Provided by the IDC

The IDC facilitates and guarantees foreign credits for the importation of capital goods into South Africa. The program was established in 1989 and was designed to facilitate foreign lending to South African firms; the availability of foreign credit in South Africa was extremely limited at that time. The IDC establishes blanket credit lines with specific foreign banks which can be used in two ways. First, the IDC may act as an intermediary lending authority, borrowing funds through these credit lines from the foreign bank and lending them to the South African firm. Second, based on these credit lines, the South African firm may negotiate its own supply contract loan with the foreign lender which is then guaranteed by the IDC. Any company seeking financing for the purchase of foreign capital equipment may apply to the IDC to use the program. Whether the financing is arranged through the IDC, or directly with the foreign lender, it is guaranteed through the IDC program. The IDC charges a fee for its guaranteeing and facilitating services.

According to its questionnaire responses, Saldanha began receiving IDC loan guarantees under this program in 1996, to finance purchases of foreign capital equipment. The GOSA has reported that these export credits are provided under the OECD guidelines for export credits in the relevant countries. Highveld did not receive guarantees under this program. Iscor received several IDC guarantees under this program which were tied to production facilities that are not involved in any part of the production process for subject merchandise. (*See* 19 CFR 351.525(b)(5).) Therefore, there are no countervailable loan guarantees attributable to subject merchandise for Highveld or Iscor.

The IDC guaranteed import financing for capital equipment purchased by Saldanha. These guarantees represent a financial contribution by the GOSA. We are measuring the benefit of the loan guarantee as the difference between the GOSA loan guarantee fee and a commercial guarantee fee as we did in *SSPC Final.* However, for purposes of the final determination, we intend to examine whether the loan guarantees provided by the IDC were required in order for Saldanha to receive this financing, and whether the provision of these guarantees affects interest rates charged on this import financing.

In *SSPC Final,* we found the amount a South African firm would pay for similar guarantee facilities would range between 0.25 and 0.50 percent, and chose to use the middle of the range, 0.375, as the benchmark rate. *See SSPC Final,* 64 FR at 15557. We also stated that the price paid for the fees would vary depending on the quality of the borrower and the size of the credit. In this case, as in *SSPC,* the amount of the guaranteed loans is large, as they are used to purchase start-up facilities. However, while we have not determined that Saldanha was uncreditworthy during all of the years in which the guarantees were provided, we find that it is not a ''high-quality'' borrower because it had no loans that were not guaranteed by the IDC. Therefore, we have determined that 0.50 percent is a more appropriate benchmark. According to questionnaire responses, the amount paid by Saldanha to the IDC for these guarantee facilities was 0.25 percent. Therefore, we have determined that the amount paid by Saldanha for the IDC guarantee was less than what it would have paid for a guarantee in the commercial market in South Africa.

In addition to determining the existence of a financial contribution and benefit, when determining whether a program is countervailable, we must examine whether it is specifically provided under section 771(5A) of the Act. The enacting legislation for the IDC does not explicitly limit eligibility for this import financing guarantee program to exporters or to an enterprise, industry, or group thereof. Thus, these guarantees are not *de jure* specific, and we must analyze whether the program meets the *de facto* criteria defined under section 771(5A)(D)(iii) of the Act. We examined IDC annual reports provided by the GOSA and found that, since 1993, the steel and metals industries have been predominant recipients of loans and loan guarantees provided by the IDC. Specifically, since Saldanha began receiving these guarantees in 1996, as much as 44 percent of IDC financing has gone to the basic iron and non-ferrous metals industries (84 percent in 1995). We note that no other industry group has received benefits near this amount. On this basis, we find IDC import financing guarantees provided to Saldanha to be *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. We note that we found IDC guarantees to be specific on these same grounds in *SSPC Final.* 64 FR at 15557. Therefore, we preliminarily determine that the IDC guarantees constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

We note that the GOSA and Saldanha have argued that the commercial guarantee rate chosen by the Department in *SSPC Final* is not a valid comparison with the IDC guarantees because Saldanha's loans were cross-guaranteed by Iscor, while the rate quoted in *SSPC Final* was, apparently, for a single guarantor. Therefore, according to the GOSA and Saldanha, the IDC was only liable for half the value of the guaranteed loans, while the benchmark guarantor would be liable in full. Iscor's role as a guarantor, however, is unclear. Furthermore, regardless of Iscor's role, the IDC's liability does not appear to be limited. Nothing on the record indicates that Saldanha's debtors are obligated to seek only half of their repayment from the IDC, and half from Iscor. Moreover, the standard for determining whether a benefit exists is not the net cost to the guarantor, but rather the benefit to the recipient that can only be determined by examining what Saldanha would have to pay for a commercial loan guarantee.

To determine the benefit, we used the following methodology. Since the guarantee fees are paid every year on the loan balance that is outstanding, we multiplied the outstanding balance during the POI for each guaranteed loan by the rate of 0.25 percent to calculate the fee paid by Saldanha to the IDC. We then multiplied the outstanding balance by 0.5 percent to calculate the fee Saldanha would have paid to a commercial guarantor. We then subtracted what Saldanha paid the IDC under this program from what it would have paid on a comparable commercial guarantee for each loan. We summed the benefits allocable to the POI from this program and divided this amount by the combined total sales of Saldanha/Iscor during the POI, as discussed in the ''Cross-Ownership and Attribution of Subsidies'' section above. On this basis, we preliminarily determine the countervailable subsidy to be 0.12 percent *ad valorem* for Saldanha/Iscor.

5. Wharfage Fees for Exports

The GOSA charges lower wharfage fees for exports than for imports through all ports in South Africa. The export rate is an *ad valorem* rate of 0.89 percent of FAS value, and the import rate is an *ad valorem* rate of 1.78 percent of entered value. We asked the GOSA to explain the difference. The GOSA responded that the cost of provision and maintenance of infrastructure primarily determines wharfage charges, but did not explain how the costs of providing and maintaining the infrastructure differ for imports than for exports.

Section 351.514(a) of the Department's regulations states that a subsidy is an export subsidy if its provision is contingent upon export performance. We preliminarily determine that the GOSA's lower wharfage fees for exports constitute a countervailable export subsidy under section 351.514(a).

In order to calculate the benefit, we calculated what each respondent would have paid in export wharfage fees if the export rate had been equal to an average of the export rate and the import rate, and then subtracted what was actually paid for export wharfage fees. Because we have preliminarily determined that this difference in rates is an export subsidy, we divided the benefit amount by the value of total exports for the POI, in accordance with section 351.525(b)(2) of our regulations, to calculate the *ad valorem* subsidy rate. Accordingly, we preliminarily determine the countervailable subsidy to be 0.45 percent for Highveld and 0.44 percent for Saldanha/Iscor, *ad valorem.* For Highveld, we based our calculation on the FOB value of its exports, because it did not provide any information on the amount of wharfage fees it paid during the POI, as requested in our February 27, 2001 questionnaire.

Programs Preliminarily Determined to be Not Countervailable

1. Improvements to Saldanha Bay Port

We initiated an investigation of a program to improve the Saldanha Bay port, alleged to provide countervailable benefits to Saldanha. The program was undertaken by Portnet, a company wholly-owned by the GOSA and charged with managing and constructing South Africa's ports. Portnet is a subsidiary of Transnet, an organization also wholly-owned by the GOSA, which supervises a number of transportation-related organizations. The program involved the expansion of the multipurpose cargo quay at Saldanha Bay port from 250 to 870 meters. Construction began in 1995 and was completed in 1998. In our initiation memorandum, we found that petitioners had provided sufficient evidence to warrant an investigation that the quay expansion was specific to an enterprise or industry or group thereof and was not general infrastructure. We noted that petitioners, after an ''exhaustive search,'' were unable to find evidence that the GOSA had received adequate remuneration for this program.

After reviewing the GOSA's questionnaire responses, we preliminarily determine that the GOSA received adequate remuneration for this provision of infrastructure. Provision of infrastructure is incorporated in our regulations under section 351.511, ''Provision of goods or services.'' (*See* section 351.511(d) of our regulations which provides an exception for general infrastructure.) Section 351.511(1) of our regulations provides that, in the provision of goods and services, ''a benefit exists to the extent that such goods or services are provided for less than adequate remuneration.'' Section 351.511(2) of our regulations directs us to judge adequate remuneration by comparing the government price to a market-determined price. In this case, there are no other operators, besides Portnet, of ports in South Africa. There is also no world market price available to ''purchasers in the country in question,'' which is the next alternative under section 351.511 of the regulations. Thus, we have to assess ''whether the government price is consistent with market principles.'' 19 CFR 351.511(a)(2)(iii).

The GOSA reported that Portnet charges country-wide wharfage fees, which it stated are used for port capital. The GOSA provided a business proprietary feasibility study and budgets for the project, demonstrating that Portnet sets its fees at a level designed to ensure that it covers operating costs and future capital expenditures. The documents calculate internal rates of return and profit indices based on planned spending and existing fees. While these fees have not changed in several years, they are *ad valorem* rates, and, thus, increase with the total value of shipments. Portnet expected an increase in the volume of shipments, and correspondingly the total value of shipments, the accommodation of which was one of the aims of the improvement.

Furthermore, the annual reports for Transnet, Portnet's parent, provide separate descriptions of its subsidiaries' operations, which describe Portnet as a profit-making operation. Financial statements for each subsidiary are also included, which indicate that Portnet had a positive income during fiscal years 1999 and 2000. Appendix A to the GOSA's March 14th response provides a summary of Portnet's financial statements going back to fiscal year 1996, which also shows a positive income for each year. This information, in combination with the study and budgets mentioned above, supports the conclusion that Portnet sets its fees in a manner designed to recover its operating and capital costs and that its fees are set to ensure its future operations. Therefore, we preliminarily find that the GOSA set prices for this infrastructure consistently with market principles, *i.e.*, that it planned to recover the costs of its investments plus an amount for profit, in accordance with section 351.511(a)(2)(iii) of our regulations.

2. Improvements to the Sishen-Saldanha Rail Line

We initiated an investigation of a program to upgrade the Sishen-Saldanha rail line, alleged to provide countervailable benefits to the production of subject merchandise. The program was undertaken by Spoornet, a company wholly-owned by the GOSA and charged with managing and constructing South Africa's railroads, through its subsidiary Orex, an entity created specifically for management of the Sishen-Saldanha line. Spoornet is a subsidiary of Transnet. The program involved two projects to improve a rail line from iron ore mines in the Sishen region to Saldanha Bay. Orex began planning the first project in November 1999 and completion of the project is expected by July 2002. It involves the construction of additional crossing loops first envisioned, but not built, when the line was built between 1973 and 1976. The GOSA states that construction of these additional loops became necessary with increased volumes of iron ore. The second project involves the upgrading of locomotives and wagons, and was also undertaken for the purpose of increasing iron ore transport capacity. The iron ore transported on this line was mined by Iscor, and either exported, sold to Saldanha, or sold to other local mills not involved in the production of subject merchandise. The GOSA's response states that the improvements were planned in order to accommodate increased iron ore exports. The ore was transported from Saldanha Bay to Saldanha's mill by means of a conveyor belt.

In our initiation memorandum, we found that petitioners had provided sufficient evidence to warrant an investigation that the rail upgrade was specific to an enterprise or industry or group thereof and was not general infrastructure. We noted that petitioners, after an ''exhaustive search,'' were unable to find evidence that the GOSA had received adequate remuneration for this program.

After reviewing the GOSA's questionnaire responses, we preliminarily determine that the GOSA received adequate remuneration for this program. Provision of infrastructure is incorporated in our regulations under section 351.511, ''Provision of goods or services.'' (*See* section 351.511(d) of our regulations which provides an exception for general infrastructure.) Section 351.511(1) of the regulations provides that, in the provision of goods and services, ''a benefit exists to the extent that such goods or services are provided for less than adequate remuneration.'' Section 351.511(2) of the regulations directs us to judge adequate remuneration by comparing the government price to a market-determined price. In this case, there are no other operators, besides the GOSA-owned subsidiaries, of rail lines in South Africa. There is also no world market price available to ''purchasers in the country in question,'' which is the next alternative under section 351.511 of the regulations. Thus, we have to assess ''whether the government price is consistent with market principles.'' 19 CFR 351.511(a)(2)(iii).

The GOSA reported that Spoornet charges Iscor a negotiated fee for use of the Sishen-Saldanha line. The GOSA provided plans and proposals for the project, demonstrating that Spoornet negotiated its fee at a level designed to ensure that it covers operating costs and future capital expenditures. The documents calculate internal rates of return and profit indices based on planned spending and existing fees. While the fee has not changed in several years, it is an *ad valorem* rate, and, thus, increases with the total value of shipments. As stated above, the project was designed to accommodate increased exports which was accomplished by an increase in the line's tonnage capacity per year.

Furthermore, the annual reports for Transnet, Spoornet's parent, provide separate descriptions of its subsidiaries' operations, which describe Spoornet as a profit-making operation. Financial statements for each subsidiary are also included, which indicate that Spoornet had a positive income during fiscal years 1999 and 2000. This information, in combination with the plans and proposals mentioned above, supports the conclusion that Spoornet sets its fees in a manner designed to recover its operating and capital costs and that its fees are set to ensure its future operations. Therefore, we preliminarily find that the GOSA set prices for this infrastructure consistently with market principles, *i.e.*, that it planned to recover the costs of its investments plus an amount for profit, in accordance with section 351.511(a)(2)(iii) of the regulations.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation, Highveld, Iscor, and Saldanha. We have preliminarily determined that the total estimated countervailable subsidy rate is 0.45 percent *ad valorem* for Highveld, which is *de minimis,* in accordance with section 703(b)(4)(B) of the Act. Therefore, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of subject merchandise by Highveld. As discussed in the ''Cross-Ownership and Attribution of Subsidies'' section above, we are treating Saldanha and Iscor as a single entity and, therefore, have calculated a single rate to be applied to these companies. With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates. Therefore, because Highveld's rate is *de minimis,* we are using the Saldanha/Iscor rate as the ''all others'' rate.

Producer/Exporter	Net subsidy rate
Highveld Steel and Vanadium Corp.	0.45% *Ad Valorem*
Saldanha Steel (Pty.) Corp./Iscor Ltd.	13.53% *Ad Valorem*
All Others	13.53% *Ad Valorem*

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from South Africa produced or exported by any company, other than Highveld, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with section 351.310 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, unless otherwise informed by the Department, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 351.309 of our regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 13, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

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