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U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for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 amount indicated above. This suspension will remain in effect until further notice. Because the estimated preliminary countervailing duty rate for POSCO and Hysco are *de minimis*, these two companies will be excluded from the suspension of liquidation.

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 nonproprietary 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, 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, 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 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.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5107 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Sulfanilic Acid from Hungary

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

ACTION: Notice of preliminary affirmative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of sulfanilic acid from Hungary. For information on the estimated countervailing duty rates, see infra section on ''Suspension of Liquidation.'' We are also aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to our regulations as codified at 19 CFR Part 351 (April 2001).

Petitioner

The petitioner in this investigation is Nation Ford Chemical Company (''the petitioner'').

Case History

The following events have occurred since the publication of the notice of initiation in the Federal Register. See Notice of Initiation of Countervailing Duty Investigation: Sulfanilic Acid from Hungary, 66 FR 54229 (October 26, 2001) (''Initiation Notice'').

On October 22, 2001, we issued countervailing duty questionnaires to the Government of Hungary (''GOH'') and to Nitrokemia 2000 Rt. (''Nitrokemia 2000''), the only producer/exporter of sulfanilic acid in Hungary.

On November 13, 2001, the petitioner filed a new subsidy allegation and also provided new information to supplement its previous uncreditworthiness allegation (which the Department had previously determined was unsupported). We addressed the issues raised in the petitioner's letter in the December 14, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations'' (''New Allegations Memorandum''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

On November 28, 2001, we received a response to the Department's questionnaire from the GOH. On December 17, 2001, the Department issued a supplemental questionnaire to

the GOH; this supplemental questionnaire also included questions regarding the new allegations contained in the petitioner's November 13 letter. On December 18, 2001, the GOH submitted a supplement to its original questionnaire response. The GOH submitted a response to the Department's supplemental and new programs questionnaire on January 31, 2002.

On December 4, 2001, we postponed the preliminary determination in this investigation until February 25, 2002. See Sulfanilic Acid from Hungary: Postponement of Preliminary Determination of Countervailing Duty Investigation, 66 FR 63674 (December 10, 2001).

Also on December 4, the Department sent letters to all of the parties in this proceeding instructing them how to properly file submissions with the Department. We did so, in part, because 1) on November 28, 2001, Nitrokemia 2000 improperly transmitted to the Department, via e-mail, its questionnaire response, but did not properly submit a hard-copy response pursuant to 19 CFR 351.303, and 2) many of the parties in this proceeding were not serving their submissions on other interested parties as required by 19 CFR 351.303. This December 4 letter also indicated that Nitrokemia 2000's questionnaire response needed to be filed according to the Department's filing requirements in order for it to be accepted by the Department.

On December 10, 2001, Nitrokemia 2000 responded via e-mail to this letter, but did not indicate whether it was planning to properly submit its questionnaire response. Therefore, on December 11, 2001, we sent a second letter to Nitrokemia 2000 notifying Nitrokemia 2000 that it needed to properly file its questionnaire response by December 18, 2001. (All e-mails that were received from Nitrokemia 2000 were attached for the record to the subsequent responses that were sent by the Department to Nitrokemia 2000.) On December 18, 2001, we received another e-mail from Nitrokemia 2000 which stated that Nitrokemia 2000 would be unable to respond to the Department's questionnaire by December 18, 2001 because its manufacturing facilities had been shut down for the holidays. Also on December 18, the Department issued a new program questionnaire to Nitrokemia 2000 which included questions related to the new allegations, noted above.

On December 21, 2001, we sent a third letter to Nitrokemia 2000 with respect to the filing of its questionnaire response. In this letter, although Nitrokemia 2000 had not actually asked for an extension of time to respond to the Department's questionnaire, we gave Nitrokemia one last extension until January 14, 2002 to respond to the Department's questionnaire. Additionally, we also gave Nitrokemia 2000 an extension until that same date to respond to the Department's December 18, 2001 new program questionnaire.

On January 11, 2002, Nitrokemia 2000 submitted its questionnaire response. Subsequent to this submission, on January 14, 2002, Nitrokemia 2000 sent the Department an e-mail indicating that it did not intend to submit a response to the Department's new program questionnaire, which was due to the Department on January 14. On January 16, 2002, we issued a supplemental questionnaire to Nitrokemia 2000. In this supplemental questionnaire, we gave Nitrokemia 2000 another opportunity to respond to the new programs questionnaire, extending its submission deadline to January 28, 2002. On January 28, 2002, Nitrokemia 2000 submitted its responses to both the Department's supplemental questionnaire and the new programs questionnaire.

On January 31, 2002, the petitioner submitted comments on the questionnaire responses filed by both Nitrokemia 2000 and the GOH. Nitrokemia 2000 responded to these comments on February 14, 2002.

On February 12 and February 19, 2002, the petitioner submitted comments on the upcoming preliminary determination.

Finally, on February 15, 2002, the petitioner requested that the Department align the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary. For further information, see infra section on ''Alignment with Final Antidumping Duty Determination.''

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because Hungary 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 Hungary materially injure, or threaten material injury to, a U.S. industry. On November 13, 2001, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Hungary of the subject merchandise. See Sulfanilic Acid from Hungary and Portugal, 66 FR 57988 (November 19, 2001).

Alignment with Final Antidumping Duty Determination

On February 15, 2002, we received a request from the petitioner to postpone the final determination in this investigation to coincide with the final determination in the companion antidumping (''AD'') investigation of sulfanilic acid from Hungary.

The companion AD investigation and this countervailing duty investigation were initiated on the same date and have the same scope. See Initiation Notice and Notice of Initiation of Antidumping Duty Investigations:

Sulfanilic Acid from Hungary and Portugal, 66 FR 54214, 54218 (October 26, 2001). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the companion AD investigation of sulfanilic acid from Hungary.

Change in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (''Delverde III''), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993) (''GIA''). The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology following the CAFC's decision in Delverde III. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

There are two potential changes in ownership to be examined in this investigation: the creation of Nitrokemia 2000 in late 1997–1998, and Nitrokemia 2000's privatization in November/December 2000.

With respect to Nitrokemia 2000's creation in 1997–1998, we have preliminarily determined that no change-in-ownership analysis is required. According to record information, in November 1997, Nitrokemia Rt., a state-owned company, began an internal reorganization based on a decision by the GOH. As part of this reorganization, many of Nitrokemia Rt.'s production facilities, including its sulfanilic acid production facilities, were transferred to a newly created fully-owned subsidiary of Nitrokemia Rt., Nitrokemia 2000. Then, in May of 1998, Nitrokemia Rt. transferred Nitrokemia 2000 to the Hungarian State Privatization and Holding Company (''APV''), the Hungarian government entity responsible for privatizing state-owned shares and assets, in order for it to be sold to private investors.

According to Department practice regarding privatizations, sales ''must involve unrelated parties, one of which must be privately-owned.'' (See GIA, 58 FR at 37266, ''Types of Restructuring 'Transactions' and the Allocation of Previously Received Subsidies.'') Because all of the parties involved in this transaction were related in that they were all owned by the GOH, we do not conclude from the evidence on the record that we should conduct our ''person'' analysis with respect to the 1997–1998 transactions.

With respect to Nitrokemia 2000's privatization, in November/December 2000, 85 percent of Nitrokemia 2000 was sold to Nitrokemia Invest Kft., a group of Nitrokemia 2000 managers and executives, while the remaining 15 percent was offered for sale to company workers with the contingency that, if the company workers did not want the shares, the remaining 15 percent would be purchased by Nitrokemia Invest Kft. Record evidence indicates that Nitrokemia Invest Kft. was the sole bidder to respond to the call for tenders by APV. APV's call for tender specified that any prospective bidders must pay for the purchase of the company in cash only, and that bidders must agree to release APV from its role as guarantor of Nitrokemia 2000's Hungarian forint (''HUF'') 2 billion loan. The tender offer also required bidders to not reduce employment at Nitrokemia 2000 by more than 10 percent within the first three years after purchasing the company. Finally, the tender offer required the buyer and Nitrokemia 2000 to ''tolerate and facilitate, according to their ability, the continuation and earliest possible completion of the environmental clean-up work taking place on the Nitrokemia Industrial site, as well as the earliest possible determination of the normal environmental state of the industrial site.''

As noted above, in making the ''person'' determination, we analyze factors such as the continuity of general business operations, the continuity of production facilities, the continuity of assets and liabilities, and the retention of personnel. According to both the GOH and Nitrokemia 2000, the sale of Nitrokemia 2000 at the end of 2000 resulted in no changes in any of these aspects of Nitrokemia 2000. Therefore, for the preliminary determination, we are attributing subsidies received by Nitrokemia 2000 prior to its privatization to Nitrokemia's sales during all of the POI.

Use of Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability.

In their responses, both the GOH and Nitrokemia 2000 failed to answer many of the Department's numerous and repeated questions relating to the alleged forgiveness of environmental liabilities and the subsequent transfer of Nitrokemia 2000 to APV for privatization. For instance, in our original questionnaire, we asked both the GOH and Nitrokemia 2000 to describe the process by which Nitrokemia 2000 and Nitrokemia Rt. were divided, how it was determined which company would receive the assets and liabilities, how the finances of the companies were divided, and the amount of the outstanding environmental liabilities. We also asked the respondents to submit financial statements and/or annual reports for both Nitrokemia 2000 and Nitrokemia Rt. Neither the GOH nor Nitrokemia 2000 provided the required information, stating only that Nitrokemia 2000 was responsible for any liabilities generated from its current production. The same questions were also left unanswered in supplemental questionnaires, despite several extensions being granted to the respondents and the respondents having almost a month to reply to the supplemental questions.

We also asked the parties to respond to several questions relating to the creditworthiness of Nitrokemia 2000 in 1998. Neither respondent answered these questions, even after we provided another opportunity to Nitrokemia 2000 to answer the questions after it originally stated that it would not respond to the creditworthiness questionnaire at all.

Moreover, as noted in the ''Case History'' section, above, although the GOH provided a prompt and timely response to the Department's original questionnaire, Nitrokemia 2000 did not properly file its questionnaire response until almost a month and a half after the questionnaire response was due. Although Nitrokemia 2000 never formally requested an extension, the Department gave Nitrokemia 2000 three subsequent opportunities to provide its response to the questionnaire. Additionally, the GOH in its responses repeatedly indicated that only the company had much of the requested information, even though the GOH owned Nitrokemia 2000 through its state privatization company, APV, through almost the end of the POI.

Based on the above discussion, we preliminarily determine that the respondents withheld information requested by the Department relating to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to section 776(a)(2) of the Act. Moreover, we preliminarily determine that an adverse inference is justified with respect to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to 776(b) of the Act because the respondents, as discussed above, have failed to cooperate to the best of their abilities.

With respect to Nitrokemia 2000's creditworthiness in 1998, as adverse facts available, we preliminarily determine that Nitrokemia 2000 was uncreditworthy in 1998. See, infra, further discussion in the ''Creditworthiness'' section.

As for the forgiveness of the environmental liabilities, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness attributable to Nitrokemia 2000 during the POI pursuant to 19 CFR 351.508. As adverse facts available, we determined that the total amount of the liability is HUF 7.5 billion, the average amount of the HUF 5 to 10 billion estimates provided in the petition. See, infra, ''Analysis of Programs'' section for a more detailed discussion of the attribution of the benefit amount to Nitrokemia 2000 and the benefit calculation itself.

When employing an adverse inference, the statute indicates the Department may rely upon information derived from, inter alia, the petition. In doing so, however, the Department should ''to the extent practicable'' corroborate the information from independent sources reasonably at its disposal. See Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994), at 870 regarding use of ''secondary'' information. In this case, with respect to Nitrokemia 2000's creditworthiness in 1998, several independent newspaper articles included in the petition indicate that Nitrokemia was not in sound financial condition in 1998. Moreover, Nitrokemia Rt.'s 1998 financial statements and financial ratios show that the company was losing money at that time, and that the company was not in good financial condition. (See New Allegations Memorandum for a further discussion of Nitrokemia's creditworthiness analysis.)

As for Nitrokemia's environmental liabilities, we found several independent news articles (in addition to the news articles and study done by the U.S. Foreign Commercial Service in Hungary, which were both included in the petition) that show that the amount of environmental liabilities are approximately HUF 5 to 10 billion. Therefore, we determine that the facts available information in question has probative value, and that we may appropriately rely upon it.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. See Countervailing Duties; Final Rule, 63 FR 65348, 65367 (November 28, 1998).

In this investigation, we are examining Nitrokemia 2000's

creditworthiness in 1998. Neither the GOH nor Nitrokemia 2000 provided a response to the Department's uncreditworthiness questions. Thus, as discussed, supra, in the ''Use of Facts Available'' section, we preliminarily determine, as facts available, that Nitrokemia 2000 was uncreditworthy in 1998.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the ''IRS Tables''). For sulfanilic acid, the IRS Tables prescribe an AUL of 11 years. Neither Nitrokemia 2000 nor any other interested party disputed this allocation period. Therefore, we have used the 11–year allocation period for Nitrokemia 2000.

Benchmarks for Discount Rates and Loans

Because we found Nitrokemia 2000 to be uncreditworthy in 1998 (see, supra, section on ''Creditworthiness''), we have calculated the long-term uncreditworthy discount rate for 1998 in accordance with 19 CFR 351.524(d)(3)(ii).

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C- rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by creditworthy companies, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the weighted-average rate on fixed-rate long-term enterprise sector loans in Hungary as reported by the National Bank of Hungary. For the term of the debt, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on an 11–year term, since the AUL in this investigation is 11 years.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Program Preliminarily Determined to Be Countervailable

Forgiveness of Environmental Liabilities

According to record evidence, Nitrokemia 2000 was created in November 1997 as a fully-owned subsidiary of Nitrokemia Rt. through an internal reorganization. Record evidence indicates that, as part of this reorganization, Nitrokemia 2000 was given responsibility for Nitrokemia Rt.'s viable operations, including its sulfanilic acid operations. Nitrokemia Rt. continued to be responsible for the company's poorly-performing operations, as well as all of the company's previous environmental liabilities generated by the plants' operations prior to the division. Information on the record from the petition indicates that these liabilities were valued between HUF 5 billion and 10 billion.

Then, in May 1998, Nitrokemia 2000 was transferred from Nitrokemia Rt. to APV in order for the GOH to begin preparations for privatization. We preliminarily determine that it was at this point that Nitrokemia 2000 was completely removed from the environmental responsibilities that had been generated in the past. Although the split from Nitrokemia Rt. had begun in November 1997, because Nitrokemia was a fully-owned subsidiary of Nitrokemia Rt. until May 1998, Nitrokemia 2000 was still potentially impacted by these environmental liabilities while Nitrokemia Rt. was still its parent company. However, once Nitrokemia 2000 was transferred to APV, the split between Nitrokemia Rt. and Nitrokemia 2000 was completed, and Nitrokemia 2000 was removed from its previous environmental liabilities.

As discussed, supra, in the ''Use of Facts Available'' section, we have, as facts available, preliminarily determined that the removal of Nitrokemia 2000's responsibility for any environmental clean-up liabilities is a countervailable subsidy. Specifically, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness that is attributable to Nitrokemia 2000. As adverse facts available, we determined that the appropriate amount of the total environmental forgiveness is HUF 7.5 billion, the average amount of the estimates provided in the petition. Finally, we also preliminarily determine that the debt forgiveness is specific pursuant to section 771(5A)(D) because it was limited to Nitrokemia.

According to Nitrokemia 2000's and Nitrokemia Rt.'s 1998 financial statements (which were submitted by the petitioner along with Nitrokemia 2000's 1999 and 2000 annual reports and Nitrokemia Rt.'s financial statements), following the split of the two companies, Nitrokemia 2000 received 53 percent of the assets of the former company. Therefore, in order to determine the amount of the benefit attributable to Nitrokemia 2000, we attributed 53 percent of the total environmental liabilities, noted above as HUF 7.5 billion, to Nitrokemia 2000.

This methodology is consistent with the methodology we used in the Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508, 15513 (March 31, 1999) (''SSPC Italy''). In SSPC Italy, we found that when ILVA S.p.A. was demerged into three separate entities, only one of the three entities that were created in the split received the former ILVA's liabilities, leaving the other two entities free of ILVA's former debt. We determined that the forgiveness of debt in that instance was a countervailable subsidy to the two companies that did not receive any of the liabilities, and based the amount of the benefit attributable to the company under investigation in that case on the relative asset allocations of the companies that were formed from ILVA's assets.

We treated the debt forgiveness to Nitrokemia 2000 as a non-recurring grant consistent with 19 CFR 351.524 because it was a one-time, extraordinary event. Because Nitrokemia was uncreditworthy in 1998, the year in which the debt forgiveness took place, we used the uncreditworthy discount rate described in the ''Subsidies Valuation Information'' section, above. Finally, we divided the amount allocated to the POI from this debt forgiveness attributable to Nitrokemia 2000 by Nitrokemia 2000's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 10.69 percent ad valorem exists for Nitrokemia 2000.

II. Program Preliminarily Determined to Not Be Countervailable

Restructuring Assistance Provided to Nitrokemia 2000

Nitrokemia 2000's 1998 financial statements show that its issued capital at the time of its inception was HUF 4,653,360,000, which is HUF 2 billion more than the issued capital transferred from Nitrokemia Rt. according to Nitrokemia Rt's financial statements.

In its response, Nitrokemia 2000 reported that this HUF 2 billion increase over the invested capital provided by Nitrokemia Rt. was the result of cash received through a bond offering at its inception, and not a cash infusion by the GOH as alleged by the petitioner. Therefore, because there is no evidence of a financial contribution from the GOH as described in section 771(5)(D) of the Act, we preliminarily determine that this increase in Nitrokemia 2000's invested capital in 1998 is not a countervailable subsidy pursuant to section 771(5) of the Act.

However, in their responses, both the GOH and Nitrokemia 2000 report that Nitrokemia 2000 received a government guarantee on a loan that was outstanding during the POI. Specifically, according to Nitrokemia 2000's financial statements and annual reports, Nitrokemia 2000 received a government guarantee for an HUF 2 billion loan that it took out in January 2000. This loan was repaid as of December 19, 2000 when the company was privatized pursuant to the requirements put forth in the APV tender.

While we do not currently have sufficient information to further analyze this loan guarantee for the preliminary determination, pursuant to section 775(1) of the Act, we will be requesting additional information on the nature of this loan guarantee from the GOH and Nitrokemia 2000 prior to the final determination.

Verification

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

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for the only company under investigation, Nitrokemia 2000.

With respect to the ''all others'' rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an ''all others'' rate for exporters and producers not individually investigated. In this case, although the rate for the only investigated company is based on facts available under section 776 of the Act, there is no other information on the record upon which we could determine an ''all others'' rate. As a result, in accordance with sections 777A(e)(2)(B) and 705(c)(5)(A)(ii), we have used the rate for Nitrokemia 2000 as the ''all others'' rate.

We preliminarily determine the total estimated net countervailable subsidy rate for Nitrokemia 2000 to be the following:

Producer/Exporter	Net Subsidy Rate
Nitrokemia 2000 Rt.	10.69%
All Others	10.69%

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of sulfanilic acid from Hungary for Nitrokemia 2000 and for any non-investigated exporters that entered, or were 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. However, this suspension of liquidation may not remain in effect for more than four months pursuant to section 703(d)(3) of the Act.

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 nonprivileged and nonproprietary 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

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 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.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5103 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020502A]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and