

[FR Doc. 02-5106 Filed 3-1-02; 8:45 am]

BILLING CODE 3510-DS-C

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-849]

#### Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea

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

**ACTION:** Notice of Preliminary Affirmative Countervailing Duty Determination.

**EFFECTIVE DATE:** March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl at (202) 482-1767 and Darla Brown at (202) 482-2849, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**PRELIMINARY DETERMINATION** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cold-rolled carbon steel flat products (subject merchandise) from the Republic of Korea. For information on the estimated countervailing duty rates, see the "Suspension of Liquidation" section of this notice.

#### SUPPLEMENTARY INFORMATION:

##### Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC, LTV Steel Company, Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp (collectively, petitioners).

##### Case History

Since the publication of the notice of initiation in the **Federal Register** (see *Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001) (*Initiation Notice*)), the following events have occurred. On November 1, 2001, we issued countervailing duty questionnaires to

the Government of Korea (GOK).<sup>1</sup> On December 20, 2001, we received responses to our initial questionnaires from the GOK, Dongbu Steel Co., Ltd. (Dongbu), Hyundai Hysco (Hysco), and Pohang Iron & Steel Co., Ltd.<sup>2</sup> (POSCO) (collectively, respondents), the producers/exporters of the subject merchandise. On January 16, 2002, the Department initiated an investigation of two additional subsidy allegations made by petitioners. See Memorandum to Melissa G. Skinner, Director of Office of AD/CVD Enforcement VI, through Richard Herring, Program Manager of Office of AD/CVD Enforcement VI; Re: Additional Subsidy Allegations in the Investigation of Certain Cold-Rolled Steel Flat Products from Korea dated January 16, 2002, which is on public file in the Central Records Unit (CRU), Room B-099 of the Department of Commerce. Supplemental questionnaires were issued to the GOK, Dongbu, POSCO, and Hysco on January 16, 2002 and January 18, 2002. We received supplemental questionnaire responses from respondents on February 5, 2002.

On December 7, 2001, we issued a partial extension of the due date for this preliminary determination from December 22, 2001, to no later than January 28, 2002. See *Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001) (*Extension Notice*). On January 24, 2002, we amended the Extension Notice to take the full amount of time to issue this preliminary determination. The extended due date is February 25, 2002. See *Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 67 FR 3482 (*Second Extension Notice*).

The GOK's December 20, 2001 questionnaire response stated that Union Steel Manufacturing Co., Ltd.

<sup>1</sup> Upon the issuance of the questionnaire, we informed the GOK that it was the government's responsibility to forward the questionnaires to all producers/exporters that shipped subject merchandise to the United States during the period of investigation.

<sup>2</sup> Pohang Coated Steel Co., Ltd. (POCOS), a wholly-owned subsidiary of POSCO which also produces and exports subject merchandise submitted a questionnaire response. Because POCOS is a wholly-owned subsidiary of POSCO, we have included the benefits received by POCOS in our calculation of POSCO's rate and have used POSCO's consolidated sales as our denominator. Reference to POSCO throughout this notice will also include POCOS.

(Union) shipped subject merchandise to the United States during the POI; however, the GOK stated that Union would not be responding to the Department's questionnaire for this investigation. On January 16, 2002, we provided Union with another opportunity to respond to the questionnaire. Union, again, declined to participate in this investigation. For the treatment of Union in this preliminary determination, see the "Use of Facts Available" section of this notice.

##### Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrent with this preliminary determination.

##### Scope Comments

In the Initiation Notice, we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company ("Emerson") to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully-or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

### 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, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

### Injury Test

Because Korea is a "Subsidy Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure or threaten material injury to a U.S. industry. On November 19, 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 Korea of subject merchandise. (66 FR 57985). The views of the Commission are contained in the USITC Publication 3471 (November 2001), *Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*; Investigation Nos. 701-TA-422-425 (Preliminary) and 731-TA-964-983 (Preliminary).

### Alignment With Final Antidumping Duty Determination

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, 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 antidumping duty investigations of cold-rolled carbon steel flat products.

### Period of Investigation

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

### Use of Facts Available

Union failed to respond to the Department's questionnaire. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act require the use of facts available when an interested party withholds information that has been requested by

the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Union failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Union failed to provide any requested information, sections 782(d) and (e) of the Act are not applicable.

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

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

Section 776(b) of the Act indicates that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. See also 19 CFR § 351.308(c). As adverse facts available in this preliminary determination, we have calculated Union's net subsidy rate by using a subsidy rate from *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999), (*Sheet and Strip*), this rate was used as adverse facts available for a company in that final determination. Therefore, we preliminarily determine a total *ad valorem* rate of 7.00 percent as adverse facts available for Union. See *Sheet and Strip*, 64 FR 30638-39. We note that, in determining Union's adverse facts available rate, we did not include in our calculations any net subsidy rates stemming from programs that would not be available to Union. For example,

there was a higher adverse facts available rate that was used in *Sheet and Strip*, however, a portion of that rate was based upon company-specific allegations, unique to a specific producer. We further note that none of the company-specific program rates used to derive the 7.00 percent net subsidy rate were determined on the basis of facts available.

### Subsidies Valuation Information

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

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, we will allocate non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

*Benchmarks for Long-Term Loans and Discount Rates:* During the POI, respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. Some loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*, and in *Structural Beams*, the Department determined that, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338, 37339 (July 9, 1993) (*Steel Products from Korea*), and *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051

(July 3, 2000) (*Structural Beams*). In both investigations, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the preliminary determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530 (March 31, 1999) (*Plate in Coils*), *Sheet and Strip*, and in the Benchmark Interest Rates and Discount Rates section of the Issues and Decision Memorandum that accompanied *Structural Beams*, we examined the GOK's direction of credit policies for the period 1992 through 1998. Based on information gathered during the course of those investigations, the Department also determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1998. In the current investigation, based upon these earlier findings and updated information, we preliminarily determine that the GOK still exercised substantial control over lending institutions in Korea during the POI.

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

(1) For countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average foreign-denominated interest rates on the companies' loans from foreign bank branches in Korea. If such a benchmark was not available, then, as facts available, we had to rely on the lending rates as reported by the IMF's *International Financial Statistics Yearbook*. We will attempt to gather additional data on lending rate during verification.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' won denominated public and private bonds. We note that this benchmark is based on the decision in *Plate in Coils*,

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

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

*Benchmarks for Short-Term Financing:* For those programs that require the application of a short-term won-denominated interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POI.

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

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

questionnaires with respect to the export subsidies under investigation.

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

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This preliminary determination is based on two main facts: first, the majority of subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon individual trading companies with regard to subject merchandise is insignificant. Thus, combination rates would serve no practical purpose because the calculated subsidy rate for any of the producers and a combination of any of the trading companies would effectively be the same rate. Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the trading companies, we calculated the benefit attributable to the subject merchandise. In each case, we determined the benefit received by the trading companies for each of the export subsidies, next we weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States to the relative share of direct exports of the producer of subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

## I. Programs Preliminarily Determined To Be Countervailable

### A. GOK Directed Credit

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

In *Plate in Coils*, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. In *CTL Plate*, the Department continued to find that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. In the final determination of *CTL Plate*, the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998. See *CTL Plate*, 64 FR at 73180. Further, the Department determined in this investigation that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act. In *1999 Sheet and Strip*, we determined that the GOK continued to control credit through 1999. See *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*). Based upon the determinations in these cited cases, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable. In addition, we also continue to find access to offshore lending and credit sources countervailable.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies in 2000, the POI, which we would consider along with our finding in the prior investigations. We note that with respect to access to direct foreign loans (*i.e.*, loans from offshore banks) and the issuance of offshore foreign securities by Korean companies, the GOK has replaced the Foreign Investment and Foreign Capital Inducement Act, with

the Foreign Investment Promotion Act. While this information indicates that the GOK is making strides in its reforms of the financial sector, at present, this additional information is not sufficient to warrant a reconsideration of our determination that the GOK has directed access to foreign credit to the Korean steel industry. During verification, we will closely examine this issue with respect to the 2000 period.

With respect to foreign sources of credit, in *Plate in Coils* and *Sheet and Strip*, we determined that access to foreign currency loans from Korean branches of foreign banks (*i.e.*, branches of U.S. and foreign-owned banks operating in Korea) did not confer a benefit to the recipient as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by the respondent from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in *Plate in Coils* and *Sheet and Strip*, we determined that respondent's loans from these banks could serve as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. As such, lending from this source is not countervailable, and, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

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

For variable-rate loans the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, in these preliminary results, we have calculated the benefit from these loans using the Department's variable rate methodology. For fixed-rate loans, we calculated the benefit from these loans using the Department's fixed-rate methodology. Next we summed the benefit amounts from the loans and divided the total benefit by the respective company's total f.o.b. sales value during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.20 percent *ad valorem*

for Dongbu, 0.24 percent *ad valorem* for Hysco, and 0.08 percent *ad valorem* for POSCO.

### B. GOK Infrastructure Investment at Kwangyang Bay Through 1991

In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. See *Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

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

### C. Research and Development (R&D)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the Industrial Development Act (IDA), including technology for core materials, components, engineering systems, and resource technology. Petitioners also allege that R&D grants are provided to the steel industry through the Ministry of Science and Technology (MOST).

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

To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the amount of the grant by each company's respective total f.o.b. sales. Based upon this methodology, we preliminarily determine that POSCO received a countervailable subsidy of 0.08 percent ad valorem and that Dongbu received a

countervailable subsidy of less than 0.005 percent ad valorem. Hysco did not use this program.

### D. Provision of Land at Asan Bay

The GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by Koland.

In *CTL Plate*, we found that steel companies received price discounts on purchases of land at Asan Bay, and found this program countervailable. See *CTL Plate*, 64 FR 73184. In addition, we found that the GOK provided additional savings to the companies by exempting them from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land. Dongbu purchased land in the Kodai industrial estate at Asan Bay and received the tax exemptions on the purchase of this land at the industrial estate.

To determine Dongbu's benefit from this program, we compared the GOK's published list price for land at the Kodai industrial estate, which was 134,966 won per square meter, to the discounted price per square meter paid by Dongbu. We adjusted the list price to account for land development costs undertaken by the company, rather than the GOK. We made this deduction because the GOK's costs for land development is included in the published 134,966 per square meter price. We then calculated this price discount by the number of square meters purchased by Dongbu. In addition to this price discount, the GOK provided an adjustment to Dongbu's final payment to account for "interest earned" by the company for pre-payments. Companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. The GOK provided a financial contribution to Dongbu under section 771(5)(D)(i) of the Act when it refunded the interest earned

on the advanced payments. This interest earned refund is specific to Dongbu under section 771(5A)(D)(iii)(I) of the Act, as being limited to Dongbu. Therefore, we find that this additional credit on the final payment made by the GOK to Dongbu also provides a countervailable benefit to the company. The land price discount and the interest earned refund are non-recurring subsidies.

Under section 351.524(b)(2) of the CVD Regulations, non-recurring benefits which are less than 0.5 percent of the company's relevant sales are expensed in the year of receipt. We performed the 0.5 percent test and we preliminarily find that the land price discount and the interest earned refund exceeded 0.5 percent of the sales for the respective year, therefore, to calculate the benefit conferred during the POI on the land price discount and the interest earned refund, we applied the Department's standard grant methodology and allocated the benefit provided by this program over a 15-year allocation time period. See the allocation period discussion under the "Subsidies Valuation Information" section, above. We then divided the total benefit attributable to the POI by Dongbu's total f.o.b. sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.62 percent ad valorem for the POI.

With respect to the exemptions from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land, we preliminarily determine that Dongbu did not receive a benefit from these tax exemptions during the POI. We make this determination because these tax exemptions were not received during the POI. Under section 351.509(b) of the CVD Regulations, the Department will normally consider that the benefit from a tax exemption is conferred in the year in which the exemption was received. We recognize that under certain circumstances, if a tax exemption is tied to capital goods, then the Department may consider the benefit from the tax exemption to be non-recurring. See *Countervailing Duties; Final Rule*, 63 FR 65384, 65393 (November 25, 1998). Non-recurring benefits are normally allocated over time. However, under section 351.524(b)(2), non-recurring subsidy benefits will be expensed in the year of receipt, if the total benefit from the subsidy program is less than 0.5 percent of a company's sales. Therefore, even if the tax exemptions received by Dongbu were considered to have provided non-recurring benefits because they were tied to the purchase of capital assets, these benefits would still have

been expensed before the POI because of the Department's 0.5 percent test.

#### *E. POSCO's Exemption of Bond Requirement for Port Use at Asan Bay*

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

In *CTL Plate*, we found this program countervailable, see *CTL Plate*, 64 FR 73183-73184. We determined that the waiver of the bond purchase was only provided to POSCO, and was therefore specific under section 771(5A)(D) of the Act. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO conferred a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determined that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to find this program countervailable.

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

#### *F. Investment Tax Credits*

Under Korean tax laws, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the Tax Reduction and Exemption Control Act (TERCL). On that date TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

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

POSCO used the following tax credits during the POI for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA 11); (2) Investments in Productivity Increasing Facilities (RSTA 24); and (3) Investments in Specific Facilities (RSTA 25).

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

If a company invested in foreign-produced facilities (*i.e.*, facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.*, facilities produced in Korea), it received a 10 percent tax credit. Under the tax credit for Equipment Investment to Promote Worker's Welfare, a tax credit could only be claimed if a company used domestic machines and materials. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determined that these investment tax credits constituted

import substitution subsidies under section 771(5A)(C) of the Act in *CTL Plate*. In addition, because the GOK forwent the collection of tax revenue otherwise due under this program, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable in *CTL Plate*. See *CTL Plate* at 73182.

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

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

According to the response of Dongbu, the tax credits earned for Investments in Equipment to Develop Technology and Manpower, Investments in Productivity Increasing Facilities, and Investments in

Specific Facilities were not based on a tax credit differential between purchasing domestic facilities and imported facilities. In addition, according to the company's response, the tax credit earned during the POI for Equipment Investment to Promote Workers' Welfare was not used to reduce taxes payable during the POI because the entire tax credit was carried forward to future years. The tax return provided in the company's response shows that the entire tax credit was, indeed, carried forward and was not used during the POI. Therefore, we preliminarily determine that Dongbu did not benefit from this program during the POI.

POSCO did use investment tax credits under this program that originated from tax credits earned based upon the differential between purchasing domestic facilities and imported facilities. To calculate the benefit from these investment tax credits, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1999 fiscal year income tax return, which was filed during the POI. We first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.14 percent *ad valorem* for POSCO.

#### G. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds

are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu also had an outstanding balance in this reserve during the POI.

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

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, as filed during the POI, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for Dongbu and Dongbu Corp by their respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the "Subsidies Valuation Information" section, above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the "Subsidies Valuation" section of this notice, we calculated a benefit for Dongbu Corp attributed to Dongbu. On this basis, we preliminarily calculated a countervailable subsidy of 0.07 percent *ad valorem* for Dongbu.

#### H. Reserve for Overseas Market Development Under TERCL Article 17

Article 17 of the TERCL allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by

returning, from the reserve to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate income tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. This program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu and Posteel, a trading company used by POSCO, also had outstanding balances in this reserve during the POI.

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

To determine the benefit conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program under Article 16 of the TERCL. We used as our benchmark interest rate each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the "Subsidies Valuation Section" above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the "Subsidies Valuation" section of this notice, we calculated a benefit attributable to each respective producer. On this basis, we preliminarily calculated a countervailable subsidy of 0.02 percent *ad valorem* for Dongbu and a

countervailable subsidy of 0.02 percent *ad valorem* POSCO.

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

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

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

#### J. Tax Reserve for Balanced Development Under TERCL Article 41/ RSTA Article 58

TERCL Article 41 allowed a company who planned to relocate its facility from a large city to a local area to establish a reserve equal to 15 percent of the facility's value. The balance in the reserve was not subject to corporate income tax in that year but all monies in the reserve must eventually be returned to the income account and are then subject to tax at the expiration of the grace period. The reserve amount equivalent to the amount incurred from the relocation of its facilities from the large city to a local area will be included in taxable income after a two-year grace period and over a three-year period. If the reserve amount is not used for the payment of relocation, this unused amount is included in the company's taxable income, after the two-year grace period. This program was replaced by Article 58 of RSTA. Subsequent to the establishment of Article 58 of RSTA, the program was terminated and the last date that this reserve could be established was August 31, 1999.

Dongbu was the only company which established a reserve under this program before the program's August 31, 1999 termination. Dongbu still had an outstanding balance under this reserve during the POI.

We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. Because the deferral of taxes owed provided under this program amounts to an interest-free loan equal to the company's tax savings, we also preliminarily determine that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

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

For our final determination, we will consider whether the methodology the Department has traditionally applied to these types of Korean tax programs accurately quantifies the benefit conferred by these tax reserves. As noted above, the Department has treated these tax reserve programs as providing a deferral of tax liability. That is, in Year X a company places funds into a reserve account and these funds are, therefore, not taxed in Year X. However, three years later when the funds in the tax reserve are returned to taxable income, then income taxes are paid on these funds in Year X plus three. Therefore, we have considered the tax savings on these funds to benefit the company in the form of an interest-free loan. However, if the company is in a tax loss situation and does not pay any taxes on income in the year in which the funds are refunded to the income account the funds placed into the tax reserve are never taxed. Under this scenario, the company, instead of being provided with a deferral of tax liability on these reserve funds, may have been provided

with a complete exemption of tax liability on these funds. Therefore, we will carefully analyze this methodological issue for the final determination. We also invite interested parties to comment on this issue.

#### K. Short-Term Export Financing

In *Steel Products from Korea*, the Department determined that the GOK's short-term export financing program was countervailable (see 58 FR at 37350). Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable. During the POI, Hysco and POSCO were the only producers/exporters of the subject merchandise that used export financing.

To determine whether this export financing program confers a countervailable benefit, we compared the interest rate Hysco and POSCO paid on the export financing received under this program during the POI with the interest rate they would have paid on a comparable short-term commercial loan. See discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable benchmark interest rate. We then divided the benefit derived from all of Hysco's and POSCO's export loans by the value of the companies' total exports. On this basis, we determine a net countervailable subsidy of 0.08 percent *ad valorem* for Hysco and 0.04 percent *ad valorem* for POSCO.

#### L. Electricity Discounts Under the Requested Load Adjustment Program

The GOK introduced an electricity discount under the Requested Load Adjustment (RLA) program in 1990, to address emergencies in the Korea Electric Power Company (KEPCO's) ability to supply electricity. Under this program, customers with a contract demand of 5,000 kW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA

discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted POSCO electricity discounts under this program.

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

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's total f.o.b. sales value for the POI. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

#### *M. POSCO's Provision of Steel Inputs at Less Than Adequate Remuneration*

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

Under section 351.511(a)(2) of the CVD Regulations, the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, Dongbu imported hot-rolled coil; therefore, we are using Dongbu's actual imported prices of hot-

rolled coil as our basis of comparison to the price at which POSCO sold hot-rolled coil to Dongbu. Based upon this comparison, we preliminarily determined that POSCO sold hot-rolled coil to Dongbu at less than adequate remuneration. As a result, a benefit is conferred to Dongbu under section 771(5)(E)(iv); therefore, we continue to find this program countervailable. Because Hysco did not purchase hot-rolled coil from POSCO to produce subject merchandise, we preliminarily determine that Hysco did not receive a benefit under this program. However, we are reviewing the issue of whether this program is an untied domestic subsidy. As this is the first time that this issue has been raised, the Department will collect additional information prior to the final determination; however, for the preliminary determination we continue to find this program tied to subject merchandise. We invite comments from interested parties.

To determine the value of the benefit under this program, we compared the monthly delivered weighted-average price charged by POSCO to Dongbu for hot-rolled coils to the monthly delivered weighted-average price Dongbu paid for imported hot-rolled coils. We made due allowances for the different specifications of hot-rolled coils, thus allowing the Department to compare a single product. We then multiplied this price difference by the quantity of hot-rolled coil that Dongbu purchased from POSCO during the POI. We then divided the amount of the price savings by the f.o.b. sales value of subject merchandise. On this basis, we preliminarily determine that Dongbu received a countervailable subsidy of 1.91 percent *ad valorem* from this program during the POI.

In *1999 Sheet and Strip*, the GOK argued that POSCO underwent privatization in September 2000, which constituted a program-wide change pursuant to section 351.526 of the CVD Regulations. In that administrative review, the Department determined that the information on the record in *1999 Sheet and Strip* was insufficient to determine whether a program-wide change occurred with respect to this program. We also noted that because of the long history and ties between the GOK and POSCO, the September 29, 2000 partial change in ownership must be carefully analyzed. In this current investigation, the respondents have made a similar claim that POSCO's change in ownership removes the GOK's control of POSCO which was found for this program in *CTL Plate* and in *Sheet and Strip*. The respondents have placed additional information on the record of

this investigation regarding a program-wide change under section 351.526 of the CVD Regulations.

In *Sheet and Strip*, the Department relied upon a number of factors to determine that the GOK controlled POSCO. For example, we found that the GOK was the largest shareholder of POSCO and that the GOK's shareholdings of POSCO were ten times larger than the next largest shareholder. In order to further maintain its control over POSCO, the GOK enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK could exercise voting rights in excess of three percent of the company's common stock. In addition, the Chairman of POSCO was appointed by the GOK. The Chairman of POSCO was also a former Deputy Prime Minister and Minister of the GOK's Economic Planning Board, and was appointed as POSCO's president by the Korean President. Half of POSCO's outside directors were appointed by the GOK. The appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO was also only one of three companies designated a "Public Company" by the GOK. See *Sheet and Strip*, 64 FR 30642-43.

In this current investigation, the GOK and POSCO have placed information on the record indicating that many of the elements of control cited to in *Sheet and Strip* have changed. According to this information, the GOK through the government-owned Industrial Bank of Korea currently holds only 3.02 percent of POSCO's shares. According to the GOK, all of POSCO's shares are common shares and have equal voting rights. The GOK also reports that the Seoul Bank holds 1.47 percent of POSCO's shares. The Seoul Bank became government-owned as a result of the financial crisis in Korea. However, the GOK states that the shares listed for Seoul Bank are shares the bank holds on behalf of its customers in trust accounts. Shares held in these trust accounts are not in the possession of, or controlled by, the bank but belong to its customers.

POSCO also states that the restrictions that no individual other than the GOK can exercise voting rights in excess of three percent has been removed. Under the Securities and Exchange Act, a company designated as a "public company" was not permitted to have individual shareholders exercising voting rights in excess of three percent of the company's common shares.

According to POSCO's response, this legal requirement applied to POSCO until September 26, 2000. As part of POSCO's privatization process, the GOK removed POSCO's designation as a "public company" on that date. Accordingly, any legal limits on individual shareholder's voting rights or ownership in POSCO ceased on September 26, 2000. POSCO's Articles of Incorporation also included this restriction on the acquisition of shares. According to the company's response, POSCO had to wait until March 26, 2001, the next General Meeting of Shareholders, to amend its Articles of Incorporation. According to POSCO, although its Articles of Incorporation had not been implemented, once the GOK eliminated the restrictions on the acquisition of shares, POSCO was in effect no longer a public company.

According to POSCO's response, the company has seven standing directors and eight outside directors on its Board of Directors who are elected for terms of three years and may be re-elected. The directors are elected at the General Meeting of Shareholders, which usually take place in March of each year. According to the response, none of POSCO's current standing directors are either current or former government officials. With respect to the outside directors, five candidates were recommended by each of the five largest shareholders, which includes the IBK and Seoul Bank, and three candidates were recommended by the Board of Directors. There were changes to the Board of Directors during the General Meeting of Shareholders which occurred during the POI; two outside directors that were former government officials resigned and were replaced.

During verification we plan to closely examine whether or not the GOK continues either directly or indirectly to control POSCO's pricing policy in the Korean domestic market.

## II. Programs Preliminarily Determined To Be Not Countervailable

### A. GOK Infrastructure Investments at Kwangyang Bay Post-1991

Petitioners alleged that the GOK made infrastructure investments during the POI for POSCO at Kwangyang Bay. In *Plate in Coils*, we determined that the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. See 64 FR 15536. According to the responses of the GOK and POSCO, the only GOK expenditures made at Kwangyang Bay during the POI were for the container terminal. We determined that the GOK's

investments in the container terminal were not specific in *Plate in Coils*. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. In addition, both the responses of the GOK and POSCO state that the GOK did not build any ports at Kwangyang during the POI. Therefore, we continue to determine that this program is not countervailable.

### B. R&D Aid for Anthracite Coal Technology

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

### C. Asan Bay Infrastructure Subsidies

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

According to the GOK's response, the roads located in and around the Asan Bay area can be divided into three different categories. The first category are roads that are located within the industrial estates which were built by Koland, the government agency which developed and sells the land at the Asan Bay industrial estates. The construction costs incurred by Koland for these roads are included as part of the land purchase price charged to companies purchasing land in the industrial estates. The second category are roads that are built on an individual company's site within the industrial estate which are built and paid for by the companies themselves. The third category of roads are the main roads and highways that are located around the Asan Bay area and which are used by the general public. Generally, the construction of toll free roads are handled by the Ministry of Construction and Transportation (MOCAT) and are built using funds from the GOK budget. These roads are part of the country's general road and highway system. The costs for construction and operation of toll roads are paid from the GOK budget

and by the Korea Road Corporation (KRC). The construction costs of the KRC are recovered through the collection of tolls from users. The major highway that serves the Asan Bay area is the West Coast Highway, which is part of the National Highway system.

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

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

We note that with respect to this program, the Department was required to conduct verification of the provision of infrastructure at Asan Bay in a recent remand of *CTL Plate*. The Department's remand redetermination of *CTL Plate* is in litigation, and thus, serves as no legal precedent in this instant investigation. However, factual information gathered in the course of the *CTL Plate* remand may be placed on the record of this investigation and considered in this

preliminary determination. Therefore, we have placed the public verification reports for both the GOK and POSCO from the *CTL Plate* remand on the record of this current investigation. See “Remand Verification Report for the Government of Korea (GOK) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea” and “Remand Verification Report for Pohang Iron and Steel Co., Ltd. (POSCO) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea.” Both of these public verification reports are dated November 26, 2001, and have been placed in the public file in the CRU. The information in the verification reports substantiates the information provided in the responses.

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

**III. Programs Preliminarily Determined Not Used**

*A. Anthracite Coal for Less Than Adequate Remuneration*

Petitioners allege that the GOK provides anthracite coal to steel producers at suppressed prices. Petitioners claim that these suppressed prices are part of a GOK price stabilization program where steel producers are receiving anthracite coal at less than adequate remuneration. According to the response of the GOK,

this program is designed to support and maintain the domestic coal industry in Korea by managing anthracite and briquette prices and is administered by MOCIE and the Coal Industry Promotion Board (CIPB). The GOK fixes the highest selling price of anthracite and briquette and then provides funds to the mining companies and briquette manufacturing companies for the difference between their costs of production and sales prices through the coal industry stabilization fund. Thus, the GOK controls prices of anthracite coal mined in Korea.

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

*B. Grants to Dongbu*

These grants which were contained in Dongbu’s 1996 Financial Statement related to R&D projects that Dongbu participated in between 1991 and 1995. These grants equaled less than 0.5 percent of Dongbu’s sales in 1996. Thus, under section 351.524(b)(2) of the CVD Regulations, these grants are expensed in the year of receipt. Therefore, because no benefit was conferred to Dongbu from these grants during the POI, we preliminarily determine that this program was not used.

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

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are

included in the company’s losses and reduces the amount of taxes paid by the company. Under this program, capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

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

*D. Special Depreciation for Energy-Saving Equipment*

*E. Export Insurance*

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 703(d)(1)(A)(i) of the Act, we have calculated individual rates for the companies under investigation. In addition, in accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all others rate which is “an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.” These rates are summarized in the table below:

Producer/exporter	Net subsidy rate
Dongbu Steel Co., Ltd. (Dongbu) .....	2.84 percent <i>Ad Valorem</i> .
Hyundai Hysco (Hysco) .....	0.32 percent <i>Ad Valorem</i> .
Pohang Iron & Steel Co., Ltd. (POSCO) .....	0.55 percent <i>Ad Valorem</i> .
Union Steel Manufacturing Co., Ltd. (Union) .....	7.00 percent <i>Ad Valorem</i> .
All Others Rate .....	2.84 percent <i>Ad Valorem</i> .

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