GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into the RLA contracts during the POI.

However, at verification the GOK failed to demonstrate to the Department a systematic procedure through which KEPCO selects those customers with which it enters into RLA contracts. The GOK simply stated that KEPCO enters into contracts with those companies which volunteer for the discount program. If KEPCO does not reach its targeted adjustment capacity with those companies which volunteered for the program, then KEPCO will solicit the participation of large companies. We note that KEPCO was unable to provide to the Department the percentage of 1997 RLA recipients which volunteered for the program and the percentage of those recipients which were persuaded to cooperate in the program. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See* ''Requested Load Adjustment Program'' section above for the Department's complete analysis.

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

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total estimated net countervailable subsidy rate is 0.65 percent *ad valorem* which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of stainless steel plate in coils in Korea. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon publication of the final negative determination in the **Federal Register**.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

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

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7529 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Kathleen Lockard or Dana Mermelstein, Office of CVD/AD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel plate in coils from South Africa. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Lukens, Inc., and United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on September 9, 1998 (63 FR 47263), the following events have occurred.

We conducted verification of the countervailing duty questionnaire responses from November 2 through November 13, 1998. On January 2, 1999, we terminated the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the ''Suspension of Liquidation'' section of this notice. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR 47263), and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than March 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa: Notice of Extension of Time Limit for Final Determinations*, 64 FR 2195 (January 13, 1999)). Petitioners, the Government of South Africa, and Columbus Stainless (the operating unit of Columbus Joint Venture) filed case briefs on January 11, 1999, and rebuttal briefs on January 19, 1999. A public hearing was held on January 21, 1999.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 (1998).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because South Africa is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from South Africa materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from South Africa of the subject merchandise (*See Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 63 FR 29251).

Period of Investigation

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

Company History

In 1988, Samancor Limited (Samancor) and Highveld Steel and Vanadium (Highveld) formed the Columbus Joint Venture (CJV) to explore the possibility of establishing a 500,000-ton capacity, stainless steel facility in South Africa. In 1991, the partners examined the option of building a plant in South Africa and made a proposal to the Industrial Development Corporation of South Africa (IDC) that it take a capital stake in the joint venture. The IDC is a state-owned corporation, established in 1940 to further the economic development goals of the Government of South Africa (GOSA). The partners approached the IDC because it provides equity investments, and facilitates and guarantees financing for projects which contribute to the GOSA's economic development objectives. After being approached by the partners, the IDC performed a detailed analysis of the 1991 proposal and decided that it would participate in the investment subject to certain conditions: That the project be based on the expansion of an existing facility rather than on the construction of a new plant; and, that its implementation be delayed pending the establishment of a program providing tax benefits for capital investments.

To meet the IDC's condition, in October 1991, Samancor and Highveld purchased an existing stainless steel facility, the Middelburg Steel & Alloys (MS&A) company. In 1992, the partners again approached the IDC. Based on a revised proposal, the IDC conducted a detailed feasibility study to analyze the prospects for the venture. Based on the feasibility study, the IDC made a counterproposal which was accepted by the partners. (The counterproposal is detailed in the proprietary feasibility study. In general, it addresses the technical financial details of the IDC's participation in the CJV.) Samancor, Highveld, and the IDC entered into a new partnership agreement which is the basis for the current structure of the CJV. Effective January 1, 1993, the IDC became a one-third and equal partner in the venture.

The implementation of the CJV expansion project began in 1993 and was undertaken over the course of two and one-half years. The expansion was completed in 1995. Columbus Stainless, the operating unit of the CJV, produces a range of stainless steel products including subject merchandise.

Subsidies Valuation Information

Discount Rates: In identifying a discount rate, the Department's options are, in the following order of preference: (1) The cost of long-term fixed-rate debt of the firm in question, excluding loans found to confer a countervailable subsidy; (2) the average cost of long-term fixed-rate debt in the country in question; and (3) a rate which we consider to be most appropriate. *See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* 54 FR 23336, 23384 (May 31, 1989) (*1989 Proposed Regulations*). With respect to the Department's first preference, the only loans which Columbus had outstanding during the relevant period were loans guaranteed by the IDC/Impofin. *See* ''IDC/Impofin Loan Guarantees'' section below. With respect to the average cost of long-term fixed-rate debt in South Africa, because we were unable to obtain information about such debt for the purposes of the preliminary determination, we used the long-term government bond rate. We considered this rate to be the most appropriate rate as it was the only long-term fixed interest rate for which we had information during the relevant period. In the preliminary determination, we stated that we would seek a rate for the final determination that better reflects an average long-term commercial fixed interest rate in South Africa. Although we discussed commercial interest rates at length during our meetings with the IDC, the South African Reserve Bank, and commercial bankers, no information was provided that would enable us to determine a commercial long-term interest rate that could be used as the discount rate. As such, because the government bond rate does not represent a commercial rate, for purposes of this final determination, we have constructed a discount rate which we believe is more appropriate. For each of the years 1993 through 1997, we have averaged the government bond rate as reported by respondents with the ''Lending Rate'' reported in *International Financial Statistics*, December 1998, published by the International Monetary Fund. This publication indicates that the ''Lending Rate'' represents financing that ''meets the short- and medium-term needs of the private sector.'' By averaging these two rates, we believe that we have identified a rate more appropriate than the rate used for the purposes of the preliminary determination, a rate which includes the necessary characteristics of both long-term borrowing and commercially-available interest rates. *See Department's Position* on *Comment 9* below.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets (AUL) in determining the allocation period for non-recurring subsidies. *See General Issues Appendix (GIA)*, 58 FR 37225, 37227, appended to the *Final Countervailing Duty Determination; Certain Steel Products* *from Austria, et al.*, 58 FR 37217 (July 9, 1993). However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In accordance with our new practice following *British Steel II*, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551, 16552 (April 7, 1997). When such data are not available (or are otherwise unusable), our practice is to rely upon the IRS depreciation tables.

Columbus did not provide the information necessary to calculate a company-specific AUL. Therefore, we are relying on the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38) (*IRS Tables*), which report a schedule of 15 years for the productive equipment used in the steel industry. *See* the *Department's Position* on *Comment 10* below.

I. Programs Determined To Be Countervailable

A. Section 37E Tax Allowances

The GOSA enacted Section 37E of the Income Tax Act in 1991 to promote capital investment and thereby foster long-term economic development. This program was intended as a ''kick-start'' for the South African economy and was limited to investments made between September 1991 and September 1993. The purpose of the program was to encourage investment in large industrial expansion projects in value-added sectors of the economy. For projects approved as valued-added processes, Section 37E allows for depreciation of capital assets and the deduction of pre-production interest and finance charges in advance, that is, in the year the costs are incurred rather than the year the assets go into use. The program also allows taxpayers in loss positions to receive ''negotiable tax credit certificates'' (NTCCs) in the amount of the cash value of the Section 37E tax deduction (*i.e.*, deduction multiplied by the tax rate). The NTCCs can be sold (normally at a small discount) to any other taxpayer, who then can use them to pay taxes. The program does not provide for accelerated depreciation, nor does it provide for additional finance charge-related deductions beyond those available under the South African tax code. The advantage to users of this program is the receipt of these tax deductions in advance, *i.e.*, when the expenses are incurred rather than when the equipment is put into use.

According to the questionnaire response, eligibility for Section 37E benefits was determined on a project-by-project basis by a committee appointed by the Minister of Finance in concurrence with the Minister of Trade and Industry. To demonstrate that their projects qualified for Section 37E, applicants were required to show: (1) That the project would add at least 35 percent to the value of the raw material or intermediate product processed; (2) that the project would be carried out on an internationally competitive scale; and (3) that the taxpayer would utilize foreign term credits, where possible, when financing the import of capital goods for the project. In addition, qualifying investments had to be made between September 12, 1991 and September 11, 1993.

The CJV began receiving Section 37E benefits in 1993, two years before the 1995 completion of the plant expansion. Because the CJV is a partnership rather than a tax-paying corporation, Section 37E benefits earned by the CJV are claimed by the partners.

When determining whether a program is countervailable, we must examine whether it is an export subsidy or whether it provides benefits to a specific enterprise, industry, or group thereof, either in law (*de jure* specificity) or in fact (*de facto* specificity). *See* Sections 771(5A)(A), (B), and (D) of the Act. For the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination: Stainless Steel Plate in Coils from South Africa*, 63 FR 47263, 47265 (September 4, 1998) (*Preliminary Determination*), we determined that Section 37E provided benefits which were *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the number of users of the program was limited. (63 FR at 47265.) However, in the memorandum accompanying our preliminary determination, we noted that ''. . . information on the record suggests that an applicant's export performance may have been considered during the approval process. While there is not enough information in the record at this time to conclude that benefits provided under Section 37E constitute a *de facto* export subsidy, we will continue to examine this question for the final determination.'' *See* August 28, 1998, Memorandum to Maria Harris Tildon, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, ''Decision Memorandum: Countervailing Duty Investigation of Stainless Steel Plate in Coils from South Africa'' at 7, public version on file in the Central Records Unit, room B–099 of the main Commerce Building (CRU) (*Decision Memorandum*). Under section 771(5A)(B) of the Act, a subsidy is an export subsidy if it is, ''in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.''

We now have a fuller understanding of the legislation which implemented the program, amendments which were made to that legislation, and the timing of Columbus' application and approval for benefits under the program. At verification, we learned that Section 37E amending the Tax Act of 1962 was published in the *Official Gazette* on July 17, 1991 and became effective September 12, 1991. To be eligible for Section 37E, an applicant had to show that the planned investment was in a ''beneficiation process,'' which was defined as a process which: ''(a) Substantially adds to the value of the product processed; (b) is carried on on such a scale that it is competitive in the international market; and (c) is carried on with the intention of exporting at least 60 percent (or such lesser percentage as the committee may determine) by value of the product produced to countries outside the customs union.'' *See* the December 16, 1998, ''Memorandum to David Mueller, Director, Office of CVD/AD Enforcement VI, on Countervailing Duty Investigation of Stainless Steel Plate in Coils from South Africa: Verification Report of the Government of South Africa,'' at 15 and Verification Exhibit SARS–1 at 3, public version on file in the CRU (*Government Verification Report*).

In 1992, the law was amended for the first time; the amendment was published on July 15, 1992, in the *Official Gazette* and was effective retroactively to March 18, 1992. The amendment broadened the definition of beneficiation of minerals in certain material respects and removed the committee's discretion to approve applicants intending to export less than 60 percent of production.

On July 20, 1993, the second amendment to Section 37E was published in the *Gazette.* This amendment was effective retroactively to September 12, 1992. This amendment made a material change to the law because it removed the export performance eligibility criterion. The deletion of this requirement is documented in the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 1993. See* Verification Exhibit SARS–1 at 11. Although this amendment was retroactive, companies that applied before July 20, 1993, addressed the export performance criterion in their applications for Section 37E benefits. Columbus' application for Section 37E benefits, which was filed on August 11,1992, specifically addressed this criterion and specified the portion of Columbus' production that was intended for export. Based on this application, Columbus was approved for Section 37E benefits on December 8, 1992, prior to the July, 20, 1993, amendment.

Although approved for Section 37E assistance on December 8, 1992, the exact amount of assistance to be provided was revised as the financial and technical aspects of the project developed (*e.g.,* contracts for the supply of equipment and financing arrangements were being finalized, enabling Columbus to identify the related costs and expenditures more accurately than they had in the initial August, 1992 application package). Columbus was in close communication with the relevant authorities throughout this period, and submitted an amended application on July 19, 1993. This application did not address any of the eligibility criteria, under the original law or the amended law, rather, it finalized information about the categorization of equipment and the costs of financing and amended the projected value of the Section 37E benefits.

The Inland Revenue authority notified Columbus of its approval of the exact amount of its Section 37E benefits on August 20, 1993. Nevertheless, when Columbus was initially approved for Section 37E benefits (on December 8, 1992), the approval was based on consideration of the export performance criterion, which was in effect at that time. Even though the law was subsequently amended to remove the export criterion, and this amendment was retroactive to September 12, 1992, Columbus was approved for Section 37E benefits before this amendment was implemented. Making the amendment to remove the export criterion retroactively effective does not undo the fact that when Columbus was approved, it had to meet an export performance criterion.

Moreover, even though Columbus amended its application on July 19, 1993, that submission was not a revised application package. It did not address all of the criteria that had to be met in order to be approved and that were addressed in the initial application (of August 11, 1992). Moreover, it did not remove the export performance information that was in the original application; rather, it contained a refinement of previously-provided financial and technical information, which was required by Inland Revenue to establish the final value of the Section 37E benefits Columbus would receive. Accordingly, based on these facts, we must conclude that the Section 37E assistance provided to Columbus constitutes an export subsidy within the meaning of section 771(5A)(B) of the Act.

The Section 37E program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act as it constitutes revenue foregone by the GOSA. Because Section 37E allows companies to claim depreciation and finance-related deductions in advance of when such deductions would normally be allowed, the benefit within the meaning of section 771(5)(E) of the Act, is the value to the company of being able to claim the depreciation in advance. The Department normally considers that a benefit arises from a tax program in the amount of the difference between the taxes paid and the taxes that would have been paid absent the program. However, the Section 37E program does not operate as a normal tax program. According to the IDC, "[t]he accelerated tax allowances reduce the peak funding requirements of major capital investment projects." *See IDC 1992 Annual Report,* Annexure 7 of the July 31, 1998 Questionnaire Response, public version on file in the CRU. Through this program, capital requirements for investments are reduced, as evidenced by the partners' views that the program was essential in reducing the start-up costs of the venture. *See* Petition at Exhibit S–8, public version on file in CRU. Furthermore, there is a cash flow impact regardless of the company's tax position. As such, we consider that, although the Section 37E program is a "tax" program, it functions more like a capital contribution.

Since the Section 37E program reduces a company's capital requirements, and because the receipt of Section 37E benefits required express government approval, we determine that it is more appropriate to treat the benefits provided under Section 37E as a non-recurring subsidy. *See GIA,* 58 FR at 37226. Therefore, we determine that the Section 37E program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

To determine the benefit, we ascertained the value of the Section 37E allowances to the company. First, we calculated the cash value of each 37E claim by multiplying the total allowance claimed in each year by the relevant tax rate. Then, we determined the time value of obtaining the allowance in advance; in the preliminary determination, we used two years for discounting purposes, however, at verification we discovered that it was appropriate to use two years for one-third of the value of the allowances and three years for the remaining two-thirds. This change reflects the fact that since Columbus Stainless was commissioned October 1, 1995, and the IDC and Samancor's tax year ends June 30, these partners would have had to wait until June 30, 1996, *i.e.,* three years to take depreciation under the normal system (section 12(c)) while Highveld, which has a December 31 year-end, would have had to wait until December 31, 1995, *i.e.,* only two years. *See Department's Position* on *Comment 5* below. The difference between the tax value of the allowances and the tax value discounted to reflect the time-value of money is the benefit to the company, for each year in which Section 37E benefits are claimed. Finally, because we consider that the Section 37E assistance should be allocated over time as a non-recurring subsidy, we treated each year's benefit as a non-recurring grant using our standard grant methodology. Since Columbus did not report its AUL, we are relying on the *IRS Tables* for purposes of establishing the allocation period. The *IRS Tables* show a depreciation schedule of 15 years for the steel industry. *See Department's Position* on *Comment 10* below. We summed the benefit amounts allocated to the POI and divided by CJV's total export sales. Accordingly, we determine the net countervailable subsidy to be 3.84 percent *ad valorem.*

B. IDC/Impofin Loan Guarantees

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

Columbus used the IDC/Impofin program to facilitate and to guarantee the financing of all of its foreign capital equipment sourcing. In the preliminary determination, we analyzed this program using our standard methodology for examining government-guaranteed loans and compared the benchmark interest rate to the interest rate charged by the lender on the guaranteed loans. However, based on information collected at verification, we now have a better understanding of this program and have revised our analysis of the program from the preliminary determination. Because these loans originate either with foreign government export credit agencies or offshore foreign banks in coordination with foreign government export credit agencies, which are not under the direction or control of the GOSA, the loans themselves are not countervailable. Thus, we find that it is not appropriate to compare the interest rates charged by offshore foreign banks to commercial interest rates in order to determine whether the program provides a financial contribution. However, the IDC did provide guarantees on these loans for a fee. This guarantee could constitute a financial contribution if the IDC charged less than what would have been charged by a commercial bank for a similar guarantee.

At verification, we sought information about commercial loan guarantee practices in South Africa at the time Columbus received the IDC/Impofin guarantees. We learned that such guarantees were available on only a limited basis in South Africa at the time. However, a commercial banker informed us that the rates for providing these types of guarantees would range between 0.25 and 0.50 percent; the banker further stated that the fee would vary based on the quality of the borrower and the size of the credit (a high-quality borrower would likely pay fees at the low end of the range; a borrower seeking guarantees for large credits would likely pay fees at the high end of the range). *See* December 17, 1998, ''Memorandum for David Mueller, Director, Office of CVD/AD Enforcement VI, on Discussions with Private Sector and South African Reserve Bank'' (*Banker's Verification Report*), a public document on file in the CRU. Since Columbus is a ''high-quality'' borrower but the size of the credits is large, we determine that the middle of this range, 0.375 percent, is a reasonable approximation of what a commercial bank would have charged Columbus for similar guarantees. Thus, when we compare what Columbus paid the IDC for the provision of guarantees, 0.25 percent, and what it would have paid a commercial bank, 0.375 percent, we find that the IDC did provide a financial contribution that confers a benefit within the meaning of the Act.

Next, we analyzed whether the program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of subsections 771(5A)(D)(i) and (iii) of the Act. The enacting legislation for the IDC/Impofin program does not explicitly limit eligibility for these financing programs to an enterprise, industry, or group thereof. Thus, we find that the law is not *de jure* specific, and we must analyze whether the program meets the *de facto* criteria defined under section 771(5A)(D)(iii). In our *Preliminary Determination,* we examined information provided by the GOSA and found that since 1990, the ''fabricated metal products'' and ''basic metal manufacture'' industries have been predominant users of the program. These industries have received more than fifty percent, by value, of the total guaranteed loans awarded over the life of the program. Information provided by the GOSA in its case brief demonstrates that the steel industry (including stainless steel) has received more than half the total value of loan guarantees awarded over the life of the program, while all of the rest of the users of the program (industries including, but not limited to mining, agriculture, pulp and paper, oil, gas, chemical, vehicles, telecommunications, and aluminum smelting and fabrication) together accounted for less than half of the total value of loan guarantees awarded over the life of the program. This information clearly indicates that the steel industry is a predominant user of this program. On this basis, we find IDC/Impofin loan guarantees to be *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, we determine that the IDC/Impofin guarantees constitute a countervailable subsidy within the meaning of section 771(5) of the Act. (*See* the *Department's Position* on *Comment 6* below.)

Since the guarantee fees are paid every year the loan is outstanding, we calculated the benefit by subtracting what Columbus paid the IDC under this program from what it would have paid on a comparable commercial guarantee during the POI. We then divided the result by Columbus' total sales during the POI. Accordingly, we determine the net countervailable subsidy to be 0.09 percent *ad valorem* for Columbus.

II. Program Determined to be Non-Countervailable

IDC Participation in the Columbus Joint Venture

As discussed in the ''Company History'' Section above, in 1988, Highveld and Samancor formed the Columbus Joint Venture to explore the possibility of establishing a stainless steel facility in South Africa. In 1991, the partners proposed that the IDC make a capital investment in the venture. The IDC performed a detailed analysis of the 1991 proposal and decided to participate in the investment subject to certain conditions: that the project would be based on the expansion of an existing facility and that its implementation would be delayed pending the establishment of the Section 37E program. In 1992, after the partners acquired an existing facility for the purpose of implementing the IDC's recommendations, the partners approached the IDC with a revised proposal. Based on this proposal, the IDC and the two partners conducted a detailed feasibility study to identify the prospects for the venture. The IDC made a counterproposal which the partners accepted. Effective January 1, 1993, the IDC became a one-third and equal partner in the venture. Samancor, Highveld, and the IDC entered a new partnership agreement which is the basis for the current structure of the CJV.

The Department considers the government's provision of equity or start-up capital to constitute a benefit ''if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made.'' *See* section 771(5)(E)(i) of the Act. The Department applies this standard in a case-by-case analysis of the commercial context in which the investment decision is made. Thus, we must determine whether the IDC's decision to participate in the CJV was consistent with the usual investment practices of private investors in South Africa.

While Samancor and Highveld are both private investors, their participation in the venture, *per se,* is not an appropriate basis for determining whether the IDC's participation is consistent with usual investment practices. By the time the IDC decided to invest, Samancor and Highveld had been partners in this investment for five years. Both already had substantial stakes in the project, including the purchase of the MS&A facility in 1991. Thus, their evaluation of the CJV expansion project was affected by their interest in protecting their existing investment and they may have been willing to accept a higher level of risk than another private investor would. Therefore, their continued participation is not the appropriate background against which to examine the IDC's decision, and we have focused our analysis on the factors considered by the IDC in making its decision in order to determine whether it was consistent with the investment practices of a private investor.

As discussed above, in 1991 and 1992, the partners made detailed presentations to the IDC of the risks and projected returns of the project. The IDC agreed to participate in the venture subject to modifications designed to increase the rate of return of the project by lowering its initial capital requirements. In 1992, the IDC conducted a detailed feasibility study to analyze the strengths and weaknesses of the venture and to project its financial performance, based upon the expansion of the MS&A facility. This detailed analysis, which Columbus submitted for the record, is the primary basis for the IDC's decision to invest in the CJV.

Given the proprietary nature of the feasibility study, the specific analysis and projections contained in the study cannot be addressed in this public notice. At verification, we discussed at length this study and the analysis which preceded it. IDC officials explained how the IDC conducted its extensive analysis, and tested its projections for various changes in forecast market and economic circumstances. *See Government Verification Report* at 8–9. The study is based on reasonable assumptions and concludes that the CJV was a viable venture which would provide a positive real rate of return on the IDC's investment. The study concludes that the average nominal rate of return for the project would be 19.13 percent over an appropriate period.

We compared the projected return on the investment to information available for other investments in South Africa during this period. Because of the proprietary nature of the feasibility study, this analysis cannot be detailed in this public notice. *See Preliminary Determination,* 63 FR at 47262; *Decision Memorandum.* The nominal rate of return of 19.13 percent exceeds government bond yields. The projected real rate of return is comparable to returns provided by other investment instruments at the time. We examined the dividend yields on industrial and commercial shares as reported in the *Quarterly Bulletin* of the South Africa Reserve Bank (appended to the August 28, 1998 ''Memorandum to the File on Calculations for the Preliminary Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa'' (*Preliminary Calculation Memo*) public version on file in the CRU). We also examined the return on assets of non-financial private incorporated businesses as reported by the Reserve Bank of South Africa on its website: http://www.resbank.co.za (a printout of the information we examined is appended to *Preliminary Calculation Memo*). At verification, we gathered more information about the commercial investment climate in South Africa in order to inform our analysis for this final determination. *See Banker's Verification Report.* The information on the record indicates that the projected return was adequate and it supports a finding that the IDC's investment decision was consistent with the behavior of a reasonable private investor.

Finally, we examined the structure of the partnership itself, to determine whether the IDC assumed more than its share of the risks involved in the venture or less than its share of the potential earnings. The three partners contributed capital to the venture equally. They all account for one-third of the project's year-end results in their financial statements, in accordance with the normal practice for partnerships. They each hold the same number of seats on the CJV's board. To the extent that the IDC's commitments and obligations to the joint venture differ from the other partners, these differences reflect the IDC's role as an investor, in contrast to the other partner's experience in industrial operations. Furthermore, the IDC took steps to protect its level of risk from the investment. For example, where the IDC has assumed more than its pro-rata share of the risk, it has required commitments from the other two partners which result in the risk being shared equally.

While the partnership is structured so that the IDC's role in the CJV is slightly different from that of the other two partners, the agreement stipulates equal cash participation, equal representation on the Board of Directors, and equal distribution of any returns on the investments. In addition, the IDC protected its investment by requiring measures to ensure that the risks would be equally distributed among all of three partners. The IDC recommended ways to increase the project's earnings potential and negotiated safeguards in the partnership agreement. The IDC appears to have assumed only an amount of risk that is commensurate with its level of participation as a partner.

The IDC's decision to invest in the CJV appears to be based upon a reasonable analysis that the project was viable, an informed assessment that the IDC would realize a positive real rate of return on its investment, and a partnership based on the equal distribution of the risks. On this basis, we determine that the IDC's capital contribution into the CJV was not inconsistent with the normal practice of private investors in South Africa, and thus, does not constitute a countervailable subsidy within the meaning of the Act.

III. Programs Determined to be Not Used

Based on the information provided in the responses and the results of verification, we determine that Columbus did not apply for or receive benefits under the following programs during the POI:

A. Low Interest Rate Finance for the Promotion of Exports (which is the same program as the Low Interest Rate Scheme for the Promotion of Exports)
B. Competitiveness Fund
C. Export Assistance Under the Export Marketing Assistance and the Export Marketing and Investment Assistance Programs
D. Regional Industrial Development Program (RIDP)

IV. Programs Determined to be Terminated

Based on information obtained at verification, we determine that the following programs have been terminated.

A. Export Marketing Allowance
B. Multi-Shift Scheme

Interested Party Comments

Comment 1: IDC Participation in the Columbus Joint Venture: Petitioners contend that the Department did not adequately address all five factors of the test developed in Final Affirmative Countervailing Duty Determination: Certain Corrosion Resistant Carbon Steel Flat Products from New Zealand, 63 FR 37366 (July 9, 1993)(*New Zealand Steel*). Petitioners contend that the Department must examine the following five factors: (1) The (un)willingness of private sector participants to invest in the project; (2) the relative contributions of the partners and the expected returns; (3) the feasibility study; (4) the nature of the project (*i.e.*, the existence of non-commercial considerations); and, (5) the economic environment prevailing at the time in South Africa. In addition, petitioners urge the Department to consider the implementation of Section 37E as a factor which affected the IDC's investment. Petitioners argue that a full examination of the five factors must lead the Department to the conclusion that the IDC's investment was not consistent with commercial considerations, and therefore constitutes a countervailable subsidy. While petitioners urge the Department to apply all five factors, and to do so completely, petitioners suggest that the test be modified to account for the relevant facts of record and to comport more closely with commercial reality.

In examining the first factor, petitioners contend that record evidence shows that the private sector was unwilling to participate in the CJV project. With respect to the second factor, petitioners further argue that the Department should consider the expected returns from the project in the context of its associated risk, and this examination leads to the conclusion that the returns were relatively low. Petitioners also argue that the structure of the investment agreement itself, in particular Highveld and Samancor's option to buy out a portion of the IDC's ownership, was needed to protect the two partners from the significant risks at the outset of the project. With respect to *New Zealand Steel* factor three, petitioners argue that the IDC's feasibility study was flawed because it was not an independent analysis and includes consideration of government actions. In support of this contention, petitioners cite *Steel Wire Rod from Saudi Arabia* 51 FR 4206, 4209 (February 3, 1986) and *Steel Wire Rod from Trinidad & Tobago,* 49 FR 480, 483 (January 4, 1984), in which the Department established that only an independent feasibility study provides an objective analysis of a project's potential returns. According to petitioners, the fourth factor shows that the parties to the CJV made non-commercial decisions when they structured the venture as a partnership in order to maximize the tax benefits, despite statements in the feasibility study that advocate the contrary. Further, petitioners contend that the record shows that the CJV expansion would not have gone forward without the IDC's investment. With respect to the fifth factor, petitioners maintain that the Department should not consider the difficult economic conditions in the post-Apartheid era in which the investment was made, as this could create a loophole allowing foreign governments to subsidize without consequence simply by claiming that unique or difficult economic conditions exist. Finally, petitioners argue that the Department should consider an additional factor, that the investment was conditioned upon the receipt of Section 37E benefits which, petitioners argue, creates a rebuttable presumption that the investment is inconsistent with commercial considerations. For these reasons, petitioners conclude that the IDC's investment is inconsistent with commercial considerations.

The GOSA and Columbus (respondents) claim that the first *New Zealand Steel* factor addresses whether private-sector participants are willing to invest and not whether private-sector participants in addition to those already participating are willing to invest in a project. With respect to the second factor, respondents maintain that the record does not support petitioners' contention that the risk was extremely high. When considering the third factor, respondents argue that it is incorrect to liken the IDC's feasibility study with that analyzed in *New Zealand Steel*, because Section 37E had already been implemented unlike the commitments of the government in *New Zealand Steel.* In addition, respondents argue that the IDC feasibility study was objective and contained full analysis of the relevant considerations including a realistic projection of the stainless steel market. With respect to the ''nature of the project,'' the structure and capitalization of the CJV, respondents note that it is common in South Africa to structure an undertaking as a joint venture rather than a company, and the IDC has often used this structure for other projects in which it is involved. Respondents argue that there is no evidence to conclude that the project would not have gone forward absent the IDC's participation. Lastly, respondents maintain that the final project study and the IDC's decision to participate in the CJV were not conditioned on the receipt of Section 37E benefits, as verification documents indicate.

Department's Position: As a threshold matter, the analysis conducted in *New Zealand Steel* does not constitute a ''test,'' or establish a standard that the Department must follow in analyzing every joint venture in which a government or government entity participates, as petitioners suggest, and therefore their reliance on *New Zealand Steel* is misplaced. Petitioners' identification of the ''five factors'' is an inaccurate interpretation of the analysis in *New Zealand Steel*. Furthermore, the facts in this case are sufficiently different from those in *New Zealand Steel* to support a conclusion different from the one reached in that case, *i.e.*, that the IDC's investment in the CJV is not countervailable (*see* the ''IDC Participation in the Columbus Joint Venture'' section above). Nevertheless, we address the elements of petitioners' arguments below.

In *New Zealand Steel*, the Department did not directly address the unwillingness of the private sector to participate in the project. Rather, the Department determined that ''the participation of NZS (the private sector participant) was not dispositive that the GONZ's investment was consistent with commercial considerations.'' *New Zealand Steel* at 37368. We made a similar finding in our preliminary determination: The continued participation of Highveld and Samancor ''is not the appropriate background against which to examine the IDC's decision'' because of the substantial resources the two partners already had at stake by this time. *Preliminary Determination* at 47266. We stand by this finding and therefore disagree with respondents' position that the participation of Highveld and Samancor by itself satisfies this factor. However, we also disagree with petitioners that the inability of Highveld and Samancor to secure a foreign partner (efforts to conclude a partnership arrangement with a Taiwanese company were unsuccessful) is dispositive of private sector unwillingness to invest in the project. At verification, we discussed the Taiwanese investor, and the record shows that the existing two partners were willing to use their substantial resources to provide certain guarantees for the Columbus project, but that the Taiwanese investor was unwilling to provide the same guarantees in return. The two existing partners were interested in finding another partner to share the risk equally. *See* December 18, 1998, ''Memorandum to David Mueller, Director, Office of CVD/AD Enforcement VI, on Verification of Information Submitted by Columbus Stainless, Ltd. and the Columbus Joint Venture in the Countervailing Duty Investigation of Stainless Steel Plate in Coils from South Africa (C–791–806)'' (*Company Verification Report*) at 10, public version on file in the CRU. Furthermore, despite the general optimism nascent in South Africa at the time, there were still very few companies with the resources necessary for the project, and two of those companies were already involved in the project through their subsidiaries, Highveld and Samancor.

As with the first factor, the second factor, the relative contributions and the expected returns, is not clearly identified or addressed in *New Zealand Steel*. Regardless, we reject petitioners' contention that we overlooked the risk and focused unduly on the return. Our preliminary determination stated that we found the returns projected in the IDC feasibility study were acceptable, and adequate to support the IDC's investment (*Preliminary Determination* at 47266). The feasibility study also contains an extensive analysis of the risk, which we discussed at length at verification. *Company Verification Report* at 9–10. In preparing the feasibility study, the IDC performed numerous sensitivity analyses to determine the result on projected returns of changes in variables related to the technical, marketing, and financial aspects of the project, including future demand for stainless steel, and world capacity for stainless steel production. The IDC determined that the investment provided acceptable returns even in the event of these contingencies. In addition, the IDC was deliberate and objective in evaluating the project and prepared more conservative projections (higher funding requirements and lower projected returns) than the two partners had, and still determined the project's risk/return profile to be within its investment parameters, parameters which we find to be comparable to those that a private investor would accept. In short, there is nothing about the project's risk vs. return that indicates the IDC's investment is inconsistent with the usual investment practice of private investors. Furthermore, it is not appropriate, as petitioners urge, to conclude that the lack of willingness on the part of the private sector indicates that the risks outweighed the returns. The appropriate focus of our analysis is the basis for the IDC's decision, the feasibility study. We also disagree with petitioners' contention that the buy-out provision is one which affords Highveld and Samancor undue protection from the project's risk. To the contrary, we believe this provision protects the IDC's investment and enables the IDC to recover most of its investment with a guaranteed return, an option not available to the other two partners. (At verification, IDC officials indicated that the IDC commonly seeks to recover its capital in the medium term so it can use its resources elsewhere. The IDC has begun to formalize this strategy, as indicated in the CJV Agreement. *See Government Verification Report* at 6.)

Unlike the first two ''factors'' petitioners identify in *New Zealand Steel*, the third factor, the feasibility study, is clearly identified and addressed in *New Zealand Steel* (58 FR at 37368). However, we find that the facts in *New Zealand Steel* differ considerably from those presented here. In that case, the Department discounted the objectivity of the feasibility study because so many of its assumptions and conclusions were premised on ''the implementation of specific commitments by the GONZ, such as the assurance of certain financing, domestic market share, supply of raw materials, and favorable tax treatment, in their projections of the revenues of the project. Therefore, we find that the studies did not present an objective assessment of the viability of the project, based on market conditions.'' *Id.* The commitments of the GONZ were made solely for the benefit of the steel producer. In other words, a private investor, considering the same investment, would not have been able to control the variables as the GONZ could (market share, tax treatment, raw materials supply), and the projections in the feasibility study were premised on controlling those variables.

In this case, as discussed above, we find that the IDC's feasibility study was objective, and the availability of Section 37E benefits was objectively accounted for in the feasibility study. (As a tax-paying entity, the IDC appropriately analyzed the effects of this tax program.) As IDC officials explained at verification, ''[a]lthough the absence of 37E would have meant a higher level of capital expenditures, the projections were still within the range of what the IDC was prepared to undertake.'' *Government Verification Report* at 10. Furthermore, we disagree with petitioners' assumption that the feasibility study was not objective because it was not independently prepared. At verification, an independent third party noted that ''many commercial interests respect the IDC for its expertise in conducting feasibility studies.'' *Banker's Verification Report* at 2. As we noted in the *Preliminary Determination*, the IDC withheld its decision to participate subject to modifications in the proposed project. 63 FR at 47266. This IDC action supports a conclusion that the IDC was actively engaged in shaping the financial and operational structure of the project, in order to protect its investment, as a commercial investor would do. Thus, we determine that the analyses and conclusions contained in the feasibility study are objective, and support a determination that the IDC's investment was not inconsistent with the usual investment practice of private investors.

We disagree with petitioners that the ''nature of the project,'' *i.e.*, its structure as a joint venture partnership, rather than as a corporation, indicates that the IDC's investment was inconsistent with commercial considerations. To the contrary, we agree with respondents that this structure supports a conclusion that the investment was not countervailable. Record evidence shows that the tax advantages of the partnership structure are clear, particularly for a capital-intensive start-up company expected to sustain tax losses for several years. The partners' interest in maximizing those tax advantages shows all three of them to be acting as commercial actors, and making commercially-consistent financial decisions. Furthermore, since we find that the feasibility study which provided the basis for the IDC's investment decision was objective and commercially consistent, it is not relevant to our analysis whether the project would have gone forward without the IDC's participation. However, we note that record evidence indicates that the two partners had enough at stake and the resources to go forward without the IDC; they ultimately had no reason to do so.

With respect to the fifth factor, we agree with respondents that we do not have before us any arguments with respect to the economic environment as a factor for analyzing the IDC's investment in Columbus. Furthermore, in *New Zealand Steel*, we stated that ''analysis of the economic environment is irrelevant,'' 58 FR at 37369, and we find no reason to address that factor here.

Finally, we disagree with petitioners' argument that the IDC's investment was conditioned on the receipt of Section 37E benefits. While record evidence shows that this tax program enabled the partners to reduce their capital outlays, and that the IDC deferred its participation until that program was implemented, the record also shows that the IDC did consider its investment in the absence of Section 37E and found that it provided acceptable returns nevertheless. The IDC's deferral was a commercially sound action taken to ensure that the IDC would be able to both consider all variables prior to making a final commitment and maximize its projected return.

Comment 2: Specificity of Section 37E and IDC/Impofin Programs: Respondents argue that, although the Department correctly found that both the Section 37E and the IDC/Impofin lending programs were not *de jure* specific, the Department's finding that the programs were *de facto* specific was incorrect. Respondents contend that the Department failed to satisfy the preconditions of any inquiry into the possibility of *de facto* specificity, which is only to be made when ''there are reasons to believe that a subsidy may be specific as a matter of fact.'' *See* section 771(5A)(D)(iii) of the Act (implementing Article 2.1(c) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)). Respondents contend that the Department made no effort to satisfy this precondition in its preliminary determination and ''leaped'' from a determination of no *de jure* specificity to an application of the *de facto* specificity criteria without first identifying the reasons to believe that such specificity might exist. Thus, the Department's specificity finding is invalid as a matter of law.

Petitioners argue that respondents have overstated the statutory requirements. While both the statute and the SCM Agreement contain the ''reasons to believe'' language, the law does not require the Department to make or publish findings with respect to the ''reasons to believe'' that a subsidy may be *de facto* specific. Respondents' arguments read a requirement into the law that does not exist. In addition, petitioners argue that the Department's analysis of a domestic subsidy inherently demonstrates the agency's reasons to believe that a subsidy may be *de facto* specific. Petitioners cite the initiation standard (section 702(b)(1) of the Act) which instructs the Department to initiate an investigation when the elements necessary for the imposition of a countervailing duty are alleged, and conclude that a decision to initiate an investigation of a program implies that the Department has a reason to believe the subsidy may be *de facto* specific. Furthermore, petitioners note that the petition contained information which provided the Department with reasons to believe that both the Section 37E and the IDC/Impofin programs may be *de facto* specific.

Petitioners contend that respondents ignore the fact that a *de jure* specificity analysis necessarily involves examining whether there are reasons to believe that a subsidy may be specific as a matter of fact; in the context of specificity in general, the Department examines the same factual information: eligibility criteria, application process, program records, and the identity of recipients. Finally, petitioners note, and cite numerous examples of, the Department's longstanding practice of first examining whether a subsidy is *de jure* specific and then proceeding to the *de facto* analysis. Petitioners argue that if this practice conflicted with the SCM, this conflict would have been addressed in the Statement of Administrative Action (SAA), which instead affirms the Department's practice in analyzing the *de facto* specificity of domestic subsidies. Thus, petitioners reject respondents' argument that the Department's analyses and determinations that Section 37E and IDC/Impofin are *de facto* specific are inconsistent with both the statute and the SCM.

Department's Position: We disagree with respondent's interpretation of the ''reasons to believe'' language in section 771(5A)(D)(iii) of the Act. It is not stated as a precondition to a *de facto* analysis and we do not interpret it as such. While the language is part of the definition of *de facto* specificity it is not presented as a threshold requirement for positive evidence to justify an inquiry into how widely available a subsidy, in fact, is. The type of program itself (*e.g.*, a development loan program) may be sufficient reason to believe that it may, in fact, be limited to a specific industry or group of industries. In contrast, there is normally no reason to believe that other types of programs (*e.g.*, standard tax deductions) that are, *de jure*, available to all businesses would, in fact, be specific. Thus, the Department would not be required to perform a *de facto* analysis of such a program. The nature of the subsidy at issue here warrants a *de facto* analysis. Moreover, we note that the allegations in the petition would be sufficient to meet even the higher standard that respondent would have us employ.

Comment 3: de facto Specificity of Section 37E: Respondents argue that in finding Section 37E to be *de facto* specific, on the basis that the actual recipients of the subsidy, whether considered on an enterprise or an industry basis, are limited, the Department also ignored its statutory obligation to ''take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.'' *See* Section 771(5A)(D)(iii) of the Act. Respondents argue that the Department's failure to consider these conditions renders invalid the Department's finding that Section 37E is *de facto* specific. Respondents contend that if the Department takes these two factors into account, the Department will find that the recipients of Section 37E are not limited in number.

Respondents cite the verification report, which shows that nine industries in six (of eleven) provinces, have benefitted from Section 37E. Respondents argue that economic sanctions led to the diversification of the South African economy in the early 1990s, but that many of the industries were not world-competitive, relied on outdated technology, and were oriented to the domestic market, *i.e.*, these industries would not be viable in an open economy. Thus, very few companies were in a position to take advantage of Section 37E. Respondents note that the applicants for Section 37E were further limited by statutory criteria (to add at least 35 percent to the raw material value, to be internationally competitive, to use foreign credits to import capital goods), reflecting the GOSA's objective to encourage growth in capital investment and employment. Thus, the most likely projects to receive approval were ''mega-projects'' in terms of capital, cost, timing and output, and such projects were rare.

In addition, respondents note that Section 37E was in operation for only two years. The program's brief lifetime, therefore, further restricted the pool of potential claimants. Respondents have provided a letter from a former official of the Department of Trade and Industry (DTI) who was involved in the development and administration of Section 37E. This letter demonstrates, according to respondents, that given the economic conditions in South Africa at that time, 19 applications and 13 approvals were considerably more than had been expected. The 13 approved companies, according to the DTI official, reflected a spread of activity, size and geographic location, and viewed in the South African context, were not limited in number.

Petitioners argue that the GOSA's concession that the statutory criteria limited the number of companies that could receive Section 37E benefits supports a conclusion that Section 37E is *de jure* specific, regardless of the extent of economic diversification in

South Africa. Petitioners note that verification documents show that the original purpose of Section 37E was to benefit mineral beneficiation projects, including Columbus. Petitioners further note that the GOSA's statement that the number of applicants was ''considerably more than had been expected'' implies that, contrary to GOSA's claim, the statute was implemented to assist a few select industries and was not intended as a broad-based economic stimulus. Thus, the Department should find not that the limited economic diversification curtailed the potential number of program beneficiaries, but that the law itself limited access to Section 37E, making it *de jure* specific.

Petitioners also argue that Section 37E is *de facto* specific. In making this argument, petitioners reject the GOSA's statement that because nine different industries benefitted, the program was widely used. Petitioners believe that the industrial breakdown provided by the GOSA incorrectly disaggregates the industry groups and that stainless steel, steel, aluminum, and ferrochrome should be considered as the ''metals'' industry, reducing to six the number of industries benefitting from Section 37E. Finally, petitioners cite to the IDC's 1997 Annual Report, which shows the IDC's involvement in many different sectors, in rejecting the GOSA's claim that there were few viable and diversified sectors in the South African economy.

Finally, petitioners maintain that the short operation period of Section 37E did not necessarily limit the number of program users. Petitioners argue that since not all of the companies that were approved for the program actually used it, some of the approved companies may have applied without any definite investment plan, merely to keep open the option to use the program in the future. Petitioners conclude that, paradoxically, the narrow window of 37E operation may have actually increased the number of applicants, rather than limiting it.

Department's Position: We note, as explained in the ''Section 37E Tax Allowances'' section above, that we have reconsidered our treatment of Section 37E and find, for purposes of our final determination, that it is specific because it constituted an export subsidy for purposes of section 771(5A) of the Act at the time the CJV partners applied and received approval for its benefits. Therefore, we need not address respondents' arguments with respect to the *de facto* specificity of Section 37E benefits.

Comment 4: Benefits Under Section 37E: Petitioners contend that the Department should recognize the benefit under the Section 37E program as the full amount of the tax allowances claimed by Columbus, rather than use the time-value of money approach which the Department used for the preliminary determination. Petitioners advance two arguments in support of this proposed approach. First, petitioners contend that the verified record questions whether the Columbus expansion project would have gone forward without the availability of the 37E program to reduce the expansion's capital requirements. This, in turn, raises doubts about the potential receipt by the CJV partners of section 12C depreciation allowances. In other words, petitioners argue that if the CJV expansion had not gone forward (which it did, petitioners contend, only because of the existence of the 37E program), then the CJV partners would never have claimed any tax allowances related to Columbus, even the depreciation allowances normally available to all taxpayers under section 12C. Thus, petitioners contend that the Department's preliminary determination was inappropriately premised on the assumption that Columbus was clearly otherwise entitled to receive normal depreciation allowances under section 12C. Petitioners also contend that the Department erroneously calculated the benefit as the difference between the depreciation allowances allowed under Section 37E and those normally available under section 12C (reducing the benefit to the time-value of money difference), rather than assuming that the full value of the allowances constituted a countervailable subsidy. In support of this argument, petitioners cite to the recently published countervailing duty regulations, which acknowledge the problems inherent in speculating upon future tax benefits to a company in relation to accelerated depreciation.

Second, petitioners argue that the Section 37E program provides for the accelerated write-off of assets and therefore should be treated as an accelerated depreciation program by the Department, that is, the full amount of the allowances should be treated as a grant in the year of receipt consistent with the Department's practice. Petitioners reject the Department's time-value of money approach with respect to Section 37E, claiming that the Department itself has consistently rejected such an approach to accelerated depreciation programs, and treated the benefits provided by those program as grants in the full amounts of the accelerated depreciation claims. The Department's rejection of this approach is explicit in the new countervailing duty regulations. *See Countervailing Duties; Final Rule,* 63 FR 65348, at 65376 (November 25, 1998) *New Regulations.* In conclusion, petitioners note that without Section 37E, there would have been no Columbus expansion, and therefore no depreciation allowances, either under Section 37E or 12C. Thus, the Department should not discount the value of these benefits based upon speculation about what Columbus may have received in the future under the South African tax code and should treat the full amount of the Section 37E allowances as grants in the years of receipt.

In addition, petitioners support the Department's treatment of benefits under Section 37E as non-recurring benefits.

Respondents argue that to capture the full amount of the Section 37E benefits, without recognizing the applicable time-value of money discount, is to ignore record evidence which shows that in the absence of Section 37E, deductions in the same value were fully allowable under section 12C from the date of Columbus' commissioning, October 1, 1995. This record evidence clearly shows, according to respondents, that the benefit is merely a matter of timing: under Section 37E, the Columbus partners were able to claim the depreciation allowances (available under both sections 37E and 12C) beginning at the time the relevant expenses were incurred, rather than waiting nearly two years until the equipment was in use.

Department's Position: We disagree with both of petitioners' arguments for treating the total value of Section 37E allowances as grants. First, whether the Columbus project would have gone forward absent the existence of the countervailable depreciation allowances under Section 37E is not relevant to our examination of the program and its benefits. While petitioners are correct in noting that, without the investment in the CJV, Columbus' partners would have claimed no depreciation allowances, either under Section 37E or the otherwise governing section 12C, it is not appropriate to speculate about the tax positions of the partners absent the investment which gave rise to the depreciation allowances (regardless of which provision of the tax code governed). It is the Department's long-standing practice to recognize that ''a benefit exists to the extent that the taxes paid by a firm as a result of the program are less than the taxes a firm would have paid in the absence of the program.'' *See 1989 Proposed Regulations* 54 FR at 23372. In other words, the Department appropriately focused on the Columbus expansion project, and compared the tax experience (in this case of the partners) under the countervailable Section 37E program with the experience which would have prevailed absent the program. In the factual circumstances in this case, the Columbus partners' tax experiences in the absence of the investment are not relevant in quantifying the benefit provided to respondents from the Section 37E program.

Furthermore, petitioners' statement that the Department wishes to avoid speculating on the future tax benefits to a company is misplaced for two reasons. In general, and consistent with the Department's practice of recognizing a benefit at the time that it is received, the Department avoids calculating tax benefits which are contingent on a company's future tax position—if a company is in a tax loss position during the POI or for a prolonged period, benefits from countervailable tax deductions or tax credit programs may not materialize. In particular, petitioners overlook two details in this case which remove any speculation from the Department's analysis: the existence of the Section 37E program reduced the partners' projection of the project's capital requirements and therefore resulted in a cash flow impact at the time the partners' investments were made (*see Preliminary Determination* at 47265); and, the provision of the Negotiable Tax Credit Certificates (NTCCs) which the users of the program could receive and convert into cash if they were in a tax-loss position (depreciation allowances under Section 12C can only be used as deductions to taxable income and therefore have no immediate value to taxpayers in tax-loss positions). Thus the cash-flow of the Section 37E benefits to the CJV partners is immediately measurable, and its timing is easily pinpointed; there is no speculation about the value of the countervailable allowances as there would be if the allowances were available only as deductions to taxable income and we were examining a company in a tax-loss position.

We also disagree with petitioners that it would be appropriate to treat the tax benefits under Section 37E as accelerated depreciation. As a threshold matter, Section 37E does not operate like an accelerated depreciation program, which allows its users to depreciate assets over an accelerated (*i.e.,* shorter) period of time. For example, where companies are normally allowed to depreciate equipment over 20 years, accelerated depreciation would allow for depreciation over ten years. Such a program would provide tax savings, vis-á-vis the normal depreciation schedule, over the period of the accelerated depreciation, in this example ten years. We would normally treat this tax savings as a recurring subsidy and allocate the benefits to the year in which tax savings were achieved.

However, we note that Section 37E does not function like an accelerated depreciation program. As respondents reported, and as was confirmed at verification, users of this program depreciate their capital equipment, buildings and machinery, over the same five-year period allowed under section 12C, the tax code provision governing depreciation. We agree with respondents that the advantage which Section 37E allows is that companies can begin depreciating equipment, buildings and machinery, in the year in which the purchases of the equipment are made, rather than having to wait until the equipment is in use, as they would under section 12C. As we verified in the case of Columbus, a large, capital-intensive project with a necessarily long construction period, the use of Section 37E enabled the partners to claim depreciation allowances two or three years in advance (depending on the partner's tax year). (Capital equipment purchases began in 1993 and the plant was officially commissioned on October 1, 1995. The plant's commissioning date was established by the South African tax authorities, as equipment purchases made beyond that date were not eligible for Section 37E depreciation.)

Thus, the benefits under this program are twofold: the opportunity to claim the depreciation allowances in advance of the time a company would otherwise be able to do so—that is, the time value of receiving the allowances in advance; and, the ability to turn the allowances into cash, through the use of the NTCCs, if a company has no tax liabilities to reduce with the depreciation allowances which would otherwise constitute tax deductions. Therefore, we will continue to use the calculation methodology we used for the purposes of the preliminary determination, with only the modifications indicated in the discussion of the program above and in the *Department's Position* on *Comment 5* below.

Comment 5: Calculation Methodology for Section 37E: Respondents note that if the Department persists in finding Section 37E benefits countervailable, the Department must correct errors in the calculation of the subsidy rate. Respondents argue that the Department should calculate the time-value of money, and thus the grant equivalents of Columbus' Section 37E advanced depreciation claims, only for Section 37E allowances claimed prior to the date of Columbus' official commissioning—October 1995. Respondents contend that depreciation claims for years after that date do not result in countervailable benefits to Columbus' partners because, after commissioning, the partners would have begun claiming depreciation of Columbus' assets under section 12C; these claims would have been in the same value as and contemporaneous to depreciation allowances claimed under Section 37E. Therefore, respondents contend that Columbus only benefitted from advanced depreciation under Section 37E for the years 1995/1996 (depending on the partners' respective tax years) and earlier. They propose that the benefit is limited to the time-value of money realized by the depreciation claims made for years for which Columbus otherwise could not have claimed depreciation.

Petitioners reject respondents' proposed corrections to the calculations on two accounts. First, petitioners reiterate their argument that the time-value of money treatment is flawed and has been rejected by the Department (*see Department's Position* on *Comment 4* above). Second, petitioners argue that respondents' proposed correction rests on an erroneous analytical assumption with respect to the timing of depreciation claims (the details of which are proprietary).

Department's Position: We disagree with respondents that Columbus benefitted from Section 37E only to the extent that the partners claimed depreciation allowances for years for which they otherwise could not have claimed depreciation allowances under section 12C. As explained above, by claiming depreciation in advance, Columbus' partners were able to realize capital savings which directly reduced the projects's financing requirements. Section 37E benefits were more than just a tax benefit. Therefore, the advanced depreciation claimed under Section 37E results in an ongoing benefit to the company, and the Department correctly found a benefit to Columbus in the advanced depreciation claimed under Section 37E throughout the length of the depreciation schedule. In other words, for each of the five years of the depreciation schedule, we calculated a grant equivalent; we then allocated each grant equivalent over the AUL of 15 years.

With regard to the contentions that the preliminary calculations contained errors, we have reviewed the calculation methodology used for our preliminary determination and have made corrections. For the preliminary determination, we incorrectly used two years as the sole basis for determining the time value, and thus the grant equivalent, of the advanced depreciation claimed under Section 37E by the three Columbus partners in each year of the depreciation schedule. We have adjusted our final calculations to reflect two years as the basis for calculating the time value of the yearly claims made by Highveld and three years as the basis for calculating the time value of the yearly claims made by Samancor and the IDC. This adjustment reflects the different tax years of the companies, the actual timing of the companies' tax claims, and their actual receipt of benefits under the program.

Comment 6: De Facto Specificity of IDC/Impofin Lending: Notwithstanding what respondents view as the Department's failure to satisfy the statutory preconditions to a *de facto* specificity analysis, discussed in *Comment 2* above, respondents argue that the IDC/Impofin program is not *de facto* specific. The preliminary determination was based on the fact that the ''fabricated metal products'' and the ''basic metal products'' industries are predominant users of the program and that these industries have received more than fifty percent, by value, of the total loan guarantees awarded over the life of the program. *Preliminary Determination* at 47266. Respondents argue that by examining value, the Department did not account for the three ''mega projects'' in the basic metal manufacture industries; these huge and extraordinary projects necessarily skew the results of any analysis based on value. Respondents note that in order to properly evaluate whether there is a predominant user of a program, one must analyze the number of loans and their distribution by industry, not the value of the loans and the distribution of that value by industry. Respondents cite verification documents which show no predominant user on this basis: 12 percent of approvals were for the basic metal manufacturing and fabricated metal products industries; the mining industry received 14.7 percent; the pulp and paper industry and the engine and vehicle industry each received 11.2 percent.

Respondents further note that the South African economy is dependent on the beneficiation of local raw materials for economic growth. The abundance of minerals and energy resources present competitive advantages for large-scale beneficiation; thus, investment in industrial infrastructure, in value terms, favors large beneficiation projects. These competitive advantages are centered in South Africa's basic metal manufacture industry. The fact that industrial development initiatives and the accompanying IDC/Impofin financing are weighted by value toward this industry does not indicate disproportionate use; rather, respondents conclude, it is a valid reflection of the sources available for beneficiation.

Petitioners note that respondents' comparison of the number of users, without examining the distribution of benefits, suggests not that the program was disproportionately used but rather that the steel industry was a dominant user of the program. Petitioners argue that the statute does not require the Department to make an exception for ''mega projects'' which may skew the distribution of benefits, and that this factor would necessarily lead the Department to a *de facto* specificity finding based on disproportionate use. According to petitioners, the Department cannot view only the number of projects without considering the relative weights of assistance by enterprise, industry, or group thereof. In addition, petitioners note that the Department's examination of IDC/Impofin financing over a seven-year period accounts for any ''skewed'' result caused by a mega-project in a particular year. Petitioners also note that the sectoral distribution of benefits was confirmed at verification.

Department's Position: We stand by our preliminary determination that the IDC/Impofin loan guarantee program provides benefits which are *de facto* specific to an enterprise, industry, or group thereof within the meaning of section 771(5A)(D)(iii) of the Act. We disagree with respondents' suggestion that the appropriate basis for our analysis is the number of loan guarantees and their distribution by industry and we note the Department's practice of examining the distribution of benefits, by value, when analyzing whether a program is *de facto* specific because an industry or group of industries is the predominant user of the program or receives a disproportionate share of the benefits granted under a program. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40485 (July 29, 1998). Respondents' statement that there were three ''mega-projects'' which necessarily skewed the distribution of benefits in fact supports the Department's specificity finding. In our preliminary determination, we found that the information provided by the IDC regarding the distribution of benefits (by value) over the life of the program showed that the ''basic metals manufacture industry'' (which includes the manufacture of stainless steel) and the ''fabricated metal products industry'' together received more than half of the loan guarantees awarded over the life of the program. *See Preliminary Determination,* 63 FR at 47266. In fact, information which respondents submitted with their brief enables us to refine our finding of *de facto* specificity for this final determination. This information shows that, by value, the steel industry (including stainless steel) received more than half of all loan guarantee approvals (the rest of the industries using the program—including the mining, agriculture, and chemical industries, among others—together accounted for less than half of the loan approvals by value). This is clear evidence that the steel industry is a predominant user of this program and thus it is *de facto* specific. Furthermore, if we perform an analysis of the information which respondents presented in their case brief parallel to the analysis in our preliminary determination, this information shows that the basic metals manufacture and the fabricated metal products industries received more than three-quarters of all loan guarantee approvals, by value. Thus, these two industries together are clearly predominant users of the program.

By examining the distribution of benefits over time, the Department accounts for any anomalous industry-specific activity in a particular year. The fact that three mega-projects received the bulk of the loan guarantees supports our finding of *de facto* specificity based on predominant use, as these three projects are in the basic metal manufacture industry (basic iron and steel, stainless steel and aluminum). Finally, the information which respondents have provided with respect to the South African economy's dependence on the beneficiation of raw materials is not relevant to our analysis.

Comment 7: Calculation Methodology for IDC/Impofin Lending: Respondents argue that the interest rates which Columbus paid for IDC/Impofin financing were not preferential, as they were established by reference to independently-prescribed rates that reflected prevailing market conditions. The interest rates for the loans were either the Commercial Interest Reference Rate (CIRR) or the London Interbank Offered Rate (LIBOR) plus a margin. The CIRR were fixed by the foreign export credit agency (ECA) for the full loan term at the time of the loan negotiation and contract; the LIBOR-based rates were variable rates.

For all of the loans, respondents note, Columbus paid to the foreign banks management and commitment fees, typically 0.5 percent and 0.25 percent, respectively, and to the IDC/Impofin a facility (guarantee) fee of 0.25 percent. Respondents argue that these fees were comparable to fees paid by other borrowers. In addition, for some of the loans, Columbus paid export credit insurance premiums to the banks, which in turn paid these fees to their respective export credit agencies. Respondents argue that there is no evidence in the record that the various fees and premiums paid by Columbus were preferential.

Petitioners argue that regardless of how the interest rates were established (by the CIRR or LIBOR), the verification report indicates that the rates were clearly not based upon loans to Columbus; rather they were ''based on the risk associated with lending to the IDC.'' (*Government Verification Report* at 11–12.) Since, as the verification report indicates, ''foreign banks like to use the IDC as a borrower because they do not have to investigate the credit of each borrowing firm,'' *id.*, petitioners argue that the interest rates paid by Columbus program are preferential.

Petitioners also contend that Columbus would not have received financing without the IDC and GOSA guarantees. Petitioners note that, because the IDC was a partner, Columbus did not have to formally apply for financing or undergo the IDC's risk assessment; foreign lenders required the IDC to guarantee the loans because Columbus had no established credit history; and, some countries required an additional back-up guarantee from the GOSA. *Id.* at 13. Petitioners contend that this information further demonstrates that IDC financing conferred a benefit.

Department's Position: As discussed in the ''IDC/Impofin Loan Guarantee Program'' section above, the Department has revised the analysis of the program from the preliminary determination. Because these loans originate either with foreign government export credit agencies or offshore foreign banks in coordination with foreign government export credit agencies, which are not under the direction or control of the GOSA, the loans themselves are not countervailable and it is inappropriate to compare the interest rates charged by offshore foreign banks to commercial interest rates in order to determine whether the program provides a benefit to Columbus. For the same reason, an examination of the fees paid to the foreign government banks is inappropriate. Thus, respondent's and petitioners' comments on the benchmark, fees to foreign government banks, and whether the program provides a benefit using this type of analysis, need not be addressed. Instead, we have determined that it is appropriate to focus on the fee charged by the IDC for the guarantee on these loans.

With respect to respondent's comment that there is no evidence that the fees charged by the IDC were preferential, we disagree. As discussed in greater detail in the ''IDC/Impofin Loan Guarantee Program'' section above, we have determined, based on conversations with an independent banker in South Africa, that a commercial bank would offer Columbus similar guarantees at a slightly higher rate, 0.375 percent. Thus, when we compare what Columbus paid the IDC for the provision of guarantees, 0.25 percent, and what it would have paid a commercial bank, 0.375 percent, we find that the IDC did provide a financial contribution that confers a benefit within the meaning of the Act.

Comment 8: IDC/Impofin Financing Calculation Adjustments: Petitioners argue that the Department's calculations for the IDC/Impofin financing understate the benefits to Columbus from this program. First, petitioners urge the Department to adhere to the preliminary determination, in which the Department stated that it would gather information about commercial fees and add an appropriate amount to the benchmark for the purposes of calculating the benefit for the final determination. Second, petitioners urge the Department to treat interest capitalizations not as interest payments but as increases in principal and to avoid double-counting the payment of capitalized interest in calculating the net present value. Third, in the absence of any record information regarding grace periods on loans in South Africa, petitioners argue that the Department should capture any countervailable benefits associated with the grace periods granted to Columbus for its IDC/Impofin financing. Fourth, the Department should correct errors which resulted in the finding of no benefit for some of the loan tranches examined. Finally, the Department should include in its loan calculations several loans, outstanding during the POI, which were omitted from Columbus' questionnaire responses and which were discovered at verification.

Respondents argue that since the Department's *de facto* specificity finding is in error, and the interest rates provided on the IDC/Impofin financing are not preferential, there is no need to comment on the manner in which the benefit should be calculated.

Department's Position: As discussed above, we have changed our analysis of the IDC/Impofin loan program. Thus, we need not address petitioners' comments with respect to adding fees to the benchmark, interest capitalization and grace periods. The Department did collect information about the guarantee fees that commercial banks charged, and based on this information, we have calculated a benefit comparing what Columbus paid the IDC to guarantee the loans under this program and what Columbus would have paid on comparable commercial guarantees. We have included the fees paid during the POI on loan tranches that were discovered at verification in our calculation of the benefit from the program.

With respect to Respondent's comment, we disagree. As discussed in the program description above and the *Department's Position* on *Comment 6* above, we find that the IDC/Impofin loan guarantee program is *de facto* specific.

Comment 9: Discount Rate: Petitioners argue that the Department should adjust the discount rate used in the preliminary determination because, although the Department relied on the long-term South African government bond rate as the discount rate, the Department noted its interest in finding a more appropriate rate for the final determination. Petitioners contend that discussions at verification of the Prime Overdraft rate (the rate at which commercial banks lend to their best customers), and the spreads added to it, support the use of this rate plus 50 to 60 basis points as the discount rate for the final determination.

Respondents note that the CIRR and LIBOR are the appropriate benchmark interest rates, and that application of these rates yields no countervailable benefits from the IDC/Impofin loans. Therefore, a benchmark based on South African lending rates is irrelevant.

Department's Position: Petitioners are correct that the Department expressed interest in finding an alternative discount rate for use in the final determination. However, as discussed in the section entitled ''Discount Rates'' above, we did not find an alternative long-term fixed interest rate. Thus, for the purposes of this final determination, we have constructed a discount rate by averaging the government bond rate as reported by respondents with the ''Lending Rate'' reported in *International Financial Statistics,* December 1998, published by the International Monetary Fund. By averaging these two rates, we believe that we have identified a rate more appropriate than the rate used for the purposes of the preliminary determination, a rate which includes the necessary characteristics of both long-term borrowing and commercially-available interest rates.

We disagree with petitioners' suggestion of using the Prime Overdraft rate plus 50 to 60 basis points, as that rate is not a long-term fixed interest rate. Respondents' comment is misplaced as the original comment addressed the choice of discount rates for use in calculating the benefit from non-recurring subsides, not the benchmark used in calculating the benefit from the IDC/Impofin loan program. The calculation methodology for the IDC/Impofin loan program is discussed in the *Department's Position* on *Comment 8,* above.

Comment 10: Average Useful Life of Assets: Petitioners argue that the Department should use five years as the average useful life of assets (AUL), as facts available, for purposes of allocating non-recurring benefits over time. In support of this argument, petitioners note that Columbus did not provide information that would allow the Department to calculate an AUL, despite the Department's repeated requests for such information. Petitioners note that the statute justifies the Department's use of adverse facts available (*see* sections 776, 782(d) and (e) of the Act) because of Columbus' unwillingness to provide the requested information. Petitioners argue that five years is the appropriate AUL for two reasons: first, the Department confirmed at verification that Columbus depreciates assets for tax purposes over five years from the date of commissioning; second, Columbus' refusal to provide the information after a preliminary determination in which the Department used 15 years, as facts available and based on the IRS tables, supports the conclusion 15 years is more beneficial than the AUL that Columbus would have reported. Petitioners cite *D & L Supply Company* versus *United States,* 113 F. 3d 1220, 1223 (Fed. Cir. 1997) and *Censaldo Componenti S.p.A.* versus *United States,* 628 F. Supp. 198 (CIT 1986) to support their contention that Columbus should not be allowed to benefit from its refusal to cooperate with the Department's information requests.

Respondents argue that petitioners are incorrect in stating that Columbus has persistently failed to provide information about its AUL. Questionnaire responses indicate that Columbus depreciates buildings over 40 years and plant and machinery, vehicles and equipment over four to 25 years. Further, Columbus has consistently expressed its view that, since Columbus has never received a non-recurring grant or any other allocable subsidy from the GOSA, further information about its AUL is unnecessary. Thus, petitioners inappropriately draw an adverse inference from Columbus' carefully explained response.

Department's Position: We disagree with petitioners. Using five years as the allocation period for any non-recurring grants received by Columbus is unwarranted for two reasons. First, respondents did provide information about their general depreciation practices: buildings are depreciated over 40 years and plant and machinery, vehicles and equipment are depreciated over four to 25 years. While this information does not enable the Department to calculate an *average* useful life of assets, it does not warrant the use of an adverse inference in determining Columbus' AUL, as petitioner urges. Second, five years is not at all relevant to the actual average useful life of assets in the steel industry. Thus, without a basis for calculating a company-specific AUL, we find that the most reasonable alternative is to rely on the *IRS Tables,* which do reflect a reasonable determination of the AUL of assets in the steel industry. In addition, using 15 years as the allocation period is reasonable in light of the information which Columbus did provide about its depreciation practices. Further, the ''Allocation Period'' section above discusses the Department's practice of determining the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable, and relying on the *IRS Tables* when company-specific AUL data are not available or otherwise cannot be used.

Verification

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

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for Columbus Stainless, the operating unit of the Columbus Joint Venture. Because this is the only company under investigation, Columbus' rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 3.93 percent *ad valorem* for Columbus.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel plate in coils from South Africa which were entered, or withdrawn from warehouse, for consumption on or after September 4, 1998, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between September 4, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

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

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

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

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

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7530 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Stephanie Hoffman, James Breeden, or Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189, 482–4198, 482–1174, or 482–0116, respectively.

Final Determination

The Department of Commerce determines that countervailable subsidies are being provided to producers and exporters of stainless steel plate in coils from Belgium. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Petitioners

The petition in this investigation was filed on March 31, 1998, by Armco, Inc., Lukens Inc., Butler Armco Independent Union, Zanesville Armco Independent Organization, and the United Steelworkers of America, AFL-CIO/CLC (''the petitioners'').

Case History

Since the publication of the preliminary determination in the **Federal Register** on September 4, 1998 (63 FR 47239) (''*Preliminary Determination*''), the following events have occurred:

We conducted verification in Belgium of the questionnaire responses from the Government of Flanders (''GOF''), the Government of Belgium (''GOB''), SIDMAR N.V. (''Sidmar''), and ALZ N.V. (''ALZ'') from November 9 through November 20, 1998. We postponed the final determination of this investigation until March 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Plate in Coils From Belgium, Italy, the Republic of Korea, and the Republic of South Africa; Notice of Extension of Time Limit for Final Determinations,* 64 FR 2195 (January 13, 1999)). The petitioners and ALZ filed case briefs on February 10, the GOB filed a case brief on February 11, and we received rebuttal briefs from the petitioners and ALZ on February 18, 1999.

The Applicable Statute and Regulations

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

Scope of Investigation

For purposes of this investigation, the product covered is stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Belgium 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 Belgium materially injure, or threaten material injury to, a U.S. industry. *See* section 701(a)(2) of the Act. On May 28, 1998, 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 Belgium of the subject merchandise (*see* 63 FR 29251 (May 28, 1998)).

Period of Investigation

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

Subsidies Valuation Information

Responding Producers

The GOB identified one producer of the subject merchandise that exported to the United States during the POI, ALZ. There are also two subsidiaries of ALZ which are involved in the production of the subject merchandise, ALBUFIN N.V. (''Albufin'') and AL-FIN N.V. (''Alfin''), and we have included any subsidies to these companies in the subsidy rate for ALZ. Furthermore, Sidmar owns either directly or indirectly 100 percent of ALZ's voting shares and is the overall majority shareholder of ALZ.

Benchmarks for Long-term Loans and Discount Rates

ALZ and Sidmar reported that they obtained long-term commercial loans contemporaneously with the receipt of certain government loans or grants. Where appropriate, we have used these