suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, 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) 482–4087, 482–1778, 482–2239, or 482–0108, respectively.

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 Italy. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

The Petitioners

The petition in this investigation was filed by Armco, Inc., J&L Specialty Steels, Inc., Lukens Inc., AFL–CIO/CLC (USWA), Butler Armco Independent Union and Zanesville Armco Independent Organization (the petitioners).

Case History

Since our preliminary determination on August 28, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy,* 63 FR 47246, (September 4, 1998) (*Preliminary Determination*), the following events have occurred:

Between September 21 and October 16, 1998, we issued supplemental questionnaires to the Government of Italy (GOI), the European Commission (EC) and Acciai Speciali Terni (AST). We received responses to these requests between October 9 and November 4, 1998. We conducted verification in Belgium and Italy of the questionnaire responses of the EC, GOI, and AST from November 11 through November 24, 1998. On January 5, 1999, 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 AST filed case and rebuttal briefs on February 17 and February 23, 1999. A public hearing was held on February 25, 1999. After the hearing, at the Department's request, additional comments were submitted by petitioners and respondents on March 2, 1999. On March 12, 1999, the EC submitted additional comments.

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 (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.

The Applicable Statute

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

Injury Test

Because Italy 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 Italy materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination 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 Italy of the subject merchandise (*see Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* 63 FR 29251 (May 28, 1998)).

Period of Investigation

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

Corporate History of AST

Prior to 1987, Terni, S.p.A, (Terni), a main operating subsidiary of Finsider, was the sole producer of stainless steel plate in coils in Italy. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Istituto per la Ricostruzione Industriale (IRI). As part of a restructuring in 1987, Terni transferred its assets to a new company, Terni Acciai Speciali (TAS).

In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A., was formed. ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and the majority of its viable assets, including

all the assets associated with the production of plate, transferred to ILVA S.p.A. on January 1, 1989. ILVA S.p.A. became operational on the same day. Part of TAS's remaining assets and liabilities were transferred to ILVA S.p.A. on April 1, 1990. After that date, TAS no longer possessed any operating assets. Only certain non-operating assets remained in TAS.

From 1989 to 1993, ILVA S.p.A. consisted of several operating divisions. The Specialty Steels Division, located in Terni, produced subject merchandise. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. Others constituted service centers, trading companies, and an electric power company, among others. ILVA S.p.A. together with its subsidiaries constituted the ILVA Group (ILVA). ILVA was wholly-owned by IRI. All subsidies received prior to 1994 were received by ILVA or its predecessors.

In October 1993, ILVA entered into liquidation and became known as ILVA Residua. On December 31, 1993, two of ILVA's divisions were removed and separately incorporated: AST and ILVA Laminati Piani (ILP). ILVA's Specialty Steels Division was transferred to AST while its carbon steel flat products operations were placed in ILP. The remainder of ILVA's assets and liabilities, along with much of the redundant workforce, was left in ILVA Residua.

In December 1994, AST was sold to KAI Italia S.r.L. (KAI), a privately-held holding company jointly owned by German steelmaker Hoesch-Krupp (50 percent) and a consortium of private Italian companies called FAR Acciai (50 percent). Between 1995 and the POI, there were several restructurings/ changes in ownership of AST and its parent companies. As a result, at the end of the POI, AST was owned 75 percent by Krupp Thyssen Stainless GmbH and 25 percent by Fintad Securities S.A.

Change in Ownership

In the General Issues Appendix (GIA), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993)(Certain Steel from Austria), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a government-owned company to a private entity (privatization), or the spinning-off (*i.e.*, sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI and ending one year prior to the sale of the company. We then take the simple average of these ratios. This averaged ratio serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold. For further discussion of our methodology, *see* the *Preliminary Determination*, 63 FR at 47247.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sales of a productive unit to determine what portion of the sale price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun off productive unit. For further discussion of these issues, *see* Comment 1 below regarding the application of the methodology to an arm's-length sale of a company, Comment 2 with respect to the calculation of the ratio representing the percentage that subsidies constitute of the overall value of a company, and Comment 3 on the calculation of the purchase price used in the change-in-ownership methodology.

After the 1994 privatization of AST, there were numerous changes in the ownership structure of the parent companies of AST. Respondent argues that the Department should apply its change-in-ownership methodology to two of these transactions. Each of these sales involved minority owners selling their interests in AST's parent companies. In the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination; Stainless Steel Sheet and Strip from Italy*, 63 FR 63900, 63902 (November 17, 1998) (*Italian Sheet and Strip*), the Department applied its methodology to one transaction but did not have the information with which to do so for the other.

The petitioners oppose the application of the change-in-ownership methodology. They argue that ownership transactions that fail to transfer control of a company to an unrelated party do not warrant the application of the change-in-ownership methodology. The petitioners cite to *Inland Bar Co.* v. *United States (Inland Bar)*, 155 F.3d 1370, 1374 (Fed. Cir. 1998) in which it is stated that a purchaser's valuation of a company:

> will depend not only on the intrinsic value of the unit, but also on whether the purchaser opts to discharge the liability at purchase time rather than continuing to pay countervailing duties until the obligation expires. (*Id.* at 1374)

According to the petitioners, the Court's reasoning dictates that a purchaser must be able to value a company's assets and liabilities, assume the liabilities and opt to repay or reallocate the countervailing duty liability. In order to do this, the petitioners argue that a purchaser must take control of the company. In contrast, Krupp has controlled AST since the 1994 privatization and only strengthened its position by virtue of these post-privatization partial changes in ownership, explain the petitioners.

More specifically, AST's post-privatization partial changes in ownership involved transfers of only minority stakes, according to the petitioners. In such cases, argue the petitioners, the liability remains with the current majority owners while the minority purchaser simply buys into the subsidized company. As support, the petitioners cite to the GIA, 58 FR at 37273, where the Department stated:

> A change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a bona fide spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position.

The petitioners warn that application of the change-in-ownership methodology

in such small share transactions that do not affect the control of a company would create a loophole in the countervailing duty law whereby each share transaction on the open market would constitute a change in ownership. In effect, point out the petitioners, the privatization of a company via stock issuance would result in extinguishment of subsidies as each trade would result in a reallocation of those subsidies. The petitioners also state that continued application of the change-in ownership methodology involving minority transfers of ownership could also provide an incentive for majority owners to manipulate share transactions so as to eliminate countervailing duty liability.

Finally, the petitioners argue that AST's partial changes in ownership are distinguishable from those examined in *Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review,* 61 FR 53351, 53352 (October 11, 1996) (*IPA from Israel*) where the Department applied its change-in-ownership methodology to partial privatizations. Petitioner argues that AST's private transactions do not warrant any repayment of subsidies as would happen when a government sells a company (*see Delverde I* at 16–17). The petitioners also note that in *IPA from Israel* the partial changes in ownership for which the change-in-ownership methodology was applied occurred on the same level of analysis that the subsidy analysis was done. However, with AST, the petitioners argue that the partial changes in ownership occurred at a higher level than the level at which the subsidy analysis is properly done; thereby rendering the changes in ownership irrelevant for purposes of a change-in-ownership analysis.

AST argues that *IPA from Israel* clearly supports application of the change-in-ownership methodology to all transactions including partial changes in ownership unless application of the methodology would have no affect on the final margin. While the case at hand involves private-to-private partial changes in ownership and *IPA from Israel* involved a public-to-private one, AST notes that the Department has found the application of the change-in-ownership methodology to be appropriate in private-to-private transfers of total ownership (*see Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 30287, 30298 (June 14, 1996) (*Pasta From Italy*). Moreover, AST points out that the application of the change-in-ownership methodology in private-to-private transactions has been upheld by the CIT (*see Delverde, SrL.* v. *United States (Delverde II),* 24 F. Supp. 2d 314 (CIT 1998).

As for the petitioners' reliance upon *Inland Bar* to show that control of the company must change in order for the change-in-ownership methodology to be applicable, AST states that it is misplaced. According to AST, the issue before the Court in *Inland Bar* was whether Commerce's repayment methodology as articulated in the GIA, was reasonable. AST also mentions that in *IPA from Israel,* there was no change in control yet the Department applied the change-in-ownership methodology. Because the change-in-ownership methodology seeks to determine what portion of the purchase price of a company is attributable to subsidy repayment, AST explains that its post-privatization changes in ownership should be accounted for in that the amount of money the owners of AST paid for the company was increased by virtue of these transactions.

For this final determination, we have determined that it is inappropriate to apply our change in ownership methodology to AST's post-privatization partial changes in ownership. While it is true that the Department has applied its change in ownership methodology to partial changes in ownership in the past, we agree with petitioners that the facts presented here are unique and require a different analysis. *IPA from Israel* involved the partial privatization of the company for which we were measuring countervailable subsidies. The transactions at issue in this case both involve the sale of a relatively small amount of shares by minority owners of a holding company two levels removed from the production of the subject merchandise. Given the flexibility that the statute has conferred upon the Department with respect to changes in ownership and the SAA's guidance that we should examine changes in ownership on a case-by-case basis, we have examined the unique facts of this case and find it inappropriate to apply our change in ownership methodology. It would be unreasonable and impracticable to reallocate subsidies every time a few shares change hands; therefore, we must distinguish the circumstances in which we will reallocate from those in which we will not. We need not set forth the exact parameters under which we would but, rather, we must examine the specific facts of each case. In this case, the ownership interest transferred is relatively small and so remote from the company upon which the subsidies were conferred that we do not think it appropriate to reallocate the subsidies.

We are not persuaded by petitioners' argument that a transaction must involve a transfer of control in order for our methodology to be applicable. However, we are deeply concerned that application of our methodology to sales of private minority share interests such as these could lead us toward the application of our methodology to daily transactions on the open market for publicly traded companies—a clearly absurd result that must be prevented. Moreover, for one of these transactions, we have less than perfect source documentation supporting the essential elements of the transaction. For these reasons, we have not applied our change in ownership methodology to the transactions at issue.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with the Department's finding in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy* 63 FR at 40474, 40477 (October 22, 1997) (*Wire Rod from Italy*), we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers, depending on their financial health.

In years in which AST or its predecessor companies were creditworthy, we added the average of that spread to the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy (*see* Creditworthiness section below), we calculated the discount rates in accordance with our methodology for constructing a long-term interest rate benchmark for uncreditworthy companies. Specifically, we added to the ABI rate a spread of four percent in order to reflect the highest commercial interest rate available to companies in Italy. We added to this rate a risk premium equal to 12 percent of the ABI, as described in § 355.44(b)(6)(iv) of the Department's 1989 Proposed Regulations, (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*)). While the *1989 Proposed Regulations* are not controlling, they do represent the Department's practice for purposes of this investigation.

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Because such expenses raise the effective interest rate that a company would experience, and because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates (*see* section 355.44(b)(8) of the *1989 Proposed Regulations* and *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* 61 FR 30366, 30373 (June 14, 1996)). While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses on overdraft loans as an approximation of expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6 to 11 percent of interest charged. Accordingly, we increased the nominal benchmark rate by 8.5 percent, which represents the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the GIA, 58 FR at 37227. In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (CIT) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the CIT's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the court in *British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In recent countervailing duty investigations, it has been our practice to follow the court's decision in *British Steel II,* and to calculate a company-specific allocation period for all countervailable non-recurring subsidies.

After considering parties' comments and based upon our analysis of the data submitted by AST regarding the AUL of its assets, we are using a 12-year AUL for AST. This 12-year AUL is based on information in *Wire Rod from Italy,* 63 FR at 40477, and *Italian Sheet and Strip,* 63 FR at 63903, which we find to be a good estimate of the AUL of the Italian stainless steel industry. For an explanation of why we are rejecting AST's company-specific AUL, *see* Comment 6.

Equityworthiness

In measuring the benefit from a government equity infusion, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist. We therefore examined whether AST's predecessors were equityworthy in the years they received infusions. *See, Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 50003, 50004 (October 22, 1997) (*Wire Rod from Trinidad and Tobago*). In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See* GIA, 58 FR at 37244. Our review of the record has not led us to change our finding from that in *Wire Rod from Italy,* in which we found AST's predecessors unequityworthy from 1986 through 1988, and from 1991 through 1992, 63 FR 40474 at 40477.

Consistent with our equity methodology described in the GIA, 58 FR at 37239, we consider equity infusions into unequityworthy companies as infusions made on terms inconsistent with the usual practice of a private investor and, therefore, we have treated these infusions as grants. This methodology is based on the premise that a finding by the Department that a company is not equityworthy is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year of the infusion. This determination is based on the information available at the time of the investment.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France); Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014 (Oct. 21, 1997).

Terni, TAS and ILVA were found to be uncreditworthy from 1986 through 1993 in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy,* 59 FR 18357, 18358 (April 18, 1994) (*Electrical Steel from Italy*) and in *Wire Rod from Italy,* 63 FR at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. (*See* Comment 13 below regarding the issue of AST's creditworthiness in 1993.) Therefore, consistent with our past practice, we continue to find Terni, TAS and ILVA uncreditworthy from 1986 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993). We did not analyze AST's creditworthiness in 1994 through 1997 because AST did not negotiate new loans with the GOI or EC during these years.

I. Programs Determined To Be Countervailable

GOI Programs

A. Equity Infusions to Terni, TAS and ILVA

The GOI, through IRI, provided new equity capital to Terni, TAS or ILVA in every year from 1986 through 1992, except in 1989 and 1990. We determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. These equity infusions constitute financial contributions, as described in section 771(5)(D)(i) of the Act, and because they were not consistent with the usual investment practices of private investors (*see* Equityworthiness section above) they confer a benefit within the meaning of section 771(5)(E)(i) of the Act. Because these equity infusions were limited to Finsider and its operating companies, TAS and ILVA, we determine that they are specific within the meaning of section 771(5A)(D) of the Act.

We have treated these equity infusions as non-recurring allocable benefits given in the year the infusion was received because each required a separate authorization. Because Terni, TAS and ILVA were uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time.

For equity infusions originally provided to Terni and TAS, the predecessor companies that produced stainless steel, we examined these equity infusions as though they had

flowed directly through ILVA to AST when AST took all of the stainless steel assets out of ILVA. Accordingly, we did not apportion to the other operations of ILVA any part of the equity infusions originally provided directly to Terni or TAS. While we acknowledge that it would be our preference to look at equity infusions into ILVA as a whole and then apportion an amount to AST when it was spun-off from ILVA, we find our approach in this case to be the most feasible since information on equity infusions provided to the non-stainless operations of ILVA is not available. For the equity infusions to ILVA, however, we did apportion these by asset value to all ILVA operations in determining the amount applicable to AST because they were not tied to any specific product.

We applied the repayment portion of our change-in-ownership methodology to all of the equity infusions described above to determine the subsidy allocable to AST after it was sold. We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to be 1.03 percent *ad valorem* for AST.

B. Benefits From the 1988–90 Restructuring of Finsider [1]

As discussed above in the Corporate History of AST section of this notice, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. In 1990, additional assets and liabilities of TAS, Italsider and Finsider went to ILVA.

Not all of TAS's liabilities were transferred to ILVA S.p.A.; rather, many remained with TAS and had to be repaid, assumed or forgiven. In 1989, Finsider forgave 99,886 million lire of debt owed to it by TAS. Even with this debt forgiveness, a substantial amount of liabilities left over from the 1990 transfer of assets and liabilities to ILVA S.p.A. remained with TAS. In addition, losses associated with the transfer of assets to ILVA S.p.A. were left behind in TAS. These losses occurred because the value of the transferred assets was written down. As TAS gave up assets whose book values were higher than their appraised values, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) An extraordinary loss in TAS's 1988 Annual Report and (2) a reserve against anticipated losses posted in TAS's 1989 Annual Report with respect to the 1990 transfer.

Consistent with our treatment of the 1988–90 restructuring in the preliminary determination of this case and *Electrical Steel from Italy*, 59 FR at 18359, we determine that the debt and loss coverage provided to ILVA constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The debt and loss coverage provided a financial contribution as described in section 771(5)(D)(ii) of the Act and provided a benefit to the recipient in the amount of the debt and loss coverage. Because this debt and loss coverage was limited to TAS, AST's predecessor, we determine that it is specific within the meaning of section 771(5A)(D) of the Act.

In calculating the benefit from this program, we followed our methodology in *Electrical Steel from Italy*, except for the correction of a calculation error which had the effect of double-counting the write-down from the first transfer of assets in 1988 by including it in the calculation of losses generated upon the second transfer of assets in 1990. We have treated Finsider's 1989 forgiveness of TAS' debt and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We treated these as non-recurring grants because they were one-time, extraordinary events. Because ILVA was uncreditworthy in these years, we used discount rates that include a risk premium to allocate the benefits over time. As with the equity infusions made into Terni and TAS, we have treated this debt and loss coverage as though they flowed directly through ILVA to AST, because we have no information on the debt and loss coverage provided to the non-stainless operations of ILVA. We applied the repayment portion of our change-in-ownership methodology to the debt and loss coverage to determine the amount of the subsidy allocable to AST after its privatization. We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to be 2.81 percent *ad valorem* for AST.

C. Debt Forgiveness: ILVA-to-AST [2]

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been separately incorporated (or ''demerged'') into either AST or ILP; ILVA Residua was primarily a shell company with liabilities far exceeding assets, although it did contain some operating assets later spun-off. In contrast, AST and ILP, now ready for sale, had operating assets and relatively modest debt loads.

We determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. The amount of debt that should have been attributable to AST but was instead placed with ILVA Residua was equivalent to debt forgiveness for AST at the time of its demerger. In accordance with our past practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the ACT and provides a benefit in the amount of the debt forgiveness. Because the debt forgiveness was received only by privatized ILVA operations, we determine that it is specific under section 771(5A)(D) of the Act.

In the preliminary determination of *Italian Sheet and Strip*, 63 FR at 63904, the amount of liabilities that we attributed to AST was based on the EC's 9th Monitoring Report of the total cost of the liquidation process to the GOI. However, for this final determination, we have re-examined our methodology and determined that it is more appropriate to base our calculation on the gross liabilities left behind in ILVA Residua. *See* Comment 9 and the March 19, 1999 Memorandum on the 1993 Debt Forgiveness to Richard W. Moreland.

In calculating the amount of debt forgiveness attributable to AST, we started with the gross liabilities appearing on ILVA Residua's consolidated December 31, 1993 balance sheet. This balance sheet represents ILVA after the demergers of and associated debt transfers to AST and ILP. From these gross liabilities, we subtracted amounts for ILVA Residua's liquid assets (cash, bank accounts, etc.) and liabilities eventually transferred to the companies sold from ILVA Residua. We then subtracted the amount of the asset write-downs specifically attributable to AST, ILP and other companies, and attributed AST's portion of these write-downs to AST. Finally, we subtracted the amount of liabilities (*i.e.*, 253 billion lire) that was attributed to Cogne Acciai Speciali

[1] This program was referred to as Debt Forgiveness: Finsider-to-ILVA Restructuring in *Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 23272 (April 28, 1998) (*Initiation Notice*)

[2] Includes the following programs from the *Initiation Notice:* Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant.

(CAS), an ILVA subsidiary that was left behind in ILVA Residua and spun-off. This amount was countervailed in *Wire Rod from Italy*, 63 FR at 40478. *See* Comments 10–14 below for further information on our calculation methodology.

The amount of liabilities remaining represents the pool of liabilities that are not individually attributable to specific ILVA assets. We apportioned this debt to AST, ILP and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST and ILP's December 31, 1993 financial results, and used the sum of purchase price plus debts transferred as a surrogate for the asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, consistent with *Italian Sheet and Strip*, we did not include in ILVA Residua's viable assets the assets of the one ILVA Residua company sold to IRI, because this sale does not represent a sale to a non-governmental entity.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993 (*see* Comment 13 below and March 19, 1999 Memorandum on the Appropriate basis for 1993 Creditworthiness Analysis of AST). We followed the methodology described in the Change in Ownership section above to determine the amount appropriately allocated to AST after its privatization. We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to be 9.58 percent *ad valorem* for AST.

D. Law 796/76: Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lira-foreign currency exchange rate in effect at the time the loan is disbursed (*i.e.*, the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lira depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lira appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. AST had two outstanding ECSC loans during the POI that benefitted from these guarantees.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lira depreciates against the foreign currency beyond the two percent limit. When this occurs, the borrower receives a benefit in the amount of the difference between the guaranteed rate and the actual exchange rate.

In its responses to the Department's questionnaires, the GOI did not provide information regarding the types of enterprises that have used this program. However, during verification of the GOI, GOI officials explained that over the last decade, roughly half of all guarantees made under this program were given to coal and steel companies. This is consistent with the Department's finding in a previous proceeding that the Italian steel industry has been a dominant user of the exchange rate guarantees provided under Law 796/76. Therefore, we determine that the program is specific under section 771(5A)(D)(iii)(II) of the Act. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995).

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. At verification, we found that AST paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies as an ''* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount AST paid under this program during the POI. *See Wire Rod from Italy*, 63 FR at 40479.

We have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, minus the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to AST for this program to be 0.82 percent *ad valorem*.

E. Law 675/77

Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) Grants to pay interest on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants effectively to reduce interest payments on loans financed by IRI bond issues; (4) capital grants for the South; (5) value-added tax reductions on capital good purchases for companies in the South; and (6) personnel retraining grants.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were then re-lent to IRI companies. During the POI, AST had two outstanding loans financed by IRI bond issues. AST was responsible for making semi-annual interest payments and annual principal payments on these bond issues. In turn, AST applied for and received reimbursements from the GOI for interest and expenses that, when combined, exceed 5.275 percent semi-annually.

We determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provided a financial contribution as described in section 771(5)(D)(i) of the Act, and conferred a benefit to AST to the extent that the net interest rate was lower than the benchmark rate. With regard to specificity, a number of different industrial sectors have received benefits under Law 675/77. However, in *Electrical Steel from Italy*, the

Department determined that assistance under this law was specific because the steel industry was a dominant user of the program (the steel industry received 34 percent of the benefits). *See Electrical Steel from Italy,* 59 FR at 18361. In the instant proceeding, the GOI submitted similar information regarding the distribution of benefits under this program. At verification, the GOI stated that this program bestowed benefits on a limited number of industries, one of which was the steel industry. The new information submitted by the GOI is consistent with the information submitted in *Electrical Steel from Italy.* Therefore, consistent with our finding in *Electrical Steel from Italy,* we find the program to be specific within the meaning of section 771(5A)(D) of the Act.

To measure the benefit from these loans, we compared the benchmark interest rate to the amounts paid by AST, less the reimbursements applied for, on these loans during the POI. We divided the resulting difference by AST's total consolidated sales during the POI. In our calculations for the *Preliminary Determination,* we erred by applying the change-in-ownership methodology to these loans. The loans at issue here are variable-rate loans whose benefits are recurring/non-allocable in nature. Since recurring benefits are not affected by our change-in-ownership calculations, we have corrected our error by not reducing the benefits from Law 675/77 loans (*see* GIA, 58 FR at 37263).

We determine the estimated net benefit from this program to be 0.07 percent *ad valorem* for AST.

F. Law 10/91

The GOI provided funds to AST under Law 10/91 for the development of energy conserving technology. Law 10/91 authorized grants based on applications submitted in 1991 and 1992, and was intended to fund projects whose purpose was to save energy or promote the use of renewable energy sources.

This program was not included in the petition and, thus, not addressed in the Department's initial questionnaire. Rather, in response to a supplemental questionnaire issued after the preliminary determination, AST stated that it had received grants under Law 10/91 both prior to and after the POI. In *Italian Sheet and Strip,* 63 FR at 63907, we did not determine the specificity of the program given the limited information available on the record at the time. Since the preliminary determinations in *Italian Sheet and Strip* and the instant proceeding, we have collected and verified information regarding this program.

The aid AST received under Law 10/91, which constitutes a financial contribution under section 771(5)(D)(i) of the Act, provides a benefit in the amount of the grants received. Furthermore, we determine that Law 10/91 is specific within the meaning of section 771(5A)(D)(iii) of the Act. There is no indication that this program is *de jure* specific. However, based on an examination of all the grants approved at the same time as AST's project was approved, we find that both the steel industry and AST's predecessor, ILVA, received a predominate and disproportionate share of the benefits (*see* Memorandum to Susan H. Kuhbach from Team, dated February 19, 1999.) Therefore, we determine Law 10/91 grants to be countervailable.

We treated these grants to AST as non-recurring because they required separate approvals. Because the amount of grant AST received prior to the POI was less than 0.5 percent of its sales in the year of receipt, the benefit was expensed in that year. Section 355.44(b)(8) of the *1989 Proposed Regulations* and *Wire Rod from Canada* 62 FR at 54977. Accordingly, we determine the estimated net benefit in the POI to be 0.00 percent *ad valorem*.

G. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 was created to conform with EC requirements of restructuring and capacity reduction of the Italian steel industry. Law 451/94 was passed in 1994 and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during the 1994–1996 period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In the *Preliminary Determination,* the Department determined that the early retirement benefits provided under Law 451/94 are a countervailable subsidy under section 771(5) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451/94 relieves the company of costs it would have normally incurred. Also, because Law 451/94 was developed for and exclusively used by the steel industry, we determine that Law 451/94 is specific within the meaning of section 771 (5A)(D) of the Act. No new information has been submitted to warrant a reconsideration of this finding.

In the *Preliminary Determination,* we used the Cassa Integrazione Guadagni-Extraordinario (''CIG–E'') program as our benchmark to determine what the obligations of Italian steel producers would have been when laying off workers. We compared the costs the steel companies would incur to lay off workers under the CIG–E program to the costs they incurred in laying off workers under Law 451/94. We found that the steel companies received a benefit by virtue of paying less under Law 451/94 than what they would have paid under CIG–E.

In *Italian Sheet and Strip,* 63 FR at 63908, we changed our benchmark because we learned that the CIG–E program applied in situations where the laid off workers were expected to return to their jobs after the layoff period. Since the workers retiring early under Law 451/94 were permanently separated from their company, we adopted the so-called ''Mobility'' provision as our benchmark. Like Law 451/94, the Mobility provision addressed permanent separations from a company.

Since then, we have learned more about the GOI's unemployment programs under Law 223 (including CIG–E and Mobility) and the early retirement program under Law 451/94. Based on this information, we do not believe that any of the alternatives described under Law 223 provides a benchmark *per se* for the costs that AST would incur in the absence of Law 451/94. As noted above, the CIG–E program addresses temporary lay offs. The Mobility provision serves merely to identify the minimum payment the company would incur when laying workers off permanently. Under the Mobility provision, the company is first directed to attempt to negotiate a settlement with the unions prior to laying-off workers permanently. Only if the negotiations fail will the company face the minimum payment required under Mobility.

Recognizing that AST would be required to enter into negotiations with the unions before laying off workers, the difficult issue for the Department is to determine what the outcome of those negotiations might have been absent Law 451/94. At one extreme, the unions might have succeeded in preventing any lay offs. If so, the benefit to AST would be the difference between what it would have cost to keep those workers on the payroll and what AST actually paid under Law 451/94. At the other extreme, the negotiations might have failed and AST would have incurred only the minimal costs described under Mobility.

Then the benefit to AST would have been the difference between what it would have paid under Mobility and what it actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear, given the EC regulations, that AST would have laid off workers. However, we do not believe that AST would simply have fired the workers without reaching accommodation with the unions. Statements by GOI officials at verification indicated that failure to negotiate a separation package with the union would lead to labor unrest, strikes, and lawsuits. Therefore, we have proceeded on the basis that AST's early retirees would have received some support from AST.

In attempting to determine the level of post employment support that AST would have negotiated with its unions, we looked to AST's own experience. As we learned at verification, by the end of 1993, the company had established a plan for the termination of redundant workers (as part of an overall ILVA plan). Under this plan, the early retirees would first be placed on CIG–E as a temporary measure and then they would receive benefits under Law 451/94. According to AST officials, the temporary measure was needed because ''they were waiting for the passage of the early retirement program under Law 451/94, which at the time had not been implemented by the GOI.''

This statement indicates that at the time an agreement was reached with the unions on the terms of the lay offs, AST and its workers were aware that benefits would be made available under Law 451/94. In such situations, i.e., where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefitting the company. *See*, GIA, 58 FR at 37225. In the GIA, the Department stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. In these situations, the Department will assume that the difference between what the workers would have demanded and what the company would have preferred to have paid would have been split between the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would exist otherwise. *See*, GIA, 58 FR at 37256. This methodology was upheld in *LTV Steel Co.* v. *United States*, 985 F. Supp. 95, 116 (CIT 1997) (*LTV Steel*).

Therefore, with respect to AST and its workers, we determine that: (1) Under Italian Law 223, AST would have been required to negotiate with its unions about the level of benefits that would be made to workers permanently separated from the company, and (2) since AST and its unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, the benefit to AST is one half of the amount paid to the workers by the GOI under Law 451/94. *See* Memorandum to Susan H. Kuhbach on Law 451/94–Early Retirement Benefits dated March 19, 1999.

Consistent with the Department's practice, we have treated benefits to AST under Law 451/94 as recurring grants expensed in the year of receipt. *See* GIA, 58 FR at 37226. To calculate the benefit received by AST during the POI, we multiplied the number of employees by employee type who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, and one-half of that amount was attributable to AST, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by total consolidated sales during the POI. On this basis, we determine the estimated net benefit to AST during the POI to be 0.69 percent *ad valorem*.

H. Law 181/89: Worker Adjustment and Redevelopment Assistance [3]

Law 181/89 was implemented to ease the impact of employment reductions in the steel crisis areas of Naples, Taranto, Terni, and Genoa. The law targeted four activities: (1) Promotion of investment in reindustrialization, (2) promotion of employment, (3) promotion of worker retraining, and (4) early retirement. One of AST's subsidiaries received a grant under the reindustrialization component of Law 181/89 as partial compensation for acquiring equipment used in the processing of subject merchandise.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This grant under Law 181/89 constitutes a financial contribution under section 771(5)(D)(i) of the Act and provides a benefit in the amount of the grant received. Because assistance is limited to steel-related enterprises located in specified regions of Italy, we determine that the program is specific under section 771(5A)(D) of the Act.

The grant received by AST's subsidiary was disbursed in several tranches prior to the POI. We treated each of the tranche as non-recurring because they were all included in a single government grant approval which was exceptional. Consistent with the Department's methodology in the GIA, because the amount of each tranche, separately, was less than 0.5 percent of AST's sales in the corresponding year, we expensed the benefit of each tranche in that year. Consequently, we determine the estimated net benefit to AST in the POI for this program to be 0.00 percent *ad valorem*

J. Law 488/92

Law 488/92 provides grants for industrial projects in depressed regions of Italy. the subsidy amount is based on the location of the investment and the size of the enterprise. The funds used to pay benefits under this program are derived in part from the GOI and in part from the Structural Funds of the European Union (EU). to be eligible for benefits under this program, the enterprise must be located in one of the regions in Italy identified as EU Structural Funds Objective 1, 2 or 5b.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The grants are a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grant. Because assistance is limited to enterprises located in certain regions, we determine that the program is specific under section 771(5A)(D) of the Act.

According to AST officials, although the company has applied for aid under this program, no approval has yet been granted and no funds have yet been disbursed. Accordingly, we determine the estimated net benefit to AST in the POI for this program to be 0.00 percent *ad valorem*.

EU Programs

A. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the European Commission (EC) (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project.

The Article 54 loans are generally financed on a ''back-to-back'' basis. In other words, upon granting loan

[3] Includes the Decree Law 120/89: Recovery Plan for Steel Industry program contained in *Initiation Notice.*

approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends back out to steel companies at a slightly higher interest rate. The mark-up is sufficient to cover the costs of administering the Article 54 program.

We determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, which confers a benefit to the extent the interest rate is less than the benchmark interest rate. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy,* 59 FR at 18362, and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* 58 FR 37327, 37335 (July 9, 1993), (*Certain Steel from Italy*) because loans under this program are provided only to iron and steel companies. The EC has also indicated on the record of this investigation that Article 54 loans are for steel undertakings. Therefore, we determine that this program is specific pursuant to section 771(5A)(D) of the Act.

AST had two long-term, fixed-rate loans outstanding during the POI, each one denominated in a foreign currency. Consistent with *Electrical Steel from Italy,* 59 FR at 18362, we have used the lira-denominated interest rate discussed in the Subsidies Valuation Information section of this notice as our benchmark interest rate because these loans effectively had fixed exchange rates. The interest rate charged on one of AST's two Article 54 loans was lowered part way through the life of the loan. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it were contracted on the date of this rate adjustment. We used the outstanding principal as of that date as the new principal amount, to which the new, lower interest rate applied. As our interest rate benchmark for both loans, we used the long-term, lira-based rate in effect on the date the loan was contracted. Because ILVA was uncreditworthy in the year these loans were approved, the benchmark rate includes a risk premium.

To calculate the benefit under this program, pursuant to section 771(5)(E)(ii) of the Act, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. As with the equity infusions made into Terni and TAS, we have treated the benefits from these loans as though they flowed directly through ILVA to AST, because we have no information on such loans provided to the non-stainless operations of ILVA. We followed the methodology described in the Change in Ownership section above to determine the amount appropriately allocated to AST after its spin-off from ILVA. We divided this benefit by AST's total sales during the POI. Accordingly, we determine the estimated net benefit to AST for these two loans together to be 0.12 percent *ad valorem*.

B. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise workers' standards of living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, Objective 5 pertains to agricultural areas, and Objective 6 pertains to regions with very low population (*i.e.,* the far north).

During the POI, AST received ESF assistance for projects falling under Objectives 2 and 4. The Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers, and the Objective 4 funding was to train AST's workers to increase their productivity.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Pasta From Italy,* 61 FR at 30294. Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we determine that this ESF funding relieves AST of obligations it would have otherwise incurred.

Therefore, we determine that the ESF grants received by AST are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grants.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy,* 63 FR at 40487. In this case, the Objective 2 grants received by AST were funded by the EU, the GOI, and the regional government of Umbria acting through the provincial government of Terni. In *Pasta From Italy,* 61 FR at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. The provincial government of Terni did not provide information on the distribution of its grants under Objective 2. Therefore, since the regional government failed to cooperate to the best of its ability by not supplying the requested information on the distribution of grants under Objective 2, we are assuming, as adverse facts available under section 776(b) of the Act, that the funds provided by the provincial government of Terni are specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). *See Wire Rod from Italy,* 63 FR at 40487. AST has argued that this decision is not reflective of the fact that ESF Objective 4 projects are funded throughout Italy and all Member States, albeit under the auspices of separate, regionally-limited documents (*see* Comment 15). We agree with AST that it may be appropriate for the Department to revisit its previous decision regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document (SPD) in Italy. Our decision in *Wire Rod* was premised upon our determination in the *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada* 51 FR 10055 (March 24, 1986), (*Groundfish from Canada*). In that case, respondents argued that benefits provided under the General Development Agreement (GDA) and Economic and Regional Development Agreements (ERDA) were not specific because the federal government had negotiated these agreements with every province. We did not accept this argument because the GDAs and ERDAs ''do not establish government programs, nor do they provide for the administration and funding of government programs.'' Instead, the Department analyzed the

specificity of the ''subsidiary agreements'' negotiated individually under the framework of the GDA and ERDA agreements.

In contrast to *Groundfish from Canada*, 51 FR at 10066, the agreements negotiated between the EU and the Member States (*i.e.*, Single Programming Documents and Community Support Frameworks) both establish government programs and provide for the administration and funding of such programs throughout the entirety of the European Union. Therefore, if we were to consider all the EU-Member State agreements together, we would arguably be unable to determine that the program is *de jure* specific.

Notwithstanding this argument, given the lack of information on the use of Objective 4 funds by either the EC or GOI, we must, as adverse facts available in the instant case, find the aid to be *de facto* specific. Both the EC and GOI stated that they were unable to provide the Department with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our questionnaires and at verification. While the GOI, at verification, provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it declined the opportunity to identify the industry and region of such grantees (*see* February 3, 1999 memorandum on the Results of Verification of the GOI at 16). Furthermore, the regional governments have refused to cooperate to the best of their ability in this investigation despite Department requests. Therefore, we continue to find that the aid received by AST is specific.

The Department normally considers the benefits from worker training programs to be recurring. *See* GIA, 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy*, 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for each of AST's projects was less than 0.5 percent of AST's sales in the year of receipt, we have expensed these grants received in the year of receipt. Two of AST's grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI and calculated an estimated net benefit of 0.01 percent *ad valorem* for ESF Objective 2 funds and 0.03 percent *ad valorem* for ESF Objective 4 funds.

II. Programs Determined To Be Not Countervailable

A. AST Participation in the THERMIE Program

The EU provided funds to AST for the development of a pilot plant through an EU program promoting research and development in the field of non-nuclear energy (THERMIE). The objective of the THERMIE program is to encourage the development of more efficient, cleaner, and safer technologies for energy production and use. The THERMIE program is part of a larger program categorized under the EU's Fourth Framework Programme which covers activities in research and technological development from 1994–1998.

The objective of AST's demonstration plant is to reduce energy consumption in the production of stainless steel by eliminating some of the traditional production steps through the adoption of ''strip casting'' technology. In *Italian Sheet and Strip*, as well as in the instant proceeding, the EU has requested noncountervailable (green light) treatment for this project as a research subsidy under section 771(5B)(B)(ii)(II) of the Act regarding precompetitive development activities.

In the instant proceeding and in *Italian Sheet and Strip*, the Department preliminarily determined that the THERMIE program did not merit green light treatment because it did not meet the statutory requirement that ''the instruments, equipment, land or buildings be used exclusively and permanently (except when disposed on a commercial basis) for the research activity'' (*see* section 771(5B)(B)(i) (II) of the Act). No new information has been submitted on the record in the instant proceeding to warrant a reconsideration of this finding.

However, in the preliminary determination we did not have sufficient information to determine if the technology and the demonstration plant provided a benefit to subject merchandise, nor did we have information on the distribution of project funds by industry or by company for the year in which AST's project was approved.

Since the preliminary determination, the EU has submitted information on the distribution of assistance under the THERMIE program for 1995 and 1996. Based on the information on the record, there is no indication that this program is *de jure* specific because eligibility is not limited to certain industries or groups thereof. Additionally, based on an examination of the distribution information, the program benefitted a large number of users in different industries, and neither AST nor the steel industry received a disproportionate share of the benefits (*see* Memorandum to Susan Kuhbach from Team, dated February 19, 1999.) Therefore, we determine that the THERMIE program is not specific within the meaning of section 771(5A)(D) of the Act and, consequently, not countervailable.

IV. Other Programs Examined

A. Loan to KAI for Purchase of AST

The government holding company, IRI, granted a loan to KAI for the purchase of AST. The loan had two basic components: an installment loan based on the up-front purchase price, and subsequent price adjustments. While the installment loan functioned as a long-term loan, the price adjustments were more akin to short-term extensions of credit. In addition, the terms of the price adjustments were independent of the terms of the installment loan. Accordingly, we regarded the price adjustments to be distinct from the installment loan.

We are not making a determination as to the countervailability of either the installment loan or the price adjustments since they separately yield no benefit. With respect to the installment loan, the full amount was paid off prior to the POI; hence there was no benefit during the POI. As for the short-term extensions of credit on the price adjustments, the benefit potentially attributable to AST during the POI, even using the most adverse of assumptions (e.g., no grace period), is 0.00 percent *ad valorem*, when rounded.

B. Brite-EuRam

At verification it was discovered that AST received a grant during the POI under the Brite-EuRam program administered by the EC. This program was not alleged in the petition. This program has been looked at by the Department once before in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367, 18370 (April 15, 1998) (*1996 UK Lead and Bismuth*). However, in *1996 UK Lead and Bismuth*, the Department did not make a specificity determination with respect to Brite-EuRam assistance because the amount received by the respondent in that review was so small that it would not have impacted the *ad valorem* rate.

In this case, we have no information upon which to make a specificity determination. In addition, because the use of the Brite-EuRam program had not

been alleged or discovered in time to solicit adequate information from all of the necessary respondents, we have no basis upon which to use facts available with respect to this program. Accordingly, we are not making a determination on the countervailability of the Brite-EuRam program in this proceeding. Should an order be put in place, however, we will solicit information on the Brite-EuRam program in a future administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

V. Programs Determined To Be Not Used

GOI Programs

A. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called ''Benefits Associated With the 1988–90 Restructuring'' in the *Initiation Notice*)
B. Law 345/92: Benefits for Early Retirement
C. Law 706/85: Grants for Capacity Reduction
D. Law 46/82: Assistance for Capacity Reduction
E. Debt Forgiveness: 1981 Restructuring Plan
F. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions
G. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits
H. Law 394/81: Export Marketing Grants and Loans
I. Law 341/95 and Circolare 50175/95
J. Law 227/77: Export Financing and Remission of Taxes

EU Programs

A. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
B. European Regional Development Fund
C. Resider II Program and Successors
D. 1993 EU Funds

Interested Party Comments

Comment 1. The Extinguishing v. Pass-Through of Subsidies during Privatization. AST emphasizes that section 771(5)(F) of the Act directs the Department to consider the facts of each change in ownership and permits the Department to find that subsidies may be extinguished in privatization transactions. In particular, AST argues that the Act does not allow the Department to ignore events subsequent to the receipt of a subsidy in the context of privatization. AST postures that the Department's present privatization methodology does not adequately address the question of whether subsidies are passed through to the purchaser of a privatized firm. Instead, the privatization methodology merely reduces the amount of subsidies that are attributed to the purchaser.

AST cites to section 771(5)(B) of the Act to show that for a subsidy to exist, a benefit must be conferred. In order to determine whether a benefit has been conferred, AST states the measure is that of benefit to recipient (section 771(5)(E) of the Act). While acknowledging that the Department's new regulations are not applicable in this case, AST looks to them as potentially instructive to the extent that they restate prior policy where they state that the Department normally will consider a benefit to be conferred where a firm pays less for its inputs than it otherwise would pay (19 CFR Section 351.503(b)). AST argues that if the normal benefit conferred by a subsidy is the artificially reduced cost to the company of an input, then the benefit no longer exists after a market-value privatization. AST points to the open bidding process used to select the ultimate buyer of AST as evidence that full market value was paid and argues accordingly, that prior subsidies were extinguished upon privatization.

The petitioners cite to section 771(5)(F) of the Act where it states that a change in ownership does not require an automatic finding of no pass through of subsidies, even if accomplished by an arm's-length transaction. In addition, the petitioners cite to the Statement of Administrative Action (SAA) which notes that the statutory provision is intended to ''correct and prevent such an extreme interpretation'' as the idea that subsidies are automatically eliminated in an arm's-length sale see SAA H.R. Rep. No. 103–316, at 928 (1994). Contrary to AST's claim that the Department has never really faced the issue of whether an arm's-length sale extinguishes subsidies under the URAA, the petitioners mention *Wire Rod from Italy* in which the Department rejected the assertion that an arm's-length privatization at market value extinguished prior subsidies. The petitioners also point out that the Department's repayment calculation was upheld by the CIT (*see Delverde II* and *British Steel PLC* v. *United States* (*British Steel IV*), 27 F. Supp 2d 209 (CIT 1998)). In particular, the petitioners quote *British Steel IV* where the court says at page 216:

> As the equations developed by Commerce satisfy the statutory goal of identifying the value of the net subsidies initially provided and as the equations identify a relationship between the net subsidies over time and the value of the corporation at privatization, this Court finds the equations developed by Commerce to apply its repayment methodology are a reasonable interpretation of the statute and are otherwise in accordance with law.

Department's Position. Under our existing methodology, we neither presume automatic extinguishment nor automatic pass through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the buyer. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining whether the countervailable benefits received by AST predecessor companies passed through to AST. Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and AST's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when AST was privatized a portion of the benefits received by ILVA passed through to AST and a portion were repaid to the government. This is consistent with our past practice and has been upheld in the Federal Circuit in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) (*British Steel II*) and *Delverde II.*

The Department rejects AST's argument that an arm's-length transaction at fair market value extinguishes any previously bestowed subsidies because no benefit was conferred. As explained in the Remand Determination Pursuant to *Delverde. SrL* v. *United States*, 989 F. Supp. 218 (CIT 1997), (*Delverde Remand*), the countervailable subsidy amount is fixed at the time that the government bestows the subsidy. The sale of a company, *per se*, does not and cannot eliminate this potential countervailability because the countervailing duty statute ''does not permit the amount of the subsidy, including the allocated subsidy stream, to be revalued based upon subsequent events in the market place.'' GIA, 58 FR at 37263. The Federal Circuit *Saarstahl II* addressed the Department's privatization methodology and ''specifically stated that the Department does not need to demonstrate competitive benefit.''

Furthermore, AST's contention that the sale of AST was an arm's-length,

market-valued transaction does not demonstrate that previous subsidies were extinguished.[4] Section 771(5)(F) of the Act states that the change in ownership of the productive assets of a foreign enterprise does not require an automatic finding of no pass through even if accomplished through an arm's-length transaction. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, the SAA directs the Department to exercise its discretion in determining whether a privatization eliminates prior subsidies by considering the particular facts of each case. SAA at 928.

The Department's methodology requires it to consider and rely upon several facts particular to the change of ownership at issue. In this investigation, these facts included the nature of the previously bestowed subsidies, the amounts of those subsidies, the time when those subsidies were bestowed, the appropriate period for allocating the subsidies, the net worth over time of the company sold, and the amount of the purchase price. On the basis of these facts, the Department determined the ultimate repayment of the prior subsidies to the GOI. In sum, the Department considered all of the factual evidence presented by AST, and then properly followed its existing methodology. Furthermore, this methodology was upheld by the Federal Circuit in *Saarstahl II, British Steel II* and *(Delverde II).*

Comment 2. Calculation of ''Gamma''. Should the Department continue to find that subsidies were not extinguished during the arm's-length purchase of AST, AST argues that the Department should revise its calculation of ''gamma,'' the measure of the percentage that prior subsidies constitute of the overall value of the company. Presently, gamma is calculated by taking the ratio of the nominal value of subsidies received each year over the company's net worth for every year in the AUL prior to privatization, and then taking a simple average of those ratios. AST argues that this calculation is distortive as evidenced by the fact that if gamma were multiplied by a firm's equity at any given date, the result would not equal the present value of the subsidy stream. Instead, AST proposes calculating gamma by taking the ratio of the present value of remaining subsidies to assets in the year of privatization. This asset-based calculation of gamma, argues AST, would result in a more reasonable standard upon which to measure the level of subsidization by more accurately measuring the amount of subsidies ''imbedded'' in the assets. According to AST, a buyer acquires assets, not the seller's equity, and the buyer's equity position is independent of the seller's. In addition, AST notes that equity as a percentage of assets can change drastically over time due to many factors, some of which are beyond the control of the company, as opposed to assets which are more constant. In addition to using assets as a reasonable basis upon which to measure subsidization, AST states that its proposed method for calculating gamma would be more consistent with the Department's grant amortization methodology which also assumes that benefits from grants extend over time as opposed to just the year of receipt.

The petitioners take issue with using the present value of subsides in the year of privatization as opposed to the nominal values received in the years preceding the same. According to the petitioners, using the present value in the year of privatization would be tantamount to ''revaluing'' the subsidies in a year other than that in which they were received. The petitioners argue that such a revaluation would be contrary to Department practice as articulated in the GIA, 58 FR at 37263, in which it is stated that the countervailable subsidy and the amount of it to be allocated over time are fixed at the time of bestowal. The petitioners also imply that performing such a revaluation would be equivalent to looking at the effects of the subsidies which is prohibited by section 771(5)(C)) of the Act. The petitioners emphasize that the Department's present methodology has been upheld by CIT. In addition, the petitioners point out that the Department rejected the use of the present value of remaining subsidies in *Wire Rod from Trinidad and Tobago,* 62 FR at 55011. In any event, the petitioners add that the Department's current methodology does, in effect, take into account the amortization of subsidies at the point when gamma is applied to determine the amount of repayment.

The petitioners claim that AST has not explained how assets, as opposed to net worth, would be a better measure of a company's value with respect to calculating the portion of the value attributable to subsidies. The petitioners state that a company's value depends upon both its assets and its liabilities. As for AST's concern about net worth being variable over time, the petitioners assert that variation in the nominal value of net worth is irrelevant in that it is the ratio of subsidies received to net worth that matters. The petitioners add that asset values, too, vary over time and can depend upon factors not necessarily related to the true value of that asset, such as the method of depreciation. Also, the petitioners state that assets are carried in a company's accounting records at historical cost which does not reflect current market value.

Department's Position: For this final determination, we have continued to calculate gamma using historical subsidy and net worth data. In considering parties arguments, we had to keep in mind that gamma is the measure of the level of past subsidies in a selling company and that it is ultimately applied to the purchase price.

Our current methodology for calculating gamma reasonably measures the level of subsides in the selling company by examining a range of years and has been upheld by the courts in *Saarstahl II, British Steel II* and *Delverde II.* AST has proposed using the net present value of the remaining benefit stream in the numerator mainly out of a concern that the application of gamma to the company's net worth should render the present value of the remaining benefits. In response, we note that while gamma itself is not a construction of the present value of the remaining benefits, the results of the gamma calculation are, however, applied to the present value. In this sense, our calculations, as a whole, do take into account the present value of remaining benefits.

Comment 3. Calculation of the Purchase Price. AST argues that the Department undervalued the subsidies repaid in the *Preliminary Determination* by basing the purchase price only on the cash paid for the company. Instead, AST suggests that the purchase price should also include the debt assumed by the purchasers as part of the sales transaction.

AST maintains that including assumed debt in the purchase price is appropriate because buyers and sellers are indifferent as to the mix of cash paid and debt assumed; a dollar of debt assumed, AST argues, is equivalent to a dollar of cash paid. If the buyers of ILVA's stainless division had offered

[4] For example, the precise selection criteria used by the GOI in selecting a buyer apparently were never made clear. Company officials at verification, for example, could not explain the basis upon which their bid was selected over other bids. Moreover, based on the questionnaire responses and verification, it is clear that the GOI required potential purchasers to make certain commitments with respect to the operations of the company after privatization. Additionally, based on statements made by company officials at verification, the GOI may have required that any potential bidder include some degree of participation by Italian companies. Given these circumstances, it could be argued that the price received by the GOI did not reflect the full market value of the company.

only the cash portion of their offer, and had not agreed to assume the debt, AST contends that their bid would not have been accepted.

To support its argument, AST offers the example of purchasing a house with an assumable mortgage. A person wanting to buy the house, according to AST, has several financing options: (1) Paying cash for the total sales price, (2) paying a down payment for some portion of the sales price and obtaining a new mortgage on the balance, or (3) assuming the existing mortgage and paying cash for the balance. AST states that in all cases, the purchase price of the home remains the same.

Moreover, by not including assumed debt in the purchase price the Department's privatization methodology for determining the amount of subsidies repaid will render different results depending upon the mix of assumed debt and cash required in a particular purchase.

The petitioners counter by stating that the cash price paid for a company already reflects the liabilities in that the price paid is the valuation by the buyer of the company as a whole, including assumed liabilities. In addition, the petitioners claim that it is the Department's well-established practice not to add assumed liabilities to the purchase price citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 55490, 55001 (October 22, 1997) (*Wire Rod from Germany*), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972, 54986 (October 22, 1997) (*Wire Rod from Canada*), as two cases in which the Department expressly declined to make an upwards adjustment to price to account for assumed liabilities/obligations. In looking at AST's example of a home purchased with an assumable mortgage, the petitioners point out that the value of that home to the buyer is the net equity position—the difference between the value of the home and the mortgage. Additionally, the petitioners point out that the seller of the home only receives the amount of equity in the home and not the full market value.

Department's Position: We agree with the petitioners that the purchase price should include only the cash paid in the sales transaction. First, as noted by the petitioners, it has been the Department's normal practice not to include assumed debts in the purchase price. Second, the purchase price is multiplied by gamma to determine the amount of the purchase price which represents repayment or reallocation of remaining benefits. Given that, under the Department's current methodology, the gamma denominator is net worth (equity) which, in the case of the privatization of AST, equals the amount of cash that was transferred in the sales transaction, it would be incongruous to multiply gamma by a purchase price amount which includes cash and debt. Third, adding debt to the cash price would imply that some portion (depending on the gamma) of that debt can go towards repayment of subsidy benefits. However, debt assumption by the purchaser, particularly where the creditors are third parties, is not a means through which repayment or reallocation of subsidy benefits back to the seller can occur. Therefore, for the final determination, we have included only cash paid in the purchase price of the units sold in the 1990 and 1992 spin-offs and in the 1994 AST privatization.

Comment 4. Repayment in Spin-Off Transactions. AST suggests that the proper way to apportion untied grants between a company and spun-off division is simply on the basis of the percentage of assets. However, in the *Preliminary Determination* the Department did not simply stop there, explains AST, but further performed a ''pass-through'' analysis on the amount apportioned to the spun-off unit via assets to determine an even smaller portion of prior subsidies that would be ultimately attributable to the spun-off company. The difference between the amount apportioned by assets to the spun-off unit and the amount ultimately attributable to it was inexplicably not extinguished, claims AST. Instead of being taken out of the benefit stream as they should have been, states AST, the extinguished subsidies remained in the benefit stream of the selling company—AST.

The petitioners claim that AST does not understand the difference between a privatization transaction and a spin-off transaction. Only in a privatization context wherein the seller is the government can subsidies be repaid to the government, according to the petitioners. In spin-off transactions, claim the petitioners, subsidies are simply reallocated between the seller and the purchaser.

Department's Position. The Department's calculations in the *Preliminary Determination* properly accounted for all prior subsidies by means of our standard spin-off calculation. In spin-off transactions, such as those at issue, the benefits from prior subsidies are reallocated between buyers and sellers. Our spin-off calculation is not premised solely upon the value of assets spun-off. Rather, we use the ratio of the value of assets spun-off to the value of the selling company's total assets to derive the maximum amount of prior subsidies that can pass through to the purchaser. From this maximum amount, we subtract the amount of subsidies which remain with the seller based on our ''gamma'' calculation and the purchase price of the spun-off unit.

Comment 5: Sale of a Unit to a Government Agency. In the *Preliminary Determination,* explains AST, the Department failed to attribute a portion of prior subsidies to Verres when it was spun off from ILVA. Since subsidies travel with assets, the sale of Verres to a government agency is irrelevant and should not prohibit the attribution of subsidies to that productive unit, argues AST. In any event, AST states that ILVA eventually sold its share in Verres to a private company.

With respect to AST's claim that the spin-off methodology should be applied to the sale of Verres because there is no basis for treating a sale to a government agency differently from a sale to a private investor, the petitioners counter that the Department's practice has been not to consider transfers among related parties to constitute legitimate sales (*see* GIA, 58 FR at 37266).

Department's Position. We agree with petitioners that ILVA's sale of some of its shares in Verres to a government entity does not warrant the application of our spin-off methodology. Regarding the government-to-government aspect of the first transfer, the Department stated in the GIA, 58 FR at 37266:

> [T]he Department has not considered internal corporate restructurings that transfer or shuffle assets among related parties to constitute a ''sale'' for purposes of evaluating the extent to which subsidies pass through from one party to another. Legitimate ''sales,'' for purposes of evaluating the pass-through of subsidies, must involve unrelated parties, one of which must be privately-owned.

ILVA was a wholly owned government entity. Therefore, the transfer of Verres shares from one government-owned entity to another is not a ''sale'' recognized under the criteria of the GIA.

With respect to the sale of ILVA's remaining shares in Verres to a private company, there is insufficient verified information on the record regarding the ultimate sale of Verres on which to base a spin-off calculation. We also note that, based on the limited information that is available for Verres, it appears that any application of our spin-off methodology in this case would probably have a minimal, if any, effect on the final estimated countervailing duty rate due to the relatively small size of the sale.

Comment 6: Use of Company-Specific AUL. The petitioners argue that AST has not fully accounted for and corrected all the data concerns raised by the Department in its preliminary determination. Specifically, argue the petitioners, the effects on financial reporting of the various changes in ownership of the stainless steel assets that now comprise AST cast doubt on the reliability of the data provided by AST. A clear indication of actual distortion from these restructurings, the petitioners assert, is that the largest fluctuations in AST's calculated annual AUL occur in the years surrounding the 1989 and 1993 restructurings. Moreover, the petitioners continue, AST's failure to include all of its depreciable assets (*e.g.*, industrial buildings) in its initial AUL calculation, its unwillingness to provide the tenth year of data, its (and its predecessors') use of certain accelerated depreciation methods, and its various practices regarding write-downs, render AST's company-specific AUL unusable.

AST, however, claims that it has sufficiently addressed the purported deficiencies in its company-specific AUL calculation, as cited by the Department in its preliminary determination and raised at verification. To support this contention, AST states the following: First, the Department verified that AST had not included accelerated depreciation in calculating its AUL. Second, the Department verified that the asset write-down undertaken in 1993 does not significantly impact the AUL calculation. Third, though the company-specific AUL is based on only 9 years of historical data, the Department has in the past acknowledged that an AUL based on fewer years would not necessarily be incorrect or inaccurate. Fourth, although the Department has noted that there was a significant variation in the annual gross asset-to-depreciation ratio, this fact alone is not a basis for rejecting the company-specific AUL. Finally, in the end the Department was able to completely verify the AUL asset and depreciation data submitted by AST. For these reasons, according to AST, the Department should use the revised AUL calculated by AST and verified by the Department.

AST further argues, however, that if the Department does reject AST's company-specific AUL as deficient, the Department should use a 12-year AUL rather than the 15 years indicated in the IRS tables. AST argues that given that the AUL of the other respondent in *Italian Sheet and Strip,* Arinox, is 12 years, and the AUL for all the respondents in *Wire Rod from Italy* was 12 years, this allocation period appears to represent an average for the Italian stainless steel industry in general. As such, this would be a more appropriate allocation period than the 15 years from the IRS tables.

In response, the petitioners, citing the *Countervailing Duties; Final Rule* 63 FR 65348 (November 25, 1998) (*New Regulations*), pre-1995 practice, and certain countervailing cases since 1995, argue that the Department's preference is to use the 15-year industry-wide AUL derived from the IRS tables, and claim that the Department should continue to do so in the instant proceeding. Though recognizing that these are not binding in the instant proceeding, the petitioner notes that according to the *New Regulations* at 65395 ''the IRS tables method offers consistency and predictability and * * * it is simple to administer.'' Furthermore, the petitioners continue, the *Countervailing Duties; Proposed Rule,* 62 FR 8817, 8827 (February 26, 1997), (*1997 Proposed Regulations*) makes clear that the Department intends to reserve the option to use the IRS tables in determining AUL, if appropriate. *See* 62 FR at 8828. Finally, the petitioners note, in *Wire Rod from Italy* the Department stated that it would only use a company-specific AUL ''where reasonable and practicable.'' *See* 63 FR at 40474.

Regarding subsidies that have been countervailed in prior proceedings, the petitioners argue that it is inappropriate to allocate the same subsidy over different periods in different proceedings. Given that some of the subsidies to AST were previously allocated over a 15-year period in *Electrical Steel,* petitioners state that allocating AST's subsidies over a 15-year AUL would be is consistent with the Department's practice of not altering the allocation period during the administrative review process under a countervailing duty order.

AST states that since the *Electrical Steel* decision, the courts have rejected the use of the IRS tables in favor of a company-specific approach for determining AUL (*see, e.g., British Steel I*). Accordingly, AST claims that it would be inappropriate to use the 15-year AUL from *Electrical Steel* since that was based on the IRS tables.

Department's Position. The Department has not used, in its final determination, AST's calculated, company-specific AUL. Though some of the other concerns noted in the *Preliminary Determination* regarding AST's AUL calculation remain, our decision not to use the company-specific AUL is primarily based on the large discontinuity over time in the annual ratios of asset value to depreciation amounts. Such discontinuity, apparently correlated with the changes in ownership, strongly indicates a disparity between the basis on which the AULs of ILVA and AST are based.

For our final determination, in lieu of an adequate company-specific AUL, we have used an allocation period of 12 years for AST as facts available. Twelve years represents a reasonable estimate of a general AUL for the Italian stainless steel industry, as supported by evidence in another case (*Wire Rod from Italy*) and by the company-specific verified data provided by another respondent, Arinox, in *Italian Sheet and Strip*.

With respect to the use of allocation periods from prior proceedings for subsidies previously countervailed, we find it unnecessary to resolve the issue in this case. The allocation period we find appropriate for AST is based on facts available. We believe that, as facts available, 12 years is more appropriate for AST than 15 years because the 15-year period is based upon the IRS tables and not the experience of Italian companies.

Comment 7: Revision of AST's Volume and Value Data. The petitioners object to AST's attempts to revise its volume and value data after the start of verification. Emphasizing that the purpose of verification is to ''verify the accuracy and completeness of submitted factual information (19 CFR 351.307(d)(1998)), the petitioners argue that AST's revised numbers should be rejected. The petitioners take particular issue with AST's revisions which report volume and value data on a consolidated level when AST refused to provide full information on subsidies provided to AST's consolidated subsidiaries. According to the petitioners, the Department should not allow AST to dilute its margins via the use of consolidated volume and value data when the subsidiary companies are not included in the investigation by virtue of AST's withholding of information. To do so, object the petitioners, would provide respondents with an incentive to withhold information as was done here.

AST counters by saying that it provided its consolidated volume and value data during verification at the behest of the Department's verifiers. According to AST, the Department's regulations permit it to request factual information from parties at any time during the proceeding (*see* 19 CFR 351.303(b)(5)). AST adds that the information was verified and served on

the petitioners. Noting that under 19 CFR 351.301(c)(1), the petitioners were afforded ten days in which to rebut the information, AST points out that the petitioners failed to do so. AST additionally notes that the petitioners do not argue that using consolidated sales data is methodologically incorrect. As for the petitioners argument that AST should have reported information on subsidies received by its affiliates, AST explains that such information would be useless in this proceeding as these affiliates neither produce nor sell subject merchandise. Furthermore, AST states that it has reported all of its financial transactions with its related parties. Any information on programs utilized by AST and its affiliates that could conceivably benefit subject merchandise has already been provided, evaluated and verified, according to AST. Based on the foregoing, AST maintains that there is no basis upon which to apply facts available with respect to its volume and value information.

Department's Position: For purposes of this final determination, we are not rejecting AST's consolidated volume and value data. At verification, Department officials requested this data from AST recognizing that the use of consolidated data would be consistent with the Department's practice in certain circumstances. As for the petitioners' concerns regarding the dilution of the *ad valorem* rate due to the use of a consolidated sales value as the denominator in cases where only unconsolidated benefit information is being used in the numerator, we disagree that such dilution is occurring. With respect to all the subsidies received prior to AST's privatization, we believe that those subsidies should be allocated to AST on a consolidated basis. The only benefits relevant to this proceeding that AST received subsequent to its privatization are under Law 10/91, Law 451/94 and ESF. Regardless of whether the consolidated or unconsolidated data is used, Law 10/91 benefits are expensed prior to the POI. With respect to Law 451/94 and ESF benefits, AST provided information pertaining to benefits received by its consolidated operations.

Comment 8: Ratio Adjusting the Benefit Stream for the Sale of AST. AST claims that the Department erred in the *Preliminary Determination* in adjusting the future benefit stream for the sale of AST. In particular, AST states that instead of adjusting the benefit stream by the ratio of prior subsidies repaid to the present value of the benefit stream applicable to AST in the year of sale in accordance with Departmental practice, the Department mistakenly used the present value of the predecessor company's benefit stream in the denominator.

The petitioners counter that the Department's calculations in the *Preliminary Determination* did account for the fact that only a portion of ILVA's assets were spun-off with AST. Unlike the methodology proposed by AST, the Department followed the GIA by multiplying the net present value of the seller's remaining subsidies by the ratio of the assets of the spun-off unit to the assets of the selling company. Making AST's proposed change, claim the petitioners, would amount to reducing the subsidies attributable to AST's assets twice.

Department's Position: AST's proposed adjustment to our calculations would amount to reducing the subsidy benefit stream twice to account for the portion of assets taken by AST. We first apportioned the remaining benefit stream (not including the Terni/TAS equity infusions, benefits associated with the 1989/1990 restructuring and ECSC loans) between AST and ILVA, the seller, by multiplying the benefit stream by the ratio of AST's assets to ILVA's. Second, we reduced the benefit stream assigned to AST (inclusive of Terni/TAS equity infusions, benefits associated with the 1989/1990 restructuring and ECSC loans) to reflect any repayment of those subsidies via the purchase price. In addition to apportioning the remaining benefit stream by the AST asset ratio in the first step, AST's proposed adjustment would amount to apportioning the remaining benefit stream by the asset ratio an extra time in the second step. Accordingly, we have not made the adjustment requested by AST.

We note that in our *Preliminary Determination*, we erred in multiplying the AST asset ratio against all subsidies in ILVA, including benefits to Terni and TAS which are being attributed to AST in their entirety. (For further discussion, *see* the Equity Infusions to Terni, TAS and ILVA; Benefits from the 1988–90 Restructuring of Finsider; and ECSC Article 54 Loans sections of this notice.)

Comment 9: Use of Gross versus Net Debt in 1993 Debt Forgiveness Calculation. AST argues that the record of this case establishes a precise amount that represents the ''actual cost to the GOI'' for the liquidation of ILVA, based on the EC's strict monitoring. Assuming that the Department countervails these costs, AST argues that the Department cannot consider the benefit to the recipients to be larger than the amount calculated by the EC as the actual cost to the GOI.

AST states that in past cases, such as *Al Tech Specialty Steel Corp.* v. *United States*, 661 F. Supp. 1206, 1213 (CIT, 1987), the Department has concluded that it would be inappropriate to look behind the action of a tribunal charged with the administration of a liquidation process. AST states that the GOI would have been subject to significant legal penalty had it failed to abide by the requirements of the EC supervised liquidation. Thus, AST implicitly is arguing that the Department should accept the amount of remaining debt calculated by the EC, without examining the underlying calculation of this remaining debt figure.

Furthermore, AST asserts that, because buyers should be indifferent to the mix of cash paid and debts assumed in purchasing a company, the Department's methodology inappropriately attributes a greater amount of debt forgiveness to a company whose buyers assume less debt but pay a higher cash price. In fact, claims AST, if the GOI had paid down the same amount of ILVA's liabilities calculated as uncovered in the EC's Monitoring Reports prior to the liquidation process, each of the companies could have been ''sold'' entirely for a transfer of debt (*i.e.*, no cash transfer) in the amount of transferred assets. In this event, AST argues, there would be no residual debt, and the Department's methodology would lead it to countervail only the grant given prior to the liquidation process.

The petitioners state that the Department, consistent with its practice, should consider the total amount of ILVA's liabilities and losses forgiven on behalf of AST at the time of its spin-off as the benefit to AST. *See, e.g., Electrical Steel from Italy*, 59 FR at 18365, and *Certain Steel from Austria*, 58 FR at 37221. The petitioners assert that the income received as a result of the sales of ILVA's productive units should not be deducted from the gross amount of ILVA's losses and liabilities for three reasons. First, the petitioners argue, the debt forgiveness occurred prior to the actual sales of ILVA's productive units and, thus, should be treated separately. Second, the amount of income at the time of the sales was greater than it would have been without the debt reduction. Third, the Department's change-in-ownership methodology separately accounts for repayment of prior subsidies associated with the purchase price of the company sold.

Department's Position: We do not dispute AST's contention that the liquidation of ILVA Residua proceeded

as detailed in the EC monitoring reports, and that the final cost, after subtracting income earned from the sale of productive units, to the GOI for the liquidation was as reported in the EC monitoring reports. However, section 771(5)(E) of the Act directs the Department to calculate subsidies as the benefit to the recipient, rather than the cost to the government. (*See* Memorandum to Richard W. Moreland on 1993 Debt Forgiveness dated March 19, 1999). At the time of the demerger, AST clearly benefitted to the extent that it did not assume a proportional share of ILVA's liabilities. In fact, the cash transfer did not take place at the time of the demerger, but nearly a year later when AST was privatized. Furthermore, we note that the liquidation process did not proceed as in AST's hypothetical example. Rather, AST was left with a substantial positive equity position as a result of ILVA Residua's assumption of the vast majority of ILVA's liabilities, unlike the firm in AST's hypothetical.

We agree with the petitioners that it is the Department's practice to determine the size of the benefit to a respondent as the amount of liabilities that are not directly associated with any given assets and that the respondent should have taken. If such a firm is later sold, such as was the case with AST, the Department applies its change-in-ownership methodology to determine the portion of the purchase price attributable to the repayment of prior subsidies.

However, we disagree with the petitioners that the Department should countervail both the liabilities and accumulated losses on ILVA's balance sheet in 1993 because ILVA's gross liabilities already reflect such losses. While we agree it is the Department's practice to countervail grants to cover losses as well as grants to cover liabilities, ILVA did not receive a separate grant in 1993 to cover operating losses. However, if it had received such a grant, ILVA's gross liabilities would have been reduced or its liquid assets would have increased. Because such a grant was not received, ILVA's gross liabilities, after netting out its liquid assets, were higher than they would have been if such a grant had been received and, thus, the total debt forgiveness calculated by the Department already captures such losses.

Comment 10: 1993 Debt Forgiveness Apportionment. According to AST, the Department improperly apportioned ILVA's residual debt after the 1993 demergers based on total viable assets taken by AST and other ILVA operations. AST argues that because there is no record evidence attributing any of this residual debt to the operations assumed by AST, none of that debt should be attributed to it. For example, AST posits, if a government-owned company that consisted of two divisions of equal assets, one healthy and one unhealthy, were split into two, the Department's methodology would illogically allocate the old debts equally, thereby punishing the heathy company for the afflictions of the unhealthy one.

The petitioners state that AST did not provide any information to allow the Department to attribute specific ILVA liabilities to specific ILVA assets despite numerous requests for information such as the financial records of ILVA's specialty stainless steel division. Additionally, the petitioners assert that in various cases, the Department has attributed otherwise untied liabilities left behind in shell corporations to the operations that had been demerged. See *Certain Steel From Austria* at 37221 and *Wire Rod from Trinidad and Tobago* at 55006.

Department's Position: It is the Department's practice to allocate otherwise untied liabilities remaining in a shell corporation to the new, viable operations that had been removed from the predecessor company. In *Certain Steel from Austria,* the Department stated that it treated as debt forgiveness liabilities left behind in the predecessor company, even though there was no indication that these liabilities were specifically related to the operations taken by the new entity (*see* 58 FR at 37221). Therefore, consistent with our past practice, we have assigned a portion of these liabilities to AST based on its proportion of assets taken to the total viable assets of ILVA.

We note, however, that because losses attributable to the write down of AST's assets can be specifically identified, we have assigned those losses to AST. We have not assigned losses attributable to the write down of ILP or Residua's viable assets to AST.

Comment 11: ILVA Residua Asset Value. The petitioners argue that the Department misallocated the amount of debt forgiveness attributable to AST in 1993 in its most recent calculation of the benefit from this program in *Italian Sheet and Strip* by using an incorrect asset amount for ILVA Residua. The petitioners assert that by using the cash price plus the liabilities transferred as a surrogate for asset values in ILVA Residua the Department was inconsistent with its normal practice of excluding liabilities in the determination of the asset value of a company (*see Wire Rod from Trinidad and Tobago* 62 FR at 55012). Thus, the petitioners argue that the Department should only use the cash paid as a surrogate for the viable asset value of the operations sold from ILVA Residua.

AST responds that record evidence contradicts the petitioners' assertion that the value of the viable assets privatized from ILVA Residua is better represented only by the cash price of those assets rather than by the cash price plus debts transferred. Specifically, the asset value of Dalmine, the largest privatization from ILVA Residua, is approximately equal to the value used by the Department. Furthermore, AST argues that relying on only the cash price, in effect the net worth of each privatized unit, to value ILVA Residua's assets is inconsistent with the petitioners' assertion that the Department should use the total consolidated assets, rather than net worth, in compiling the remainder of ILVA's total viable assets. Finally, AST claims that the petitioners reach an erroneous conclusion that *Wire Rod from Trinidad and Tobago* requires the Department to estimate the asset value of a company solely based on its purchase price. AST states that in that case, the issue at hand was not raised because the purchase price did not include any assumption of debt.

Department's Position: For operations sold from ILVA Residua, the Department did not have the necessary asset values. Therefore, as a surrogate for the asset values of these companies, the Department used the cash price plus liabilities transferred. We believe this approach provides a reasonable surrogate asset value because the newly sold company's books will, by the basic accounting equation of ''assets equal liabilities plus owners' equity,'' reflect an asset value that is equal to the debts transferred plus the cash purchase price. The debts transferred become the liabilities in the new company's books, while the cash purchase price becomes the owners' equity. If the assets transferred do not have a book value equal to the cash purchase price plus debts transferred, the new company will, in effect, write-up its asset value by crediting the difference as a goodwill asset. Thus, we have continued to use the cash price plus liabilities transferred as a surrogate for the asset values of the units sold from ILVA Residua.

Comment 12: Use of Consolidated Asset Values for 1993 Debt Forgiveness Calculation. AST argues that the Department improperly calculated the total viable assets of ILVA by using the unconsolidated financial statements of AST and ILP. This error led to an incorrect calculation of the proportion of total viable assets assumed by AST

and, thus, an incorrect assignment of debt forgiveness bestowed on AST, according to the company. AST notes that it provided the Department with the consolidated financial statements of AST and ILP during verification, and that the Department should correct its calculation based on the consolidated asset figures provided therein.

The petitioners agree with AST that the Department should use consolidated asset values in determining total viable ILVA assets. However, they argue that the Department should exclude the asset values for the companies sold out of ILVA Residua to ILP from ILP's consolidated assets in order to avoid double-counting. AST asserts, however, that these assets are not double-counted because they had not yet been sold to ILP by 1993. Therefore, they are not included in ILP's December 31, 1993 consolidated assets.

Department's Position: Consistent with our position in Comment 7, we have altered the calculation allocating the debt forgiveness to account for AST's and ILP's consolidated asset values. Furthermore, we agree with AST that because the companies purchased by ILP from ILVA Residua were purchased after 1993, they are not included in its 1993 consolidated assets. Therefore, our methodology does not double-count these assets.

Comment 13: 1993 Creditworthiness. AST notes that the Department used an uncreditworthy benchmark discount rate to allocate the benefit from the debt forgiveness imputed by the Department to AST as a result of its 1993 demerger from ILVA. AST points out that the Department stated in the *Preliminary Determination* that it would determine whether it would be more appropriate to analyze the creditworthiness of AST, rather than ILVA, in the final determination. Citing the preamble of the Department's new regulations (at 65366), AST states that it is the Department's practice to consider the creditworthiness of the firm receiving the aid, rather than the entity granting the aid.

The petitioners state that the Department should continue to consider the creditworthiness of ILVA, rather than AST, in determining the discount rate used to allocate the 1993 debt forgiveness attributable to AST. The petitioners state that because the GOI provided the debt forgiveness to ILVA Residua, it is appropriate to analyze the creditworthiness of ILVA. Additionally, the petitioners assert that it is illogical to evaluate AST's prospects after ILVA's debt had been lifted from its shoulders.

Department's Position: For the final determination, in allocating the benefit of the 1993 debt forgiveness, we have continued to base our creditworthiness analysis on ILVA as a whole. Our reasons are as follows: Contrary to AST's assertions, ILVA was not the provider of the debt forgiveness to AST. Rather, it was the GOI which ultimately assumed the losses involved in the privatization and liquidation of those units which originally comprised ILVA. All of ILVA, of which AST was but a part, directly benefitted from this GOI assumption of losses. Therefore, focusing on ILVA is in accordance with the Department's practice of focusing on the receiver of the benefit.

It would, moreover, be illogical for the Department to base, as AST argues, its creditworthiness analysis on AST's future financial data (i.e., AST's future prospects after the debt forgiveness had been granted) given the fact that these data were likely considerably impacted by the very program for which the creditworthiness analysis is necessary in the first place. Clearly, the shedding of billions of lire of debt would impact private, commercial lenders' views in deciding whether to loan funds to AST. However, it would be impracticable (if not impossible), based on the information available on the record, to construct what AST's future financial situation would have been absent the debt forgiveness.

Under its normal methodology for analyzing creditworthiness, the Department could, in theory, rely largely on AST's financial data prior to and contemporaneous with the granting of the debt forgiveness. However, this too would be impossible in this instance. AST's debt forgiveness occurred at the moment of the demerger, *i.e.*, at the point when ILVA's stainless steel operating unit was carved out and separately incorporated as AST. There is insufficient AST-specific financial data for the period prior to the demerger on which to base a creditworthiness analysis.

Therefore, because the appropriate level of creditworthiness analysis is the receiver of the debt forgiveness, and because there is insufficient ''untainted'' AST financial data both prior and subsequent to the debt forgiveness on which to base an AST-specific creditworthiness analysis, we have continued to base our 1993 creditworthiness determination on ILVA as a whole.

Comment 14: ILVA Asset Write-Downs. AST argues that the Department improperly countervailed asset write-downs in the calculation of the 1993 debt forgiveness because the write-downs are not countervailable. The company states that the write-downs did not provide a benefit to AST because the company is simply restating the value of the assets to reflect their market values. AST also asserts that even if one considered there to be a benefit associated with the write-downs, such write downs are generally available because all companies must restate the value of their assets when they are sold. Additionally, AST argues that even if the write-down of assets is treated as a subsidy, the Department must deduct the write-down from the loss incurred in the liquidation of ILVA to ensure that it is not double-counted.

The petitioners rebut AST's argument that write-downs should not be countervailable because they are routinely performed during asset sales. The petitioners argue that AST's focus on the write-downs is misplaced, because the Department's actual concern is not the write-down, but rather the additional loss generated by the write-down which had to be eventually covered by the GOI. Furthermore, the petitioners dispute AST's claim that the write-downs are double-counted in the Department's methodology. The petitioners state that this allegation is based on the fact that the Department excluded the amount of write-downs in its calculation of the debt forgiveness associated with the transfer of TAS's assets to ILVA in 1989 and 1990. The petitioners assert that the Department excluded these write-downs from the remaining liabilities because it captured them separately in the calculations of the loss coverage. However, in the case of the 1993 restructuring, the petitioners note, the Department has not countervailed the write-downs separately and is appropriately measuring the benefit by examining the debt assumed by the GOI.

AST also states that even if the Department finds the write-downs countervailable, the Department should separate all the ILVA write-downs from the other debt forgiveness and instead countervail only the portion of total write-downs attributable to AST assets. AST states that this suggested methodology is consistent with the Department's methodology in countervailing write-downs associated with TAS when it was merged into ILVA in 1989 and that the Department has the appropriate information on the record. Furthermore, AST reasons that for other liquidation losses, the Department should, where possible, attribute the losses to specific assets, only distributing losses that cannot be tied based on relative viable assets.

The petitioners counter that, according to generally accepted accounting principles, losses associated

with write-downs typically are assumed by the company as a whole, rather than tied to specific assets. Additionally, the petitioners note that in AST's calculation, most of the write-downs are left in ILVA Residua, rather than tied to specific assets and, therefore, should be attributed based on relative asset values consistent with the Department's standard debt forgiveness methodology.

Department's Position: We disagree with AST that the write-downs in question are not countervailable. Because the write-downs in question generated a loss that eventually was covered by the GOI through its debt forgiveness to ILVA, we find the write-downs countervailable. This approach is consistent with the treatment of write-downs in the 1988–90 restructuring in the instant case and in *Electrical Steel from Italy*.

However, we agree with AST that the Department should attribute the portion of ILVA's losses associated with the write down of assets to the specific written down assets and, thus, to the company who took those assets. This issue is addressed in more detail in the March 19, 1999 Memorandum on the 1993 Debt Forgiveness to Susan H. Kuhbach. We have modified our calculations accordingly.

Comment 15: ESF Objective 4 Specificity. AST states that the Department found ESF Objective 4 funding countervailable based on its erroneous conclusion that this aid is *de jure* limited to certain regions. AST asserts that Objective 4 funding is available throughout the EU Member States, and that the Department has acknowledged this in the instant case and in previous cases (see Wire Rod from Italy, 63 FR at 40487). Despite this acknowledgment, the Department has based its specificity finding on the fact that the EU has decided to detail its Objective 4 funding in separate documents for each Member State as well as two separate documents within Italy itself, one covering Objective 1 regions, and one covering non-Objective 1 regions. AST asserts that this ''documentary distinction'' does not alter the fact that Objective 4 aid is available to all regions for the same basic goal of reducing unemployment. Regardless of these documentary distinctions, AST claims that all Objective 4 aid is ''integrally linked'' and, thus, the Department must analyze its specificity on this basis.

AST states that in order to find a domestic subsidy *de jure* specific, section 771(5A)(D) of the Act requires that the granting authority ''expressly limit access to the subsidy to an enterprise or industry'' or that the subsidy be expressly limited to ''an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy.'' AST argues that neither of these criteria has been met for ESF Objective 4 funding because the ESF Objective 4 funds available to firms in non-Objective 1 regions are also available to firms in Objective 1 regions. Lastly, AST argues that there is no basis to find the Objective 4 funding *de facto* specific given that it is distributed to a wide variety of industries throughout Italy and the EU.

The petitioners argue that the Department should affirm its decision in *Preliminary Determination* that the funding that AST received under ESF Objective 4 is *de jure* specific. The petitioners assert that this finding is consistent with the Department's decision in *Wire Rod from Italy* which found that this funding was specific because the ''EU negotiates a separate programming document to govern the implementation of the program with each Member State'' and that different programming documents govern the distribution of aid in Objective 1 and non-Objective 1 regions. The petitioners assert that EC officials admitted at verification that aid approved under the programming document for Objective 1 regions has separate purposes, administration, and distribution requirements than aid approved under the programming document for non-Objective 1 regions. Lastly, the petitioners assert that because the aid in question was received by AST through Riconversider, a steel industry group, the aid is also specific because it was disbursed by a organization that by its nature limited its grants to the steel industry.

Department's Position: We agree with AST that it may be appropriate for the Department to revisit its previous decision regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 SPD in Italy. Notwithstanding this argument, the facts of the instant case lead us to find that the Objective 4 funding received by AST was *de facto* specific, as facts available (*see* European Social Fund section above). For this reason, we have continued to countervail the aid in question. As discussed above, while there are separate agreements for different regions in the EC and within Italy, these agreements can be distinguished from the agreements discussed in *Groundfish from Canada*, 51 FR at 10066. Moreover, the statements by EC officials are taken out of context and would need to be examined against all the information before concluding that Objective 4 financing is *de jure* specific. Because we have considered this aid to be *de facto* specific, the petitioners last point is moot.

Comment 16: ESF Objective 3. The petitioners state that the Department should countervail the amount spent by AST on an ESF Objective 3 project for which it claimed reimbursement. The petitioners claim that AST was unable to provide any documentation showing that it did not, in fact, receive any reimbursement for the amount spent on the project.

In response, AST argues that it would be inappropriate for the Department to countervail assistance that AST did not receive. While AST does not dispute that it was unable to provide the Department with any specific document showing that it did not receive the Objective 3 assistance that it applied for, AST states that the Department, in its review of the company's financial statements, did not encounter any previously ''unidentified governmental financial assistance.''

Department's Position: We agree with AST that the Department should not countervail the amount of AST's request for ESF Objective 3 funds. While company officials were not able to provide direct documentation showing that AST's relatively small claim shown in its records for ESF Objective 3 funds was disapproved, we found no indication that this aid was received by AST during verification.

Comment 17: Law 10/91. AST states that funding under Law 10/91 is not limited to any industry or enterprise and, thus, should not be found countervailable. Furthermore, according to AST, Law 10/91 is the successor to Law 308/82 which the Department found not countervailable in *Pasta from Italy*, 63 FR at 30299, *Wire Rod from Italy*, 63 FR at 40488, and (*Certain Steel from Italy*).

The petitioners argue that, whether or not AST received benefits during the POI, the Department should find Law 10/91 *de facto* specific and, thus, countervailable consistent with the finding in its February 19, 1999 analysis memorandum that the steel industry received over half of all aid approvals in 1991 under this program and ILVA companies received over 40 percent of such approvals.

Department's Position: Consistent with the Department's February 19, 1999 analysis memorandum, we find that the funding received by AST under Law 10/91 is *de facto* specific based on the predominant and disproportionate use of this program by the steel industry and AST's predecessor, ILVA. In the

year that the aid in question was approved, the steel industry was approved for 50.52 percent and ILVA was approved for 43.52 percent. Just because a program may replace or succeed a non-specific program, the finding of non-specificity for the earlier program does not carry over to the replacement or successor program.

Comment 18: Specificity of THERMIE. AST argues that the Department should maintain its previous finding in the instant case that the THERMIE program is neither *de jure* nor *de facto* specific and, thus, find the program not countervailable for this final determination. The Department should reaffirm its previous finding, reinforced by a successful verification, that the THERMIE program has not been disproportionately or predominantly used by the steel industry or AST.

The petitioners argue that the Department should find the THERMIE sub-program, ''Rational Use of Energy (RUE) in Industry,'' countervailable because AST's receipt of nearly a third of the funding under this subprogram constitutes disproportionate use. The petitioners state that the Department, in *Wire Rod from Italy,* recently found an Italian subsidy program *de facto* specific when a firm received about one-third of the total assistance (*see* 63 FR at 40483.) The petitioners add that AST's project was one of the three largest projects funded under the RUE in Industry program. Lastly, the petitioners note that the Department found at verification that several of the projects reported as approved by the EC, had in fact, not been funded; thereby increasing the concentration of AST's share of the reported funding.

AST does not dispute the usage figures presented by the petitioners, but states that they are incorrectly based on the usage of only one portion of the THERMIE program (RUE in Industry) and, thus, are legally irrelevant. AST argues that the THERMIE sub-programs are integrally linked and, therefore, the Department must view the usage data of the sub-programs collectively when considering its *de facto* specificity.

The petitioners note that the team recommended finding the RUE in Industry sub-program *de facto* specific in its *Italian Sheet and Strip* concurrence memorandum for the preliminary determination based on the same usage data cited by the petitioners. The petitioners suggest that the Department reverse its preliminary decision to analyze the usage data of the program as a whole, and return to analyzing the specificity based on RUE in Industry.

If the Department finds this program countervailable, the petitioners argue that the Department should consider AST, rather than AST and its partners, as the sole beneficiary of the EU assistance for the project funded because AST will retain the entire value of the project, including licensing rights, after its completion. However, AST argues that the petitioners' claim that AST will have the sole right to retain and exploit equipment and technology is completely false, and contradicted by the Department's verification report. AST notes that the verification report specifically states that ''AST and its partners'' will retain the equipment and technology from the project. Given this, should it find the assistance countervailable, the Department should only countervail the assistance actually attributable to AST.

Lastly, the petitioners state that the Department should find the grant to be tied to sheet and strip because the company admitted at verification that the technology would primarily benefit that product.

Department's Position: Consistent with our finding in *Italian Sheet and Strip,* 63 FR at 63907, and our February 19, 1999 Memorandum on the EC THERMIE Program, we continue to find that the THERMIE program is neither *de jure* nor *de facto* specific. We analyzed the usage data for the THERMIE program at verification, and found no discrepancies within the database of projects reported as approved by the EC. While we did note that a small number of the projects approved were not funded for a variety of reasons, this fact does not substantially alter the usage data reported.

We disagree with the petitioners that we should analyze the specificity of the aid received based on one of THERMIE's sub-programs, RUE in Industry. At verification with the EC, we found that the goals, project selection, and general administration of the programs did not vary significantly between the sub-programs, and that the classification into sub-programs was primarily for administrative convenience. According to the EC, while the technical evaluation of each project is handled by different individuals, this is a result of the need to have evaluators with highly technical specialties in order to evaluate the projects submitted. We also verified that the same level of funding and eligible expense restrictions applied across all three sub-programs, and that each sub-program was subject to the same EC regulations and application procedures (*see* Annex 12, 13, and 14 of the EC's initial questionnaire response).

Comment 19: Law 675 Bond Issues. AST requests that the Department change the methodology used for calculating the benefit for the loans it received under Law 675. Specifically, AST states that the Department should not include the interest accrued for the first semi-annual payment in the principal amount used to calculate the interest due on the second semi-annual payment, because, as verified, AST actually makes semi-annual payments.

Additionally, AST states that the Department, consistent with accrual accounting, should only account for the interest and fee reimbursements from the GOI accrued by AST for its repayments made in the POI, not for reimbursements actually received in the POI for previous year's accruals.

With regard to AST's second point, the petitioners argue that in determining the benefit from this program, the Department should countervail the amount of reimbursements actually received in the POI, rather than those accrued but not received.

Department's Position: We agree with AST's first point and have altered our calculations accordingly. With regard to AST's second point, it is the Department's practice to calculate the benefit from an interest rebate program using its loan methodology if the recipient knows at the time the loan is received that it will receive interest rebates (*see Certain Steel from Italy,* 58 FR at 37331, and *Pasta from Italy,* 61 FR at 30293). Because AST knew at the time it assumed repayment of these bond issues from ILVA that it would receive reimbursements from the GOI for any payments above a certain interest rate, it is appropriate to treat this aid simply as a below benchmark interest rate loan.

Comment 20: 1988 Equity Infusion. According to AST, the Department incorrectly countervailed the September 1988 equity infusion received by ILVA because the infusion was received prior to ILVA becoming a steel company at the beginning of 1989. AST argues that the payment is instead tied to real estate management services because these services were ILVA's only activities at the time of the infusion.

The petitioners argue that the 1988 infusion should be countervailed by the Department because the Department typically treats equity infusions as untied subsidies, benefitting the company as a whole (*see 1989 Proposed CVD Regulations,* 54 FR at 23366, and *Countervailing Duties, Final Rule,* 63 FR 65348, 65400 (November 25, 1998)). Additionally, the petitioners state that the Department has countervailed this same infusion in *Electrical Steel from*

Italy and *Certain Steel from Italy*, and that in *Electrical Steel from Italy* the Department found in that ILVA was more than a real estate company in 1988, owning land, buildings, a plant and machinery.

Department's Position: We have continued to countervail the 1988 equity infusion to ILVA. As noted by petitioners, we consider equity infusions to be untied subsidies benefitting the total consolidated sales of the recipient company. In this case, AST has not provided any information indicating that the benefits of this equity infusion should be tied to non-steel activities.

Comment 21: Law 451/94. The petitioners argue that the Department must countervail early retirement benefits AST received under Law 451/94 because the program relieved AST of an obligation it would otherwise incur during the POI. The petitioners state that an affirmative finding of countervailable benefits under Law 451/94 is consistent with the Department's determination in *Wire Rod from Italy* and in the preliminary determination of this proceeding.

The petitioners note that in the preliminary determination for *Italian Sheet and Strip*, the Department inappropriately found that the Mobility program provided the most accurate benefit benchmark for this program. The petitioners maintain that verification confirms that the Mobility is an inappropriate benchmark by which to measure the benefit of Law 451/94 and a more appropriate benchmark is CIG–E. The petitioners point out that Law 451/94 and CIG–E have similar characteristics in that both are designed for companies which are undergoing structural, long-term problems. Additionally, the petitioners note that at verification an AST official confirmed that the company has placed redundant workers in the CIG-E program while waiting for the passage of Law 451/94.

Lastly, the petitioners object to AST's claims that it was under no legal obligation to retain its workers. First, the petitioners point out that the Department has determined in *Certain Steel from Italy* and *Wire Rod from Italy* that large Italian companies cannot simply lay-off workers. Second, the petitioners maintain that AST's argument misses the point because the obligation refers to the payment that a company would have to make absent government payments. The petitioners argue that record evidence confirms that in the normal course of business, Italian companies are obligated to make severance payments to laid-off workers and the fact that Law 451/94 reduced the financial obligation AST would incur is a countervailable benefit.

AST argues that Law 451/94 early retirement benefits to former AST employees are not countervailable because AST did not receive Law 451/94 benefits during the POI. AST points out that the Department correctly determined in *Italian Sheet and Strip* that since employees were eligible to apply for Law 451/94 only through 1996, AST could not have received benefits during the POI because the Department's practice is to treat employment benefits as recurring grants that are expensed in the year of receipt. AST further argues that as specified by the terms of the Law and AST's own records, all of AST's employees who chose to leave the company under Law 451/94 did so prior to the POI.

AST argues that its use of Law 451/94 did not benefit the company because AST's overall costs under Law 451/94 were greater than those the company would have incurred had it followed the normally applicable Mobility provisions under Law 223. Lastly, the respondents argue that Law 451/94 is not countervailable because AST was under no *de jure* or *de facto* obligation to retain workers. The respondents point out that in the past, the Department has concluded that Italian firms cannot simply fire workers. However, in the instant proceeding, the respondents note that the GOI has informed the Department that Italian companies are under no legal obligation to participate in the GOI's early retirement programs, and if an Italian company is unable to reach an agreement with worker unions and if there are no better means, then the company can fire employees. AST also argues that countervailing the Italian social safety net based on the vague perception that social or political conditions make it impossible to fire workers is inappropriate and unreasonable. Furthermore, AST states that the Department should not assume that it was impossible for AST to fire its workers had it chosen to do so. In fact, the Mobility program would have no purpose if, as a legal or practical matter, employees in Italy could not be fired.

Department's Position: As set forth in the program description for Law 451/94 above, the Department has determined that Law 451/94 provided a countervailable benefit to AST during the POI. Although AST employees applied for Law 451/94 from 1994 to 1996, AST has indicated that all of these employees received pre-pension payments from the GOI during the POI.

We do not dispute AST's argument that it can fire workers. However, as mandated by Law 223, AST was required to negotiate with the labor unions before it fired more than five employees in 120 days. As we stated in the program description above, the outcome of these negotiations is uncertain, and we have no basis for expecting either that AST would have been able to fire the total number of workers without additional payments over and above the standard Mobility costs or that the unions would have successfully negotiated no lay-offs. Since AST's own experience in laying-off employees indicated that its workers were aware beforehand of the GOI's forthcoming early retirement plan and the amount of the GOI's contribution to them, we applied our standard methodology as set forth in the GIA, 58 FR at 37256. See also *Certain Steel from Germany*, 58 FR at 32320–21. Furthermore, this methodology was upheld by the CIT in *LTV Steel*. For more information on this program see Memorandum to Richard Moreland regarding Law 451/94—Early Retirement Benefits dated March 19, 1999.

Comment 22: Law 675/77—Worker Training Program. The petitioners argue that, at verification, the Department confirmed that AST received grants under Law 675/77 between 1984 and 1987 for worker retraining. The petitioners allege that AST failed to document this assistance in its response to the Department's original and supplemental questionnaires. Because AST failed to supply information regarding these grants, the Department should resort to facts available for this program. Furthermore, the petitioners maintain that since several Departmental determinations indicate that benefits received under Law 675/77 are countervailable, the Department should countervail the worker retraining portion of Law 675/77 in the final determination and treat those benefits as a non-recurring grant.

AST argues that it has made available both in its submissions and at verification all factual information available to the company regarding the personnel retraining component of law 675/77. AST points out that these benefits were applied for and received by a predecessor to AST which ceased to exist years ago. Additionally, AST maintains that it is the Department's long-standing policy to treat worker retraining programs as recurring benefits and there is no support in law or Department practice for the treatment of this program as a non-recurring grant as suggested by the petitioners.

Department's Position: We agree with AST. At verification, AST officials indicated that an AST predecessor

company, Terni, received personnel retraining grants between 1984 and 1987. As pointed out by the respondent, it is the Department's practice to treat training benefits as recurring grants and expense the benefit in the year of receipt (*see* GIA at 37226). Furthermore, personnel retraining grants under Law 675/77 were countervailed in *Certain Steel from Italy,* 58 FR at 37331. In *Certain Steel from Italy,* the Department used best information available to determine the benefit provided by this program. However, in *Certain Steel from Italy,* the Department also determined that the treatment of benefits under this program as non-recurring was not appropriate. In the instant proceeding, there is no new information to warrant a reconsideration of this finding. Therefore, since the training grants in question were provided before the POI, there is no countervailable benefit derived from this program during the POI.

Comment 23: Law 796 Benefit Calculation. AST argues that the Department should revise its methodology for allocating the benefit AST received under the Law 796 exchange rate guarantees covering certain ECSC loans. AST notes that in the *Preliminary Determination,* the Department calculated the benefit from these exchange rate guarantees by multiplying the difference between the guaranteed and benchmark exchange rates by the sum of principal and interest paid during the POI. This, AST argues, is a reasonable approach where the loan repayment is structured such that there are regular installment payments of principal and interest. AST notes, however, at least one of its ECSC loans has a balloon payment, *i.e.,* the principal comes due in one lump payment at the end of the loan term. In the cases of balloon-payment loans, AST argues, the Department should treat exchange rate guarantee benefits as non-recurring and allocate these benefits over the full term of the loan.

The petitioners respond that the benefits provided under Law 796 do not stem from the nature of the loans themselves but, rather, from the exchange rate guarantees on those loans. The structure of the underlying loan, argue the petitioners, is not relevant to the analysis of the benefit from the guarantees. Therefore, the petitioners conclude, for its final determination the Department should continue to use the same methodology as that used in the *Preliminary Determination* for calculating the Law 796 benefits.

Department's Position: We agree with the petitioners that no change to the methodology used in the *Preliminary Determination* is warranted. As stated in the *Preliminary Determination,* once an ECSC loan is approved for an exchange rate guarantee, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Longstanding Department practice is to treat non-exceptional, automatically-approved benefits as recurring grants (*see* the Preamble to the *1989 Proposed Regulations,* 54 FR at 23376). Consistent with the Department's regulations, recurring benefits are expensed in the year in which the benefit is received. Accordingly, no change has been made to the Law 796 benefit calculation.

Comment 24: AST's Brite-EuRam Grant. The petitioners argue that the Department should countervail the grant received by AST under the EU's Brite-EuRam program that was discovered at verification. According to the petitioners, AST failed to submit information on this grant in its questionnaire responses and was unable at verification to provide information on the use of the aid and other materials relating to it.

In response, AST notes that the petitioners never requested the Department to investigate the Brite-EuRam program. Since it was not asked a single question regarding the Brite-EuRam program, AST maintains that it cannot be found to be uncooperative by not providing information on assistance received under this program. AST argues that any determination of countervailability of Brite-EuRam assistance should properly be done in the context of an administrative review, should one occur.

Department's Position: We agree with AST that any determination regarding the countervailability of assistance under the Brite-EuRam program cannot be done in the context of this investigation. During the course of this proceeding, the Department did not request information on this program from either the relevant government bodies or AST. Therefore, a finding that respondents were ''uncooperative'' would be inappropriate as would the application of facts available. We will, however, request information on the Brite-EuRam program in a future administrative review in the event one occurs.

Comment 25: ECSC Article 56 Aid. The petitioners argue that, based on information collected by the Department at the verification of the EC, its appears that Law 451/94 benefits were still being provided to AST during the POI. The information further suggests, the petitioners contend, that the GOI made additional severance payments related to ECSC Article 56(2)(b) on AST's behalf. All payments made by the GOI or the EC, the petitioners conclude, should be countervailed.

AST responds that the results of verification make clear that no additional Article 56 assistance, beyond that already countervailed under Law 451/94, has been given to AST. The petitioners' claims to the contrary, AST contends, merely represent a mis-reading of the verification report.

Department's Position: In the course of verifying both the EC and AST, we found no evidence suggesting that additional Article 56(2)(b) assistance has been given to AST beyond that already found countervailable under Law 451/94. At verification we learned that the Article 56(2)(b) program partially compensates the GOI for benefits the GOI has already paid out to workers under its Law 451/94 early retirement program. Moreover, the severance payments, referred to by the petitioners, are benefits stipulated under Law 451/94 and, therefore, have already been incorporated into our analysis of the Law 451/94 benefits.

Comment 26: ECSC Article 54 Loans. AST points out that a subsidy exists only where ''a government of a country or any public entity'' provides a ''financial contribution'' or ''makes a payment to a funding mechanism to provide a financial contribution or entrusts or directs a private entity to make a financial contribution. * * *'' AST then argues that ECSC Article 54 loans do not convey government funds to borrowers and that no financial contribution is provided from the treasury of any public or quasi-public entity. Rather, Article 54 loans are commercially obtained funds re-lent on a private, fully commercial basis. (The European Commission made a similar argument in a submission made prior to the briefing schedule.) Citing to the Department's prior treatment of the ECSC Article 56(2)(b) program (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany,* 58 FR 6233, 6236 (January 27, 1993)), AST maintains that if the program operates without government funds, it is the Department's practice to find no countervailable benefit. Finally, respondents argue that no public entity has ''entrusted or directed'' the ECSC to make Article 54 loans to AST.

Petitioners maintain that the Department has previously found that the ECSC met the definition of an ''authority'' capable of granting subsidy benefits (*see* section 771(5)(B) of the Act) and that the ECSC is, in fact, a public entity. Pointing out that the Department's verification found that

ECSC and European Community administrative functions are merged, petitioners argue that it is inconceivable that a purely private entity would be run by Commission officials as claimed by AST. Finally, petitioners argue that the new reference to ''financial contribution'' was not intended by Congress ''to become a loophole when unfairly traded imports enter the United States and injure a U.S. industry.'' SAA at 926.

Department's Position: We determine that the ECSC is a public entity under sections 701(a)(1) and 771(5)(B) of the Act. It is part of the European Union, which undeniably is a particular form of governmental body. Neither AST nor the EC have contested this position. Rather, the issue raised is whether the ECSC has made a ''financial contribution'' to AST. Under the Act and the WTO Subsidies Agreement, a financial contribution includes the direct transfer of funds, such as the provision of loans. While AST and the EC have acknowledged that ECSC loans were provided to AST, they both attempt to make the case that because the loans were not financed directly from ''the treasury of any public or quasi-public entity'' they cannot be considered ''financial contributions.'' However, we see no requirement in the WTO Subsidies Agreement nor the Act that the financial contribution must be funded in a particular manner. In fact, it is common practice for governments and other public entities to finance at least some of their operations via the issuance of bonds or other debt instruments, the proceeds of which are commonly used to fund normal government operations, including subsidy programs.

While this position may arguably conflict with the approach we have previously taken with respect to Article 56(2)(b), there are differences between the two programs. For example, the Article 56(2)(b) program has been funded directly by producer levies, while Article 54 loans, as noted above, are generally financed by means of ''back-to-back loans.'' To the extent this fact fails to adequately distinguish the two programs, we may re-visit our prior reasoning with respect to the Article 56(2)(b) program in light of the new provisions of the WTO Subsidies Agreement and the changes to the Act made pursuant to the Uruguay Round Agreements Act.

Comment 27: Exclusion of Floor Plate from the Scope of the Investigation. AST requests that the Department exclude floor plate from the scope of the instant proceeding and the *Italian Sheet* investigation. AST argues that floor plate should not be included in the scope of these investigations because floor plate is not manufactured in the United States, it does not compete with any product manufactured in the United States or with imports of other covered products, and it is materially different from the other products subject to this investigation. Furthermore, AST argues that floor plate has only one end-use, which is as flooring material and cannot be used for any other application that requires a smooth surface, as is a common requirement of end-uses of stainless steel. Lastly, AST argues that the Department has the inherent authority to exclude products from the scope of an investigation that are not properly included therein.

The petitioners object to AST's request to exclude floor plate from the scope of both investigations. The petitioners argue that floor plate clearly falls within the scope of this case. Furthermore, the petitioners cite *Melamine Institutional Dinnerware Products from the People's Republic of China*, 62 FR 1708 (January 13, 1997), as evidence of the Department's clear and consistent practice of examining the interests of the domestic industry in defining the scope of a case. The petitioners point out that numerous requests to exclude certain products from the scope have been considered and, where there was no interest on the part of the domestic industry, petitioners have excluded such products from the scope as evidenced in the revisions to the initial scope definition set forth in *Italian Sheet and Strip*. The petitioners object to AST's argument that in order for a product to remain within the scope, the domestic industry must be currently producing it. The petitioners state that often products are included in the scope because they are similar to and competitive with the domestic like product. Furthermore, the petitioners point out that the International Trade Commission has preliminarily determined that stainless steel plate in coils produced by the domestic industry is a single domestic like product with all imported stainless steel coiled plate, including floor plate, *Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, International Trade Administration, Investigations Nos. 701–TA–376–379 (Preliminary) and Investigations Nos. 731–TA–788–793 (Preliminary) (Publication 3107; May 1998).

Department's position: We disagree with AST. Despite AST's arguments, the scope as set forth in the preliminary determination covers merchandise described as floor plate if it is more than 4.75 in thickness. The scope specifically describes the subject merchandise as ''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.'' Additionally, the petitioners have objected to the exclusion of floor plate from the scope of the investigation. Therefore, the Department is not amending the scope of the investigation to exclude stainless steel floor plate.

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 government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for AST. Because AST is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 15.16 percent *ad valorem* for AST and for all others.

In accordance with our *Preliminary Determination*, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel plate in coils from Italy, 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, these proceedings 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. 99–7528 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–832]

Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Kristen Johnson, Office of CVD/AD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 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 not being provided to producers and exporters of stainless steel plate in coils from the Republic of Korea.

Petitioners

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

Case History

Since the publication of our preliminary determination in this investigation on September 4, 1998 (63 FR 47253), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from December 3 through December 18, 1998. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR 47253), and the final antidumping duty determination was postponed (*see* 63 FR 59535), the Department on January 13, 1999, extended the final determination of this countervailing duty investigation until no later than March 19, 1999 (*see* 64 FR 2195). On January 27, February 2, 10, and 12, 1999, the Department released its verification reports to all interested parties. The Department issued decision memoranda on the issue of direction of credit by the Government of Korea (GOK) and the operations of the Korean domestic bond market on March 4 and March 9, 1999, respectively. Petitioners and respondents filed case briefs on March 5 and 10, 1999, and rebuttal briefs on March 10 and 12, 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's regulations are to the regulations as codified at 19 CFR Part 351 (April 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 petition 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 the Republic of Korea (Korea) 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 Korea 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 Korea of the subject merchandise (*See Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 63 FR 29251).