Docket Number: 02–004.

Applicant: University of California, Lawrence Berkeley National Laboratory, Procurement 937–200, One Cyclotron Road, Berkeley, CA 94720.

Instrument: Electron Microscope, Model JEM–2010.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study carbon and inorganic nanotubes, nanowires and nanoscale electrical and mechanical devices. It will also be used to measure mechanical properties as the Young modulus, and yield strength and failure modes of single nanotubes.

Application accepted by Commissioner of Customs: February 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–5109 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–835]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil

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

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Holly Hawkins at (202) 482–0414, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

PRELIMINARY DETERMINATION:

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

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed, on September 28, 2001, by Bethlehem Steel Corp.; United States Steel Corporation; LTV Steel Company, Inc.; Steel Dynamics, Inc.; National Steel Corp.; Nucor Corp.; WCI Steel, Inc.; and Weirton Steel Corp.

Case History

We initiated this investigation on October 19, 2001. See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea, 66 FR 54218 (October 26, 2001) (Initiation Notice). Since the initiation, the following events have occurred. On November 2, 2001, we issued a countervailing duty questionnaire to the Government of Brazil (GOB). The GOB identified three producers which exported subject merchandise to the United States during the period of investigation: Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA).

On November 13, 2001, the U.S. International Trade Commission notified the Department of its affirmative determination in the preliminary phase of the investigation. See Letter from the U.S. International Trade Commission to the U.S. Department of Commerce, dated November 20, 2001, stating that the ITC made affirmative determinations in the preliminary phase of the cold-rolled steel investigations. On November 30, 2001, the Department issued a partial extension of the due date for this preliminary determination until January 28, 2001. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 66 FR 63523 (December 7, 2001).

On November 14, 2001, petitioners alleged that countervailable benefits were being provided to cold-rolled producers and exporters during the POI under several additional GOB subsidy programs. On December 11, 2001, the Department decided to examine three of the newly-alleged programs and issued a second questionnaire related to those programs. See Memo to the File from the Team Through Barbara E. Tillman: Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil (December 11, 2001) (Memo to the File). On December 17, 2001, the GOB and CSN, USIMINAS, and COSIPA submitted responses to the Department's first questionnaire. Petitioners provided comments on these responses on December 28, 2001. On December 26, 2001, the GOB and CSN, USIMINAS, and COSIPA responded to the Department's second questionnaire. Petitioners provided comments on these responses on January 3, 2002. On January 17, 2001, we issued a supplemental questionnaire to the GOB. We received responses to this supplemental on February 5, 2002.

On January 18, 2002, we fully extended the deadline for the preliminary determination to February 25, 2002. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 67 FR 3482 (January 24, 2002) (Extension Notice). On January 18, 2002, in response to a request from Ispat Inland, Inc., we added them as a party to this proceeding.

We issued another supplemental questionnaire on February 8, 2002. The response to these questionnaires were submitted on February 22, 2001. We note that, given the timing of this submission, we were unable to analzye it for purposes of this preliminary determination.

Scope of the Investigation

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

Scope Comments

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

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope

language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

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

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act). In addition, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Injury Test

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

Alignment with Final Antidumping Duty Determinations

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determinations in the antidumping duty investigations of certain cold-rolled carbon steel flat products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, et al, 66 FR 54198 (October 26, 2001). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the companion antidumping investigations of certain cold-rolled carbon steel flat products.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

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

Company Histories

USIMINAS

As stated in the Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5536 (February 4, 2000) (Cold-Rolled from Brazil Final), Usinas Siderurgicas de Minas Gerais (''USIMINAS'') was founded in 1956 as a venture between the GOB, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB included SIDERBRAS' operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia Vale do Rio Doce ''CVRD'', a majority government-owned iron ore producer, acquired 15 percent of USIMINAS' common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (the pension fund of the Bank of Brazil) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

In January 1999, a project was implemented for the corporate, financial, equity, and operational restructuring of USIMINAS and COSIPA. The result of this project was the reallocation of assets and liabilities between the two companies. According to the questionnaire responses, one result of this restructuring was a slight change in USIMINAS' shareholdings in COSIPA, to 49.77 percent from 49.8 percent in January 1999. Another result of the restructuring was the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA. These debentures are not redeemable. They are convertible on demand, at a fixed price, in groups of three, to one common (voting) and two preferred shares. As of the end of the POI, USIMINAS had not converted any of these debentures to shareholdings.

One of USIMINAS' minority shareholders is ''CVRD'', one of the world's largest producers of iron ore. CVRD also owns stock in Companhia Siderurgica Nacional (''CSN''). However, CVRD does not exercise direct or indirect control of either USIMINAS or CSN. See ''Cross-Ownership and Attribution of Subsidies'' section below, for a complete analysis of the extent of CVRD's control over USIMINAS and CSN.

COSIPA

Companhia Siderurgica Paulista (''COSIPA'') was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.77 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management, Ltd.; the COSIPA Employee Investment Club; and COSIPA's Pension Fund (FEMCO). See Cold Rolled from Brazil Final, 65 FR at 5544. The President of USIMINAS is a member of COSIPA's administrative council, which operates similarly to a board of directors. As discussed in the history of USIMINAS above, COSIPA and USIMINAS underwent a major corporate restructuring in January, 1999, resulting in the reallocation of assets and liabilities between the two companies and the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA.

CSN

Companhia Siderurgica Nacional (''CSN'') was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao, S.A. (Docenave/CVRD), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN's shareholders during the POI were Vicunha Siderurgia, with 46.48 percent of the voting shares; Previ, with 13.85 percent; Docepar/CVRD (formerly known as Docenave/CVRD), with 10.33 percent; and a consortium of private investors, including Uniao Comercio e Partipacoes, Ltda.; Textilia, S.A.; the CSN Employee Investment Club; and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization. See Cold Rolled from Brazil Final, 65 FR at 5544.

SUBSIDIES VALUATION INFORMATION:

Allocation Period

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

Respondents did not rebut the presumption that the IRS tables should be used. Therefore, we are using the 15–year AUL as reported in the IRS tables to allocate any non-recurring subsidies under investigation which were provided directly to the producers and exporters of the subject merchandise.

Cross-Ownership and Attribution of Subsidies

There are three producers/exporters of the subject merchandise in this investigation: USIMINAS, COSIPA, and CSN. As discussed above, during the POI, USIMINAS owned 49.77 percent of COSIPA. The CVD Regulations, at section 351.525(b)(6)(ii), provide guidance with respect to the attribution of subsidies between or among companies which have cross-ownership. Specifically, with respect to two or more corporations producing the subject merchandise which have cross-ownership, the regulations direct us to attribute the subsidies received by either or both corporations to the products manufactured by both corporations. Further, section 351.525(b)(6)(vi) defines cross-ownership as existing ''between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations through common ownership of two (or more) corporations.'' The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' See Countervailing Duties Final Rule, 63 FR 63548, 65401 (November 25, 1998).

In this investigation, we preliminarily determine that USIMINAS' 49.77 percent ownership interest in COSIPA is sufficient to establish cross-ownership between the two companies because USIMINAS is capable of using or directing the individual assets of COSIPA in essentially the same ways it can use its own assets. In the Cold Rolled from Brazil Final, we found that USIMINAS' 49.8 percent shareholding, given the number and shareholdings of the remaining shareholders, was sufficient to establish cross ownership of the two companies and attribution of the two companies' subsidies to both companies. 65 FR at 5544.

In the instant investigation, we preliminarily determine that USIMINAS' shareholding, at 49.77 percent, together with the COSIPA convertible debentures that USIMINAS holds, are sufficient to establish that USIMINAS effectively held a majority interest in COSIPA during the POI. This satisfies the definition of cross-ownership provided in section 351.525(b)(6)(iv) of the regulations. Therefore, we preliminarily determine that USIMINAS' virtual majority share in COSIPA, and the COSIPA debentures held by USIMINAS that are not redeemable and are convertible to shares in COSIPA, are sufficient to establish cross-ownership between USIMINAS and COSIPA. Thus, we will continue to calculate one subsidy rate for USIMINAS/COSIPA. For all domestic subsidies, we will follow the methodology outlined in section 351.525(b)(6)(ii) of the regulations. In the case of export subsidies for USIMINAS/COSIPA, we will determine the countervailable subsidy by following the methodology outlined in sections 351.525(b)(2) and 351.525(b)(6)(ii) of the regulations.

In the Cold-Rolled from Brazil Final, the Department also examined the ownership of CSN. We note that, in the instant investigation, the same two entities, CVRD and Previ (the pension fund of the Bank of Brasil) that were found to have minority shareholdings in CSN in the Cold-Rolled from Brazil Final, still have minority holdings in both USIMINAS and CSN. 65 FR at 5544. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could, notwithstanding the absence of direct cross-ownership between them, have cross-ownership such that their interests are merged, and one company could have the ability to use or direct the assets of the other through their common investors. Since the Cold-Rolled from Brazil Final, CVRD's common shares in USIMINAS increased from 15.48 percent to 22.99 percent, while its common shares in CSN, through its wholly-owned subsidiary Docepar/CVRD, remained unchanged at 10.33 percent at the end of the POI. For this same period, Previ's holdings of common shares in USIMINAS fell slightly from 15 percent to 14.90 percent, and remained unchanged for its holdings in CSN at 13.85 percent.

As noted in the Cold Rolled from Brazil Final, both USIMINAS and CSN are controlled through shareholders' agreements which require participating shareholders (who together account for more than 50 percent of the shares of the company) to pre-vote issues before the Board of Directors and to vote as a block. 65 FR at 5544. While CVRD and Previ both participate in the CSN shareholders' agreement, and thus exercise considerable influence over the use of CSN's assets, neither CVRD nor Previ participates in the USIMINAS

shareholders' agreement, and therefore, neither is in a position to exercise any appreciable influence (beyond their respective 22.99 and 14.90 percent USIMINAS shareholdings) over the use of USIMINAS' assets. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38741, 38744 (July 19, 1999) (Hot-Rolled from Brazil Final), which noted the Department's verification of USIMINAS' shareholder agreement.

No new information has been submitted on the record of this investigation to indicate any changes in the terms of USIMINAS' shareholders' agreement since the Department's verification in the Hot-Rolled from Brazil Final. Therefore, consistent with our finding in the Cold-Rolled from Brazil Final and the Hot-Rolled from Brazil Final, we preliminarily determine that CVRD's and Previ's shareholdings in both USIMINAS and CSN are not sufficient to establish cross-ownership between those two companies under our regulatory standard. This absence of common majority or significant minority shareholders leads us to preliminarily determine that USIMINAS' and CSN's interests have not merged, i.e., one company is not able to use or direct the individual assets of the other as though the assets were their own. Thus, for the purposes of this preliminary determination, we have calculated a separate countervailing duty rate for CSN.

Equityworthiness

In accordance with section 351.507(a)(1) of the Department's regulations, a government provided equity infusion confers a benefit to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. See also section 771(5)(E)(i) of the Act. In past investigations, we determined that COSIPA was unequityworthy from 1977 through 1989, and 1992 through 1993; USIMINAS was unequityworthy from 1980 through 1988; and CSN was unequityworthy from 1977 through 1992. See Cold-Rolled from Brazil Final, 65 FR at 5545, citing to Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 58 FR 37295, 37297 (July 9, 1993) (Certain Steel Final); Hot-Rolled from Brazil Final, 64 FR at 38746. For purposes of this investigation, no new information or evidence of changed circumstances has been submitted which would cause us to reconsider these findings.

We note that, because the Department determined that it is appropriate to use a 15–year allocation period for non-recurring subsidies, equity infusions provided prior to 1986 no longer provide benefits in the POI. None of the parties have submitted information or argument, nor is there evidence of changed circumstances, which would cause us to reconsider these determinations.

Equity Methodology

Section 351.507(a)(3) of the Department's regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The applicable methodology is described in section 351.507(a)(6) of the regulations, which provides that the Department will treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is equivalent to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

To determine whether a company is uncreditworthy, the Department must examine whether the firm could have obtained long-term loans from conventional commercial sources based on information available at the time of the government-provided loan. See section 351.505(a)(4) of the Department's regulations. In this context, the term ''commercial sources'' refers to bank loans and non-speculative grade bond issues. See section 351.505(a)(2)(ii) of the CVD regulations.

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991–1993; and CSN 1983–1992. See Cold Rolled from Brazil Final, 65 FR at 5546, citing to Certain Steel Final, 58 FR at 37298 and Hot-Rolled from Brazil Final, 64 FR at 38747. No new information or evidence of changed circumstances has been presented in this investigation that would lead us to reconsider these findings.

Discount Rates

From 1984 through 1994, Brazil experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the Certain Steel Final, 58 FR at 37298, the Hot-Rolled from Brazil Final, 64 FR at 38745–38746 and the Cold-Rolled from Brazil Final, 65 FR at 5546, we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian currency discount rate, is to convert the information on non-recurring subsidies provided in Brazilian currency into U.S. dollars. If the date of receipt of the equity infusion was provided, we applied the exchange rate applicable on the day the subsidies were received, or, if that date was unavailable, the average exchange rate in the month the subsidies were received. Then we applied, as the discount rate, a long-term dollar lending rate in Brazil. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with the methodology applied in the Certain Steel Final; Hot-Rolled from Brazil Final; and Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014, 55019, 55023 (October 21, 1997).

As discussed above, we preliminarily determine that USIMINAS, COSIPA, and CSN were uncreditworthy in all the years in which they received equity infusions. Section 351.505 (a)(3)(iii) of the CVD Regulations directs us regarding the calculation of the benchmark interest rate for purposes of calculating the benefits for uncreditworthy companies: to calculate the appropriate rate for uncreditworthy companies, the Department must identify values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, Historical Default Rates of Corporate Bond Issuers, 1920 - 1997 (February 1998). See 19 CFR 351.505(a)(3)(iii). For the probability of default by a creditworthy company, we used the cumulative default rates for Investment Grade bonds as reported by Moody's. We established that this figure represents a weighted average of the cumulative default rates for Aaa to Baa-rated companies. The use of the weighted average is appropriate because the data reported by Moody's for the Caa to C-rated companies are also weighted

averages. For non-recurring subsidies, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 15–year term, since all of the non-recurring subsidies examined were allocated over a 15–year period.

Changes in Ownership

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

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

Methodology

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the beginning of the POI, the Department would then continue to countervail the remaining benefits of that subsidy. See Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel, 66 FR 49351 (September 27, 2001).

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

Background

Using the approach described above, we have analyzed the information provided by the GOB and USIMINAS, COSIPA, and CSN to determine whether the pre-sale and post-sale entities of each company can be considered the same person. We began our analysis by estimating the point in time where government control of these companies was transferred to private entities as a result of their changes in ownership. As noted in their questionnaire responses, respondents state that since their initial privatization auctions of common shares, USIMINAS, COSIPA, and CSN have operated as independent entities. The Department finds that the information on the record of this investigation supports respondents' statement.

USIMINAS' International Offering Circular, provided in exhibit 28, appendix E of the GOB's December 17, 2001 questionnaire response, reflects USIMINAS' ownership status after its 1991 partial privatizations and before its international public offerings made in 1994. This circular notes, on page 64, that GOB control of USIMINAS had transferred to ''certain shareholders of the Company (including Bozano; Simonsen Centros Comerciais, S.A.; Nippon Usiminas; CIU; Banco Economico, S.A.; and certain other private sector shareholders), which in aggregate have voting power in excess of 50 percent of the voting shares of the Company.'' Furthermore, it states that these shareholders ''agreed to vote together on major corporate governance matters, corporate events and fundamental policies (including mergers, declaration of dividends and issuance of shares).'' Therefore, we preliminarily determine that control of USIMINAS was transferred from the GOB in 1991, after the initial privatization auctions.

As mentioned above in the ''Company Histories'' section, COSIPA was partially privatized by auction in 1993, and control of the company was acquired by a consortium of investors led by USIMINAS, with the GOB retaining a minority of the preferred shares. Based on our finding above that USIMINAS was no longer under the control of the GOB by 1991, we find that COSIPA's partial privatization in 1993, led by a privatized USIMIMAS, is the appropriate point in time to analyze whether COSIPA is the same entity that existed prior to and after its transfer of control to USIMINAS.

We reviewed the GOB's Notice of Conclusion of Privatization Process regarding CSN, which was provided in exhibit 29, appendix G of the GOB's December 17, 2001 questionnaire response. This exhibit reflects the initial ''Auction of Control Shares,'' on April 2, 1993, of 60.13 percent of CSN's capital stock that was acquired by 196 different participants. Only five of these participants acquired more than 5 percent of the capital stock, the largest acquisition being that of Docenave/CVRD, with 9.41 percent. By the end of 1993, the GOB had sold an additional 11.87 percent of CSN's capital stock in an offering to employees, and another 9.92 percent in the public offering noted above, resulting in the sale of 81.92 percent of CSN's capital stock. CSN's Employee's Pension Fund (CBS) controlled 9.2 percent of CSN's shares prior to its privatization. We, therefore, find that the year 1993 is the appropriate point in time to analyze whether CSN is the same business entity that existed before and after its change in ownership.

Continuity of General Business Operations

Although respondents state that there have been numerous changes in the operations of USIMIMAS, COSIPA, and

CSN since their privatizations, respondents have also noted that these changes were made as part of their ongoing operations and business decisions. See USIMINAS', COSIPA's, and CSN's December 17, 2001 questionnaire response at 79. According to respondents, since their privatizations, all of these companies have acquired interests in steel distributors or service centers; have initiated new management techniques or sales strategies; and, have focused on developing new product lines and value-added products. However, respondents add that none of these changes were directly related to their privatizations. Id. at 79.

Continuity of Production Facilities

Respondents note that, since their privatizations, USIMINAS, COSIPA, and CSN have all added and shut down facilities and equipment in order to upgrade their production processes. According to respondents, all the companies have upgraded their blast furnaces in order to increase production capacities; USIMINAS and CSN have also added coating facilities in an effort to expand their product lines. Again, respondents note that these changes were not directly related to their privatizations, but were part of the companies' ongoing and business decisions.

Our review of USIMINAS' production information indicates little change in the quantity and composition of its production following its privatization. The comparative production data provided at pages 4–5 of USIMINAS' 1992–1993 financial statement (exhibit 34 of the GOB's December 17, 2001 response) indicates that USIMINAS' production totals declined slightly, by 1.6 percent, from 1991 to 1992, and that its product mix remained essentially unchanged for this period. In addition, there was only a slight change in its labor productivity ratio of 386 tons/man/year in 1992 (an increase of 3 over 1991). A similar review of COSIPA's 1993 financial statement at pages 5 and 11, indicated that annual production of uncoated flat-rolled steel products remained steady, declining slightly from 2.6 in 1992 to 2.5 million tons in 1993. However, COSIPA's labor productivity ratio in 1993 did increase to 223.9 tons/man/year from 208.6 tons/man/year in 1992. No specific information was provided about CSN's continuity of production facilities made as a result of its change in ownership in 1993.

Continuity of Assets and Liabilities

The privatizations of USIMINAS, COSIPA, and CSN were accomplished through the sale of the GOB's shares to private investors, and did not involve the transfer of any of the corporate assets of the companies in question. According to respondents, the privatizations of these companies involved the purchasing of shares of an ongoing corporation. As a result, the new shareholders of these companies continued to maintain an ownership interest that included both the assets and liabilities of the privatized companies. Therefore, the liabilities and assets of USIMINAS, COSIPA, and CSN remained intact throughout the privatization process. See GOB's December 17, 2001 questionnaire response at 56.

Retention of Personnel

After the privatizations of USIMINAS, COSIPA, and CSN, respondents state that management began to reorganize the personnel of these companies in order to adjust to the private sector and improve production efficiencies. Specifically, USIMINAS revised its sales strategy by establishing closer customer relationships and additional customer services that required a modest increase in its sales staff and a reduction in the number of sales managers. This is supported by information provided at page 9 of USIMINAS' 1992–1993 financial statement, indicating that the number of USIMINAS' hired personnel in 1992 was 2.7 percent below the number of its personnel in 1991. COSIPA also experienced a 16.8 percent reduction in personnel from December 1992 to December 1993, as reflected on page 11 of COSIPA's 1993 financial statement. This period encompasses four months from the time of COSIPA's initial privatization auction in August 1993, in which control was transferred from the GOB to USIMINAS. No specific information was provided about CSN's personnel adjustments made as a result of its change in ownership in 1993.

Summary

Based on the analysis above, we determine that the vast majority of the business aspects of USIMINAS, COSIPA, and CSN remained unchanged by their respective privatizations. All of these companies still operate in a manner similar to that characterizing their operations prior to privatization. As respondents themselves noted, the legal status of these businesses did not change as a result of their privatizations. Instead, the GOB's privatization process involved the purchasing of shares of ongoing corporations that resulted in the transfer of control and ownership, and in the assumption of each company's existing assets and liabilities. Any changes made in the business operations of USIMINAS, COSIPA, and CSN can be attributed to the ongoing operations and business decisions of these companies, as stated by respondents themselves. In addition, the production levels and product mix of each company remained essentially the same after its change in ownership. While there is information that indicates that the management and personnel of these companies may have been altered as a result of their privatizations, on balance, we do not consider these changes to be sufficient to find that USIMINAS, COSIPA, and CSN were different entities after privatization. As respondents themselves have noted, most of the changes were due to ongoing business decisions and were not directly related to privatization itself. Accordingly, our analysis leads us to preliminarily determine USIMINAS, COSIPA, and CSN to be the same entities which benefitted from subsidies bestowed by the GOB prior to their privatizations.

Trading Companies

Section 351.525(c) of the regulations requires that the benefits from subsidies provided to a trading company which exports subject merchandise be cumulated with the benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company, regardless of their affiliation. In its questionnaire response, the GOB indicated that seven trading companies exported cold-rolled steel to the United States during the POI. These trading companies purchased the cold-rolled steel from the producers subject to this investigation. The GOB, however, did not identify by name these trading companies nor did the GOB provide any quantity and value information, explaining that it was unable to determine whether any of the steel products exported by these trading companies to the United States consisted of subject merchandise. We issued supplemental questionnaires to the GOB and USIMINAS, COSIPA, and CSN, and requested that they identify these trading companies and provide the quantity and value of subject merchandise shipped by them during the POI and that they provide information concerning the use by the trading companies of any of the non-company-specific subsidy programs during the POI. This information was provided by the parties on February 22, 2002. We have not had the opportunity to analyze this information for purposes of this preliminary determination, but

we will consider this information for purposes of our final determination.

Programs Preliminarily Determined to be Countervailable

I. Equity Infusions into CSN, USIMINAS, and COSIPA

Petitioners alleged that the GOB provided equity infusions during the following periods: to CSN from 1986 through 1992; to USIMINAS from 1986 through 1988; and to COSIPA from 1986 through 1993. In our past investigations of hot-rolled steel from Brazil and cold-rolled steel from Brazil, we found that the GOB, through SIDERBRAS, provided equity infusions to USIMINAS, CSN and COSIPA. See Hot-Rolled from Brazil Final, 64 FR at 38747, 38748 and Cold-Rolled from Brazil Final, 65 FR at 5546, 5547. For the reasons cited in the last cold-rolled investigation by the Department (see id.), and because none of the parties have provided new information or argument which would lead us to reconsider this determination, we are continuing to find, under section 771(5)(E) of the Act, that equity infusions were provided to CSN from 1986 through 1992, to USIMINAS from 1986 through 1988, and to COSIPA from 1986 through 1993. The equity infusions into CSN in 1992, and into COSIPA in 1992 and 1993, were made through debt-for-equity swaps and are discussed in more detail below.

As in the previous cold-rolled investigation, we will treat the pre–1991 equity infusions as grants given in the year the infusions were received. These equity infusions constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771(5A)(D)(i) of the Act because they were provided specifically to each company. Accordingly, we preliminarily determined that the pre–1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we treat equity infusions into unequityworthy companies as grants given in the year the infusion was received. These infusions are non-recurring subsidies in accordance with section 351.524(c)(1) of the CVD Regulations. Consistent with section 351.524(d)(3)(ii) of the CVD regulations, because USIMINAS, COSIPA and CSN were uncreditworthy in the relevant years (the years the equity infusions were received), we applied an uncreditworthy discount rate, as discussed in the ''Discount Rate'' section above. As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that the three companies continue to benefit from subsidies received prior to their privatizations, and, therefore, the full value of the benefits allocable to the POI from these equity infusions is being used in the calculation of the companies' subsidy rates.

Additionally, we find, as in the last cold-rolled investigation, that the GOB provided debt-for-equity swaps to CSN in 1992 and COSIPA in 1992 and 1993. See Cold-Rolled from Brazil Final, 65 FR at 5547, 5548. Prior to COSIPA's privatization, and on the recommendation of consultants who examined CSN and COSIPA, the GOB made a debt-for-equity swap for CSN in 1992 and two debt-for-equity swaps for COSIPA in 1992 and 1993. We previously examined these swaps and determined that they were not consistent with the usual investment practices of private investors; constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act; and, therefore, conferred benefits to CSN and COSIPA in the amount of each conversion. See id., citing to Hot-Rolled from Brazil Final, 64 FR at 38747, 38748. These debt-for-equity swaps are specific within the meaning of section 771(5A)(D)(i) of the Act because they were limited to CSN and COSIPA. Accordingly, we preliminarily determine that the GOB debt-for-equity swaps provided to CSN in 1992 and COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act. No party has provided any new information or argument which would lead us to reconsider this determination.

Each debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated each debt-for-equity swap as a grant given in the year the swap was made, in accordance with section 351.507(b) of the regulations. Further, these swaps, as equity infusions, are non-recurring in accordance with section 351.524(c)(1) of the regulations. Because CSN and COSIPA were uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the regulations, as discussed in the ''Discount Rates'' section above.

As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that CSN and COSIPA continue to benefit from subsidies received prior to its privatization, and therefore, the full value of the benefits allocable to the POI from these equity infusions and debt-for-equity swaps is being used in the calculation of CSN's and COSIPA's subsidy rate. We summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 11.27 percent ad valorem for USIMINAS/COSIPA. For CSN, we summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 7.44 percent ad valorem for CSN.

II. ''Presumed'' Tax Credit for the Program of Social Integration (PIS) and the Social Contributions of Billings (COFINS) on Inputs Used in Exports

Background

In the new allegations submitted on November 14, 2001, petitioners stated that the GOB provides a ''presumed'' tax credit for PIS and COFINS taxes. Petitioners allege that PIS and COFINS are social welfare charges and, therefore, fall within the Department's definition of a direct tax under section 351.102(b) of the Department's regulations. The remission of direct taxes constitutes a countervailable subsidy under section 351.509(a) of the Department's regulations. However, petitioners alleged that, even if the Department should find these to be indirect taxes, the remission of these taxes through the ''presumed'' tax credit would still confer a countervailable benefit, because the credit is excessive and is not tied to the actual tax incidence of PIS and COFINS taxes paid on inputs consumed in the production of the exported merchandise. On December 11, 2001, the Department initiated on this program to determine whether the ''presumed'' tax credits exceeded the actual incidence of PIS and COFINS taxes. See Memo to the File.

According to the PIS/COFINS tax credit legislation provided by the GOB, this tax credit program was established on December 13, 1996. See PIS/COFINS Credit Legislation in exhibit 3 of the GOB's questionnaire response dated February 5, 2002. The ''presumed'' tax credit rate for PIS and COFINS is 5.37 percent. The GOB has devised a single rule for ''administrative convenience'' in calculating the ''presumed'' tax credit which applies to all industries, and assumes two stages of processing and therefore, two stages of tax incidence of

PIS and COFINS on all inputs consumed in exports.

The GOB states that PIS and COFINS taxes are incident on all domestic sales of goods and services. Each company is responsible for making monthly payments of PIS and COFINS based on the total sales value of its domestic sales of goods and services. Our review of the legislation governing COFINS indicates that these tax proceeds are used for financing the ''Social Insurance Services,'' which are ''intended solely to defray {the} cost of health care and social security and assistance work.'' The goal of the PIS tax program, as reflected in the legislation, is to ''bring about the integration of employees in the life and growth of their companies.'' See PIS and COFINS legislation in exhibit 3 of the GOB's December 26, 2001 questionnaire response. During the POI, PIS and COFINS taxes were calculated at rates of 0.65 percent and 3.0 percent, respectively. The original COFINS rate, as reflected in its tax legislation noted above, was 2.0 percent.

The GOB states that the minimum incidence of PIS and COFINS taxes that can occur on domestic inputs is at 3.65 percent, since each input is produced and purchased at least once, and every good and service sold in Brazil is subject to these taxes. However, the GOB also notes that the incidence of PIS and COFINS can vary from once to more than five times, depending on the complexity of the goods purchased, and the number of distinct stages of production and intermediate producers. The GOB has not undertaken an examination of the PIS and COFINS tax incidence on an industry-specific basis. The GOB states that because ''... the incidence of PIS/COFINS on inputs could vary not only from industry to industry, but also within the industry itself as well as by virtue of the nature of the inputs purchased, the GOB determined that it would be a practical impossibility to determine the actual incidence in every case. Nor was it in any position to check the actual incidence from individual taxpayer claims, as it would in effect have to look at every input and determine how many stages of processing each input had undergone.'' See GOB's February 5, 2002 submission at 14–15. As a result, the GOB adopted a single method for determining the ''presumed'' tax credit of 5.37 percent. Companies can claim the credit of 5.37 percent as part of their regular monthly federal taxes. The credit of 5.37 percent is calculated based on the previous PIS/COFINS rate of 2.65 percent with the presumption that the PIS and COFINS taxes are paid at two stages of production before the final stage of production when the product is then exported. During the POI, CSN, COSIPA, and USIMINAS all applied for and received the PIS/COFINS tax credit.

Our review of the information provided by respondents indicates that the ''presumed'' PIS and COFINS tax credit is applied quarterly against IPI tax payments. To calculate the PIS/COFINS tax credit, a company divides its export revenues, accumulated through the prior month, by its total gross sales revenues for the same period. This export revenue ratio is then multiplied by the company's production costs or total domestically-purchased inputs accumulated over the same period in order to determine the percentage of domestically- purchased inputs used in the production of the export products. This figure is multiplied by the ''presumed'' tax credit rate of 5.37 percent to yield the year-to-date accumulated tax credit. In order to calculate the credit for the current month, the credit used through the prior month is deducted from this accumulated tax credit. CSN stated that, in order to be conservative, they do not claim the total amount of available credit permitted by law. See USIMINAS', COSIPA's, and CSN's February 5, 2002 submission at 9.

The GOB uses the company income tax return and information pertaining to a company's cost of goods sold to track the costs of domestically-purchased inputs which are used in calculating the PIS/COFINS tax credit. According to the GOB, each company maintains a record of the costs of domestic inputs consumed in production. We reviewed the PIS/COFINS tax credit legislation and noted that the calculation of the costs of these domestic inputs is intended to be based on the ''total value of the purchases of raw materials, semi-finished products and packaging materials.'' See exhibit 3 of the GOB's February 5, 2002 questionnaire response.

Analysis

We examined the information provided by the GOB in the PIS and COFINS legislation, as noted above, to determine the manner in which the GOB assesses PIS and COFINS taxes. Article 2 of the COFINS legislation states that ''corporate bodies'' will contribute two percent, ''charged against monthly billings, that is, gross revenue derived from the sale of goods and services of any nature.'' Likewise, Article ''Second'' of the PIS tax law (also found in the PIS and COFINS legislation) provides similar language stating that this tax contribution will be calculated ''on the basis of the invoicing.'' The PIS legislation further defines invoicing under Article ''Third'' to be the gross revenue ''originating from the sale of goods.''

Section 351.102(b) of the Department's regulations defines an indirect tax as a ''sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge.'' As noted in the PIS and COFINS legislation, these taxes are derived from the ''monthly invoicing'' or ''invoicing'' originating from the sale of goods and services. The GOB supported this interpretation by stating that ''PIS and COFINS taxes are, by law, incident on all domestic sales of goods and services sold.'' See GOB's February 5, 2002 questionnaire response at 12. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, and we are treating PIS and COFINS taxes as indirect taxes for purposes of this preliminary determination.

We intend to continue to examine whether PIS and COFINS taxes should be construed as social welfare charges. Pursuant to section 351.102(b) of the Department's regulations, if we determined a tax program to be a social welfare charge, then it would be classified as a direct tax rather than an indirect tax.

The GOB has stated in its response that PIS and COFINS are not social welfare charges, but are normal taxes. According to the GOB, social welfare charges are administered by the agencies responsible for their disbursement. Thus, the Imposto Nacional para Seguridade Social (INSS), the GOB's social security tax, is administered by the National Social Security Institute, whereas the PIS and COFINS taxes are administered by the Secretariat of Federal Revenue. In addition, most Brazilian companies have a special account (denominated ''encargos sociais'') for social welfare charges, such as the social security tax, but PIS and COFINS are not included in this account and are instead accounted for as normal taxes on the companies' accounting books. Id. at 9–10. However, we intend to examine whether the stated purpose of the COFINS legislation in supporting ''health care and social security and assistance work,'' renders this tax a social welfare charge.

Based on our preliminary determination that PIS and COFINS are indirect taxes, we examined how the GOB calculates the ''presumed'' tax credit related to these taxes. The law pertaining to this tax credit, as

mentioned above, states that this tax credit is determined by using ''the total value of the purchases of raw materials, semi-finished products and packaging materials.'' These items fit the description of what the Department normally considers prior-stage inputs. Therefore, we are examining the countervailability of this program under section 351.518(a)(2) of our regulations, which covers the ''Remission of prior-stage cumulative indirect taxes'' upon export. As noted above, these tax credits are calculated using an ''export revenue ratio'' in order to segregate and credit those inputs that were used in respondents' exported products.

In order for the Department to determine whether a benefit exists, we must determine whether the amount remitted exceeds the incidence of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of exports. Generally, the Department will determine the amount of the benefit to be the difference between the amount remitted and the amount of prior-stage cumulative taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. However, to use this measure of the benefit, the Department must be satisfied that certain criteria are met. Thus, section 351.518(a)(4)(i) provides that the Department will consider that the entire amount of the remission confers a benefit unless;

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

Our review of the information on the record of this investigation indicates that, although the GOB does have a system in place for calculating an amount for the ''presumed'' credit due, the system is not effective for calculating the credit corresponding to the ''actual'' inputs consumed in the exports of these companies. As noted above, the GOB stated that a single rule was used for ''administrative convenience'' to determine the rate of the credit. This rule applies to all industries and assumes two stages of production, and therefore, two levels of tax incidence for the PIS and COFINS taxes charged on inputs. However, the GOB was unable to demonstrate how the PIS/COFINS tax credit of 5.37 percent is reflective of the tax incidence incurred by the inputs through the stages of production associated with the steel industry.

Respondents' explanation of how each of the companies calculate the ''presumed'' tax credit for PIS and COFINS states that the export revenue ratio is multiplied by either ''raw material'' costs or ''production costs.'' See USIMINAS', COSIPA's, and CSN's February 5, 2001 submission at 8. Production costs usually include cost elements in addition to prior-stage inputs, such as depreciation, overhead and labor costs. In addition, USIMINAS provided the list of ''raw material'' inputs it uses to calculate this tax credit. This list includes machine parts, which are items that are not normally considered inputs. See e.g., Final Results of Countervailing Duty Review: Ball Bearings and Parts Thereof from Thailand, 62 FR 728, 731 (January 6, 1997). Therefore, we preliminarily determine that the GOB's system used for calculating the amount of this ''presumed'' tax credit, of tracking the appropriate inputs consumed and measuring the actual PIS and COFINS tax incidence, is ineffective.

In section 351.518(a)(4)(ii) of the regulations, additional criteria are to be considered before the Department reaches a determination that the entire amount of the rebate or remission confers a benefit:

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

Neither the GOB nor the companies involved have met the terms of section 351.518(a)(4)(ii) by carrying out an examination of the actual inputs involved, nor of whether the inputs are consumed in production and in what amounts.

As a result, the Department preliminarily finds that the entire amount of this tax credit is countervailable as an export subsidy. For CSN, we have calculated the ad valorem rate in accordance with section 351.525(b)(2) by dividing the total tax credit claimed during the POI by CSN's total export sales during the POI. In calculating a combined rate for USIMINAS/COSIPA, we calculated the benefit by first combining the tax credits claimed by both USIMINAS and COSIPA during the POI, and then dividing this total benefit amount by their combined export sales during the POI. This is consistent with the calculation methodology outlined under section 351.525(b)(6)(ii) for corporations with cross-ownership. On this basis, we determine the net subsidy to be 0.78 percent ad valorem for CSN and 1.31 percent ad valorem for USIMINAS/COSIPA.

Program Preliminarily Determined to be Not Used

Programa de Financiamento as Exportacoes (''PROEX'')

We initiated on this program based on petitioners' allegation that the GOB provided export financing through the Programa de Financiamento as Exportacoes (''PROEX'') at preferential interest rates.

According to the questionnaire responses, PROEX was created by the GOB on June 1, 1991 by Law No. 8187/91 with the purpose of offering Brazilian companies the opportunity to finance exports at rates equivalent to those available on international markets. PROEX is administered by the Comite de Credito as Exportacoes (''the Committee''), with the Ministry of Finance serving as its executive. Day-to-day operations of PROEX are conducted by the Banco do Brasil, the Central Bank of Brazil. There are two components to the PROEX program. ''PROEX Financiamento'' (or PROEX Financing) provides direct financing for a portion of the funds required for the transaction. ''PROEX Equalizacao'' (or PROEX Equalization) permits interest equalization, by which the government covers the difference between the interest rate obtained from a private bank and the prevailing rate in the international market.

According to the GOB and USIMINAS, CSN, and COSIPA, no PROEX funds were disbursed to finance any exports of subject merchandise to the United States during the POI. Therefore, we preliminarily determine that this program was not used during the POI.

Programs for Which Additional Information Is Needed

I. National Bank for Economic and Social Development (''BNDES'') Fund for the Modernization of the Steel Industry

In their submission of November 14, 2001, petitioners alleged that the National Bank for Economic and Social Development (''BNDES'') offers financing for the steel industry through

the Fund for the Modernization of the Steel Industry (Fund). Petitioners alleged that the Fund was specifically created by BNDES, a GOB development bank, to support the development of the Brazilian steel industry after its privatization. Petitioners provided information showing that loans through the Fund were allegedly made by BNDES to the Brazilian steel industry at interest rates below those on comparable commercial loans. On December 11, 2001, we decided to investigate this program. See Memo to the File.

The GOB reported that the Fund for the Modernization of the Steel Industry does not exist. However, based on our review of the questionnaire responses, we found that all of the companies under investigation had outstanding loans from BNDES during the POI and that BNDES operates a number of different financing programs, some of which may provide countervailable benefits. We note that, in the Preliminary Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, the FINAME program, which is administered by BNDES and agent banks throughout Brazil, and provides capital financing to companies located in Brazil, was found to be an import substitution program that provided countervailable benefits to producers and exporters of wire rod. 67 FR 5967, 5972 (February 8, 2002). The FINAME program provides for the leasing of new machinery and equipment to producers in Brazil. Although the GOB reported that the BNDES Fund for the Modernization of the Steel Industry does not exist, we are continuing to investigate BNDES and a number of lending programs that may be offered by BNDES to determine whether they provided countervailable subsidies, during the POI, to producers and exporters of cold-rolled steel from Brazil. We are seeking additional information from the GOB and the companies on BNDES loan programs for purposes of our final determination.

II. Program to Induce Industrial Modernization of the State of Minas Gerais (PROIM)

In their allegations filed on November 14, 2001, petitioners alleged that the state of Minas Gerais provides concessionary project financing through the PROIM program for up to 50 percent of the total investment, with grace periods not to exceed 36 months. On December 11, 2001, we decided to investigate this program because petitioners' arguments and supporting documentation indicated that PROIM may be an import substitution program which finances the use of Minas Gerais-produced raw materials and inputs. See Memo to the File.

According to the questionnaire responses, the PROIM program is a state-administered program that is intended to encourage companies located in the state of Minas Gerais to increase production; of the three respondent companies, only USIMINAS is located in Minas Gerais. PROIM allows for the deferral of state taxes in the state of Minas Gerais. The tax that is deferred is known as the Imposto Sobre Circulacao da Mercadoria e Servicos (tax on the circulation of merchandise and services), or ICMS. ICMS is a value-added tax. Companies located in the state of Minas Gerais must charge 18 percent on sales within the state, 12 percent on sales to outside of the state other than to states in the North and Northeast regions, and 7 percent on sales to states in the North and Northeast regions. Sales for export and sales to the free port of Manaus are exempt from the tax.

The PROIM program provides that companies that increase their production within the state of Minas Gerais may obtain a deferral of that portion of the ICMS which applies to the increased production.

Since there is a deferral of a state tax that is administered by a state government, our specificity analysis must focus on whether the deferral is limited to an enterprise or industry or group thereof located within the state of Minas Gerais. See section 351.502 of the Department's regulations. We are still in the process of gathering additional information concerning use of this program within the state and, therefore, for purposes of this preliminary determination, we are not making a finding with respect to this program.

Verification

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

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation. We have preliminarily determined that the total estimated countervailable subsidy rate is 12.58 percent ad valorem for USIMINAS/COSIPA and 8.22 percent ad valorem for CSN. With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates and rates based entirely on facts available. Because none of the companies has a de minimis or zero rate, or a rate based entirely on facts available, we have weight-averaged the companies' rates to calculate an ''all others'' rate of 11.90 percent ad valorem.

Producer/Exporter	Countervailable Subsidy Rate
USIMINAS / COSIPA	12.58%
CSN	8.22%
All Others	11.90%

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

ITC Notification

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

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

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals

who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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

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

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–823]

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

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

ACTION: Preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of certain cold-rolled carbon steel flat products from France. For information on the estimated countervailing duty rates, see section below on ''Suspension of Liquidation.''

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam at (202) 482–0176; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination

The Applicable Statute and Regulations

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

The Petitioners

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

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea,* 66 FR 54218 (October 26, 2001) (''*Initiation Notice*'')).

On November 3, 2001, we issued countervailing duty questionnaires to the Government of France (''GOF''), the European Commission (''EC''), and Usinor, a producer/exporter of the subject merchandise from France. Our decision to select Usinor to respond to our questionnaire is explained in the Memorandum to Susan H. Kuhbach, ''Respondent Selection,'' dated November 2, 2001, which is on file in the Central Records Unit, room B–099 of the main Department building.

On November 30, 2001, we extended the time limit for the preliminary determination of this investigation to January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 63523 (December 7, 2001).

On November 15, 2001, Emerson Electric Co. submitted a request to exclude certain merchandise from the scope of this investigation. On February 22, 2002, the petitioners submitted an objection to this request. *See* section below on ''Scope of the Investigation: Scope Comments'' for an analysis of these submissions and the Department's resulting determination.

We received a response to our countervailing duty questionnaire from the EC on December 20, 2001, and from the GOF and Usinor on December 21, 2001. On January 2, 2002, the petitioners submitted comments regarding these questionnaire responses.

We issued supplemental questionnaires to the GOF and Usinor on January 7, 2002, and received responses to these questionnaires on January 16, 2002.

On January 18, 2002, we further extended the time limit for the preliminary determination of this investigation to February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 67 FR 3482 (January 24, 2002).

On January 24, 2002, we requested that Usinor provide its sales values for its French production from 1988 through 2000. *See* Memorandum to File, dated January 24, 2002. Usinor submitted this information on January 29, 2002.

We issued another supplemental questionnaire to Usinor on February 12,