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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum: Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; POR: 01/01/2000–12/31/2000

Summary

We have analyzed the briefs and other submissions by the interested parties in the administrative review of the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea. The "Subsidies Valuation Methodology" and "Analysis of Programs" sections below describe the decisions made in this review. Also below is the "Analysis of Comments" section which contains the Department of Commerce's (Department) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttal comments from parties:

Comment 1: Rescission of Sammi from the Final Results
Comment 2: Sammi's name change to BNG
Comment 3: Cross-ownership between Inchon and Sammi
Comment 4: Debt-for-equity swap received by Kangwon
Comment 5: Tax Subsidies received by Inchon
Comment 6: Calculation Revision for Inchon's Long-term Loans
Comment 7: Sammi's debt forgiveness from KAMCO
Comment 8: Loan Benchmark Rates
Comment 9: GOK's control of POSCO
Comment 10: Program-wide change: POSCO's privatization
Comment 11: POSCO's Provision of Hot-Rolled Coil (HRC) for less than adequate

remuneration

Comment 12: POSCO's purchase of Sammi's Changwon Facility for More than Adequate Remuneration

Comment 13: Adjustments to Import Prices

I. METHODOLOGY AND BACKGROUND INFORMATION

A. Rescission of Sammi Steel Co., Ltd. (Sammi)

Petitioners and Respondents have both requested that the Department reverse its decision in the Preliminary Results to rescind this administrative review with respect to Sammi. See Preliminary Results, Intent to Partially Rescind and Postponement of Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 67 FR 57395 (September 10, 2002). The Department determines that it is appropriate to rescind this administrative review with respect to Sammi, and will therefore not examine any programs used exclusively by Sammi in this review. This means that the Department will make no changes to Sammi's cash deposit or liquidation rates. For further discussion, see Comment 1: Rescission of Sammi from the Final Results. We note that there is currently an on-going administrative review, covering the 2001 calendar year, in which Sammi is a participant. Thus we will examine Sammi/BNG's data in the context of that review.

B. Program-wide Change

Respondents argue that the Department should find that the program, "POSCO's provision of inputs for less than adequate remuneration," was terminated in September 2000, when POSCO's public company designation was removed. However, if the Department continues to find that this program confers a benefit through the POR then, it should find that, on March 2001, POSCO was fully privatized resulting in a program-wide change for this same program. The Department determines that it is not appropriate to make such a determination during this review and, therefore, will not adjust the cash deposit rate as requested by respondents. For further discussion, see Comment 10: Program-wide change: POSCO's privatization. We note that there is currently an on-going administrative review, where the Department will closely examine the facts of this program.

C. Name Changes

1. Inchon Iron and Steel Co. (Inchon) to INI[1]

In the Preliminary Results, we did not recognize that Inchon had changed its name effective

[1]While we are acknowledging the name change, we will continue to refer to INI as Inchon throughout this Decision Memo.

April 2001, to INI Steel. Nonetheless, in our Initiation of Antidumping and Countervailing Duty Reviews and Request for Revocation in Part, we noted that we would conduct an administrative review on INI Steel Company (formerly Inchon Iron and Steel Co., Ltd.). 66 FR 49924 at 49925. In addition, both petitioners and respondents have been referring to Inchon as INI during the course of this proceedings. For example, in petitioners' February 5, 2002 questionnaire comments, they address the issues of INI Steel Company (INI). Respondents have been filing their submissions under the name INI throughout this review. For the purposes of this review, the Department determines that as of April 2001, the entity that the Department was calling Inchon changed its name to INI. In this review, however, the Department is not performing any type of entity review, or successor-in-interest test, based on facts occurring outside of the period of review (POR). The Department notes that there is currently an on-going administrative review, covering the 2001 calendar year, in which it will examine the facts related to the entity known as Inchon.

2. Sammi to BNG[2]

The Department acknowledges that Sammi's name was changed to BNG in March 2002. Effective April 1, 2002, all of Sammi's sales have been made under this name. In this review, however, the Department is not performing any type of entity review, or successor-in-interest test, based on facts occurring outside of the period of review (POR). The Department notes that there is currently an on-going administrative review, covering the 2001 calendar year, in which it will examine the facts related to the entity known as Sammi. For further discussion, see Comment 2: Sammi's name change to BNG.

II. SUBSIDIES VALUATION METHODOLOGY

A. Allocation Period

In Sheet and Strip, the Department used the IRS Tables for the industry-specific average useful life (AUL) of assets in determining the allocation period for non-recurring subsidies, which in this case is 15 years for the steel industry. See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 (June 8, 1999) (Sheet and Strip). However, Inchon did not have any non-recurring subsides during the POR. Thus, allocation has not been necessary in this review.

B. Benchmarks for Long-term Loans and Discount Rates

During the POR, Inchon, had both won-denominated and foreign currency-denominated long-term loans outstanding which were received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea.

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[2]While we are acknowledging the name change, we will continue to refer to BNG as Sammi throughout this Decision Memo.

In the Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (March 31, 1999) (Plate in Coils) and Sheet and Strip, the Department, for the first time, examined the Government of Korea (GOK)'s direction of credit policies for the period 1992 through 1997. During the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997. In the Final Affirmative Countervailing Duty Determination: Certain Cut-to Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176, 73180 (December 29, 1999) (CTL Plate) the Department determined that the GOK still exercised substantial control over lending institutions in Korea during 1998. In the Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 67 FR 1964 (January 15, 2002) (1999 Sheet and Strip) the Department determined that the GOK still exercised substantial control over lending institutions in Korea during 1999 and also decided this for 2000 in Cold-Rolled. See Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 6201 (October 3, 2002) (Cold-Rolled) and the Accompanying Issues and Decision Memorandum (September 23, 2002) (Cold-Rolled Decision Memo). As no new factual information has been placed on the record of this review, we continue to find direction of credit countervailable through 2000, which is the POR of the current administrative review.

Based on our findings on this issue in prior investigations, we are using the following benchmarks to calculate the subsidies attributable to respondents' long-term loans obtained in the years 1992 through 2000:

(1) For countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average foreign-denominated interest rates on the companies' loans from foreign bank branches in Korea, foreign securities and direct foreign loans received after April 1999. For variable-rate loans, we used the weighted-average interest rate of benchmark variable-rate instruments issued in the same year as the loan being countervailed. If no such instruments were issued in the year of the loan being countervailed, we used the weighted-average interest rate of all benchmark variable-rate instruments outstanding in the POR. Finally, if no such benchmark instrument was available, then, as facts available, we would rely on the lending rates as reported by the IMF's International Financial Statistics Yearbook.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the company's public and private bonds. For fixed-rate loans, we continue to follow the decision in Plate in Coils where we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. See 64 FR at 15531. We note that, for variable-rate loans, we are unable to use the preferences listed above, at (1) as no benchmark variable-rate instruments were available.

C. Attribution

1. Cross-ownership of Inchon and Sammi

For these final results and consistent with our Preliminary Results, we continue to find that Inchon and Sammi were not cross-owned during the POR. We find that under section 351.351.525(b)(6)(vi) of the Department's regulations, Inchon is not able to control Sammi's assets as it could its own. Therefore, cross-ownership does not exist during this review period. See Comment 3: Cross-ownership between Inchon and Sammi.

2. Treatment of Subsidies Received by Trading Companies

Hyundai Corporation (Hyundai) is a trading company that sells subject merchandise, including Inchon's merchandise. In accordance with section 351.525(c) of the regulations, we have cumulated the benefits received by Hyundai and Inchon to calculate the countervailing duty rate applicable to Inchon.

D. Untimely Subsidy Allegation

We have determined petitioners' allegation that Kangwon received a countervailable subsidy, through a debt-to-equity swap agreed to by its government-owned creditors, is untimely pursuant to 19 CFR 351.301(d)(4)(i)(B). For further discussion, see Comment 4: Debt-for-equity swap received by Kangwon

III. ANALYSIS OF PROGRAMS

A. Programs Determined to Confer Subsidies

1. The GOK's Direction of Credit

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

In Plate in Coils, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. In CTL Plate, the Department continued to find that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. In the final determination of CTL Plate, the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998. See CTL Plate, 64 FR at 73180. Further, the Department determined, in that investigation, that these regulated loans conferred a benefit on the producers of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act. In 1999 Sheet and Strip, we determined that the GOK continued to control credit through 1999. In Cold-Rolled, we determined that the GOK continued to

control, directly and indirectly certain lending practices in Korea in 2000, except for foreign security and direct foreign loans received after April 1999. We provided the GOK with the opportunity to present new factual information concerning the government's credit policies in 2000, the POR, which we would consider along with our finding in the prior investigations. Respondents did not provide any new information on the GOK lending policies for domestic banks. Therefore, based upon the determinations in these cited cases, we continue to find lending from domestic banks and government-owned banks such as the KDB to be countervailable.

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

In Cold-Rolled, the Department determined that, with respect to access to direct foreign loans (i.e., loans from offshore banks) and the issuance of offshore foreign securities by Korean companies, the GOK has replaced the Foreign Exchange Management Act (FEMA), with the Foreign Exchange Transaction Act (FETA). Under FEMA, companies seeking direct foreign loans or foreign securities were required to get approval from the GOK. Under this scheme, we found that the GOK controlled access to these type of lending activities; however, in April 1999, when FETA came into effect, the positive approval system was replaced with a negative system. Under FETA, a company must notify the Ministry of Finance and Economy (MOFE) of any foreign exchange transaction but it does not require approval. We found that any foreign security and direct foreign loans received after April 1999 are not countervailable and, where available, will serve as an appropriate benchmark.

Inchon received long-term fixed and variable rate loans from GOK-owned/controlled institutions during the years 1993 through 2000 that were outstanding during the POR. In order to determine whether these GOK directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Methodology" section of this notice.

For variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate methodology under section 351.505(a)(5)(i) of the regulations.

In 1999 Sheet and Strip, we calculated a benefit for countervailable fixed-rate loans using the "grant equivalent" methodology as described in section 351.505(c)(3) of the CVD Regulations. Regarding the calculation of the benefit on countervailable, fixed-rate loans, in past cases the Department has employed the "grant equivalent" methodology, as described in section 351.505(c)(3)

of the CVD Regulations, when the government-provided loan and the comparison loan have dissimilar grace periods or maturities, or where the repayment schedules have different shapes (e.g., declining balance versus annuity style). See Sheet and Strip, CTL Plate, and Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (H-Beams) and accompanying Issues and Decision Memorandum (June 26, 2000) (H-Beams Decision Memo).

In the Preliminary Results and in Cold-Rolled, the Department revised its application of the fixed-rate loan methodology which used the grant equivalent methodology discussed in 351.505(c)(3) of the CVD Regulations. See Preliminary Results. We note that section 351.505(c)(2) of the CVD Regulations states that the Department "will normally calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, (i.e., the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan)." We also note that, in reference to paragraph (c)(2), the Preamble of the Department's CVD Regulations states that in situations where the benefit from a long-term, fixed rate loan stems solely from a concessionary interest rate, it is not necessary to engage in the grant equivalent methodology. See 63 FR at 65369. Thus, the CVD Regulations and the Preamble direct the Department to default to a simple comparison of interest payments made during the POR when calculating the benefit from a long-term, fixed rate loan.

The Preamble goes on to describe those situations in which the Department shall deviate from the "simple, default methodology," and instead employ the grant equivalent methodology. The Preamble states that, "[b]ecause a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate," the Department will calculate the benefit using the "grant equivalent" methodology. See 63 FR at 65369.

There is no information on the record that indicates that Inchon derived a benefit from any special repayment terms (i.e., abnormally long grace periods or maturities, etc.) on its long-term, fixed-rate loans. Therefore, in accordance with section 351.505(c)(2) of the CVD Regulations, we are calculating the benefit that Inchon received on its long-term, fixed-rate loans by comparing the amount of interest paid on the loan during the POR to the amount of interest that would have been paid during the POR on a comparable, commercial loan.

Therefore, to calculate a benefit we used the above-mentioned methodology, and summed the benefit amounts from all countervailable loans. We then divided the total benefit by Inchon's total f.o.b. sales value during the POR. On this basis, we determine the net countervailable subsidy to be 0.38 percent ad valorem for Inchon.

2. Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Losses

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning

an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses, or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents, this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Inchon still had an outstanding balance in this reserve during the POR.

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

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, as filed during the POR, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for Inchon by its respective weighted-average interest rate for short-term won-denominated commercial loans for the POR, as described in the "Subsidies Valuation Information" section, above. We then divided the benefit by the respective total f.o.b. export sales. On this basis, we preliminarily calculated a countervailable subsidy of less than 0.005 percent ad valorem for Inchon.

In our Preliminary Results, we stated that we would collect information on whether we were accurately calculating the benefit conferred by these tax reserves. Based upon our review, we have determined that we need to revise our benefit calculations. In the past, we did not calculate a benefit from the reserve balances in years in which a company was in tax loss and did not incur tax payments. Upon further review, we determine that the time in which the deferral of tax liability took place was in the year in which funds from the company's income were placed into the tax reserve. Therefore, regardless of whether the company is in a tax loss during the POR, the balance in the tax reserve is still providing the company with an interest-free loan. This methodology treats the tax reserves as a deferral of tax liability and, therefore, the benefit lies in the amount of the reserve deferred. A company receives a benefit when it defers a certain amount of taxable income; however, the benefit ceases once the company returns the reserve to taxable income and pays taxes on this amount. In addition, we also recognize that a company is benefitting when it returns funds from the reserve back into income during those years in which the company is at a tax loss. If the company is in a tax loss situation and does not pay any taxes on income in the year in which the funds are refunded to the income account, the funds that were placed into the tax reserve are never taxed. Under this scenario, the company, instead of being provided with a deferral of tax liability on these reserve funds, has also been provided with a complete exemption of tax liability on this income. When a company is in a tax loss position and returns

its reserves and does not have to pay taxes, this confers a benefit in the form of tax forgiveness. Furthermore, a financial contribution is provided as the GOK does not collect revenue that was otherwise due. We find that, during the POR, Inchon is not in a tax loss position, so the above methodology does not apply.

3. Article 17 of the TERCL: Reserve for Overseas Market Development

The Department found this program to constitute a countervailable export subsidy under section 771(5A)(B) of the Act, in CTL Plate, 64 FR at 73181. In the Preliminary Results, we found that Hyundai, Inchon's trading company received a benefit under Article 17 of the TERCL. No new information has been provided by respondents to warrant a change since the Preliminary Results. Using the methodology for calculating subsidies received by the trading company, as detailed in the "Subsidies Valuation Information" section above, we calculate a countervailable subsidy of less than 0.005 percent ad valorem for Inchon.

4. Technical Development Fund under Restriction of Special Taxation (RSTA) Article 9, Formerly TERCL Article 8

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

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

In CTL Plate, 64 FR 73181, we determined that this program is specific because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the two percent differential tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. Id. No new information, or evidence of changed circumstances, were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program to be countervailable. Record evidence indicated that Inchon did not contribute funds to this reserve during the POR, but it did carry a balance. Thus, to calculate the benefit on the balance, we compared the amount that it would have paid if it had only claimed the three percent tax reserve with the tax reserve amount as claimed under five percent. Next, we calculated the amount of the tax savings earned through the use of this tax reserve during the POR and divided that amount by Inchon's total f.o.b. sales during the POR. On this basis, we preliminarily determine a net

countervailable subsidy of less than 0.005 percent ad valorem for Inchon.

5. Asset Revaluation: TERCL Article 56(2)

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

To calculate the benefit from the program, we reviewed the effect that the difference of the revaluation of depreciable assets had on Inchon's tax liability each year. We multiplied the additional depreciation in the tax return filed during the POR, which resulted from the company's asset revaluation, by the tax rate applicable to that tax return. We then divided the benefit by Inchon's total f.o.b. sales. Accordingly, the net subsidy for this program is less than 0.005 percent ad valorem for Inchon.

6. Electricity Discounts under the Requested Loan Adjustment Program (RLA)

In the original investigation of Sheet and Strip, the Department found this program specific under section 771(5A)(D)(iii)(I) of the Act, as the discounts were distributed to a limited number of customers. (See 64 FR at 30646). No new information has been provided to warrant reconsideration of this determination. In addition, we found that a benefit is provided. Therefore, we continue to find this program countervailable. As the electricity discounts are recurring benefits, we have expensed the benefit from this program in the year of receipt. To calculate the benefit provided under this program, we summed the electricity discounts which Inchon received from KEPCO under the RLA program during the POR. We then divided this amount by Inchon's total f.o.b. sales values for 2000. On this basis, we determine a net countervailable subsidy of 0.01 percent ad valorem for Inchon.

7. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration

In the Preliminary Results, the Department determined that POSCO charged Inchon less than adequate remuneration for hot-rolled coils (HRC), an input used to produce subject merchandise. (See 66 FR 47012). While substantial arguments were raised, no new information has been provided to warrant a change in this determination. See Comment 11: POSCO's Provision of Hot-Rolled Coil (HRC) for less than adequate remuneration. The Department continues to find this program specific to Inchon, and that the government, through POSCO, provided a financial contribution. The Department calculated the benefit received by Inchon consistent with section 351.511(a)(2) of the CVD Regulations. As noted in the Preliminary Results, we continue to compare the price that Inchon paid to

POSCO for HRC to the prices that it paid for imports of the input. Id. The Department determines that there was an error in Inchon's preliminary calculations and has corrected this error for the final results. See Comment 13: Adjustment to Import Prices.

In addition, the Department determined in Cold-Rolled that it was appropriate and necessary to make an adjustment to the import price for duty drawback. "Under duty drawback a company receives a portion of the duty paid for importing when it reexports merchandise manufactured using that import." See Cold-Rolled Decision Memo at 19. We verified that Inchon received drawback of a portion of the duties it paid on imported HRC. Therefore, we adjusted the monthly weight-averaged import price to account for that portion of import duties which were drawn back. (See Comment 13: Adjustments to Import Prices).

In the Preliminary Results, we compared Inchon's monthly delivered weight-average price paid to POSCO for the HRC to a monthly delivered weight-average price paid for imported HRC. As noted in our Preliminary Results, Inchon lacked complete monthly benchmark data to make either a month to month or quarter to quarter comparison. See 67 FR 57403. Therefore, we only compared prices in the months in which Inchon had both domestic and import prices in the preliminary calculation. We now determine that it is more appropriate to make an annual weight-average price comparison for these final calculations. We continue to make comparisons by grade and edge, making due allowances for factors affecting comparability, including adjusting for duty drawback received on import duties paid for inputs reexported. See Comment 13: Adjustment to Import Prices. We calculated an annual price differential by grade and multiplied it by the quantity Inchon purchased from POSCO, subtracting out any quantities during months where the Department found no price differential. We summed the grade benefits and then divided this amount by the f.o.b. value of merchandise produced using HRC. On this basis we determine that Inchon received a countervailable subsidy of 3.28 percent ad valorem rate for this program.

8. Tax Credit for Investments in Productivity Improvement Facilities under RSTA Article 24

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

During the POR, Inchon used tax credits for investments in productivity-increasing facilities (RSTA Article 24, previously TERCL Article 25). If a company invested in foreign-produced facilities (i.e., facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (i.e., facilities produced in Korea), it received a ten percent tax credit. Under section 771(5A)(c) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the

meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, in CTL Plate, 63 FR at 73182, we determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK forewent the collection of tax revenue otherwise due under this program, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable.

According to the response of the GOK, the government has changed the manner in which these investment tax credits are determined. Pursuant to amendments made to TERCL, which occurred on April 10, 1998, the distinction between investments in domestic and imported goods was eliminated for the tax credits for investments in productivity increasing facilities (RSTA 24). According to the response of the GOK, for investments made after April 10, 1998, there is no longer a difference between domestic-made and foreign-made facilities. The current tax credit is five percent for all of these investments.

Because the distinction between investments in domestic and foreign-made goods was eliminated for investments made after April 10, 1998, we determined, in the Preliminary Results, that the tax credits received pursuant to these investment programs for investments made after April 10, 1998, are no longer countervailable. However, record evidence indicates that companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998, amendment to the tax law. Therefore, we continue to find the use of investment tax credits earned on domestic investments made before April 10, 1998, to be countervailable. In addition, no record evidence or comments from interested parties warrants a reconsideration of this finding.

Inchon claimed tax credits under RSTA 24 that originated when there was a distinction between purchasing domestic facilities and imported facilities. To calculate the benefit from this investment tax credit, we examined the amount of tax credits Inchon deducted from its taxes payable for the 1999 fiscal year income tax return, which was filed during the POR. We first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of ten percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of this tax credit during the POR and divided that amount by Inchon's total f.o.b. sales during the POR. On this basis, we determine a net countervailable subsidy of 0.12 percent ad valorem.

9. Inchon's Local Tax Exemption

At verification, the Department found that Inchon was exempt from paying registration and acquisition taxes for its Pohang factory located outside of a metropolitan area. Under Korean tax law, companies are exempt from the registration and acquisition taxes on industrial land outside of a metropolitan area.

The Department found in Cold-Rolled that these exemptions are regionally specific under

section 771(5A)(D)(iv) of the Act, as being limited to an enterprise or industry located within a designated geographical region. See Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 21, 2001). No new information was presented on the record of this case to warrant a reconsideration of this finding. A financial contribution is provided, as the GOK foregoes revenue that it would otherwise collect. A benefit is conferred in the form of a tax exemption.

To calculate the benefit, we took the amount of Inchon's tax exemption and divided that tax savings by the total f.o.b. sales. Using this methodology, we calculated a net countervailable subsidy rate of less than 0.005 percent ad valorem for Inchon.

B. Programs Determined to Be Not Used

1. Investment Tax Credits under RSTA Articles 10, 18, 26, 27 and 71 of TERCL
2. Loans from the National Agricultural Cooperation Federation
3. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act
4. Reserve for Investment under Article 43-5 of TERCL
5. Export Insurance Rates Provided by the Korean Export Insurance Corporation
6. Special Depreciation of Assets on Foreign Exchange Earnings
7. Excessive Duty Drawback
8. Short-Term Export Financing
9. Export Industry Facility Loans

No new information, evidence of changed circumstances, or comments from interested parties were received on these programs. Therefore, we continue to determine that these programs were not used by the respondents in this review.

IV. TOTAL AD VALOREM RATE

The total net subsidy rate for Inchon in this review is 3.79 percent ad valorem.

V. ANALYSIS OF COMMENTS

Comment 1: Rescission of Sammi from the Final Results

Both respondents and petitioners urge the Department not to rescind the administrative review of Sammi, even though Sammi did not export subject merchandise to the U.S. during the POR.

Respondents note that the final results of an administrative review serve two important functions as noted in 351.221(b)(6) and (7) of the Department's regulations: (1) the establishment of assessment rates at which entries covered by the review will be liquidated; and (2) the establishment of a revised cash deposit rate for future entries of subject merchandise. Respondents argue that despite the fact that

Sammi did not export subject merchandise to the U.S. during the POR, thus negating the need to calculate an assessment rate, the Department is not prevented from calculating a new cash deposit rate. Respondents argue that this new rate would more accurately reflect the verified facts on the record. Respondents further stress that section 351.213(d)(3) of the Department's regulations, leave to the Department's discretion the decision whether or not to rescind a review if there are no exports. Also, as none of the programs used by Sammi involve benefits that were contingent upon export to the U.S., and since the Department verified Sammi's sales and programs data, they claim the Department has sufficient information to calculate an accurate subsidy rate.

Respondents provide three main reasons why the Department should conduct the administrative review on Sammi. First, respondents point out that Sammi has fully cooperated during the course of the review by providing a complete questionnaire response, supplemental responses and it participated in verification. Respondents acknowledged that Inchon's cross-ownership and control of Sammi since March 2, 2001 would result in a combined Inchon/Sammi subsidy rate for entries made after that date. Second, the rate calculated for Sammi during the original investigation was based on adverse facts available, because Sammi did not participate. Respondents argue that the adverse facts available finding is no longer applicable and the Department should make its finding for this review based on verified data. Respondents also address Sammi's name change to BNG. (See Comment 2: Sammi's name change to BNG). Respondents urge the Department to establish a new cash deposit rate, based on Sammi's responses, and that the rate should be a combined Inchon (INI)/Sammi(BNG) rate. Third, respondents view that calculating a rate for Sammi would not be difficult as only three programs were used: (1) purchases of HRC from POSCO; (2) POSCO's purchase of the Changwon Facility; and (3) direction of credit. Respondents stress that no other programs were used, as reported in Sammi's Verification Report at 8-9. See December 20, 2002, Memorandum from Tipten Troidl, Carrie Farley, and Eric B. Greynolds to Melissa Skiner, Director, Office of CVD/AD Enforcement VI, RE: Verification Report for Sammi Steel Co., Ltd. (Sammi) in the Countervailing Duty Second Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea, (Sammi's Verification Report).

The Department's Position:

We disagree that we should reverse our decision in the Preliminary Results to rescind the administrative review on Sammi. 67 FR 57398. Respondents point out that Sammi fully participated in this review, including verification. However, because the Department had not conclusively decided whether Sammi and Inchon were cross-owned during the review period, it would have had to collect this information regardless of whether or not Sammi shipped subject merchandise to the United States during the POR. If the Department had found cross-ownership to exist, it would have needed this information for calculating the subsidy benefit to the cross-owned company.

Under 19 CFR 351.213(d)(3), the Department "may rescind an administrative review" if there were no entries of the subject merchandise during the POR. The Department's regulations thus permit the Secretary to rescind an administrative review where it finds that a company has not exported to the United States during the period of review. See Certain Iron Metal Castings from India: Final Results of

Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000). It is on this basis that we decided to rescind the review for Sammi in the preliminary results, and that we continue to make such a determination here. This also reflects our recent practice, where we had conducted a full investigation of a respondent only to find at verification that the company did not ship to the United States during the POR (e.g., German Lead Bar). In that case, we promptly terminated the administrative review. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review, 64 FR 44489 (August 16, 1999). Therefore, the Department, for these final results, will not calculate a countervailing duty rate for Sammi. We note that there is currently an on-going administrative review, where Sammi will have the opportunity to participate.

Comment 2: Sammi's name change to BNG

Respondents informed the Department that Sammi changed its name to BNG in March 2002. All sales have been made under the name BNG since April 1, 2002, as verified by the Department. See Sammi's Verification Report at 1. Also, there is currently no company-specific rate for BNG. While there has been no export of subject merchandise to the U.S. under the name of BNG, any future entries of subject merchandise would be subject to the "All Others Rate."

The Department's Position:

In support of Sammi's name change, respondents provided a copy of the Minutes of General Shareholders Meeting, where in the "Revision of Articles of the Association" it listed the prior name of the company to be Sammi Steel Co., Ltd. and the new name as BNG Steel Co., Ltd. after the revision. See Sammi's August 19, 2002, questionnaire response at Exhibit L-3. Also provided was the registration of name change that Sammi submitted to the Seoul Region Court on March 20, 2002. See Sammi's August 19, 2002, questionnaire response at Exhibit L-4. At verification, we reviewed commercial invoices, a bill of lading and sales contracts, all of which demonstrate that Sammi is shipping under the name BNG. See Sammi's Verification Report at 1. We also reviewed sales invoices to ensure that Sammi is now shipping its merchandise under the name BNG and not Inchon. All of these invoices show that Sammi, from April 1, 2002, was shipping under the name BNG. See Sammi's Verification Report at 9. Thus, based on record evidence the Department finds that the entity known as Sammi Steel Co., Ltd. on March 31, 2002, changed its name to BNG Steel Co., Ltd.(BNG) on April 1, 2002. Therefore, for the purposes of the cash deposit rate only, we determine that Sammi changed its name to BNG. We are making no other determination with respect to Sammi based on facts occurring outside of the POR.

Comment 3: Cross-Ownership between Inchon and Sammi

Petitioners disagree with the Department's Preliminary Results where it found that Sammi was not cross-owned by Inchon. See 67 FR 57398. Petitioners contend that the Department erred in

finding that Inchon and Sammi were not cross-owned by applying an "extraordinary circumstance" decision of Inchon not controlling Sammi during the POR, even though Inchon held a majority of voting ownership.

Petitioners claim that the Department inverted the hierarchy of section 351.525(b)(6)(vi) of the Department's regulation, by first relying on Inchon's majority ownership and second relying on evidence of control. Petitioners contend that the Department subordinated these factors and relied upon Sammi being under court receivership, to support the preliminary finding. Petitioners reference PET Film, where the Department concluded that ownership in its affiliates coupled with the ability to control the company's finances was sufficient to establish cross-ownership. See Final Affirmative Countervailing Duty Determination of Polyethylene Terephthalate Film, Sheet and Strip from India, 67 FR 34905 (May 16, 2002) (PET Film) and accompanying Decision Memorandum, (May 6, 2002) (PET Film Decision Memo). In addition to PET Film, petitioners cite to the Preliminary Results of Wire Rod from Canada, where the Department found that even where ownership was indirect, cross-ownership may exist. See Preliminary Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 5984, (February 8, 2002) (Wire Rod from Canada).

While petitioners note that there is currently no precedent on how to treat a company under court receivership, they reference South African Hot-Rolled, where the Department determined that the role of a third party owner is subordinate to the role of the company which actually exercises operational control. See Final Affirmative Countervailing Duty Determination of Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 50412 (October 3, 2001) (South African Hot-Rolled) and accompanying Issues and Decision Memorandum (September 21, 2001)(South African Hot-Rolled Decision Memo). Particularly, in South African Hot-Rolled, the Department found that Iscor was in a position to control the company while not having a majority ownership interest and concluded that cross-ownership existed between the two entities. Petitioners explain that the facts of the instant review are even more compelling than the evidence relied upon in South African Hot-Rolled, as Inchon actually held a majority interest. Petitioners protest that the court's role in overseeing the receivership does not override Inchon's level of ownership or exercise of control. Petitioners also direct the Department to find that the role of the court is similar to the subordinated role that IDC, as another investor in Saldanha[3], played in the cross-ownership analysis. Petitioners advance that the Department applied an "extraordinary circumstance" finding without any foundation in the regulations or case law.

Petitioners specifically disagree with the Department's finding that Inchon did not exercise operational control over Sammi. Petitioners submit that Inchon's personnel, in fact, oversaw Sammi's operations while Sammi was under receivership. For example, during the court receivership Mr. Oh

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[3] ". . . Because Iscor owns half of Saldanha steel, nearly a majority, the remaining facts need only demonstrate that the balance is tilted in Iscor's favor, when determining whether Iscor is in a position to use or direct Saldanha Steel's assets. It is not necessary to demonstrate that Iscor's use or direction of Saldanha Steel's assets is so strong as to relegate the IDC to an insignificantly influential position." See South African Hot-Rolled Decision Memo at 8.

was appointed as the receiver, Mr. Oh was previously an executive at Inchon and subsequently became Sammi's president. Petitioners pose that during his tenure, Mr. Oh had oversight authority and retained full management control over Sammi's operations. Additionally, petitioners point to the GOK's questionnaire response and Sammi's verification report, which notes that "on each document there was a section for the court receiver's stamp which signified approval." See Sammi's Verification Report at 4. Petitioners argue that Inchon and the court receiver were the same. Petitioners stress that in fact, Inchon did have control over most aspects of Sammi's business. As additional evidence, petitioners cite to the December 6, 2000 management change, where Inchon transferred its employees to serve as Sammi's executive team. Petitioners claim that this action put Inchon in charge of Sammi's production operations, sales, pricing, and accounting. Petitioners note that the Corporate Restructuring Act (CRA) and the Supreme Court Regulations set forth specific management activities that provide significant control over Sammi's operations and are designated to the Management Committee. Petitioner put forth the argument that the Management Committee most likely includes at least one Inchon representative. Petitioners contend that the above evidence should cause the Department to find that Inchon controlled Sammi's operations during the POR.

Petitioners further argue that the Department based its preliminary finding on legal control rather than on operational control, and that Sammi's status of being under court receivership does not preclude Inchon from exercising control over Sammi's operations. Rather, record evidence, they argue, demonstrates that Inchon was able to control Sammi's assets, just as it could control it's own.

Petitioners argue that the Department should reverse its preliminary finding and not only conduct and complete the administrative review of Sammi, but should also collapse the two companies' benefits and attribute the subsidized benefits over combined sales.

Petitioners and respondents agree that the Department should complete the administrative review on Sammi and find cross-ownership between Inchon and Sammi. However, petitioners refute respondents' reasons and ultimate consequences for finding cross-ownership. Specifically, petitioners disagree with respondents' argument that the facts available call for the purchase of the Changwon facility for more than adequate remuneration be replaced. For more discussion of this program, see Comment 12: POSCO's Purchase of Sammi's Changwon Facility for More than Adequate Remuneration.

Respondents agree with the Department's preliminary results, where it determined that, while Inchon gained ownership of Sammi's assets, it did not control these assets until the termination of Sammi's court receivership in March 2001. Respondents affirm that the Department's preliminary finding was supported by substantial evidence on the record and was in accordance with law, and that none of petitioners arguments undermine this finding. To support their position, respondents detail the events that occurred between Sammi's bankruptcy to Inchon's purchase of 68 percent of Sammi's shares as evidence that Inchon could not control Sammi's assets as if it were its own. Specifically, respondents note that On December 4, 1997, Sammi was placed under court receivership and Dong-yoon Kim was appointed as the court receiver. See Sammi's Verification Report Exhibit S-9. Respondents point out that while the court receiver held the right to operate the company, manage and dispose of property, it was subject to the court's authority to approve certain major decision under Article 54 of the CRA. Also, any actions that required the courts approval and were performed

without the approval were deemed invalid. See Sammi's 12/20/01 Questionnaire Response: Exhibit 6. Respondents stated "all cash disbursements and management decisions concerning Sammi were required to receive court approval," as evidence that only the court and the court receiver and not Inchon could use or direct Sammi's assets in essentially the same way it could use its own assets, as detailed in section 351.525(b)(6)(vi). In addition, they claim the Management Committee was also responsible for certain business activities, as noted in Sammi's Verification Report Exhibit S-13. Respondents refute petitioners' argument that Inchon exercised operation control over Sammi through the appointment of Mr. Oh, as the court receiver. Respondents note that Mr. Oh was elected at the very end of the court receiver, and that Inchon did not have the ability to control Sammi. As background information, respondents explain that Mr. Kim, had been Sammi's court receiver for over three years, during which time all of the major decision regarding Sammi's reorganization had been made, including the approval of the original and modified reorganized plans. Therefore, respondents claim that Mr. Oh, while having been a former employee of Inchon was not responsible for any major decision, except for the termination of the court receivership. Respondents point out that in Exhibit S-9 of Sammi's Verification Report, a chronology of the significant events occurring during Sammi's court receivership is listed. Furthermore, respondents disagree with petitioners argument that the court appointment of a former Inchon official as the court receiver proves that Inchon itself controlled Sammi, nor is there evidence that Mr. Oh was able to circumvent the court's authority. Hence, respondents claim that petitioners argument is unsupported speculation and not evidence. Respondents concede that on December 6, 2000, it became the major shareholder of Sammi, however, it was not in a position to exercise control over Sammi's assets under the termination of the court receivership.

Respondents submit that if the Department were to follow petitioners direction and find that Sammi received countervailable benefits during the POR, then the Department should only collapse the two companies starting in March 2001, when Sammi's court receivership terminated. Thus, the Department would have to make an adjustment to the cash deposit rate for the final results. Respondents further state that if the Department were to reverse it's preliminary finding of no cross-ownership during the POR, then the Department should pro-rate any of Sammi's benefits attributed to the combined Inchon/Sammi entity to take into account that the Inchon/Sammi entity only existed for 26 days during the POR.

Respondents disagree with petitioners' argument that in the Preliminary Results, the Department erred by misapplying section 351.525(b)(6)(vi) and arguing that neither the Department's regulation or case precedent "establish that a company's legal status trumps the acquiring company's ability to exercise control." Respondents refute this argument by first noting that section 351.525(b)(6)(vi) states that "Such control is 'normally' established where there is a majority voting ownership interest between the two companies." Second, respondents assert that the mere existence of majority ownership did not confer control, and since the issue before the Department is whether Inchon could control Sammi and not whether Inchon held majority ownership, the Department should continue to find that Inchon and Sammi, during the POR, were not cross-owned. Third, section 351.525(b)(6)(vi) set forth general rules for the Department to follow, allowing the Department to use its discretion on a case-by-case basis.

Respondents state that the Department's finding in its Preliminary Results is fully supported by

the record and is in accordance with law.

In addition, respondents claim that neither of the cases cited by petitioners constrain the Department's ability to exercise discretion on a case-by-case basis. (PET Film and Wire Rod from Canada).

The Department's Position:

In the Preliminary Results, we determined that Sammi was not cross-owned with Inchon during the POR, as defined by section 351.525(b)(6)(vi). See 67 FR 57397. During the POR and through 2001, Sammi was under court receivership and Inchon was not able to control Sammi's assets as it could its own. The Department preliminarily found that while Inchon held majority voting ownership, it did not control Sammi's assets. We noted that this was an extraordinary circumstance, and stated that we would seek additional information.

When asked about the changeover in Sammi's operations since Inchon purchased majority shares, Inchon officials noted at verification, that even after Inchon gained controlling shares of Sammi, "the court retained legal control over the operation of Sammi. As a result, neither Inchon nor Sammi had the ability to deviate from the reorganization plan without consulting the court and gaining approval from the Creditors' Committee." See page 3 of Sammi's verification report.

Petitioners allege that the Management Committee consists of at least one Inchon representative. While petitioners note that there is no conclusive evidence, it is their assumption that Inchon had representation on the Management Committee and therefore, was able to control Sammi during the POR. First, by reviewing the chronology, provided in Sammi's Verification Report Exhibit S-9, a Management Committee member could have been selected as early as June 20, 1998. Inchon sent a Letter of Intent (LOI) to purchase Sammi on September 14, 1998, and on October 12, 1998, at the Third Creditors' meeting, Inchon's purchase of Sammi was rejected. Inchon submitted a non-bidding offer to purchase Sammi on October 15, 1999. Second, the responsibilities of the Management Committee are outlined in Article 24 of the Supreme Court Regulations (SCR). It states that "{d}elegation of Permission Affairs on the corporate reorganization proceeding. The permission affairs which may be delegated to management member in accordance with Article 54-2 of the CRA are as follows: 1. Disposal of company property; 2. Acquisition of property by transfer; 3. Receiving loans for operation of the company, and others responsibilities." See Sammi's Verification Report. Based on the information obtained during verification, the Department finds petitioners' argument regarding Inchon's control of Sammi to be unpersuasive since the Management Committee members have been in place since before Inchon's first LOI and have had the responsibility of assisting the court and the court receiver running Sammi's operations since the inception of the bankruptcy proceedings.

Petitioners contend that the fact that Mr. Oh, a former Inchon employee, was picked as Sammi's new court receiver beginning December 5, 2000, signals that Inchon had the ability to control Sammi's assets. We disagree with petitioners on this point. There is no evidence that Mr. Oh's responsibilities to Sammi or to the court were any different from Mr. Kim's. We do not find that Mr. Oh was able to control Sammi in any way outside of the guidelines given by the court, nor could he control Sammi on behalf of Inchon until the termination of the court receivership. In addition, in

Sammi's Verification Exhibit S-9, it was noted that Mr. Oh, who was to become the new president of Sammi, was appointed as the new court receiver on December 4, 2000, and that KAMCO and the Management Committee sent their positive opinion letters to the court about the change of Sammi's court receiver. KAMCO, a representative of the Creditors' Committee and the Management Committee are responsible for affirming any changes to the reorganization plan under the court receivership proceeding. Therefore, Mr. Oh's actions were explicitly approved through court determined channels and he was serving subject to the court's control.

In their case briefs, petitioners disagree with the Department's Preliminary Results and claim that the Department inverted the hierarchy of section 351.525(b)(6)(vi). They also cite to PET Film and Wire Rod from Canada as supporting precedents where the Department found cross-ownership for companies that did not hold majority ownership. They direct the Department to conclude in the final results that since Inchon holds majority voting ownership that it fulfills the cross-ownership regulation. While petitioners are correct in pointing out that, like Garware, a respondent company in PET Film, Inchon holds a majority ownership, they are incorrect in comparing the elements of the two cases. First, unlike Garware, Inchon was not in a position to control Sammi's finances. In PET Film, it was determined that "Garware owns 80 percent of Garware Chemicals, guarantees almost all of Garware Chemicals' loans, and is in a position to control Garware Chemcials' finances. . ." See PET Film Decision Memo at 4. In addition, page 36 of the PET Film Decision Memo, states that, "given Garware's 80 percent ownership in Garware Chemicals, and Garware's substantial control over Garware Chemicals, cross-ownership as defined by 19 CFR §351.525(b)(6)(vi) clearly exists between Garware and Garware Chemicals." As discussed above, the facts of the case do not clearly demonstrate that Inchon was able to control Sammi's assets during the POR; rather the court had control. Therefore, it is not appropriate for the Department to make the same determination as it did in PET Film.

In Wire Rod from Canada, the Department preliminarily determined that Fers et Metaux and Stelco could still be cross-owned even when ownership is indirect. See 67 FR 5988. We have already determined that Inchon held majority ownership, thus making it a direct owner; however, the issue at hand is whether Inchon could control Sammi's assets. As the issue of control has not been addressed in Wire Rod from Canada, the Department finds that Wire Rod from Canada is not an appropriate guideline in the instant review.

In addition, petitioners suggest that the Department use the finding in South African Hot-Rolled, where, they claim, the role of third party owners was subordinated to the role of the company which actually exercised operational control. In South African Hot-Rolled, the Department determined that the facts must "in the aggregate demonstrate that Iscor can use or direct the assets of Saldanha Steel; it is not necessary for each fact to demonstrate the requisite control independently." See South African Decision Memo at Comment 8. It also states, "Because Iscor owns half of Saldanha Steel, nearly a majority, the remaining facts only need demonstrate that the balance is tilted in Iscor's favor, when determining whether Iscor is in a position to use or direct Saldanha Steel's assets." Id. The evidence on this record, in the aggregate, demonstrates that Inchon could not use nor direct Sammi's assets as if they were Inchon's own, even with a majority ownership. Therefore, in keeping with South African Hot-Rolled, we determine that, even with majority ownership, Inchon and Sammi are not cross-owned.

Petitioners compared IDC, another shareholder of Saldanha Steel, in South African Hot-Rolled to the court and court receiver, in the current review. Specifically, the petitioners agree that they do not need to show that Inchon's use or direction Sammi's assets were so strong as to relegate the court and court receiver to an insignificantly influential position. In South African Hot-Rolled, however, the Department found that Iscor could control Saldanha Steel's assets. In this administrative review the court and the court receiver controlled Sammi's assets throughout the POR. Petitioners' comparison of IDC to the role of the courts misinterprets the Department's finding South African Hot-Rolled and the facts on the record of the instant review. Thus, for all of the reasons above, we continue to find that Inchon and Sammi are not cross-owned.

Comment 4: Debt-for-equity swap received by Kangwon

Petitioners allege that Kangwon received a countervailable benefit from the debt-to-equity swap carried out prior to Kangwon's merger with Inchon in March 2000. Petitioners note that this issue was presented to the Department in H-Beams, but that the Department refused to examine it as any benefits received by Kangwon would not have been attributable to the POI of that case. As the POR in this case covers the calendar year 2000, petitioners ask that the Department to examine the debt-for equity swap and find that the benefits of that swap are attributable to Inchon.

First, petitioners assert that the GOK holds a substantial interest in many of Kangwon's creditor banks. They specifically refer to the KDB, the Korea Exchange Bank (KEB), Chohung Bank (CHB), Hanvit Bank, and Hana Bank. Noting that the Department has already found that the GOK directed and controlled the actions of Korean banks at the time of the transaction in question, citing the Cold-Rolled. They state that, therefore, the actions of Kangwon's creditor banks should be treated as actions of the GOK, thus providing a financial contribution.

Second, petitioners allege that Kangwon was unequityworthy in 2000. To support this statement, they note that the Department found Kangwon uncreditworthy in 1998, and that information found at verification also demonstrates this finding. In addition, petitioners mention the fact that objective analyses of Kangwon's financial situation also found the company unequityworthy at the time of the transaction, and they remind the Department that objective analyses are one of the factors examined by the Department in its equityworthiness analysis. Petitioners, therefore, request that the Department treat the full amount of the debt swapped for equity be treated as a non-recurring grant received by Kangwon in 2000.

Finally, petitioners argue that, as established in the changed circumstances review, Kangwon's operations were fully integrated into Inchon upon the merger, and that any subsidy should be fully attributed to the merged entity. See Final Results of Changed Circumstances Review: Structural Steel Beams From Korea, 66 FR 34615 (June 29, 2001).

Respondents argue that petitioners' allegation of this countervailable subsidy is untimely, citing the Department's regulations at 19 CFR 351.301(d)(4)(i)(B) which allow for countervailable subsidy allegations up to 20 days after all responses to the initial questionnaire are filed with the Department in administrative reviews. Respondents note that, in this case, the initial questionnaire responses were filed with the Department on December 20, 2001, and that petitioners first raised this allegation in their

January 10, 2003, case brief. In addition, respondents state that the Department did not specifically examine this issue, but placed Kangwon's verification report on the record that contained information pertaining to this issue. As a result, respondents argue that any investigation of this subsidy must be deferred until the next administrative review.

However, respondents also argue that, were the Department to examine this issue, they would find that the debt-for-equity swap was not countervailable. Primarily, respondents state that the debt-for-equity swap was negotiated based on the condition that Kangwon merged with Inchon. Given this basis, respondents argue, there is no need to evaluate Kangwon's equityworthiness as it is Inchon's equityworthiness that is the issue underlying this financial transaction, and Inchon's equityworthiness is indisputable.

Secondly, respondents refer to the two-step process through which the debt-for-equity swap was negotiated. They state that this process was based entirely on market values as determined by transactions in the Korean stock market and that all calculation methodologies were performed pursuant to the Stock Exchange's regulations. Thus, the conversion from Kangwon debt into Kangwon equity and Kangwon equity into Inchon equity was carried out in accordance with prevailing market determined values for the relevant company's shares. In addition, respondents note that these conversion ratios were determined at the same time, therefore, any creditor which agreed to the debt-to-equity swap was fully aware of the value of this swap in terms of Inchon's shares. As a result, respondents contend that there was no coutervailable benefit conferred on Kangwon that could have passed through to Inchon as a result of its merger with Kangwon.

The Department's Position:

The Department agrees with respondents that this allegation is untimely pursuant to 19 CFR 351.301(d)(4)(i)(B). The allegation that Kangwon received a benefit from its creditors through their participation in a debt for equity swap was first raised by petitioners in their January 10, 2003, case brief. While the Department has, where possible, examined countervailable subsidy allegations, even those made after the regulatory deadline, there was insufficient time to fully investigate this allegation. In order to properly investigate this allegation, specifically Kangwon's equityworthiness in 1999, which is the basis of petitioners' argument, the Department would need substantially more time to collect the necessary information. According to 19 CFR 301.311(c), "if the Secretary concludes that insufficient time remains before the scheduled date for . . . the final results of review to examine the practice the Secretary will: (2) . . . defer consideration of the newly discovered subsidy program until a subsequent administrative review." In addition, in Bethelem Steel Corporation, et al., v. United States of America, Ct. No. 00-03-00116, Slip Op. 01-95 (CIT August 8, 2001) at 3, 4, the Court found that "Commerce's explanation for refusing to investigate the waiver or reduction of import duties on steel-making equipment to be supported by substantial evidence," and, thus, the Court was satisfied with the Department's explanation that it did not receive notice of this program until, "almost three months after the preliminary determination and immediately prior to verification." Id. at 4. The Department notes that petitioners' allegation in the instant case was made after verification and two months before the final results. For these reasons the Department will defer examination of the debt for

equity swap until the following review.

Comment 5: Tax Subsidies Received by Inchon

Petitioners state that the Department should continue to countervail tax subsidies received by Inchon in this review. Petitioners argue that the Department should adopt the benefit calculation methodology from Cold-Rolled, where the Department found a twofold benefit from Korean tax reserve programs. In addition, petitioners cite to tax programs found in Exhibit 3 of Inchon's Verification Report and request that the Department include any additional programs Inchon used that were found countervailable in Cold-Rolled. Respondents did not comment on this issue.

The Department's Position:

We agree with petitioners with respect to additional tax programs found at verification, and, as a result of our discovery, have included in the final calculations the additional tax exemptions. We are also continuing to include all tax programs included in the Preliminary Results. In response to petitioners' second comment pertaining to the twofold benefit calculation methodology used in Cold-Rolled, we do not find it necessary to recalculate Inchon's benefit based on this methodology. The twofold benefit methodology adopted in Cold-Rolled examines the two different ways in which Korean companies can benefit from Korean tax reserve programs. See Cold-Rolled Decision Memo at 14-15. Inchon, unlike HYSCO, the company which received this dual benefit in Cold-Rolled, was not in a tax loss position; therefore, the twofold benefit methodology is not applicable to Inchon during the POR. Neither Inchon nor Hyundai was in a tax loss situation where the reclamation of tax reserves would have resulted in the forgiveness of tax; therefore, it is not necessary to address this concern.

Comment 6: Calculation Revision for Inchon's Long-Term Loans

Respondents state that, in cases where data was omitted, the Department assumed information which overstated the benefit received by Inchon. They note that the missing information was provided to the Department at verification. See December 20, 2002, Memorandum from Tipten Troidl, Carrie Farley, and Eric B. Greynolds to Melissa Skiner, Director, Office of CVD/AD Enforcement VI, RE: Verification Report for Inchon Iron and Steel Co., Ltd. (Inchon) in the Countervailing Duty Second Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea, (Inchon's Verification Report) at 5, and Exhibit I-6 at 1-2. They request that the Department revise its calculations to reflect the corrected data. Petitioners did not comment on this issue

The Department's Position:

The Department agrees with respondents, and we have included Inchon's revised data in its final calculations.

Comment 7: Sammi's debt forgiveness from KAMCO

Petitioners' allege that Sammi received a countervailable benefit from KAMCO's forgiveness of portions of Sammi's debt, and that the Department found evidence showing this at verification.

In arguing that these financial transactions constitute a countervailable subsidy, petitioners first assert that KAMCO is a government-owned agency. They state that the GOK owns 42.8 percent of KAMCO's shares directly, and that government owned banks hold additional KAMCO shares. Due to this ownership interest, petitioners argue that the actions of KAMCO should be considered tantamount to the actions of the GOK. In addition, petitioners note that KAMCO owned 90 percent of Sammi's secured and 25 percent of Sammi's unsecured debt, acquired from Korea First Bank (KFB). Petitioners assert that this debt ownership, combined with the debt ownership of other GOK-controlled banks allowed the GOK to approve all activities related to Sammi's reorganization.

Furthermore, petitioners explain that KAMCO accepted an offer by Inchon to purchase Sammi, noting that KAMCO had rejected Inchon's previous offer. The contract for the Inchon purchase of Sammi includes several stipulations concerning Sammi's liabilities. Petitioners argue that KAMCO, in satisfying these conditions, substantially reduced Sammi's outstanding debt and accumulated deficits, and that this debt forgiveness constitutes a benefit under the statute.

Petitioners argue that this debt forgiveness is specific and that the fact that Sammi's debt was forgiven as a part of the company's reorganization does not shield Sammi from countervailing duty liability. Petitioners state that the Department has countervailed debt forgiveness in the context of bankruptcy in the past, citing Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55808 (Aug. 30, 2002) (German Wire Rod) and accompanying Decision Memorandum (August 23, 2002); Grain-Oriented Electrical Steel From Italy: Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (Jan. 12, 2001) (Grain-Oriented Steel from Italy) and accompanying Decision Memorandum (January 3, 2002) (Grain-Oriented Decision Memo); and Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30624, 30628 (June 8, 1999) (Stainless Steel from Italy). They further argue that this reorganization and debt forgiveness was unusual because KAMCO purchased Sammi's debts for the express purpose of ensuring that Sammi was sold to Inchon, noting that this agreement with Inchon was not in place until after KAMCO became the lead creditor. In addition, they argue that the fact that KAMCO was required to forgive the debt in order to participate in a deal speaks to the specific nature of this contribution. Finally, they argue, referring to Sammi's Verification Exhibit 7, that the Korean Fair Trade Commission (KFTC) provided preferential treatment to Sammi by only choosing to limit the business methods of post-sale Inchon and Sammi, as opposed to prohibiting the sale outright.

In addition to debt forgiveness, petitioners also allege that Sammi reduced its capital stock through a reverse stock split, resulting in an offset to its accumulated deficit of 239.6 billion won. They argue that the shareholders that participated in Sammi's reverse stock splits and significantly reduced Sammi's accumulated deficits are effectively Sammi's creditors because these creditors approved Sammi's reorganization plan that required these financial modifications

Finally, in order to measure the benefit provided by KAMCO's debt forgiveness, petitioners

argue that both accumulated losses and exempted liabilities should be included in the calculation. They cite Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37212, 37221-22 (July 9, 1993) and Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474, 40478 (July 29, 1998) as examples of the Department's past practice with respect to the treatment of these contributions. Specifically, petitioners refer to countervailing these types of contributions as non-recurring grants.

Respondents disagree with petitioners assertion that Sammi received a financial contribution from the government. First, respondents note that KAMCO acquired Sammi's debt from the KFB at a substantial discount, and that this was in keeping with KAMCO's typical practice, as confirmed by the department in the GOK Verification Report at 2. In addition, respondents state that after buying non-performing assets (NPAs) at a discount, KAMCO works to resell them for a profit. Furthermore, respondents cite the GOK Verification Report at 3 where the Department stated that KAMCO realized a profit with respect to the sale of Sammi. Given this profit, respondents argue that there can be no financial contribution from KAMCO to Sammi.

Respondents also disagree with petitioners claim that KAMCO orchestrated Sammi's sale to Inchon by forgiving a substantial portion of Sammi's debt burden. Respondents state that while KAMCO did play an important role in this transaction, KFB was the creditor which decided to sell Sammi to a third party before KAMCO was lead creditor, again citing GOK Verification Report at 5. See December 20, 2002, Memorandum from Tipten Troidl, Carrie Farley, and Eric B. Greynolds to Melissa Skiner, Director, Office of CVD/AD Enforcement VI, RE: Verification Report for the Government of Korea (GOK) in the Countervailing Duty Second Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea, (GOK's Verification Report). In addition, respondents note that KFB sold its non-performing loans (NPLs) to KAMCO in order to comply with Newbridge Capital's purchase agreement of KFB, which required KFB to reduce its NPL holdings. Respondents argue that KAMCO's motivation would therefore be to facilitate the sale of KFB to Newbridge Capital, not to facilitate the sale of Sammi to Inchon.

Finally, respondents argue that any alleged benefit is not specific. First, they explain that the Department's practice, as evidenced by the decision memorandum accompanying German Wire Rod at 24-25, is to find debt forgiveness in the context of bankruptcy non-countervailable if bankruptcy protection if available to all companies, and the company in question was not treated differently than others. They further bolster their case by citing the Court of International Trade, in Al Tech Specialty Steel Corp. V. United States, 661 F. Supp. At 1212, which said that "Bankruptcy laws, like tax laws, do not confer countervailable benefits so long as, in their actual operation, the do not 'result in special bestowals upon specific enterprises.'" Therefore, respondents reason, the Department should consider (1) whether bankruptcy is generally available to all companies in Korea; and (2) whether Sammi received any preferential treatment.

Respondents state that petitioners do not seem to take issue with the general availability of the bankruptcy system, but they suggest that Sammi was given preferential treatment by KAMCO. First, respondents oppose petitioners' suggestion that the fact that KAMCO's sale of its shares in Sammi was the first time KAMCO was involved in the direct sale of assets to another company makes Sammi's treatment unique. Respondents point out that KAMCO has disposed of 22 companies'

assets in the same manner as Sammi's, referring to the GOK Verification Report Exhibit 2 at 25. In response to petitioners' assertion that the KFTC gave Sammi preferential treatment, respondents state that the mere fact that the KFTC chose to approve the purchase and only limit business methods, does not indicate that any preferential treatment was given, and petitioners did not provide any additional information to support this assertion. In addition, respondents note that the KFTC was acting in its capacity as the GOK's enforcer of its anti-monopoly laws and had nothing to do with the terms of Sammi's court-approved reorganization plan.

Finally, respondents note that petitioners' citation to German Wire Rod does not relate to debt forgiveness in the context of bankruptcy. Saarstahl, the company which received the debt forgiveness in German Wire Rod, did not file for bankruptcy until 4 years after receiving debt forgiveness, thus lending no support to petitioners' case. Respondents again cite to the German Wire Rod at 13-15 and 24-25 to show that when the Department found that Saarstahl was not treated differently than other bankrupt companies, debt forgiveness was not determined to be countervailable. In addition, respondents note that Sammi meets the five criteria used in German Wire Rod that were used to determine whether Saarstahl received any unique treatment. First, Sammi followed established procedures for filing for bankruptcy by applying for court receivership under Article 30(1) of the CRA. Second, the court appointed Sammi's court receiver with the creditors approval. Third, the court receiver oversaw the operations of the company while in court reorganization. Fourth, the creditors committee approved the reorganization plans; and fifth, the decision to sell Sammi to Inchon was approved by the creditors committee. Therefore, respondents contend, the Department should find that Sammi did not receive specific benefits in connection with its court reorganization.

The Department's Position:

As explained above, the Department has determined to rescind this administrative review with respect to Sammi. For further discussion, see Comment 1: Rescission of Sammi for the Final Results. Because the comments summarized above specifically address an issue which pertains solely to Sammi, the Department is not examining this issue in the instant review.

Comment 8: Loan Benchmark Rates

Petitioners state that the Department has found repeatedly that the GOK directed long-term credit to the steel industry which resulted in a financial contribution. Petitioners argue that the Department should continue to find this program countervailable, but modify its calculation methodology.

Specifically, petitioners argue that the Department deviated from its normal practice in two instances. First, they state that the Department applied the 2000 long-term won-denominated benchmark for all variable-rate loans, even though these loans were not necessarily received in the year 2000, instead of using a won-denominated benchmark extended in same year as the loan being countervailed. Secondly, they state that in calculating the company-specific U.S. dollar benchmark the Department created a composite rate with loans extended over several years, but that in previous

investigations, the Department has used the company-specific benchmark for years in which it was available and lending rates as reported by the IMF's International Financial Statistics Yearbook when it was not. In both instances petitioners argue that the Department should modify the benchmarks calculated in the Preliminary Results and return to its previous standards.

Respondents disagree with petitioners' argument on both counts. First, in response to the assertion that the Department deviated from past practice in using the 2000 long-term won-denominated benchmark for all variable-rate loans, respondents state that petitioners are incorrect. They further state that the Department has, in all recent countervailing duty investigations and reviews involving Korea, used company-specific benchmark rates based on corporate bonds issued during the POR, where available. Respondents state that petitioners acknowledged that this same methodology was applied in the Preliminary Results, and the Department should not alter its benchmark. In response to the comment regarding the company-specific U.S. dollar benchmark, respondents state that the Department partially rejected petitioners' argument in the first administrative review of this case. Respondents note that the Department used a weight-averaged interest rate calculated from all loans outstanding in the POR
as a benchmark for loans without company-specific benchmark information for all the years in which it received loans and had outstanding balances. They specifically note the Department's stated preference to use company-specific information over a commercial benchmark.

The Department's Position:

We agree with petitioners that, where possible, the Department should use as a benchmark for variable-rate loans the weighted-average of all variable-rate loans outstanding in the POR originating in the same year as the loan to be countervailed. However, when this information is unavailable, the Department must find a benchmark which comes closest to approximating the ideal benchmark. Respondents are correct in that the Department does prefer to use company-specific information, where available. Although loans issued in years different from those being countervailed might be negotiated on slightly different terms, they are more likely to resemble those of the loans being countervailed than a non-company specific benchmark. In the Preliminary Results, we used a weight-average of all outstanding variable-rate loans, regardless of year of issue. In the final determination, for years where we have company-specific information, we calculated a benchmark rate based on the weighted-average rates of loans received in that year. For years where no company specific information is available, we will continue to use the weighted-average of all variable rate loans received in the POR.

Comment 9: GOK's Control of POSCO

Respondents disagree with the Department's preliminary finding that the GOK, acting through its ownership and control of POSCO, directed POSCO to sell HRC to domestic steel companies for

less than adequate remuneration. See 67 FR 57401-03. Respondents assert that the Preliminary Results were based on previous determinations: Sheet and Strip covering the period up to 1997, CTL Plate (1998), and 1999 Sheet and Strip (1999). Respondents purport that the evidence relied upon for the previous determinations has changed and the Department's finding is no longer applicable for the current review. Specifically, in the previous determinations, the Department concluded that the GOK was controlling POSCO based upon the following five points: (1) the GOK as the largest shareholder, (2) the GOK enacted a law that restricted individual shareholders from exercising voting rights in excess of three percent of the company's common share and the inclusion of a similar restriction in POSCO's Articles of Incorporation, (3) POSCO designation as a "public company," (4) POSCO's chairman and half of its outside directors were appointed by the GOK, and (5) POSCO's chairman and several of appointed directors were former senior government officials. Respondents counter that each of the above five points have either been terminated or have been replaced.

Respondents note that in Sheet and Strip covering up to 1997, the GOK owned 33.7 percent of POSCO's shares. By the end of 2000, the POR, the GOK no longer directly owned any of POSCO's shares. Furthermore, the IBK, a government-owned bank, held 6.3 percent of POSCO's share at the end of 1998 and only 4.12 percent at the end of 2000. Respondents also point out that currently the largest block of POSCO's shares consist of American Depository Receipts (ADRs). At the end of 2001, respondents note that POSTECH was the largest single shareholder of POSCO with 3.14 percent of POSCO's shares compared to the IBK's 3.02 percent. In addition, by the end of the POR, 49 percent of POSCO was foreign-owned, increasing to 62 percent at the end of 2001. They also note that investment banks now hold significant shares of POSCO. Respondents therefore argue that point (1) of the Department's evidence has not only changed, as POSCO has been privatized with only a minor GOK ownership, but that facts relied upon no longer exist to support the Department's position that the GOK either owns POSCO or is the largest shareholder.

Petitioners note that respondents did not address the elements that the Department relied upon in making its determination in Cold-Rolled. Petitioners counter respondents' argument that the GOK can no longer control POSCO because the GOK's ownership interest in POSCO was reduced. For instance, the IBK remained the largest shareholder through the POR, and was only replaced as POSCO's large shareholder in 2001. Petitioners direct the Department to follow the Cold-Rolled finding of continued GOK control and direction of POSCO.

Respondents demonstrate that POSCO's designation as a "public company" was removed on September 26, 2000, occurring during the POR. With the removal of the "public company" designation, point (3), the restriction limiting the amount an individual shareholder's voting right and ownership not to exceed three percent, was simultaneously removed, thereby also removing the restriction on independent shareholders to exercise their voting right. Respondents also note that while the clause included in POSCO's Articles of Incorporation restricting individual ownership was not officially removed until March 16, 2001, at the General Shareholders Meeting, the legal elimination of the restriction by the Ministry of Finance and Economy (MOFE) meant that the restriction no longer had any effect on POSCO. Therefore, respondents purport that the Department can no longer rely on point (2) of restricted individual shareholder ownership or on point (3) of the public company designation as supporting evidence of GOK ownership or control.

Petitioners refute respondents' claim that POSCO's public company designation and the limitation on private shareholder ownership were removed. Petitioners argue that these changes did not incur during the POR. Although POSCO's designation as a public company was removed in September 2000, petitioners note that POSCO's Articles of Incorporation were not amended until March 2001. This factor supports the Department's finding in Cold-Rolled and in the Preliminary Results of continued GOK control throughout the POR.

Next, respondents take issue with the Department's finding that, in Cold-Rolled, POSCO was GOK controlled by means of the GOK's appointments of POSCO's chairman and half of its outside directors and by the preponderance of former GOK officials at POSCO. Respondents contend that in March 1999, POSCO revised its Articles of Incorporation, establishing new procedures for selecting members of the Board of Directors (BOD), assuring the independence and transparency of the selection process. During the General Meeting of Shareholders, held on March 17, 2000, two outside directors who were former government employees, resigned. Respondents note that the composition of POSCO's BOD during the POR was based upon the new procedures, and that none of POSCO's standing directors were either current or former government employees and only two of eight outside directors had any prior government affiliation. Therefore, with the new procedures in place for selecting the BOD and the change of BOD members, respondents argue that the Department's points (4) and (5) no longer exist and do not support the finding that the GOK appointed POSCO's chairman and outside directors; and were therefore, not able to control or direct POSCO to set its prices of HRC at levels less than adequate remuneration.

Petitioners refute respondents' argument that POSCO's chairman and all of POSCO's outside directors were appointed by the shareholders and not the GOK. In fact, petitioners claim that the facts on the record contradict respondents' point. Namely, POSCO's current chairman is the same individual that was appointed by the President of Korea, and was subsequently reappointed by the shareholders in March 2001. Also, petitioners take issue with respondents' claim that only "two of the eight directors have any prior government affiliation" claiming that four of POSCO's outside directors had served as "consultants" for the Korean government. See GOK's August 19, 2000, supplemental questionnaire response, exhibit F-6.

The Department's Position:

In Sheet and Strip, the Department first determined that the actions of POSCO should be considered the actions of the GOK because it was a government-controlled company during 1997. See 64 FR 30642. We affirmed this decision in CTL Plate covering calendar year 1998, 1999 Sheet and Strip covering calendar year 1999, and in Cold-Rolled covering calendar year 2000. Therefore, in those cases, we compared POSCO's sales of inputs to Korean steel producers to a commercial benchmark, and found that these sales were made for less than adequate remuneration. In Sheet and Strip at 64 FR 30642, the Department based its decision on a number of factors, including: (1) GOK was POSCO's largest shareholder, (2) a law restricting voting rights for public companies, (3) the restriction in POSCO's Articles of Incorporation of voting rights for individual shareholders, (4) POSCO's designation as a public company, (5) the appointment of POSCO's Chairman by the

President of Korea, and (6) the fact that half of POSCO's outside directors were appointed by the GOK and KDB.

In Cold-Rolled, while we recognized that both the GOK and POSCO have made substantial changes to their ownership structure, the voting rights of their shareholders, and board membership, the Department was not convinced that POSCO acted of its own volition and was not government-controlled. See Cold-Rolled Decision Memo at 32. We note that Cold-Rolled has the same POR as the instant review. While the GOK reduced its shares from 15 percent to 4 percent during the POR, it was still the largest shareholder. In addition, the primary reduction in shareholding came only in October 2000 near the end of the POR. Also, throughout the POR and until March 2001, POSCO's Articles of Incorporation included the voting rights restriction for individual shareholders set forth by the GOK. Further, the Chairman presiding over POSCO throughout the POR was appointed by the GOK. Therefore, we disagree with respondents' argument that during the POR, POSCO was not controlled by the GOK.

We recognize that substantial changes have occurred since our Sheet and Strip determination, including notable developments in the period following the POR. However, the record of the period for this review, calendar year 2000, shows continued GOK control over POSCO for the entire period. This is particularly the case given that the GOK retained a substantial shareholding until late in the POR and that some other aspects of government control were not revised until after the POR. It is on the basis of these facts that we must make our determination. Accordingly, we find that POSCO continued to be controlled by the GOK during the entire POR.

Comment 10: Program-Wide Change: POSCO's Privatization

Respondents argue that with the privatization of POSCO, the Department's program of POSCO providing inputs for less than adequate remuneration was terminated. The Department should therefore, adjust the cash deposit rate to zero for any subsidies associated with this program, thus reflecting a program-wide change.

First, respondents note that in 1999 Sheet and Strip, the Department determined that the evidence of POSCO's privatization on the record did not constitute an "official act" under section 351.526(b)(2). Furthermore, they state that the Department cited that "respondents have presented only newspaper articles of the sale, and not direct evidence of an official act. . ." Respondents address the Departments finding of insufficient evidence by providing POSCO's 2001 Summary of Shareholders Register, showing that the KDB held no shares in POSCO as of December 31, 2000. Respondents also clarify that this evidence was verified during the cold-rolled investigation. Moreover, respondents claim that if the Department were to state that this evidence does not constitute an "official act," then the Department's literal reading of the regulation of "official act" would not be in accordance with law. By virtue of the countervailing duty law, which recognized that a subsidy can be indirect when there is evidence that the government is directing or entrusting a private entity to provide a subsidy, there may not exist any official law or decree related either to the establishment or the termination of an indirect program. Therefore, respondents contend that the Department has sufficient evidence on the record to determine that POSCO was "officially" privatized.

Second, respondents provided the Department with a side-by-side comparison of the evidence relied upon during previous cases and the Preliminary Results to find government-control of POSCO and evidence verified in the cold-rolled investigation and on the record of the current administrative review. They allege that this comparison proves that any means by which the GOK could control POSCO were removed. Respondents stress that all of the evidence relied upon to find GOK control of POSCO was rendered obsolete as of March 2001.

Third, respondents address the Departments finding that the 3.11 percent of POSCO's shares held by the IBK indicates that the GOK continues to maintain some ownership over POSCO. Respondents counter that the 3.11 percent ownership is insufficient to demonstrate GOK control of POSCO and thus can not continue to serve as a basis for rejecting a finding of "program-wide change." Regarding the IBK shares, respondents note that the shares are common shares with normal voting rights, and as it does not have preferential voting rights, it is not in a position to exercise undue influence over POSCO. Also,the IBK is no longer the largest single shareholder. Incidently, respondents note, that the shares held by the IBK are part of the IBK's equity capital, thus aligning the IBK's interest with the success of POSCO. As an example, respondents explain that if the IBK was able to direct POSCO to sell HRC at artifically low prices, it would lower POSCO's revenues and profits, thus lowering its share price and ultimately putting IBK's capital ratio at risk. Respondents confirm this, by citing to the Private Meeting Verification Report at 3-4, where a privatization specialist stated that "the IBK most likely is not influencing POSCO's pricing policy. He related that the IBK lacks the incentive to direct POSCO's pricing policy of HRC or other products. It wants POSCO to be profitable." Furthermore, POSCO does not consider the IBK shares as an indication of GOK ownership, as it does not include these shares in its financial statements as part of GOK ownership. The GOK reported that the IBK's ownership of POSCO's share came about in 1998 as a result of the GOK's recapitalization of the IBK during the financial crisis. Hence, the shares were not provided to the IBK as a mean of controlling POSCO; but, rather, to raise the IBK's capital adequacy ratio.

Petitioners refute respondents' argument that POSCO's privatization represents a program-wide change. Petitioners further argue that respondents rely on information that occurred outside of the POR. They also state that respondents ignore the fact that the Department relied upon the very same evidence in Cold-Rolled, and found that this evidence did not support respondents' claim of a program-wide change. Next, petitioners disagree with respondents' assumption that a program-wide change occurred by virtue of the GOK reducing its direct ownership interest in POSCO, and equating this to an official act, thus eliminating years of government influence and control over the company. Petitioners also cite to the long history that the GOK and POSCO share, including the GOK's assistance with the construction of integrated steel mills at Pohang and Kwangyang Bay, as evidence that strong ties do not just disappear with the reduction of share ownership. Lastly, petitioners point out that the Department does not often apply the program-wide change regulation under section 351.526(d) and that each and every element of the regulation must be satisfied. Moreover, petitioners claim that the facts do not establish that the program was "terminated" and the Department should reject respondents' request.

The Department's Position:

We disagree with respondents' claim that it is appropriate to find a program-wide change with respect to the GOK's control over POSCO, and thus change the cash deposit rate. As an initial matter, it is within the Department's discretion to determine whether the facts on the record of a proceeding justify an adjustment to the cash deposit rate on the basis that a program has changed. See Allegheny Ludlum Corp. et. al. v. United States, Slip Op. 02-112 (CIT September 12, 2002) (agreeing that cash deposit rates should be as "accurate and valid as possible" but also affirming that absent entries of subject merchandise on the record, new cash deposit calculations would not necessarily be either more "accurate" or more "valid"). In our recent Cold-Rolled determination, which covered the same period as this administrative review, we did not calculate a new cash deposit rate. We did not make such a change in that case and, accordingly, will not do so in this case, because the facts do not warrant such an action. Under this program, the Department's determination that a subsidy exists is based on a large number of factors. While some of these factors may have changed subsequent to the review period, it is our view that the changes to which respondents cite are not sufficient to find that this program has changed, and that this issue demands a full review of all of the facts in an administrative proceeding. Therefore, the Department finds that the issues in question are appropriately analyzed during the course of the next review, when the noted events occurred.

Comment 11: POSCO's Provision of Hot-Rolled Coil (HRC) for Less than Adequate Remuneration

Respondents argue that POSCO's pricing policy is based (and was based) upon normal commercial considerations. Respondents strongly assert that the Department, in its Preliminary Results, did not rely upon, nor have evidence that the GOK actually exercised control over POSCO. Respondents argue that the Department did not prove that the GOK forced POSCO to sell HRC to its competitors for less than adequate remuneration. They attest that the Department must actually have evidence that the GOK exercised control over POSCO, thus forcing POSCO to sell HRC for less than adequate remuneration, to find an indirect subsidy. Respondents contend that there is no evidence of GOK involvement in setting POSCO's pricing system, and, therefore, no indirect subsidy exists. Respondents contend that since the elimination of POSCO's two-tiered pricing scheme, POSCO has a single pricing system. Respondents claim that the record demonstrates that POSCO's pricing policy is consistent with market conditions, which includes taking import competition into consideration. To support this point respondents cite the July 26, 2002, Memorandum from Tipten Troidl and Richard Herring to Melissa Skiner, Director, Office of CVD/AD Enforcement VI, RE: Meetings with Private Parties regarding the Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Korea and Second Administrative Review of Stainless Steel Sheet and Strip from Korea, at 1-2, where a private sector specialist stated, "the Japanese have been very aggressive in the Korea market," as evidence that POSCO uses market considerations to set its own prices. Respondents also claim that in Nails from Korea, the Department determined that POSCO was incorporated as a commercial company under Korea's commercial code, and has full control over pricing, marketing, and other aspects of its operations. See Final Negative Countervailing Duty Determination; Certain Steel Wire Nails from the Republic of Korea, 47 FR 39549 (September, 8,

1982). Respondents also cite Certain Cold-Rolled and Corrosion-Resistant Products, where the Department noted that "the Korean government's direct control over domestic steel prices ended in March 1982, and that since that date the government has not participated in POSCO's pricing decision. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Administrative Review, 62 FR 18404, 411 (April 15, 1997).

Petitioners affirm the Department's preliminary finding that through the GOK's influence, POSCO provided HRC to Inchon for less than adequate remuneration. Petitioners state that no new information has been put on the record to cause the Department to change its preliminary finding. In addition, petitioners cite to Cold-Rolled, where the Department found that the government continued to have influence over POSCO's pricing policies, despite POSCO's privatization. See Cold-Rolled Decision Memo at 30-32. Petitioners note that the period of investigation for Cold-Rolled was the same period of review for this instant review, and that the evidence relied upon was verified.

Petitioners also refute respondents' argument that POSCO's pricing system is based on commercial considerations. Petitioners claim that respondents' based their argument on one specialist interviewed in the cold-rolled investigation and two antidumping duty investigations. The specialist interview was also on the Cold-Rolled record and the Department addressed this same issue and found that it did not demonstrate that the GOK does not control POSCO.

Petitioners refute respondents' argument that the Department did not base its preliminary finding on record evidence. Specifically, petitioners claim that the respondents ignored the Department's finding in Cold-Rolled, where the Department found that the GOK continued to control POSCO's to sell inputs of HRC for less than adequate remuneration. Petitioners claim that Cold-Rolled is important for two reasons: (1) it covers the identical period of time, and (2) it includes virtually all of the same information regarding the GOK's ownership and control over POSCO. Furthermore, petitioners refute that respondents did not offer any evidence to the Department to reject the Cold-Rolled finding nor did the GOK at verification address this issue. Petitioners also claim that the evidence that respondents did present, proves that any relevant changes did not occur until either very late in, or after, the POR.

Respondents argue that the Department's methodology of calculating benefits on sales of goods or services for less than adequate remuneration does not prove that POSCO is selling HRC for less than adequate remuneration as the methodology has inherent distortions. Respondents argue that the Department must make certain adjustments in order to lessen the level of distortions caused by the Department's methodology. These adjustments include applying duty drawback received on imports and using a combined monthly-weighted import price, thus utilizing both Inchon's and Sammi's data. Even after making the appropriate duty drawback adjustment and using more complete monthly benchmark prices, the distortion will not be fully eliminated.

Respondents claim that the Department's methodology does not examine or measure whether POSCO actually charges more or less for HRC inputs than foreign suppliers. Respondents assert that the Department based it's methodology on the final actual payments made by Inchon and Sammi for the purchase of HRC. This methodology assumes that POSCO knows whether and when its delivered prices are lower or higher than delivered prices Inchon and Sammi will pay for their imports. They claim that the methodology used does not measure the price differences between FOB prices. In addition, respondents claim that the exchange rate element in the calculation distorts the results and

makes the calculation less precise. Specifically, in the calculations the Department correlates the exchange rate with the month of purchase, while, the companies use a date much later when the payments for various charges are recorded in the company's accounts. Furthermore, respondents point out that Sammi makes comparisons on a quarterly basis, and converts the current prices on POSCO's price lists into U.S. dollar prices based on the exchange rate at the time the analysis is made. This date is usually about one month before the beginning of the quarter in which the purchases are made. See Sammi's Verification Report Exhibit S-3. Respondents conclude that a "subsidy" could be found solely due to changes in the exchange rate.

Respondents claim that another weakness in the Department's methodology is the inherent assumption that POSCO knows exactly what the final delivered import prices to its customers will be at the time it sets its prices. While POSCO does have market intelligence, it does not know the actual FOB or CNF prices being offered to its customers by foreign suppliers. While POSCO's customers know their needs, and their hierarchy of trade-offs, such as: delivery times, product quality, quantity and prices among various suppliers, they do not know the final cost of the imports at the time that they agree to those purchases because changes in the exchange rate and other factors, can vary on a per-ton basis from purchase to purchase.

Lastly, respondents argue that finding a price differential is not sufficient in determining if a subsidy exists because POSCO operates in a competitive market where price is an important factor in winning a sale and it should be expected that sometimes POSCO's prices could be lower than import prices. Moreover, respondents state that a comparison of Inchon and Sammi's purchases of HRC from POSCO compared to their import purchases during the POR demonstrate that no consistent underpricing pattern exists for purchases from POSCO. Respondents further state that in fact, for most months, POSCO's adjusted prices were higher than the import prices. Respondents state that by observing the weighted-average prices of both POSCO and import prices, demonstrates a great degree of volatility from month to month. Respondents state that this fact should give the Department pause when drawing conclusions about whether POSCO has a policy of providing a subsidy to Inchon and Sammi, when POSCO does not have the ability to manipulate prices since it does not know what the actual import prices are.

Respondents performed a yearly-weighted average comparison and found that performing the calculations in this manner actually mitigated some of the inherit calculation distortions they mentioned above. They claim this finding demonstrates that there is not, and cannot be, a pricing policy employed by POSCO aimed at providing inputs to its customers at prices that are less than adequate remuneration.

The Department's Position

In response to respondents' argument that, based on Nails from Korea, we should find that POSCO has full control over its pricing system, we disagree because there have been numerous determinations that have been issued subsequent to Nails from Korea that affirm the Department's decision that POSCO is not in full control over its pricing system. See e.g., Sheet and Strip, CTL Plate, H-Beams and 1999 Sheet and Strip.

Respondents have also argued that merely finding a price differential is not sufficient in determining whether a subsidy exists. We disagree with respondents on the grounds that they are attempting to add a criteria of control into the Department's adequacy of remuneration regulations. In the case of government provision of goods or services, 19 CFR 351.511 of the Department's regulations is clear. Paragraph (a) states that where goods or services are provided by a government, a "benefit exists to the extent that such goods or services are provided for less than adequate remuneration." See 19 CFR 351.511(a). The regulation further states that the Department will "measure the adequacy of remuneration by comparing the government price for the good or service to a market determined price for the good or service. . ." See 19 CFR 351.311(b). In other words, once the Department has determined that the government has provided a good or service, the regulations direct the Department to conduct a price comparison using market-determined transactions. We note that the Department has found that POSCO was government-owned and operated under government control during the POR. For further discussion see Comment 9: GOK's control of POSCO. Thus, we have determined that POSCO was, in effect, a government entity during the POR. Having found that POSCO acted as a government entity during the POR, we find that 19 CFR 351.511 applies without having to address the additional criteria suggested by respondents.

For a response to the methodological issues raised by respondents, see Comment 13: Adjustments to Import Prices.

Comment 12: POSCO's purchase of Sammi's Changwon Facility for More than Adequate Remuneration

Petitioners argue that record evidence in the instant review affirms the Department's original finding that the GOK through POSCO provided a coutervailable subsidy to Sammi by purchasing Sammi's Changwon Pipe & Bar Facility (Changwon) for more than adequate remuneration. Petitioners point to Sammi's Verification Report at 2, where the Department reported that Sammi sold it's pipe and bar facility "to raise cash" for its financial difficulties. Petitioners also stress that Sammi admitted that normal valuation procedures were not followed. Where most valuations and negotiations take from six months to a year, the Changwon valuation only took two months. Petitioners affirm the Department's original finding that POSCO's purchase of Sammi did not make good economic sense. See 64 FR 30642.

In respondents' case briefs, they stress the fact that in the original investigation, the Department calculated a countervailable subsidy rate for this program based on adverse facts available, because Sammi was not able to participate. Respondents distinguish the current review from the original investigation by having verified evidence on the record of this administrative review. Specifically, POSCO received physical assets from Sammi and paid an amount established in appraisals, and therefore, respondents urge the Department to discontinue finding that the entire purchase amount of the Changwon facility was a grant from POSCO to Sammi.

Respondents discuss the commercial nature of the sale and purchase of the Changwon Facility, thus refuting the Department's previous finding that Sammi received a countervailable subsidy. Respondents contend that the process by which POSCO purchased the Changwon Factility was

commercial in nature. For instance, both parties executed a letter of intent (LOI) of the purchase of the Changwon facility, U.S. and Canadian subsidiares, and both hired independent accounting and appraisal firms to prepare reports on the value of assets. Next, the parties executed a Basic Agreement, under which POSCO would purchase Sammi's Changwon facility, U.S. and Canadian subsidiaries; however, POSCO subsequently notified Sammi that it would not purchase the U.S. and Canadian subsidiaries. Once POSCO decided not to purchase the subsidiaries, a Purchase Agreement was executed three days later and listed the amount that POSCO would pay, 719.4 billion won, plus VAT. See Sammi Verification Report at 2. The Department also noted that the Purchase Agreement provided that the purchase amount would be adjusted based on the results of the final valuation reports. Id.

Petitioners refute respondents' claim that the purchase of the Changwon facility was a commercial transaction. First, petitioners point out that the entire process, from the LOI to the Purchase Agreement took only two months, rather than the typical 6 months to a year that it takes to normally complete valuation and negotiations of a plant. Petitioners claim that the valuation studies were also effected by being prepared under tight time constraints. Petitioners cite to the fact that the Purchase Agreement was signed based on the interim valuations rather than the final valuations as evidence that the purchase did not occur under commercial considerations.

Respondents cite to Sammi's Verification Report at 2 and Sammi questionnaire response Exhibit K-7, where they explain that the Purchase Agreement provided the terms and payments that POSCO would make: advance, interim and balance payments. Respondents point out that in the final payment, POSCO and Sammi altered the amount to be paid to take into account Sammi's outstanding account receivables (A/R) to POSCO. In effect, POSCO canceled Sammi's outstanding A/R by lowering the final payment for the Changwon facility by the amount owed to POSCO. This transaction changed the form of payment, but not the amount. Sammi filed for bankruptcy and came under the protection of the court receiver the day after the final payment was made.

Respondents contend that the valuation appraisals that both POSCO and Sammi conducted were completed by independent consulting agencies. POSCO hired Santong Accountign and Daehan Appraisal and Sammi hired Ahnkun Accounting and Jungil Appraisal firms. The appraisal firms submitted their interim valuations on January 23, 1997. See Sammi December 20, 2001 questionnaire response, Exhibits K-3 through K-5, and August 19, 2002 supplemental questionnaire response, ExhibitK-31. POSCO's appraisers valued the Changwon Facility at a lower amount than that of Sammi's appraisers, and the Santong valuation ultimately served as the basis for the initial Purchase Agreement. The Purchase Agreement included the Santong value plus the agreed value of technology, which set the purchase price at 719.4 billion won plus VAT; however, the final price was to be adjusted based on the final valuation reports that were to be prepared subsequent to the Purchase Agreement. Respondents further note that this purchase price, did not include a value for goodwill, liabilities or provide for workers, it only covered the value of the assets. See Sammi's Verification Report at 2. The final valuation amount as issued by Santong Accounting firm, POSCO's appraiser, was lower than the previously determined amount of 719.4 billion. This lower amount included the final agreement price for technology.

Petitioners take issue with the valuation studies, they claim that the goal of the studies was to

determine the market price, while in fact, the studies did not consider conditions of the market. Specifically, petitioners claim that Sammi conceded that the valuations "did not take into account the over-supply market situation." See Sammi's August 19, 2002 supplemental questionnaire response at 11. Petitioners point out that absence of market conditions element in the valuation report demonstrates serious weaknesses and flaws in the studies.

Respondents submit that the litigation surrounding the purchase of the Changwon facility demonstrates that the commercial nature of the purchase. They claim the litigation is based on the fact that neither POSCO, nor Sammi agreed on the purchase price of the facility and as they are not able to make an agreement, they have taken the issue to the courts. Respondents point out that to date, both parties have filed claims and counterclaims affecting the price of the of the facility.

Petitioners disagree with respondents' conclusion that since POSCO and Sammi are in litigation then the purchase of the facility was a normal commercial transaction. Petitioner counter that respondents' point actually signals that the transaction was too hurried and that these business issues would have been resolved in the course of a normal business transaction.

Respondents stress that POSCO's purchase of Sammi's Changwon Facility was commercial in nature and did not provide a countervailable benefit to Sammi. In fact, respondents argue that it was Sammi's lack of leverage that resulted in it getting less than it valued its asset. Sammi's Verification Report at 3. Also, the fact that parties are in litigation over the purchase price of the facility confirm that both parties are and were acting in their best interest, in a commercial interest, to obtain the best possible deal for their investment.

Respondents argue that the Department should not continue to base it's decision on the facts relied upon in the original investigation. In particular, respondents take issue with the fact that the Department relied upon: newspaper articles containing statements by POSCO's chairman and a December 1998 report published by the Board of Audit and Inspection (BAI). Respondents avouch that this information does not demonstrate that POSCO's decision to purchase Sammi's Changwon facility was based upon political pressure, as was cited to in the original investigation. Furthermore, the Department reviewed Sammi's operating performance as additional evidence, finding that Sammi was operating at less than 60 percent of its capacity and that it had not shown a profit since 1991. See Sheet and Strip, 64 FR 30643. Respondents assert that this argument is irrelevant, becasue POSCO did not purchase Sammi, rather it purchased assets of Sammi. Therefore, concluding that Sammi wasn't operating at full capacity or was not making a profit is not relevant when determining the value of a specific asset, such as the Changwon facility. Next, regarding the BAI report where the Department cited that "POSCO failed to follow its own internal regulations regarding new investments when making the investment decision to purchase Sammi; and that, overall the purchase of Sammi did not make good economic sense" does not provide anything more than a criticism that POSCO deviated from its own internal regulations regarding new investments. Respondents advance that the purchase price was based upon third party valuation appraisals and that while POSCO may have deviated from its normal internal regulations, it does not demonstrate that POSCO's decision to purchase the Changwon facility was a bad decision or a pressured one. Additionally, the BAI's conclusion that the purchase did not make good economic sense, is merely speculation and wrong, concludes respondents. They also point out that the {BAI} "failed to confirm the alleged peddling of influence by members of the former

governing Grand National Party (GNP) in POSCO's takeover. . ." Thus, the BAI was unable to uncover any evidence that the GOK pressured POSCO into purchasing Sammi's Changwon facility.

Petitioners also disagree with respondents' claim that the facts of the original investigation are irrelevant. In fact, petitioners state that the original analysis and its facts represent the foundation which the Department should use to evaluate the purchase in the current review. Furthermore, petitioners stress that none of the evidence on the record "casts doubt" on the Department's original finding, rather the additional information supports it. Petitioners disagree with respondents' arguement that one of the newspaper articles relied upon, which quoted POSCO's chairman as stating that the purchase of Sammi's pipe and bar facility was a mistake founded upon outside political pressure, did not demonstrate acknowledgement of pressure, rather it demonstrated that the current Chairman wanted to distance himself from the "then" current Chairman. Petitioners submit that the fact that, at the time of the quote, the Chairman was not the decision-maker, thus putting him in a better position to criticize the transaction. Petitioners explain that the Department relied upon information gathered from POSCO, a participant to the investigation. In addition to the newspaper articles, petitioners assert that the Department also analyzed "internal proprietary documents of POSCO." See Sheet and Strip, 64 FR 30643. Countering respondents' argument that the Department's position should not have relied upon the BAI report, petitioners defend the credibility of the report because it reflects the findings of a government auditor. (Petitioner rebuttal briefs, 19). Petitioners claim that the report highlights the failings of independent valuations, in particular, quoting the report, "{t}he BAI stated that at the time of the purchase of the Changwon plant, there was both oversupply and overproduction in the specialty steel industry." Id. Petitioners also find that respondents' argument that the BAI report did not conclude that there was government influence-peddling in POSCO's purchase of the facility and therefore, does not support the Department's conclusion of government interference, is misguided. First, petitioners note that this report was included in the evidence relied upon for the final determination in the original investigation. Second, the report discussed the fundamental problems with POSCO's purchase of Sammi's facility. Third, POSCO was an active participant in the investigation, and even at that time was unable to justify the company's decision to purchase Changwon.

Lastly, petitioners argue that the Department's finding was only marginally based on adverse facts available. In the original investigation, POSCO officials stated that Sammi was trying to sell the plant to other steel companies, and as adverse facts available, the Department assumed that absent POSCO's purchase, the facility would not have been sold to another commercial investor. However, petitioners claim that Sammi confirmed that POSCO was the only potential purchaser of the facility. In fact, petitioners contend that Sammi has provided the only missing piece to the puzzle, of whether or not there were other interested investors in the facility, barring that information, all other evidence is appropriate and reliable.

Respondents disagree with petitioners pre-preliminary comments that the Department should not revisit the prior finding absent new factual information and Sammi has not presented anything that either challenges or casts substantial doubt on the previous finding. Respondents fully disagree, and reinstate the arguments made in their case briefs regarding the voluminous information that Sammi has provided during the course of this review. Respondents reiterate how the original decision was based on adverse facts available, and it has no probative value. Moreover, respondents refute petitioners'

argument that the Department should not revisit the original decision by citing Grain-Oriented Steel from Italy, because the facts in Grain-Oriented Steel from Italy, are distinctively different. Specifically, respondents assert that the decision in Grain-Oriented Steel from Italy, was based on verified record evidence and the respondent in that case did not present any new information; whereas, in the decision of Sheet and Strip, the finding was based on adverse facts available. See Grain-Oriented Steel from Italy Decision Memo page 11. Respondents also disagree with petitioners interpretation of PPG Indus. Inc. V. United States. Respondents explain that in that case, the Federal Circuit was reviewing the propriety of the Department's practice of "not reinvestigating a program determined not to be countervailable unless the petitioner presents new evidence justifying reconsideration of a prior finding." PPG Indus. Inc., 978 F.2d at 1242. Respondents claim that this is the opposite of the current situation, as it is the petitioners that are asking not to reinvestigate a previous finding. In addition, that case was not based on adverse facts available.

Respondents reiterated two main points from their case briefs. First, the BAI report was unable to uncover any evidence that the GOK pressured POSCO into purchasing Sammi's Changwon Facility. Second, the POSCO official quoted as saying that POSCO's decision to purchase Sammi "transcends economic merit" also stated in the next sentence "POSCO plans to restructure the Changwon plant and turn a profit in about four years." Respondents point out that the BAI's speculation was wrong and that the Changwon facility became profitable less than two years after its purchase and has been profitable every year since 1999. They claim that this confirms POSCO's decision to purchase the facility was based on sound economic principles.

Respondents also refute petitioners' point that the Department reviewed POSCO's valuation studies in the original investigation and that the Department did not find these studies to be persuasive evidence that the transaction was a commercial transaction. Respondents state that nowhere in the original determination did the Department state that it did not find the valuation studies to be persuasive that the transaction was not commercial in nature. Rather, respondents point out that in Sheet and Strip, the Department stated that it relied upon "information gathered from POSCO, the GOK, information provided in the petition, and from public documents regarding POSCO's purchase of Sammi which have been placed on the record of this investigation" and did not rely on the valuation studies. See Sheet and Strip, 64 FR 30643.

Respondents also dispute petitioners' comment that the on-going litigation between POSCO and Sammi over the final purchase price does not mitigate the evidence that the purchase of the facility was a countervailable subsidy, by arguing the exact opposite. They argue that it is the fact that the two parties are in litigation, that the transaction was transparent and subject to commercial law.

Respondents argue that petitioners' focus on Sammi facing financial difficulties and that attempting to avoid bankruptcy by selling the Changwon does not support petitioners view that POSCO paid more than adequate remuneration for the facility. Rather, Sammi's financial difficulties placed it in a bad negotiating position and allowed POSCO to have leverage in using a more advantageous depreciation methodology, thus allowing POSCO to pay less than what it would have if Sammi had been in a better financial position. See Sammi's Verification Report 3. In addition, POSCO attempted to use its position to get Sammi to accept a price reduction of the facility by the amount of Sammi's outstanding A/Rs. Respondents also argue that the fact that POSCO was the only

potential buyer for its facility, does not prove that the sale was not commercial in nature. Respondents claim that it is because Sammi desperately needed cash that it was commercially reasonable to sell to POSCO rather than go through a lengthy bidding process. Also, they assert that by using valuation appraisals rather than an open bidding process does not demonstrate that the transaction was not commercial.

The Department's Position:

The Department has determined to rescind this administrative review with respect to Sammi. For further discussion, see Comment 1: Rescission of Sammi for the Final Results. Because the comments summarized above specifically address an issue which pertains solely to Sammi, the Department is not examining this issue in the instant review.

Comment 13: Adjustments to Import Prices

Respondents assert that if the Department continues to find that POSCO sells HRC for less than adequate remuneration then it should make appropriate adjustments to the import prices, used as the benchmark, in the final results calculations. Respondents contend that the Department should recognize that Korean companies can receive duty drawback on a majority of import duties paid; and therefore, the Department should adjust the import price to take into account the amount of duty drawback received. Respondents further note that both Inchon and Sammi factor in the amount of duty drawback they will receive when determining to import HRC. Specifically, the Department should adjust downward the import duty-inclusive prices to reflect the net prices paid on imports, as it did in Cold-Rolled. See Cold-Rolled Decision Memo at 34.

Respondents suggest that the Department use import prices from both Inchon and Sammi to calculate the benchmark prices. They state that the Department should use combined monthly weighted-average import prices from both Inchon and Sammi to create the most reliable market-based benchmark. By using combined prices, the Department will have benchmark prices for all months during the POR. Furthermore, respondents point out that in the Preliminary Results, the Department was unable to compare monthly delivered weighted-average import prices to monthly weighted-average prices from POSCO as it had done in Sheet and Strip, as there was a lack of compete monthly or quarterly data on the record. See 67 FR 57403. For the preliminary calculations, the Department determined that "it is more appropriate to only compare prices in the months in which Inchon had both domestic and import purchases. . . ." Id. Respondents claim that by using a price based on both Inchon and Sammi data, verified data, the distortion that occurred in the preliminary calculations would be avoided. Respondents also contend that using combined prices is consistent with the regulatory hierarchy in section 351.511(a)(2) of the Department's regulations. Moreover, the combined import data meets the regulatory standard because it is based on "observed market prices" for HRC in Korea from private suppliers located outside the country.

In addition, respondents note that the Department correctly characterized certain adjustments to be made to the HRC allowing for factor comparability; however, it did not do so for one specific

adjustment. The Department stated in the Preliminary Results that it would adjust for different edge finishes so that all purchases can be compared as equivalent to slit-edge base prices; however the Department subtracted the amount of the negative mill edge extra from mill-edge products instead of adding that amount to the price of mill-edge products in order to create comparability with slit-edge products. See 67 FR 57403. Respondents assert that, instead of eliminating the difference between slit-edge and mill-edge, the Department actually doubled the differential.

Petitioners disagree with respondents' suggestion of calculating a benchmark price by using combined weighted-average import prices from both Inchon and Sammi. While respondents claim that by using a combined benchmark, the final calculations will be less distorted, petitioners claim that by using a combined benchmark more distortion to the calculation will occur. Petitioners point out that the administrative review is on an individual firm and that, in accordance with the Department's regulations and practice, the Department conducts a company-specific investigation, determining any countervailable subsidies to a specific company. Petitioners claim that respondents' cite to Canadian Lumber as precedent where the Department used industry data as benchmark data, is misplaced as the Lumber Investigation was an aggregate case and this review is company-specific. See Notice of Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002) (Canadian Lumber) and accompanying Issues and Decision Memorandum (March 21, 2002) (Canadian Lumber Decision Memo)

In addition, petitioners note that section 351.511(a)(2)(ii) of the regulations, directs the Department to determine the adequacy of remuneration "in relation to prevailing market conditions" which include "price, quality, availability, marketability, transportation, and other condition of purchase or sale." Petitioners speak specifically to the clause "other condition{s} of purchase or sale" as taking into account the different business relationship between producers in a given industry, thus concluding that the relationships that Sammi and Inchon have with their suppliers (POSCO and others) of HRC could affect the prices and terms. Therefore, making a comparison between Inchon and Sammi's prices is problematic. Petitioners claim that information on the record of the current review demonstrates that there are differences between the relationship that Inchon and Sammi have with their suppliers. For instance, Sammi has cultivated relationships with foreign suppliers all over the world, while at the same time is involved in litigation with POSCO. Also, while Sammi only purchases HRC from POSCO, Inchon purchases other inputs. Petitioners maintain that these distinctive relationships affect the comparability of Inchon's and Sammi's purchases. In addition, petitioners claim that the two companies purchased different quantity amounts and received different duty drawback percentages, thus making a price comparison inappropriate.

Not only would using a combined import price distort the data, it contradicts the statute and the Department's regulations, claims petitioners. They further direct the Department to only compare actual transactions of the subject producer to determine the benefit from this countervailable subsidy for the final results.

The Department's Position:

We agree with respondents that, in calculating this program's subsidy rate, we should adjust

for the drawback of import duties. This is consistent with section 771(5)(E)(iv) of the Act, which states that the adequacy of remuneration will be determined in relation to prevailing market conditions, including price, quality, availability, marketability, transportation, and other conditions of purchase of sale. The availability and use of duty drawback in Korea is a condition of sale in Korea. Imports into Korea, which are subsequently exported are entitled to duty drawback. We verified that both Inchon received a portion of the import duties which are paid. In calculating a benefit, the goal is to derive net prices paid by Inchon for purchases from POSCO and import purchases from foreign suppliers in order to make an appropriate comparison. We therefore find it necessary to apply this adjustment to the import price to account for that portion of the import duties which are refunded (or drawn back).

We also agree with respondents, that the Department inadvertently subtracted out a mill-edge adjustment rather than adding it. For the final results the Department has corrected this error.

While, respondents are correct that using a combined rate would fill in any gaps, petitioners claim that using a combined price would cause further distortions. Specifically, petitioners note that Inchon and Sammi have different relationships with both POSCO and their foreign supplier, thus making the prices that Sammi pays inappropriate cross-over benchmarks. The Department disagrees with respondents that we should use both Inchon's and Sammi's import prices to measure the benefit for Inchon under this program. First the Department is finding that Inchon and Sammi were not cross-owned during the POR, and, therefore, are not the same entity for purposes of calculations of subsidy benefits. Further, we disagree that it would be appropriate to use Sammi's pricing data, because the prices necessarily reflect contracts negotiated by Sammi and those terms and conditions are not applicable to Inchon. Thus, for purposes of the final calculations, the Department has not combined Sammi's and Inchon's import pricing data.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final net subsidy rates for the reviewed producers/exporters of the subject merchandise in the Federal Register.

_____ Agree

_____ Disagree

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date