

69 FR 2113, January 14, 2004

C-580-835  
3<sup>rd</sup> Administrative Review  
POR: 01/01/01 - 12/31/01  
Public Document  
Group II/Office VI: CF/DB

January 7, 2004

MEMORANDUM TO: James J. Jochum  
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 of Countervailing  
Duty Administrative Review: Stainless Steel Sheet and Strip in Coils  
from the Republic of Korea  
Period of Review (POR): 01/01/2001–12/31/2001

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### Summary

We have analyzed the comments and rebuttal comments of 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 methodology followed 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: Benchmarks for INI’s and Sammi’s Long-term Loans  
Comment 2: Sale of Sammi’s Bar and Pipe Facility at Changwon  
Comment 3: Kangwon’s Debt-for-Equity Swap  
Comment 4: Debt Forgiveness Provided to Sammi by KAMCO  
Comment 5: POSCO’s Provision of Steel Inputs for Less than Adequate Remuneration

## I. METHODOLOGY AND BACKGROUND INFORMATION

### A. Same Person Test for Sammi

In the Notice of Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 68 FR 53116, 53118 (September 9, 2003) (Preliminary Results), we stated that Sammi was the same “person” after Inchon became Sammi’s majority shareholder on December 6, 2000. Furthermore, we stated that any allocable subsidies received by Sammi prior to Inchon’s share acquisition continue to benefit the post-share-acquisition Sammi. We received no comments on this issue. Therefore, absent new evidence or arguments, for the final results we continue to find that Sammi was the same “person” after Inchon became Sammi’s majority shareholder. As a result, we are continuing to allocate benefits from non-recurring subsidies to Sammi.

### B. Sammi and Cross-ownership with INI

In our Preliminary Results, we found that cross ownership, as defined under section 351.525(b)(6)(vi) of the Department’s regulations, existed between INI<sup>1</sup> and Sammi<sup>2</sup> during the instant period of review (POR). Consequently, for the purpose of the Preliminary Results, we calculated one rate for INI/Sammi, in accordance with section 351.525(b)(6)(ii) of the regulations. We received no comments on this issue. Therefore, absent new evidence or arguments, for the final results we continue to find that cross ownership, as defined under section 351.525(b)(6)(vi) of the CVD regulations, existed between INI and Sammi during the instant POR. As a result, we are attributing the combined benefits over the combined production of both companies to calculate a single rate attributable to both companies.

## II. SUBSIDIES VALUATION METHODOLOGY

### A. Allocation Period

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 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, 30640 (June 8, 1999) (Sheet and Strip). Parties did not contest the Department’s use of a 15-year AUL in this review.

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<sup>1</sup>Formerly known as Inchon Iron and Steel Co. (Inchon). As of April 2001, Inchon changed its name to INI.

<sup>2</sup>As of April 2002, Sammi changed its name to BNG Steel Co., Ltd. (BNG).

B. Benchmarks for Long-term Loans and Discount Rates

*Benchmarks for Long-term Loans:* During the POR, INI and Sammi had both won-denominated and foreign currency-denominated long-term loans outstanding which they received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea.

With respect to foreign sources of credit, in the Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530, 15533 (March 31, 1999) (Plate in Coils), and Sheet and Strip, we determined that access to foreign currency loans from Korean branches of foreign banks (e.g., branches of U.S.-owned banks operating in Korea) did not confer countervailable subsidies to the recipient as defined by section 771(5) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act), and, as such, credit received by respondents from these sources was found not to be countervailable. We based this decision 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 respondents' loans from these banks could serve as an appropriate benchmark to establish whether access to regulated sources of foreign-denominated credit conferred a benefit on respondents. In this review, we have determined that lending from Korean branches of foreign banks continues to be not countervailable. Consequently, 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.

Based on our findings on this issue in prior investigations, we are using the following benchmarks to calculate the subsidies attributable to respondent's long-term loans obtained in the years 1991<sup>3</sup> through 2001:

(1) For countervailable, foreign-currency denominated loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the company's 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. We note that this benchmark is based on the decision in Plate in Coils, 64 FR at 15531, in which we determined that the government of Korea (GOK) did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the

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<sup>3</sup>Neither INI nor Sammi had any loans outstanding during the POR that were issued before 1991.

national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in Plate in Coils, in which we determined that, absent company-specific interest rate information, the corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea. Id.

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

### C. Treatment of Subsidies Received by Trading Companies

We required responses from trading companies because the subject merchandise may benefit from subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the United States by a trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POR, INI exported subject merchandise to the United States through a trading company, Hyosung Corporation (Hyosung). We required the trading company to provide a response to the Department with respect to the export subsidies under review.

Under section 351.107(b)(1) of the Department's regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the Preamble to the regulations, there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27303 (May 19, 1997). In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. Id.

We determine that it is not appropriate to establish combination rates in this review. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producer; second, the level of subsidies conferred upon the individual trading company with regard to the subject merchandise is insignificant.

Instead, we have continued to calculate a rate for the producers of subject merchandise that includes the subsidies received by the trading company. To reflect those subsidies that are received by the exporter of the subject merchandise in the calculated ad valorem subsidy rate, we first calculated the benefit attributable to the subject merchandise from subsidies received by the trading company. We then added these calculated ad valorem subsidy rates to the subsidy rate calculated for INI/Sammi. Thus, for each of the programs below, the listed ad valorem subsidy rate includes countervailable subsidies received by both the producer and the trading company.

### III. ANALYSIS OF PROGRAMS

#### A. Programs Determined to Confer Subsidies

##### 1. The GOK's Direction of Credit

The Department previously determined in the 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 (H-Beams Decision Memo) at section "The GOK's Credit Policies through 1991," 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. Also in H-Beams, we determined that the provision of these long-term loans through 1991 provided a financial contribution that resulted in the conferral of a benefit, within the meaning of sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act, respectively. Id.

In Plate in Coils, 64 FR at 15332, and in Sheet and Strip, 64 FR at 30641, the Department examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered in 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 H-beams, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1998, and 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. Furthermore, the Department determined in H-Beams that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were lower than the interest rates on comparable commercial loans, within the meaning of section 771(5)(E)(ii) of the Act. 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 continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998, and the Department made a similar finding for 1999. See also 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) and accompanying Issues and Decision Memorandum (1999 Sheet and Strip Decision Memo) at "the GOK's Direction of Credit" section.

In the 1999 Sheet and Strip Decision Memo at "The GOK's Direction of Credit" section, we found that the GOK had control over the lending institutions during 1999. In the Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002) (Cold-Rolled), and accompanying Issues and Decision Memorandum (Cold-Rolled Decision Memo) at "The GOK Directed Credit" section, the Department found that the GOK continued to exert control over the lending institutions during 2000.

In the instant proceeding we asked the GOK for information pertaining to the GOK's direction of credit policies for 2001. The GOK did not provide any additional information, stating instead that, "the legal costs to further contest this issue in this review overshadow any possible benefit." See the GOK's February 4, 2003, questionnaire response. As such, because the necessary information to determine whether the GOK has continued its direction of credit policies from 2000 through 2001 is not available on the record, the Department must base its determination on facts otherwise available. See section 776(a) of the Act. Moreover the GOK's willful refusal to supply this information, which involves the GOK's own policies, demonstrates its failure to cooperate to the best of its ability. See section 776(b) of the Act. Accordingly, the statute authorizes the Department to employ an adverse inference in selecting among facts otherwise available. See *id.* Drawing from our determination on this issue in the previous administrative review, we find that the GOK's direction of credit policies continued from 2000 through 2001, the POR. In addition, absent information indicating otherwise, we find that lending from domestic banks and from government-owned banks, such as the KDB, continues to be countervailable through 2001.

INI and Sammi received long-term fixed and variable rate loans from GOK-owned/controlled institutions 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 Information" section of this memorandum.

*Won-Denominated Loans:* Regarding the calculation of the benefit on countervailable, long-term fixed-rate loans, in past cases the Department has employed the "grant equivalent" methodology, as described in section 351.505(c)(3) of the Department's regulations, when the government-provided loan and the comparison loan have dissimilar grace periods or maturities, or where the repayment schedules are different (e.g., declining balance versus annuity methodology).

In the 2000 Sheet and Strip Decision Memo, the Department revised its application of the grant equivalent methodology discussed in 351.505(c)(3) of the Department's regulations (see Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea, 68 FR 13267 (March 19, 2003) (2000 Sheet and Strip) and accompanying Issues and Decision Memorandum (2000 Sheet and Strip Decision Memo)). We note that section 351.505(c)(2) of the Department's 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 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 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 of this review that indicates that either INI or Sammi derived a benefit from any special repayment terms (i.e., abnormally long grace periods or maturities, etc.) on their long-term, fixed-rate loans. Therefore, in accordance with section 351.505(c)(2) of the regulations, we are calculating the benefit that INI and Sammi received on their 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. Thus, to calculate the countervailable subsidy benefit, we first derived the benefit amounts attributable to the POR for each company’s fixed and variable rate won-denominated loans and then summed the benefit amounts from the loans.

*Foreign Currency Denominated Loans:* Neither INI nor Sammi had foreign currency denominated loans outstanding during this POR which could be used for benchmark purposes. Sammi did provide information pertaining to a foreign currency denominated bond. As in the Preliminary Results, we have determined that this information may serve as a benchmark for INI’s foreign currency denominated loans issued in 2001; however, this information is unsuitable for use as a benchmark for INI’s loans received prior to 2001. Therefore, for loans issued before 2001, we have used the same benchmark rates as those applied in 2000 Sheet and Strip. See INI’s February 4, 2003 Questionnaire Response, Exhibit A-4.

To determine the total benefit for all directed credit, we added the benefit derived from foreign currency loans to the benefit derived from won-denominated loans and divided the total benefit by INI/Sammi’s total f.o.b. sales value during the POR. On this basis, we determine the countervailable subsidy to be 0.24 percent ad valorem for INI/Sammi.

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, INI still had an outstanding balance in this reserve during the POR. Sammi did not use this program.

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, as we did in the Preliminary Results, that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program, we calculated INI's tax savings by multiplying the balance amount of the reserve as of December 31, 2000, as filed during the POR, by the corporate tax rate for 2000. Sammi did not use this program. 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 INI 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 INI/Sammi's total f.o.b. export sales. On this basis, we calculated a countervailable subsidy of less than 0.005 percent ad valorem for INI/Sammi.

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

In CTL Plate, the Department found this program to constitute a countervailable export subsidy under section 771(5A)(B) of the Act (see 64 FR at 73181). In the Preliminary Results, we found that Hyosung, INI'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 have calculated a countervailable subsidy of less than 0.005 percent ad valorem for INI/Sammi.

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

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act. 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 of sales revenue, while companies in all other industries are only allowed to establish a three percent reserve.

In CTL Plate, 64 FR at 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. See CTL Plate, 64 FR at 73181. No new information, or evidence of changed circumstances, was presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program to be countervailable.

Sammi did not use this program. Record evidence indicates that INI 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 INI 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 INI/Sammi's total f.o.b. sales during the POR. On this basis, we determine a net countervailable subsidy of less than 0.005 percent ad valorem for INI/Sammi.

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 due to the fact that it is specific and provides a financial contribution by allowing companies to reduce their income tax liability. 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.

Sammi did not use this program. To calculate the benefit from the program for INI, we reviewed the effect that the difference of the revaluation of depreciable assets had on INI'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 INI/Sammi's total f.o.b. sales. Accordingly, the net subsidy for this program is less than 0.005 percent ad valorem for INI/Sammi.

6. Investment Tax Credits

Under Korean tax laws, companies 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 TERCL. On that date, the 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, INI earned or used tax credits for investments in productivity increasing “facilities” (RSTA Article 24, previously TERCL Article 25) and investments in specific “facilities” (RSTA Article 25, previously TERCL Article 26). Sammi did not use either program. Under these programs, if a company invested in foreign-produced “facilities,” the company received a tax credit ranging from three to five percent of its investment. However, if a company invested in domestically-produced “facilities,” 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, under this program, the GOK forewent the collection of tax revenue otherwise due, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable.

In Cold-Rolled, we found that RSTA Article 24 (previously TERCL Article 25) was altered on April 10, 1998, eliminating the distinction between domestic and imported goods; therefore, any credits received after that date were not countervailable. However, we continue to find the use of investment tax credits earned on domestic investments made before April 10, 1998, to be countervailable.

INI claimed tax credits under RSTA Article 24 and RSTA Article 25 for investments that originated when there was a distinction between purchasing domestic “facilities” and imported “facilities.” Sammi did not use this program. To calculate the benefit from these investment tax credits, we examined the amount of tax credits INI deducted from its taxes payable for the 2000 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 and specific “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 as opposed to the lower tax credit earned on investments in foreign produced facilities. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POR and divided that amount by INI/Sammi’s total f.o.b. sales during the POR. On this basis, we determine a net countervailable subsidy of 0.03 percent ad valorem for INI/Sammi.

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

Under this program, the Korea Electric Power Corporation (KEPCO) provides electricity discounts to certain customers. In Sheet and Strip, 64 FR at 30646, the Department found this program to be specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Moreover, we found that a financial contribution was provided within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone by the government.

INI did receive discounts during the POR; therefore, we find that a financial contribution is provided to INI under this program, within the meaning of section 771(5)(D)(ii) of the Act, in the form

of revenue foregone by the government. Sammi did not use this program. The benefit provided under this program is a discount on a company's monthly electricity charges.

Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which INI received from KEPCO under the RLA program during the POR. We then divided that amount by INI/Sammi's total f.o.b. sales value for 2001. On this basis, we determine a net countervailable subsidy of 0.01 percent ad valorem for INI/Sammi.

#### 8. Purchase of Sammi Specialty Steel Division by POSCO

In our Preliminary Results, we found that POSCO's 1997 purchase of Sammi's bar and pipe division at more than adequate remuneration constituted a countervailable subsidy (see 68 FR at 53123-53124). In the Preliminary Results, the Department invited parties to comment on the benefit calculation for this program. We received comments on this issue. See Comment 2: Sale of Sammi's Bar and Pipe Facility at Changwon, below. Based on the comments we received, we have modified the discount rate from the one used in our Preliminary Results.

After consideration of the comments received, we continue to find that, as there is no record evidence of other similar transactions by POSCO, this purchase was specific to Sammi within the meaning of section 771(5A)(D)(i) of the Act. Furthermore, we continue to find that POSCO purchased this facility for more than adequate remuneration. Therefore, we find for these final results that, to the extent that this purchase was made for more than adequate remuneration, it conferred a countervailable benefit to Sammi within the meaning of section 771(5)(E)(iv). To calculate the benefit for this program, we summed the amounts for which POSCO overpaid. We have treated this total amount as a grant, resulting in a net countervailable subsidy of 0.27 percent ad valorem for INI/Sammi.

#### B. Programs Determined to Be Not Used

1. Investment Tax Credits under RSTA Articles 11, 30, and 94 and TERCL Articles 24, 27, 71
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
10. Research and Development

11. Local Tax Exemption on Land Outside of Metropolitan Area

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

C. Programs Determined To Be Not Countervailable

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

In 2000 Sheet and Strip, we found that POSCO's provision of steel inputs for less than adequate remuneration was countervailable on the basis that the GOK, through POSCO, provided a financial contribution. However, we noted at Comments 9 and 10 of the 2000 Sheet and Strip Decision Memo that we would analyze POSCO's privatization in the course of the instant administrative review.

In our Preliminary Results, we stated that although we had previously found that POSCO's provision of steel inputs for less than adequate remuneration was countervailable on the basis that the GOK, through POSCO, provided a financial contribution, in the instant review, we preliminarily found that the evidence relied upon in the previous determinations has changed, and, therefore, the Department's earlier finding was no longer applicable (see 68 FR at 53124).

We received comments on this issue. See Comment 5: POSCO's Provision of Steel Inputs for Less than Adequate Remuneration, below. As explained below, we continue to find that the GOK did not control POSCO during the POR. As such, we also find that absent GOK control over POSCO, there is no longer a government financial contribution as defined by section 771(D)(iii) of the Act, and, therefore, that this program is not countervailable.

2. Electricity Discounts under the Voluntary Electric Power Savings Adjustment Program

When reviewing INI's questionnaire responses, we discovered that INI used this program. We examined at verification the voluntary electric power savings adjustment (VEPS) program, Article 107-2 of the Regulation on Optional Electricity Supply. This program is associated with the Summer Vacation and Repair Adjustment (VRA) program previously examined by the Department and found not countervailable. See Sheet and Strip 64 FR at 30647. The goal of the VEPS program is to reduce customers' electricity usage during the summer months, when demand is normally high.

In our Preliminary Results, we preliminarily found that the VEPS program is not countervailable on the basis that the program is neither de facto nor de jure specific (see 68 FR at 53124-53125). We did not receive any comments on this program. Therefore, absent new evidence or argument since the Preliminary Results, we find the VEPS program is not countervailable.

### 3. Kangwon's Debt-to-Equity Swap

Petitioners allege that Kangwon Industries Ltd. (Kangwon) received a countervailable benefit through a debt-for-equity swap and that the benefit is attributable to INI. See the April 18, 2003, New Subsidy Allegation Memorandum from the team to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, which is on file in the Department's central records unit (CRU), room B-099 of the main Department of Commerce building.

In our Preliminary Results, we preliminarily found this program to be not countervailable because it did not confer a benefit to Kangwon (see 68 FR at 53125-53126). We received comments on this issue. See Comment 3: Kangwon's Debt-for-Equity Swap, below. As explained in Comment 3, for the purposes of these final results, we continue to find that Kangwon's debt-for-equity swap did not confer a countervailable benefit on Kangwon.

### 4. Debt Forgiveness Provided to Sammi by the Korea Asset Management Corporation (KAMCO)

Sammi received debt forgiveness as part of a workout plan agreed to by Sammi's creditors while Sammi was under court receivership from March 18, 1997 until March 23, 2001. KAMCO, a government-owned entity, was Sammi's lead creditor during a portion of Sammi's time under court receivership. In the previous review, petitioners argued that even though this debt forgiveness occurred in the context of bankruptcy proceedings, the debt forgiveness was specific. See 2000 Sheet and Strip Decision Memo at Comment 7.

In our Preliminary Results, we preliminarily found KAMCO's debt forgiveness to Sammi to be not countervailable because it occurred in the context of bankruptcy and because we found no evidence on the record that Sammi received special or differential treatment in the bankruptcy process (see 68 FR at 53126).

We received comments on this program. See Comment 4: Debt Forgiveness Provided to Sammi by KAMCO, below. As explained in Comment 4, for the purposes of these final results, we continue to find that KAMCO's debt forgiveness to Sammi is not countervailable.

## IV. TOTAL AD VALOREM RATE

The total net subsidy rate for INI/Sammi in this review is 0.55 percent ad valorem.

## V. ANALYSIS OF COMMENTS

### **Comment 1: Benchmarks for INI's and Sammi's Long-term Loans**

Respondents argue that the Department incorrectly calculated the year 2000 and 2001 benchmarks for INI's and Sammi's outstanding won-denominated long-term loans. Respondents point out that the Department's established practice with respect to benchmarks for countervailable won-

denominated long-term loans, dating from the Department's decision in Plate in Coils, 64 FR at 15533, is to use company-specific data on the corporate bond rates of the company's bonds.

Respondents further explain that the Department's regulations state that the benchmark rate for a long-term fixed-rate loan will be based on loans received in the same year as the countervailable loan, to the extent practicable (see 19 CFR 351.505(a)(2)(iii)). Respondents state that, in the Preliminary Results, the long-term fixed-rate benchmarks for the years 2000 and 2001 did not reflect the weighted-average of the rates on INI's corporate bonds issued during those years but rather were a weighted-average of the rates on all of INI's corporate bonds outstanding during the POR. Moreover, respondents point out that the Department did not explain in its Preliminary Results nor in the calculation memo why its treatment of benchmarks for the years 2000 and 2001 differed from the years 1997-1999 nor did it explain its departure from longstanding practice.

Respondents argue that because INI had several corporate bonds issued in 2000 and 2001 that were outstanding during the POR, the Department should, for the final results, calculate a weighted-average benchmark rate for both 2000 and 2001 using the rates on INI's outstanding corporate bonds issued in those years and apply these corrected benchmarks to INI's outstanding long-term fixed-rate loans received in 2000 and 2001.

Furthermore, respondents assert that the Department used an incorrect benchmark for INI's and Sammi's outstanding won-denominated long-term variable rate loans. Specifically, respondents argue that the Department should use data on INI's corporate bonds issued during the POR (i.e., 2001) to determine the benchmark rate on all of INI's won-denominated long-term variable rate loans outstanding during the POR. Respondents maintain that in prior segments of this proceeding as well as all other Korean countervailing duty proceedings since Plate in Coils, the Department has used the weighted-average interest rates on corporate bonds issued during the periods of investigation or review to determine the benchmark rate for long-term won-denominated variable rate loans. Moreover, respondents submit that this methodology is consistent with section 351.505(a)(2)(iii) of the Department's regulations, which states that the Department will normally use a for a long-term benchmark a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established. Respondents argue that since the terms (i.e., the interest rate) of long-term variable rate loans were determined during the POR, the Department's benchmark for such loans must also be based on the interest rates established during the POR. Therefore, respondents urge the Department to use the revised and corrected benchmark for 2001 to INI's and Sammi's outstanding variable rate loans for the final results.

Petitioners did not comment on this issue.

#### The Department's Position:

We agree with respondents that the Department inadvertently used the weighted-average of all outstanding bonds for the benchmark interest rate for INI's won-denominated long-term fixed-rate loans in 2000 and 2001, as well as INI's and Sammi's won-denominated long-term variable rate loans. In its Preliminary Results, the Department intended to follow past practice. See Preliminary Results at 53119. See also 2000 Sheet and Strip. We have corrected this error in the final results, and are now

using, as a benchmark for fixed-rate won-denominated long-term loans, the weighted-average of all outstanding won-denominated corporate bonds issued during the year in which the loan being countervailed was issued, where available. For variable-rate won-denominated long-term loans we are using the weighted-average of all outstanding won-denominated corporate bonds issued during 2001.

## **Comment 2: Sale of Sammi's Bar and Pipe Facility at Changwon**

Respondents argue that the Department, in its Preliminary Results, was premature in its judgement that POSCO paid more than adequate remuneration for Sammi's bar and pipe facility at Changwon. Respondents point out that the final purchase price of the facility is not yet settled and is still subject to ongoing litigation in Korea. Respondents assert that because the purchase agreement stated that the final settlement price would be set based on the final valuation studies, and POSCO may be entitled to a refund of a portion of the original purchase price, the Department cannot conclude that POSCO's purchase price constituted payment at more than adequate remuneration, as the final price is still not set.

Additionally, although they disagree with the Department's finding that there was a subsidy provided to Sammi as a result of POSCO's purchase of Sammi's bar and pipe facility, respondents assert that the Department made an error in its choice of a discount rate when calculating the benefit to INI/Sammi. Specifically, respondents state that in the Preliminary Results the Department erroneously continued to rely on the discount rate used in the original investigation, an adverse facts available rate selected because Sammi did not participate in the investigation. This rate was calculated taking the highest commercial bank loan interest rates available and adding a risk premium equal to 12 percent of the commercial lending rate. See Sheet and Strip, 64 FR at 30640. Respondents point out that the Department has made no finding of facts available or adverse facts available with respect to INI/Sammi during the instant review, and, therefore, the Department cannot continue to apply the adverse facts available discount rate from the original investigation.

Respondents maintain that, instead of using the adverse facts available rate, the Department should use the yield on three-year corporate bonds as the national average long-term interest rate, to which would be added the risk premium for an uncreditworthy company. Since POSCO's purchase of Sammi's Changwon facility occurred in 1997, the discount rate, according to respondents, should be based on 1997 data.

Petitioners assert that the Department was incorrect in changing the methodology it used to measure the benefit from POSCO's purchase of Sammi's Changwon facility from that applied in the original investigation, where the Department treated the full purchase price paid by POSCO as a non-recurring grant, to that applied in the Preliminary Results. In the Preliminary Results, the Department only found a portion of the purchase price countervailable, based on certain items identified by the Korean Board of Audit and Inspection (BAI) which POSCO should have known were worth less than the value attached to them (see 68 FR at 53123-53124). Petitioners argue that the Department cannot change a previously established methodology absent a compelling legal or factual basis suggesting that the earlier methodology was erroneous. As evidence, petitioners cite to CINSA, S.A. v. United States, 966 F. Supp. 1230, 1237-38 (CIT 1997), finding that the Department unlawfully departed from

methodology followed in a previous review of the same order by failing to justify the change, and Citrosuco Paulista, S.A. v. United States, 704 F. Suppl. 1075, 1088 (CIT 1988), noting that the Department can abandon prior methodology if new arguments or facts are presented but otherwise must be consistent in administering the statute. Petitioners state that in the instant review, no party requested a change in methodology, nor have there been any developments in the law or Department practice to mandate the change. Moreover, petitioners assert that the evidence relied on by the Department, *i.e.*, portions of a report issued by the BAI, was on the record in the original investigation and, therefore, does not constitute new information nor prompt a change in the methodology used to countervail this subsidy. Therefore, petitioners argue, the Department's change in methodology from the original investigation should be rejected and the original methodology should be applied for the final results.

Furthermore, petitioners maintain that the Department's methodology misapplies the agency's regulations concerning adequacy of remuneration. Specifically, petitioners argue that the transaction at issue, the sale of an entire plant, is not addressed by the adequacy of remuneration regulation, 19 CFR 351.511(a)(2). Petitioners assert that the Preamble to the Department's regulations concerning adequacy of remuneration refers to transactions involving commodity products, inputs, and electricity, land leases or water (see "Explanation of the Final Rules" of Countervailing Duties, Final Rule, 63 FR 65348, 65377-78 (November 25, 1998) (Preamble)).

Petitioners maintain that the adequacy of remuneration analysis does not apply to the Changwon purchase, and they point to an example of a subsidy countervailed by the Department that they argue illustrates how section 351.511 of the regulations is meant to be applied. Specifically, when the Department calculated the benefit from POSCO's provision of steel inputs for less than adequate remuneration, the Department compared POSCO's prices to actual import prices for the same product (see 2000 Sheet and Strip Decision Memo at Comment 11). According to petitioners, this type of subsidy and this type of price comparison clearly illustrate how the adequacy of remuneration standard set out in the Department's regulations is meant to be applied.

In the instant review, however, petitioners point out that no such comparison exists, as there were no other potential buyers for Sammi's bar and pipe facility. Therefore, petitioners maintain that the appropriate benefit methodology is analogous to the Department's calculation of the benefit from a government stock purchase in an unequityworthy company. Petitioners put forth that pursuant to section 351.507(a)(6) of the Department's regulations, if the Department finds that typical commercial investors would not have purchased shares in a company, it treats the full amount of equity assumed by the government as the countervailable benefit. Petitioners point to the Preamble, which states that although the government equity infusion is not *per se* a grant, it is appropriate to consider the full amount of the infusion as the benefit because the government provided a sum that would not have been provided by a private investor (63 FR at 65375). Petitioners stress that the comparison is what the company actually received versus what the company would have received absent the government intervention.

Petitioners maintain that, even accepting the adequacy of remuneration standard, record evidence demonstrates that the only relevant market conditions are that absent the GOK's control of POSCO, POSCO would not have purchased the Changwon facility and Sammi would have received

nothing. As such, petitioners argue, the benchmark for measuring the subsidy effectively is zero. Moreover, petitioners assert that there is no evidence on the record undermining the Department's finding that POSCO was a GOK-controlled company at the time of the purchase and no evidence that a similar purchase was made by POSCO or any other government entity at the time of the purchase. Therefore, petitioners urge the Department to adjust the benefit calculation for the final results and treat the full amount paid by POSCO to Sammi as a non-recurring grant.

In their rebuttal briefs, respondents assert that in arguing that the Department should affirm its original finding that the entire amount of POSCO's purchase price for Sammi's Changwon facility is a countervailable grant, petitioners fail to acknowledge that the methodology applied and the subsidy rate found in the original investigation were based on the use of adverse facts available specifically because Sammi did not participate. Respondents point out that while the original determination was made without the participation of Sammi and without a complete and verified record, Sammi has fully participated in the instant review and the record has been verified. Therefore, respondents maintain, the adverse facts available determination in the original investigation is no longer applicable. Respondents further argue that neither of the cases cited by petitioners support their argument that the Department should affirm its original adverse facts available determination when it now has a complete, verified record from a cooperative respondent.

Moreover, respondents discount petitioners' argument that the Department's regulations concerning adequacy of remuneration do not apply to the sale of the Changwon facility. Respondents maintain that by trying to distinguish the sale of an entire plant from the sale of commodity products, inputs, and electricity, land leases or water, they ignore the Department's own finding in the Preliminary Results. In the Preliminary Results, the Department stated that the term "good" is expansive, encompassing more than just moveable property. The Department went on to define "goods" as including all property or possessions and saleable commodities and preliminarily to determine that Sammi's bar and pipe facility is a good. See Preliminary Results, 68 FR at 53123.

Respondents also rebut petitioners' contention that the appropriate benefit methodology for calculating the benefit to Sammi is analogous to the Department's calculation of the benefit from a government stock purchase in an unequityworthy company. Respondents argue that this analysis misconstrues the nature of the transaction. Unlike the purchase of equity, where the purchaser obtains certain ownership rights to a company's assets, in this case, money was exchanged for a tangible facility. Respondents maintain that the transaction represents the sale of an asset and, as such, cannot be treated as a grant.

Furthermore, respondents rebut petitioners' argument that the entire purchase price should be treated as a grant because the facility would not have been sold absent government involvement. Respondents assert that this argument is unsupported by record evidence. Respondents point to the BAI report and the Department's Private Bankers Verification Report (see August 7, 2003, Meeting with Private Bankers in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea) (Private Bankers Verification Report) as evidence invalidating petitioners' arguments. According to respondents, the BAI, after a four month investigation, was unable to detect any evidence that the GOK pressured POSCO into purchasing Sammi's Changwon facility. As for the private bankers, respondents observe that the Department reported several ways

that the experts described how the price could be determined for the sale of tangible assets by companies in distress. See Private Bankers Verification Report at 1-2.

Respondents maintain that the process by which POSCO purchased Sammi's bar and pipe facility was commercial in nature and occurred at arm's length, and, therefore, Sammi did not receive a countervailable subsidy. Respondents outline the commercial steps that Sammi and POSCO took, including negotiations, a letter of intent, valuation studies by independent accounting and appraisal firms, and the execution of a purchase agreement, to facilitate the sale of Sammi's Changwon facility. Respondents maintain that POSCO and Sammi agreed to determine a reasonable price by relying on the valuation studies of independent appraisers. Respondents reiterate that the final purchase price is still being litigated in court.

Petitioners rebut respondents' argument that the Department cannot determine whether POSCO's purchase price constituted payment at more than adequate remuneration due to the fact that the price is subject to on-going litigation. Petitioners state that the Department's practice regarding a subsidy program under litigation is not to consider the implications of the litigation until it is final. As evidence, petitioners cite to Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474, 40491 (July 29, 1998) (Wire Rod from Italy), where the Department refused to consider respondents' arguments regarding repayment because the issue had been appealed and was likely to remain unresolved for several years.

Moreover, petitioners assert that the outcome of any litigation will not erase the fact that POSCO would not have acquired the bar and pipe facility were it not for the intervention of the GOK. Petitioners submit that the litigation does not negate the existence of the subsidy, and, in fact, the litigation is significant only to the extent that the ultimate benefit for Sammi may have to be adjusted in future reviews to account for new facts discovered during the litigation.

Petitioners also rebut respondents' argument that the Department applied an incorrect discount rate, *i.e.*, the adverse facts available discount rate from the original investigation, to calculate the benefit to Sammi. Petitioners assert that while respondents are correct that the Department should apply a new discount rate for the calculations for the final results, the rate proposed by respondents is incorrect. Petitioners point out that during the original investigation, the Department calculated Sammi's uncreditworthy discount rate according to the methodology established in the General Issues Appendix (GIA) (*see* Sheet and Strip, 64 FR at 30640). However, since that time, the Department has promulgated a new regulation for calculating benchmark interest rates for uncreditworthy companies. Therefore, petitioners argue, the Department should calculate a new uncreditworthy discount interest rate for the final results, based upon the formula contained in section 351.505(a)(3)(iii) of the regulations.

#### The Department's Position:

We disagree with respondents that the Department cannot conclude that POSCO's purchase price constituted payment at more than adequate remuneration because the final price is still subject to litigation in Korea. As petitioners point out, it is the Department's practice not to consider the impact of litigation until that litigation is finalized, as in Wire Rod from Italy.

We disagree with petitioners that there is no new evidence in the instant review to warrant a change from the determination reached in the original investigation. The Department applied adverse facts available due to Sammi's failure to participate in that proceeding. In the instant review, Sammi has cooperated fully and the record has been verified. Therefore, the findings made in the original investigation do not necessarily apply in this review. Because the Department has now investigated this program with the cooperation of the respondent, and on the basis of the information on the record of this proceeding, we determine that it is no longer appropriate to treat the entire purchase price of the Changwon facility as a grant.

In the Preliminary Results we found that POSCO purchased this facility for more than adequate remuneration. The mere fact that the transaction was at arm's length, as respondents point out, is not determinative of whether the government's purchase was market-based. Rather, in accordance with the statute, the adequacy of remuneration is determined in relation to prevailing market conditions for the good purchases, which includes price, quality, availability, marketability, transportation and other conditions of purchase or sale. See 771(5)(E)(iv) of the Act. On the basis of the factors outlined above, therefore, we continue to find that the sale of Sammi's bar and pipe facility to POSCO was made for more than adequate remuneration.

We disagree with petitioners that the Changwon facility does not represent a good and that the less than adequate remuneration regulation is not applicable when determining the benefit from the sale of the facility. As we stated in our Preliminary Results, as used in the Act, the term "good" encompasses more than just moveable property. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum, at "Financial Contribution" section. The definition of "goods" includes all property or possessions, and saleable commodities. See id. Accordingly, we continue to determine that Sammi's bar and pipe facility is a "good."

Furthermore, we disagree with petitioners that the appropriate methodology for measuring the benefit from the sale of Sammi's Changwon facility is the same as calculating the benefit from a government stock purchase in an unequityworthy company. Equity infusions involve the purchase of shares in a company by the government, and this investment may confer a benefit on the company where the investment decision is found to be inconsistent with the usual investment practice of private investors. In this instance, POSCO, acting as the government, did not purchase shares in Sammi with the expectation of some future return on such an equity investment. Rather, POSCO purchased an entire productive facility, Changwon, which, as we have explained, is properly viewed as an asset, or good. As such, it is inappropriate to evaluate this purchase under the Department's methodology for government equity infusions.

We agree with respondents that in the Preliminary Results the Department erroneously continued to rely on the discount rate used in the original investigation, an adverse facts available rate. However, petitioners are also correct that since the investigation, our calculation methodology for uncreditworthy benchmark interest rates has changed. Therefore, for the final results, we used the calculation methodology as laid out in section 351.505(a)(3)(iii) of the regulations.

None of these comments has led us to alter our analysis of POSCO's purchase of the Changwon facility under the standard for government purchases of goods. Specifically, we continue to rely on the BAI report to support our finding that POSCO purchased this facility for more than adequate remuneration. As such, we continue to find that POSCO's purchase conferred a countervailable benefit to Sammi within the meaning of section 771(5)(E)(iv) of the Act. See Preliminary Results, 68 FR at 53123-4.

### **Comment 3: Kangwon's Debt-for-Equity Swap**

Petitioners argue that the Department incorrectly found in the Preliminary Results that Kangwon's debt-for-equity swap was not countervailable. Specifically, petitioners find fault with the Department's preliminary finding that, because the swap took place in the context of the merger between Kangwon and Inchon, Kangwon's creditors were effectively exchanging their debt for equity in Inchon, an equityworthy company. Petitioners assert that the Department's analysis wrongly focused on Inchon's equityworthiness, rather than Kangwon's, and that Kangwon was unequityworthy at the time of the swap. Petitioners argue that the Department's equityworthy analysis should focus on Kangwon because Kangwon's creditors assumed equity in the company prior to the merger and without guarantees from Inchon. Petitioners also argue that the creditors' provision of equity was inconsistent with typical investment practices.

Moreover, petitioners refute the Department's conclusion that the swap was agreed to by Kangwon's creditors on the condition that the merger was completed. Petitioners put forward that there were no guarantees given to Kangwon's creditors in the event that the merger did not take place, and petitioners cite to the Department's verification report as evidence (see August 7, 2003, Verification Report for INI in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (INI Verification Report) at page 9). Furthermore, petitioners point out, Kangwon's creditors exchanged Kangwon's debt for equity in January 2000, two months before the merger, and, under Article 17 of the Merger Agreement, Inchon retained the right to withdraw from the merger absent the swap. Therefore, petitioners conclude, record evidence indicates that instead of the creditors requiring that the merger take place as a condition of the swap, Inchon stipulated that the swap take place as a condition of the merger.

Petitioners also assert that even if the Department's equityworthiness analysis was properly focused on Inchon, the record evidence does not establish that Inchon was equityworthy. According to petitioners, none of the factors examined by the Department (e.g., the share issuance price) supports the Department's conclusion that Inchon was equityworthy at the time of the swap, nor do they address why Kangwon's creditors agreed to the debt-for-equity swap.

In sum, petitioners maintain that the Department erred in its Preliminary Results in finding that Kangwon's debt-for-equity swap was not countervailable for the reasons listed above as well as because, according to petitioners, the swap was specific. Therefore, for the final results, they urge the Department to countervail the full amount of the swap in accordance with section 351.507(a)(6) of the Department's regulations.

Respondents first respond to petitioners' claim that Inchon was unequityworthy. Respondents note that petitioners offer no evidence to support the claim that Inchon was unequityworthy. Citing to Preliminary Sheet and Strip, respondents point out that the Department found Inchon creditworthy from 1991 until 1997 (see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 63 FR 63884, 63889 (November 17, 1998) (Preliminary Sheet and Strip)). In addition, respondents contend that INI's financial statements and profitability since Preliminary Sheet and Strip do not support the questioning of INI's creditworthiness or equityworthiness.

Respondents state that petitioners' main argument is that the timing of the debt-for-equity swap indicates that Kangwon's creditors swapped debt for equity in Kangwon and not Inchon, and, as Kangwon was unequityworthy, that Kangwon's creditors acquired worthless equity. Respondents argue that the record evidence strongly refutes such an argument. Respondents state that Kangwon's creditors required that the Kangwon-Inchon merger take place in order to proceed with the debt-for-equity swap. Due to this requirement, respondents argue, Kangwon's creditors were agreeing to swap their debt for the acquisition of Inchon's equity. Respondents refer to the Samil Report at 77, where the benefits of the swap are discussed, to support the fact that the merger was desirable to creditors because of Inchon's financial strength (see INI's May 21, 2003 supplemental questionnaire response, Exhibit M-4). Respondents contend that, due to the fact that Kangwon's creditors were swapping their debt for Inchon's equity, Kangwon's equityworthiness is irrelevant.

Respondents also argue that the conversion prices used in the debt-for-equity swap were determined based on market values for Kangwon's and Inchon's shares. They begin their argument by explaining that the swap was a two-step process, whereby first the number of Kangwon shares equivalent to the value of Kangwon's debt to be swapped was determined, and, second, the ratio of the share value of Inchon's shares to Kangwon's shares was calculated (see INI's May 21, 2003 questionnaire response at Exhibit M-10). Respondents note that the calculation methodology for both of these steps was in accordance with the Stock Exchange's regulations and was outlined in the Merger Agreement (see INI's May 21, 2003 questionnaire response at Exhibit M-12 at 2).

In response to petitioners' argument that the merger did not occur before the debt-for-equity swap, respondents note that by January 7, 2000, the Merger Agreement had been approved by Inchon's and Kangwon's respective Boards of Directors and their respective shareholders. Thus "all the legal procedures had been completed" and "there was no concern that the merger would not go forward as planned" (see INI's Verification Report at 6 and 9). Respondents maintain that Article 17 of the Merger Agreement did not, as petitioners insist, enable Inchon to terminate the merger, but, more accurately, gives Inchon the right to withdraw from the merger in the case of non-performance (see INI's May 21, 2003 questionnaire response at Exhibit M-12 at 6). In conclusion, respondents contend that the record evidence shows that the debt-for-equity swap and the merger were inextricably linked and that one cannot be considered without the other. Furthermore, they argue that, as Kangwon's creditors agreed to swap their debt for Inchon's equity, Kangwon did not receive a countervailable benefit from this transaction. Therefore, respondents request that the Department sustain its decision from the Preliminary Results in these final results.

### The Department's Position:

The Department agrees that the timing of the debt-for-equity swap is instrumental in determining whether Kangwon's or Incheon's equityworthiness should be examined to determine if a benefit is conferred by this program. As petitioners point out, the financial transactions related to the merger were not carried out until March 15, 2000, more than two months after the financial transactions related to the debt-for-equity swap (see INI Verification Report at 8). However, the Merger Agreement was approved by both Incheon's and Kangwon's Boards of Directors on November 2, 1999, and by Kangwon's and Incheon's shareholders on December 14, 1999, and January 7, 2000, respectively (see INI Verification Report at 6). While the financial transactions had not yet been completed, all of the legal requirements for the merger had been completed as of January 12, 2000, the date of the debt-for-equity swap (see INI Verification Report at 9). Thus, the condition that the merger take place in order for the debt-for-equity swap to proceed was met.

Petitioners argue that there was no guarantee that the merger would go forward after the debt-for-equity swap took place. No guarantee was necessary because the merger had already been approved. The Merger Agreement contained both the valuation principles for the purposes of the merger, and those for the purposes of the debt-for-equity swap (see INI's May 21 questionnaire response, Exhibit M-12). These two events were inextricably linked. While it is true that Incheon could have pulled out of the Merger Agreement based on Article 17, this would have only been possible had Kangwon or its creditors not acted on some part of the agreement. Therefore, Incheon did not have the ability to leave Kangwon's creditors holding Kangwon equity, without some failure on the part of Kangwon.

The sum of the evidence on the record indicates that Kangwon's creditors agreed to the debt-for-equity swap because they were obtaining equity in Incheon. Therefore, the Department concludes that Kangwon's equityworthiness is not relevant to the determination of whether a benefit was conferred by this program. Petitioners state that the Department did not complete a formal equityworthiness analysis of Incheon. While this is true, Incheon's equityworthiness, up until this point, had not been questioned. No allegation of unequityworthiness was ever raised to enable the Department to examine this issue. There is, however, substantial evidence on the record pertaining to Incheon's financial status that provides no reason to question its equityworthiness. Therefore, the Department continues to find that there was no benefit conferred by this program, as Kangwon's creditors exchanged their debt for equity in Incheon, an equityworthy company. Due to the lack of benefit, the Department continues to find that this program is not countervailable.

### **Comment 4: Debt Forgiveness Provided to Sammi by KAMCO**

Petitioners argue that the Department's finding in the Preliminary Results that the debt forgiveness provided to Sammi by KAMCO was not specific or preferential failed to account for record evidence demonstrating otherwise. Specifically, petitioners take issue with the Department's conclusion that the debt forgiveness received by Sammi was similar to that received by other companies in court receivership. Petitioners contend that KAMCO's role as Sammi's lead creditor during the

workout program was unique, citing the Department's verification report (see August 7, 2003, Verification Report for the GOK in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (GOK Verification Report) at Exhibit KAM-1). Petitioners also emphasize that KAMCO held large amounts of non-performing loans where it did not act as lead creditor, which, petitioners state, demonstrates that KAMCO's actions in Sammi's reorganization were highly unusual.

Citing 2000 Sheet and Strip, petitioners state that the Department has already determined that the GOK directed credit to the steel industry during the period in which KAMCO forgave Sammi's debt. Furthermore, petitioners argue, citing both the Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination of Structural Steel Beams From the Republic of Korea (June 26, 2000) referenced in 65 FR 41051 (July 3, 2000) at 10 and the Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Dynamic Random Access Memory Semiconductors From the Republic of Korea (June 16, 2003) referenced in 68 FR 37122 (June 23, 2003) (DRAMS) at 18-19, that the Department has found that debt forgiveness as part of corporate restructuring is a component of the GOK's direction of credit.

In response to the Department's finding that KAMCO's forgiveness of Sammi's debt was not preferential, petitioners argue that the Department cannot compare KAMCO's typical returns on non-performing loans to the returns generated on Sammi's non-performing loans, because this comparison examines the relative cost-to-government. Petitioners further argue that the fact that the amount of debt forgiven was determined by Inchon's purchase offer is of little significance, as Inchon's purchase offer was rejected when Korea First Bank was Sammi's lead creditor (see the GOK's May 21, 2003 questionnaire response, Exhibit N-2). Petitioners cite opposition to the proposed sale of Sammi as an indication that, were the lead creditors not controlled by the government, the sale would not have proceeded (see August 7, 2003, Verification Report for BNG in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (BNG Verification Report) at Exhibit B-6). Finally, petitioners argue that Solomon Smith Barney's role in the sale process was only handling the bidding process, and that their involvement does not prove that KAMCO's actions were typical.

In conclusion, petitioners argue that although the Department has indicated that it would consider debt forgiven within the context of bankruptcy non-countervailable, the Department has found that, where debt forgiveness is specific, the debt forgiveness is countervailable (see DRAMS and the Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 (August 30, 2002) (Wire Rod from Germany) and the accompanying Issues and Decision Memorandum (Wire Rod from Germany Decision Memo)). They contend that the debt forgiveness given to Sammi by KAMCO was specific and should therefore be treated as countervailable.

Respondents disagree with the entirety of petitioners' argument; however, they first point out that petitioners' argument did not address the requirement of a financial contribution by the government, a contribution which, respondents argue, did not occur during KAMCO's forgiveness of Sammi's debt. Respondents state that KAMCO acquired Sammi's debt at a discount (see Verification Report for the Government of Korea in the CVD Second Administrative Review of Stainless Steel Sheet and Strip from Korea (2000 Sheet and Strip GOK Verification Report), submitted on the record of the instant

review in the GOK's May 21, 2003 supplemental questionnaire response at Exhibit N-2). They further state that this practice is typical for KAMCO and that KAMCO then sells debt at a higher price than what they paid to generate a profit (see 2000 Sheet and Strip GOK Verification Report Exhibit K-1 at 21-22). Respondents emphasize that the rate of return earned by KAMCO on the sale of Sammi's debt was higher than the rate typically earned by KAMCO. They argue that as KAMCO realized a profit from this transaction, no financial contribution is possible.

In response to petitioners' statement that KAMCO orchestrated Sammi's sale to Inchon, respondents state that the decision to sell Sammi to a third party was made by Korea First Bank (KFB) before KAMCO controlled Sammi's debt (see 2000 Sheet and Strip GOK Verification Report at 5). In addition, respondents argue that KAMCO did not buy Sammi's debt to facilitate the sale of Sammi to INI, but because KFB, the party that owned Sammi's debt, needed to reduce its number of non-performing loans (see 2000 Sheet and Strip GOK Verification Report at 5). Therefore, as neither the sale of Sammi's debt to KAMCO nor the sale of Sammi itself by KAMCO was an action instigated by KAMCO, respondents contend that the sale of Sammi to INI cannot be considered as orchestrated by KAMCO.

Respondents also maintain that any alleged benefit received by Sammi is not specific and is therefore not countervailable. Firstly, they state that petitioners' comments on this issue fail to take into account the fact that Sammi's debt forgiveness occurred in the context of bankruptcy and court reorganization. Respondents cite to Wire Rod from Germany, to support the finding that debt forgiveness occurring in the context of bankruptcy is not, as a rule, countervailable. Respondents argue that in the Wire Rod from Germany Decision Memo at 24-25 the Department found that Saarstahl's debt forgiveness was not countervailable as it was provided under bankruptcy protection that was available to all types of companies in Germany. In addition, respondents cite to Al Tech Specialty Steel Corp. v. United States, 661 F. Supp. 1206 (CIT 1987), where the court found that benefits given through reorganization do not confer subsidies as long as the company does not receive preferential treatment in the application of the laws governing the reorganization.

Respondents state that the Department found that bankruptcy protection is generally available to all companies in Korea (see Preliminary Results, 68 FR at 53124). Furthermore, they note that petitioners do not challenge this fact. Rather petitioners argue that Sammi's situation is unique. Respondents point out that petitioners' citation to Wire Rod from Germany does not support their argument. Specifically, respondents explain that the debt forgiveness to which petitioners refer occurred four years before Saarstahl applied for bankruptcy and was found to be countervailable. However, Saarstahl's debt forgiveness within the context of its bankruptcy was found to be non-countervailable by the Department.

Finally, for the purposes of determining whether Saarstahl was granted preferential treatment, respondents state that the Department considered the following criteria: (1) Saarstahl followed established procedures in filing for bankruptcy; (2) the court appointed bankruptcy trustees who were subsequently approved by the creditors; (3) the trustees oversaw the company until the creditors decided whether the company should continue in operations; (4) the creditors had to approve the restructuring plan that allowed Saarstahl to emerge from bankruptcy; and (5) the decision to maintain Saarstahl as an ongoing concern was made by Saarstahl's creditors upon the advice of the bankruptcy

trustee (see Wire Rod from Germany Decision Memo at 24). Respondents argue that evidence establishing that each of these conditions exist in Sammi's situation is on the record in this case. Specifically: (1) Sammi applied for court receivership under Article 30(1) of the CRA (see 2000 Sheet and Strip GOK Verification Report); (2) the court appointed Sammi's court receiver with the creditors' approval (see 2000 Sheet and Strip GOK Verification Report at Exhibit S-9); (3) the court receiver oversaw the operations of the company while under court reorganization (see 2000 Sheet and Strip GOK Verification Report at 5); (4) the creditors' committee approved the reorganization plans (see id.); and (5) the decision to sell Sammi to INI was approved by the creditors' committee (see BNG Verification Exhibit S-9; see also BNG's February 4, 2003 questionnaire response at Exhibit 17).

In sum, respondents argue that the Department correctly found in its Preliminary Results that Sammi's debt forgiveness did not confer a countervailable benefit because bankruptcy is generally available to distressed companies in Korea and Sammi received no preferential treatment in its reorganization. Therefore, they argue that the Department's previous finding should be sustained in the final results.

#### The Department's Position:

Petitioners are correct that the Department has, on many occasions, found that debt forgiveness in the context of bankruptcy constitutes a countervailable subsidy. In such cases, the Department has also determined one of two things: either bankruptcy protection in the country in question is not available to all companies and therefore the bankruptcy protection itself, including the debt forgiveness, is specific; or, bankruptcy protection is generally available in the country in question, but the debt forgiveness provided is inconsistent with typical practice and is therefore specific (see DRAMS, see also Wire Rod from Germany Decision Memo at 10 ). Petitioners have not challenged the general availability of bankruptcy protection in Korea; they raise points pertaining to whether the debt forgiveness provided by KAMCO to Sammi was somehow unique.

In preliminarily determining whether this debt forgiveness was unique, one factor the Department examined was KAMCO's treatment of other companies undergoing reorganization under court protection. Petitioners have argued that this analysis is a "cost to government" standard and cannot be used to assess preferentiality. Petitioners are correct in that the Department does not measure the benefit from a program based on the "cost to government" analysis; however, merely examining typical practice does not constitute measuring a potential benefit. In examining KAMCO's behavior in other, similar situations, we found that the terms of the debt forgiveness provided to Sammi were not inconsistent with the terms of debt forgiveness provided by KAMCO to other companies (see GOK Verification Report, Exhibit KAM-1).

Petitioners' argument that Inchon's bid for Sammi, which was part of the workout plan including the debt forgiveness, was accepted solely because KAMCO became Sammi's lead creditor is incorrect. It is true that the bid that was provided by Inchon before KAMCO took over was turned down; however, it is also true that the bid that KAMCO later approved was an entirely different bid (see INI's February 4, 2003 questionnaire, Exhibit A-5 at 2). In addition, the decision to sell Sammi was made by Korea First Bank before KAMCO became Sammi's lead creditor (see BNG's February

4, 2003 questionnaire response, Exhibit 9). Also, while petitioners are correct that some creditors did oppose the debt forgiveness, both secured and unsecured creditors had to approve Sammi's reorganization plan that included the debt forgiveness (see May 21, 2003 GOK questionnaire response, Exhibit N -2 at 4). While KAMCO did hold a majority of Sammi's secured debt, it did not hold a majority of the unsecured debt. Therefore, unsecured creditors agreed to the reorganization plan independently of KAMCO.

In addition to examining KAMCO's actions, respondents are correct that we also examined Sammi's actions in order to assess whether these actions represented typical bankruptcy practice in Korea. Sammi applied for court receivership under Article 30(1) of the CRA, became subject to a court-appointed, creditor-approved court receiver while under reorganization, and required approval by its creditors committee of its reorganization plans (see 2000 Sheet and Strip GOK Verification Report at 5 and Exhibit S-9). Thus, Sammi's bankruptcy proceeded according to the Korean bankruptcy law that is available to all Korean companies. Therefore, as record evidence demonstrates no unique or preferential treatment of Sammi by KAMCO in its actions as Sammi's lead creditor, the Department continues to find that Sammi's debt forgiveness is not specific. As a result, the Department continues to find that this program is not countervailable.

#### **Comment 5: POSCO's Provision of Steel Inputs for Less than Adequate Remuneration**

Petitioners argue that, contrary to the Department's finding in the Preliminary Results, POSCO's provision of steel inputs for less than adequate remuneration remains a countervailable subsidy. Petitioners argue that although POSCO has undergone several changes with respect to the GOK's direct ownership of the company during the POR, the evidence on the record is insufficient to conclude that the GOK no longer has any influence over POSCO and its pricing practices. Petitioners maintain that POSCO, while nominally privatized, remains under the influence of the Korean government. For example, petitioners state, POSCO's chairman during the POR was appointed by the Korean president and is the same person that chaired the company during the time in which it was found to have provided subsidized hot-rolled coil (HRC) to Inchon. Moreover, petitioners point out that the GOK continues to own shares in POSCO through the Industrial Bank of Korea (IBK). According to petitioners, the IBK's holdings amount to 3.12 percent of the company's shares, or close to the shareholdings of the company's largest shareholder. Finally, petitioners maintain that some of POSCO's directors during the POR were government officials or employees.

Petitioners assert that, collectively, these facts demonstrate that POSCO continues to retain its ties to the GOK. Therefore, petitioners urge the Department not to equate the changes leading to POSCO's privatization to complete elimination of government control over the company. For these reasons, petitioners argue that the Department should reverse its preliminary finding and conclude that the government provided a financial contribution sufficient to constitute a countervailable subsidy through the provision of HRC to INI.

Respondents rebut petitioners' assertion that the record evidence is insufficient to conclude that the GOK no longer has any influence over POSCO and its pricing practices. Respondents assert that

petitioners' claims are unsupported, ignore record evidence, and offer no evidence demonstrating that the GOK had a mechanism by which it could control POSCO and its pricing practices.

Regarding the IBK's holdings of 3.12 percent of POSCO's shares, respondents state that the IBK has no preferential voting rights and can only vote its shares like all other common shareholders. Thus, argue respondents, the IBK is not in a position to exercise influence over POSCO through its share ownership and voting rights. Accordingly, the IBK's minor ownership interest in POSCO does not support petitioners' argument that the GOK has the ability to control POSCO and its pricing decisions. Moreover, respondents maintain that equating slightly more than three percent ownership of a private company by a government-owned bank with a government-controlled company would be unprecedented and incongruous with U.S. trade law. For example, respondents point to section 771(33) of the Act, which defines the threshold for affiliation via stock ownership as five percent. Respondents assert that the IBK's ownership of just over three percent of POSCO's stock would not even render the parties affiliated under U.S. law, let alone render POSCO controlled by the GOK.

Respondents also maintain that petitioners overlook the changes that occurred prior to and following POSCO's privatization in 2000 with respect to how the chairman and directors are chosen. Respondents point out that the composition of POSCO's board of directors (BOD) during the POR is a byproduct of these new procedures and that none of POSCO's standing directors is either a current or former government employee. Respondents reaffirm that POSCO's BOD was independent and free of GOK influence during the POR.

For these reasons, respondents argue that the evidence does not support a finding that the GOK was directing POSCO to sell inputs to its domestic customers for less than adequate remuneration. Therefore, respondents urge the Department to sustain in the final results its preliminary finding that POSCO is no longer controlled by the GOK.

#### The Department's Position:

In our Preliminary Results, we found that the evidence relied upon in previous determinations to conclude that POSCO was controlled by the GOK had changed, and, therefore, the Department's earlier finding was no longer applicable. See Preliminary Results, 68 FR at 53124.

We disagree with petitioners that record evidence demonstrates that POSCO remains under the influence of the Korean government. Respondents have provided substantial evidence demonstrating that during the POR, POSCO was free of GOK control and influence. Regarding petitioners' argument that the IBK holds 3.12 percent ownership of POSCO's shares, we agree with respondents that these shares do not bestow preferential voting rights on the IBK, nor do they convey GOK control over POSCO and its activities. Regarding petitioners' assertion that POSCO's chairman during the POR was appointed by the Korean president and is the same person that chaired the company during the time in which it was found to have provided subsidized HRC to Incheon, as we stated in our Preliminary Results, and as respondents have pointed out, the Chairman was subsequently reappointed by the shareholders in March 2001. With respect to POSCO's outside directors during the POR, two of eight were prior government officials or employees. However, we disagree with

petitioners that this fact, taken alone or combined with the other arguments, supports a finding that the GOK continues to control or influence POSCO and POSCO's pricing practices.

For the above stated reasons, petitioners have not provided or pointed to compelling evidence that would lead us to depart from our Preliminary Results. Therefore, we continue to find that the GOK did not control POSCO during the POR. As such, we also find that absent GOK control over POSCO, there is no longer a government financial contribution as defined by section 771(D)(iii) of the Act, and, therefore, that this program is no longer countervailable.

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

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date