

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of
the Countervailing Duty Order on Stainless Steel Sheet and Strip in
Coils from South Korea; Final Results

Summary:

We have analyzed the substantive responses and rebuttal comments of the interested parties in the first sunset review of the countervailing duty (“CVD”) order on stainless steel sheet and strip in coils (“SSSS”) from the Republic of Korea (“Korea”). We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive and rebuttal comments by parties:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail

History of the Order:

On June 8, 1999, the Department of Commerce (“the Department”) published its final affirmative countervailing duty determination in the Federal Register. See Final Affirmative Countervailing Duty Determination; Stainless Steel Sheet and Strip in Coils from The Republic of Korea, 64 FR 30636 (June 8, 1999) (“Final Determination”). On August 6, 1999, the Department published in the Federal Register an amendment to the final determination, and a CVD order on SSSS from Korea. See Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea, 64 FR 42923 (August 6, 1999).

Final Determination (Amended)

Manufacturers/Producers/Exporters	Net Subsidy Rate (percent)
Inchon Iron and Steel Company ("Inchon")	2.65
Dai Yang Metal Company ("DMC")	1.58
Taihan Electric Wire Company ("Taihan")	7.00
Sammi Steel Company, Ltd. ("Sammi")	59.30
All Others	1.68

POSCO was excluded from the CVD order because it received a net subsidy rate in the investigation. The Department applied adverse facts available for Sammi and Taihan because they did not respond to the Department's questionnaire regarding a subsidy program newly examined in the investigation. See Final Determination, 64 FR 30636 at 4-6. A list of the countervailable subsidy programs, net subsidy rate's, and Korean companies that benefitted from these programs during the investigation is attached.

The Department has completed three administrative reviews since the imposition of the CVD order on SSSS from Korea. In the first review, covering the period November 17, 1998, through December 31, 1999, the Department assigned Inchon a net subsidy rate of 4.21 percent. In addition, the Department rescinded the review with respect to Sammi because the Department found that Sammi did not ship the subject merchandise to the United States during this period of review. See 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). On February 22, 2002, the Department published in the Federal Register the amended final results of the first administrative review. See Stainless Steel Sheet and Strip in Coils from Korea: Amended Final Results of Countervailing Duty Administrative Review, 67 FR 8229 (February 22, 2002).

First Review (Amended)

Manufacturer/Producer/Exporter	Net Subsidy Rate (percent)
Inchon	2.45

Below is the list of programs found to confer subsidies in the first review, as amended, in addition to Korean companies found to benefit from these programs and, net subsidy rates found for each program:

1. The Government of Korea's (GOK's) Direction of Credit: Inchon - 0.07 percent.¹
2. Article 17 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Overseas Market Development: Inchon - 0.005 percent.
3. Electricity Discounts under the Requested Loan Adjustment Program (RLA): Inchon - 0.005 percent.
4. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration: Inchon - 2.87 percent.

In the second administrative review, the Department established a net subsidy rate for Inchon, covering the period January 1, 2000, through December 31, 2000.² See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet in Coils and Strip from the Republic of Korea, 68 FR 13267 (March 19, 2003) ("Second Review").³

Second Review

Manufacturer/Producer/Exporter	Net Subsidy Rate (percent)
Inchon	3.79

The Department rescinded the second review with respect to Sammi because Sammi did not ship SSSS to the United States during the period of review. Below is the list of programs found to confer countervailable subsidies in the second administrative review, Korean companies found to benefit from these programs, and net subsidy rates:

1. The GOK's Direction of Credit: Inchon - 0.76 percent.
2. Article 16 of TERCL: Reserve for Export Loss: Inchon - 0.005 percent.⁴

¹ The net subsidy rate for the GOK's Direction of Credit program from the first review was revised to 0.07 percent. See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review, 67 FR 8229 (February 22, 2002).

² The net subsidy rate increased as a result of POSCO's Provision of Steel Inputs for Less than Adequate Remuneration program. In the third review, this program was found not to be countervailable. See Second Review, Issues Memo.

³ As a result of Inchon's name change to INI Steel Company, on April 1, 2001, the Department determined in the second administrative review to assign Inchon's cash deposit rate to INI. As a result of Sammi's name change to BNG Steel Company, Ltd ("BNG"), on April 1, 2002, the Department determined to instruct the U.S. Customs to assign Sammi's cash deposit's rate to BNG. Given that Sammi did not ship subject merchandise to the United States during the period of review, the Department rescinded the first and second administrative reviews with respect to Sammi.

⁴ In the second administrative review, respondents claimed that this program was terminated on April 10, 1998. However, the Department determined that Inchon still had an outstanding balance in this reserve during the period of review. In this sunset review, the GOK did not respond; therefore, we continue to determine that Inchon

3. Article 17 of TERCL: Reserve for Overseas Market Development: Inchon - 0.005 percent.⁵
4. Technical Development Fund Under Restriction of Special Taxation (RSTA) Article 9, formerly TERCL 8: Inchon - 0.005 percent.⁶
5. Asset Revaluation TERCL Article 56(2): Inchon - 0.005 percent.⁷
6. Electricity Discounts under the Requested Loan Adjustment Program (RLA): Inchon - 0.01 percent.⁸
7. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration: Inchon - 4.32 percent.⁹
8. Tax Credit for Investments on Productivity Improvement Facilities under RSTA Article 24: Inchon - 0.12 percent.

In the third administrative review, covering the period January 1, 2001, through December 31, 2001, the Department reviewed INI Steel Company ("INI") (formerly Inchon) and Sammi (now known as BNG). In that review, the Department determined that INI and Sammi were cross-owned and calculated a single subsidy rate of 0.55 percent for Sammi and INI¹⁰. See Final Results of

has an outstanding balance during this review.

⁵ Although Inchon did not use this program during the period of review, it exported subject merchandise through Hyundai, which used this program during the period of review. This program provides financial contributions and is contingent upon export performance.

⁶ On December 28, 1998, TERCL was replaced by RSTA. Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Although the name changed, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

⁷ 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.

⁸ The GOK introduced this discount in 1990. Customers can apply for this program between May 1 and May 15 of each year. This program provides recurring benefits.

⁹ In 1998, the Department determined that the GOK, through its ownership and control of POSCO, set prices of steel inputs, used by the Korean steel industry for less than adequate remuneration. POSCO is the only Korean producer of hot-rolled stainless steel coil, which is the main input into the subject merchandise. Although in the second review the GOK argued that POSCO underwent privatization in September 2000, the Department determined to further review the GOK's claim. See 67 FR 57395 (September 10, 2002).

¹⁰ Since the completion of the investigation, the Department has modified its practice regarding analyzing privatizations in the context of countervailing duty investigations and reviews and their impact on the countervailability of allocated pre-privatization subsidies. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37127 (June 23, 2003) ("Final Modification"). This modification applies to all reviews initiated on or after June 30, 2003, including this sunset review. That notice explicitly addressed full privatizations of state-owned enterprises and noted that the Department would not make a decision at that time whether the new methodology would also be applied to other types of ownership changes and factual scenarios, such as partial privatizations or private-to-private sales. See Final Modification 68 FR at 37136. In the seventh countervailing duty administrative review of Certain Pasta from Italy, the Department extended the new

Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (“Third Review”). Subsequently, the Department published its amended final results of the third review. See Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 7419 (February 17, 2004).

Third Review (Amended)

Manufacturer/Producer/Exporter	Net Subsidy Rate (percent)
INI/Sammi ¹¹	0.54

Below is the list of programs found to confer countervailable subsidies in the third administrative review, the Korean companies found to benefit from these programs, and the net subsidy rates for each of the programs.¹²

practice to full, private-to-private sales of a company (or its assets). See Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review, 69 FR 70657, (December 7, 2004) and accompanying Issues and Decision Memorandum for the Final Results of the 2002 Administrative Review of the Countervailing Duty Administrative Review, December 7, 2004 (Issues Memorandum – 7th Review of Pasta).

In this sunset review, interested parties have not raised the issue of privatization and its possible impact on the countervailability of allocated pre-privatization subsidies. The final modification states that, “The methodology is based on certain rebuttable presumptions, reflecting the conclusions of the Panel and the Appellate Body. The ‘baseline presumption’ is that non-recurring subsidies can benefit the recipient over a period of time (*i.e.*, allocation period) normally corresponding to the average useful life of the recipient’s assets. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm’s-length transaction for fair market value.” See Final Modification, 68 FR at 37127. This same rebuttable presumption is the basis for the Department’s new methodology for analyzing full private-to-private sales. See Issues Memorandum – 7th Review of Pasta at 2. Since, in this case, interested parties have neither raised the issue nor submitted information rebutting the baseline presumption, the Department finds that non-recurring subsidies continue to be countervailable throughout their allocation periods.

¹¹ Hereinafter referred to as INI/BNG.

¹² In the third administrative review, the Department found that POSCO was no longer government controlled as a result of its privatization and that there was no longer a countervailable program with respect to INI and BNG’s purchase of stainless steel inputs from POSCO. See Third Review, Issues Memo at 12 and 26-28.

1. The GOK's Direction of Credit: INI/BNG - 0.24 percent.¹³
2. Article 16 TERCL: Reserve for Export Loss: INI/BNG - 0.005 percent.¹⁴
3. Article 17 of TERCL: Reserve for Overseas Market Development: INI/BNG - 0.005 percent.¹⁵
4. Technical Development Fund under Restriction of Special Taxation (RSTA) Article 9, formerly TERCL Article 8: INI/BNG - 0.005 percent.¹⁶
5. Asset Revaluation TERCL Article 56(2): INI/BNG - 0.005 percent.¹⁷
6. Investment Tax Credits: INI/BNG - 0.03 percent.¹⁸
7. Electricity Discounts under the Requested Loan Adjustment Program (RLA): INI/BNG - 0.01 percent.¹⁹
8. Purchase of Sammi Specialty Steel Division by POSCO: INI/BNG - 0.28 percent.²⁰

The Department initiated a changed circumstances review to determine whether INI, formerly Inchon, was the successor-in-interest to Inchon and entitled to Inchon's rate. See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Initiation of Changed Circumstances Countervailing Duty Administrative Review, 66 FR 49639 (September 28, 2001). The Department

¹³ INI and Sammi received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the period of review. The Department found that the GOK continued to exert control over the lending institutions during 2000. In its February 4, 2003 questionnaire response, GOK did not provide any additional information. Because no additional information is on the record, the Department based its determination facts available.

¹⁴ Benefits were conferred on INI by this program. No new information was provided in the third administrative review.

¹⁵ Neither INI nor Sammi used this program during the period of review, however, INI exported subject merchandise through Hyosung, which used this program during the period of review. No new information was provide in the third review with respect to this program.

¹⁶ Sammi did not use this program. Record evidence indicates that INI did not contribute funds to this reserve during the period of review, but it did carry a balance.

¹⁷ Sammi did not use this program. No new information has been provided.

¹⁸ INI claimed tax credits under RSTA Article 24 and RSTA Article 25 for investments that originated when there was distinction between purchasing domestic facilities and imported facilities. Sammi did not use this program.

¹⁹ INI received benefits under the RLA program during the period of review.

²⁰ In the investigation, this program was found to confer a countervailable benefit to Sammi of 52.30 percent based on adverse facts available. In the third administrative review, the Department continued to find that POSCO purchased this facility for more than adequate remuneration, but received, and was able to verify, the information needed to calculate the subsidy. See BNG Verification Report, Exhibit B-9. The Department revised the amount of the actual subsidy attributed to Sammi as a result of POSCO's purchase of Sammi's Speciality Steel Division. Id. at 11 and 15-20

published a notice of preliminary results of that review. In the preliminary results the Department determined that Inchon changed its name to INI, and that INI is entitled to Inchon's rate. See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review, 67 FR 38257 (June 3, 2002). The final results of this changed circumstances review are currently pending.

Background

On June 1, 2004, the Department initiated a sunset review of the CVD order on SSSS from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See Initiation of Five-Year ("Sunset") Reviews, 69 FR 30874 (June 1, 2004). The Department received the "Notice of Intent to Participate" from the domestic interested parties: Allegheny Ludlum Corporation, North American Stainless, Nucor Corporation, United Steelworkers of America (AFL-CIO/CLC), Local 3303 United Auto Workers (formerly the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., (collectively "the domestic interested parties") within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In addition, we received a complete substantive response from respondents, INI and BNG, (collectively, "respondent interested parties"). We did not receive a response from GOK.

On July 2, 2004, the Department received a request from the domestic interested parties for an extension of the time limit to file rebuttal comments to substantive responses.²¹ The Department granted an extension until July 9, 2004, to all participants eligible to file rebuttal comments.²² On July 9, 2004, the Department received rebuttal briefs from domestic interested parties, however, respondents did not submit rebuttal briefs in this proceeding.

On July 21, 2004, the Department determined that the response of the respondent interested parties constituted an inadequate response to the notice of initiation. See 19 CFR 351.218(e)(1)(ii)(B). In accordance with section 351.218(e)(2)(i) of the Department's regulations, the Department determined to conduct an expedited sunset review of this antidumping duty order.²³ Pursuant to

²¹ See Letter from Collier Shannon Scott, July 2, 2004, to the Department of Commerce.

²² See Letter from Kelly Parkhill, Director, Industry & Support Analysis, Department of Commerce, to Collier Shannon Scott, July 6, 2004.

²³ See Memorandum for Ronald K Lorentzen; Stainless Steel Sheet and Strip in Coils from South Korea: Adequacy of Respondent Interested Parties Response to the Notice of Initiation, July 21, 2004.

sections 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department notified the International Trade Commission (“ITC”) of inadequate respondent responses to the notice of initiation, and conducted an expedited sunset review of this CVD order.²⁴

Discussion of the Issues

In accordance with section 751(c)(1)(A) of the Act, the Department conducted this sunset review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of countervailable subsidies. Section 752(b) of the Act provides that, in making this determination, the Department shall consider both the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the programs which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“Subsidies Agreement”).

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidies

Domestic interested parties assert that revocation of the CVD order on SSSS from Korea would likely lead to unfair subsidization by the foreign governments. See Domestic interested parties response, (“Domestic Response”) July 1, 2004, at 45. Specifically, domestic interested parties focus on the net subsidy rates that continue since the imposition of the order on SSSS from Korea. Id. at 47. Domestic interested parties contend that the Department is instructed to consider the net countervailable subsidies in effect after the issuance of the order and whether there are any changes in the relevant subsidy programs that are likely to affect the net countervailable subsidy. The domestic interested parties maintain that the record of this order strongly supports the conclusion that subsidization of SSSS would likely continue, or recur, if the order were revoked. Id. at 48.

Respondent interested parties argue that revocation of the order is not likely to lead to recurrence of subsidization. They state that given the 0.54 percent subsidy rate in the third review, future subsidy rates for INI/BNG are likely to be de minimis. See Respondent Interested Parties Response (“Respondent Response”), July 1, 2004, at 3. Respondents note that despite INI/BNG’s low countervailing duty rate

²⁴ See Letter to ITC, Inadequate Respondent Response, July 21, 2004.

of 0.54 percent, INI and BNG have not shipped subject merchandise to the United States since 2001. See Respondent Response at 7. Thus, the countervailing duty order has had no impact on INI's and BNG's participation in the U.S. market and revocation of the order will not change respondent interested parties view of the U.S. market. Id. They also note that China's demand for steel of all types including subject merchandise offers more attractive prices than those in the United States which makes it unlikely that INI and BNG will participate in the U.S. market in the foreseeable future. Id.

In their rebuttal comments, domestic interested parties state that the Department should reject respondent interested parties' arguments and abide by its stated policy that where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation of a countervailable subsidy. See Domestic Rebuttal Comments ("Domestic Rebuttal"), July 9, 2004, at 2-3. Domestic interested parties specifically addressed two subsidy programs: the Purchase of Sammi's Specialty Steel Division by POSCO and the GOK's Direction of Credit. They note that the subsidy relating to POSCO's purchase of Sammi's Specialty Steel Division continues to provide benefits through 2011. Id. at 3 - 4. In addition, domestic interested parties argue that it is likely that INI and/or BNG continue to receive benefits and may have received additional benefits from the GOK's Direction of Credit program to the extent that they obtained new financing. Id. at 2-3. They also assert that numerous other subsidy programs continue to exist as well. Therefore, the Department should find that revocation of this order would likely lead to continuation of a countervailable subsidy. Id.

Department's Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action (the "SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its Policy Bulletin 98.3, "Policies Regarding the conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders," reprinted at 63 FR 18.871 (April 16, 1998) ("Sunset Policy Bulletin") providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a CVD order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the Sunset Policy Bulletin).

We agree with domestic interested parties that evidence exists of a likelihood of continuation or recurrence of countervailable subsidies if this order were revoked. The Department considers that continuation of a subsidy program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies. As noted above, several countervailable programs continue to exist and the Department has found above de minimis subsidy rates for all of the companies subject to this sunset review in the original investigation as well as, in some cases, subsequent administrative reviews. In addition, benefits for certain subsidies in this proceeding (e.g., the benefits from POSCO's purchase of Sammi's Specialty Steel Division) have been allocated over time and continue to provide benefits beyond the sunset review period. Neither INI's current lack of participation in the U.S. market despite receiving a low countervailing duty rate in the third administrative review, nor the fact that market conditions such as strong demand in China make it likely that INI and BNG will not participate in the market in the foreseeable increased demand, alter these facts. With respect to respondents' argument regarding the likelihood that future subsidy rates for INI/BNG are likely to be de minimis, as noted, many programs continue to exist, including programs not involving non-recurring grants. Therefore, future subsidy rates for INI/BNG cannot be readily predicted and could increase as well as decrease. Further, we would note that the Department's determinations in sunset reviews are made on an order-wide basis, and in this proceeding, other companies with above de minimis rates exist.

2. Net Countervailable Subsidy Likely to Prevail

Domestic interested parties argue that the Department should rely on the net subsidy rates from the investigation: Taihan – 7.00 percent; INI/BNG – 59.30 percent (based on Sammi's investigation rate); DMC – 1.58 percent; and All Others – 1.68 percent; as the net subsidy rates likely to prevail if the CVD order is revoked. See Domestic Response at 58 and 60. Respondent interested parties argue that the investigation rate for Sammi was based on adverse facts available and is inappropriate to use as the subsidy rate likely to prevail for INI/BNG given the Department's examination of the company's use of the programs and its calculation of an actual subsidy rate of 0.54 percent for INI/BNG in the third administrative review. They also argue that since the third administrative review, benefits to INI/BNG from these programs can only have declined; therefore, the only reasonable expectation is that the INI/BNG subsidy rate is now de minimis. Id. at 7. In their rebuttal comments, domestic interested parties argue that respondents' claim that their subsidy rate will be "certain to be de minimis" in future administrative reviews should be rejected. See Domestic Rebuttal at 5. Domestic interested parties maintain that a net subsidy was established for INI, it has remained above de minimis throughout the order, and Sammi's subsidy rate remained at 59.30 percent until the recent administrative review. Id. Respondent interested parties did not provide rebuttal comments.

Department's Position:

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation. However, the purpose of the net countervailable subsidy in the context of sunset reviews is to provide the ITC with a rate which represents the countervailable rate that is likely to prevail if the order is revoked. Furthermore, section 752(b)(1)(B) of the Act provides that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Consequently, although the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. Therefore, the Department may make adjustments, as appropriate, to the net countervailable subsidy.

In this review there are two facts that cause us to depart from the investigation rate for INI/BNG. First, as a result of POSCO's privatization, there has been a program wide-change with respect to INI's and BNG's purchase of stainless steel inputs from that company under its two-tiered pricing system. See Third Review, Issues Memo at 12 and 26-28. Second, in the third administrative review, the Department determined that cross-ownership existed between INI and BNG and calculated a single net countervailable subsidy rate for the two companies. As a result, neither the investigation rate for Inchons or Sammi, INI's and BNG's respective predecessors, is appropriate to report to the ITC for INI/BNG. The only rate that reflects these changes is the 0.54 percent rate for INI/BNG calculated in the third administrative review. With respect to the other companies subject to this sunset review, we have adjusted the investigation rate, as appropriate, to reflect the program-wide change to the two-tier pricing system resulting from POSCO's privatization.

Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The following programs have benefits contingent upon export performance as described under Article 3.

Export Industry Facility Loans ("EIFL"): The Department determined in Steel Product from Korea, 58 FR 37328, that EIFLs are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates.

Short-Term Export Financing: The Department determined that the GOK's short-term export financing program was countervailable in Steel Products from Korea, 58 FR at 37350.

Reserve for Export Loss – Article 16 of TERCL: This program constitutes an export subsidy because the use of the program is contingent upon export performance. The Department determined that this program provides financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. 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.

Reserve for Overseas Market Development – Article 17 of the TERCL: Article 17 of the TERCL operates similar to Article 16 of the TERCL constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. This program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

Our review of the determinations on the record does not lead us to conclude that the programs in this proceeding fall within the definition of a subsidy under Article 6.1. We note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement).

Final Results of Review:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)

INI/BNG	0.54
Dai Yang Metal	0.67
Taihan Electric Wire Company	4.64
All Others	0.63

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)

ATTACHMENT I

Adjustments made in the Sunset Review.

Program	DMC	Taihan*	INI/BNG	All Others
Investigation	1.58	7.00	NA	1.68
POSCO Two-Tiered Pricing Structure	- 0.87	- 2.36	NA	NA
Total Net Subsidy	0.71	4.64	0.54	0.63**

* Taihan's subsidy rate was based on adverse facts available. In the final determination, for the two-tiered pricing program, the Department applied the highest calculated company-specific rate for this program to Taihan as adverse facts available – 2.36 percent ad valorem, the company-specific program rate for Incheon. See Final Affirmative Countervailing Duty Determination; Stainless Steel Sheet and Strip in Coils from The Republic of Korea, 64 FR 30639 (June 8, 1999).

**The “All Others” net subsidy rate is the average of DMC and INI/BNG's rates