C-580-862
Investigation
POI: 01/01/08 - 12/31/08
Public Document
Operations/Office 3

DATE: September 14, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Negative Determination in the Countervailing Duty Investigation of Ni-Resist Piston Inserts from the Republic of Korea

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I. Summary

On July 6, 2009, the Department of Commerce (the Department) published the preliminary determination in this countervailing duty (CVD) investigation. See Ni-Resist Piston Inserts from the Republic of Korea: Preliminary Negative Countervailing Duty Determination, 74 FR 31919 (July 6, 2009) (Preliminary Determination). The "Analysis of Programs" section below describes the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's response to the issues raised in the briefs. Based on the comments received and our verification findings,[1] we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

Comment 1: Whether the Tax Benefits under the Namdong National Industrial Complex are Countervailable

Comment 2: Whether the Technical Development for Innovation Production Environment Program is *de facto* Specific

[1] From July 30 through August 4, 2009 we conducted verification of the questionnaire responses submitted by the Government of the Republic of South Korea (Korea) and Incheon Metal Co., Ltd. (Incheon Metal) (collectively, respondents). We issued the verification reports on August 14 and August 21, 2009. Copies of the verification reports are on file on the public record located in the Department's Central Records Unit (CRU), room 1117.

Comment 3: Whether the Department Should Expand the POI

II. Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to Korea's most recently completed fiscal year. See 19 CFR 351.204(b) (2).

III. Application of Facts Available and Use of Adverse Inferences

Adverse Facts Available

At verification, officials from the Department examined the loans Incheon Metal had outstanding during the POI. During the course of the review, the verifiers discovered that, with regard to one of Incheon Metal's outstanding loans, the Government of Incheon City paid a portion of the company's interest payment. See Incheon Metal Verification report at 4 and Verification Exhibit (VE) 8, of which the public version is on file in the CRU. Despite the Department's instructions in the initial questionnaire, Incheon Metal and the GOK did not disclose the existence of this subsidy program. At the verification of Incheon Metal, the verifiers were able to obtain information indicating the amount of interest that was paid by the Government of Incheon City during the POI. However, because the Department conducted verification of the GOK before the verification of Incheon Metal, the Department was unable to discuss this subsidy program with GOK officials during verification. As a result, the Department lacks the information on which to base a determination of whether the interest subsidy program administered by the Government of Incheon City is specific as described under section 771(5A) of the Tariff Act of 1930, as amended (the Act).

Sections 776(a)(1) and (2) of the Act, provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute

requires the Department to use the information if it can do so without undue difficulties.

Because the GOK failed to disclose the existence of the interest subsidy program by the established deadlines, the Department lacks the information to determine whether the subsidy program administered by the Government of Incheon City is specific as described under section 771(5A) of the Act. Therefore, the Department must base its determination on the facts otherwise available in accordance with sections 776(a)(2)(A) and (B) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Because the Government of Incheon City did not disclose the existence of the interest subsidy program used by Incheon Metal, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act, the use of AFA is appropriate for the final determination. Therefore, pursuant to section 776(b) of the Act, we find that the interest subsidy program administered by the Government of Incheon City constitutes a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act. The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the GOK directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

Regarding the benefit received under the program, as explained above, at the verification of Incheon Metal the verifiers were able to determine the amount of interest that was paid by the Government of Incheon City on behalf of Incheon Metal during the POI. Therefore, we have relied upon the interest information obtained at verification when conducting our benefit calculations. However, for purposes of calculating the net subsidy rate, in accordance with section 776(b), as AFA we are assuming that benefits under this program are tied to exports of subject merchandise to the United States. Our benefit and net subsidy rate calculation methodology for this program is described below in the "Analysis of Programs" section of this decision memorandum.

IV. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Tax Benefits under the Namdong National Industrial Complex Program

During the POI Incheon Metal received tax benefits under the Namdong National Industrial Complex pursuant to the Framework Act on small and medium-sized enterprises (SMEs) from the GOK. The Small and Medium Business Administration (SMBA) defines SMEs as businesses with less than 1,000 employees and less the KRW 500 billion in total assets. Any SME involved in manufacturing, transportation, or information technology can locate inside the Namdong National Industrial Complex and receive assistance from the government. Under the program, firms inside the complex are eligible to receive exemptions from acquisition and registration taxes that are normally due on real estate transactions. Incheon Metal reported receiving such tax exemptions during the POI in connection with real estate transactions during the POI.

We determine that the Incheon Metal received a financial contribution in the form of revenue forgone within the meaning of section 771(5) (D) (ii) of the Act and that the exemptions are specific within the meaning of section 771(5A) (D) (iv) of the Act, because they are limited to enterprises located inside the Namdong National Industrial Complex. Incheon Metal is located within this complex.

Pursuant to section 771(5) (E) of the Act, we find the tax exemption confers a benefit in the amount equal to the exemption during the POI. We divided the benefit under this program by Incheon Metal's total sales. The resulting net subsidy rate is less than 0.005 percent ad valorem. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is not measurable. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (HRC from India), and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at "Exemption from the CST."

2. Unreported Loan Subsidy

During the verification of Incheon Metal, the Department discovered that the company had failed to report all of the information with respect to one of the loans that it received during the POI. We found that the Government of Incheon City paid a portion of the interest for one of Incheon Metal's loans during the POI. At verification, we were able to verify the amount of the benefit Incheon Metal received (i.e., the amount of interest paid by the city). Because Incheon Metal failed to report this information to the Department in its questionnaire response we have applied AFA and find the government's interest assistance countervailable. Irrespective, the amount of interest assistance provided was so small that it does not result in a net subsidy rate that results in an affirmative final CVD determination.

As explained above, as AFA, the Department is assuming that the program constitutes a financial contribution and is specific under section 771(5) (D) and 771(5A) of the Act. Regarding the

benefit, the verifiers were able to determine the amount of interest paid by the Government of Incheon City during the POI. To calculate the benefit, we summed all of the interest payments the local government made during the POI.

For purposes of calculating the net subsidy rate, as AFA, we assumed that the program is tied to exports of subject merchandise to the United States. Accordingly, we divided the benefit by Incheon Metal's total sales of Ni-resist pistons to the United States during the POI. In this manner, we calculated a net subsidy rate of 0.16 percent.

B. Programs Determined To Be Not Countervailable

1. Technical Development for Innovation Production Environment (TDIPE)

Incheon Metal's annual report indicates that it received grants from the GOK during the POI. See Incheon Metal's April 24, 2009, questionnaire response at Exhibit 5. Supplemental questionnaire responses from Incheon Metal and the GOK indicate that Incheon Metal received two grants from the GOK's SMBA under the TDIPE. See Incheon Metal's May 29, 2009, response at 2-3. In the narrative of its supplemental questionnaire response, Incheon Metal indicated that SME's that purchase equipment classified under Harmonized Tariff System (HTS) Chapters 10 through 33 are eligible to receive grants under the TDIPE. The GOK's description of the program and the portions of the TDIPE regulations and sample application forms submitted by the GOK do not make any reference to the grants being limited to purchases of equipment under HTS chapters 10 through 33. See GOK's June 12, 2009, response at Exhibits S-29 and S-30. In response to our request, the GOK also submitted information concerning the enterprises and industries that received grants under the TDIPE program during the period 2005 through 2008. See GOK's June 12, 2009, response at 19.

Based on our analysis of the information submitted by the GOK regarding the TDIPE program, including a copy of the relevant legislation, we determine that the grants under the program are not de jure specific within the meaning of sections 771(5A)(A), (B), (C) and (D)(i) and (ii) of the Act. See also 19 CFR 351.502(e) and see also the GOK's June 12, 2009, response at Exhibits S-29 and S-30.

Where the Department finds no de jure specificity, section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are de facto specific, that is, whether the benefits are specific as a matter of fact. Subparagraphs under section 771(5A) (D) (iii) of the Act stipulate that a program is de facto specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department's request for information regarding these factors, the GOK provided the Department with a breakdown of the issuance of grants (both in terms of amounts and number of recipients), by industry, for the years 2005 through 2008. See GOK's June 12, 2009, questionnaire response at 19 and the Department's June 25, 2009, Memorandum to the File (Preliminary De Facto Specificity Analysis Memorandum), of which a public version is available in the CRU in Room 1117. In conducting our de facto specificity analysis, we examined the grant amounts issued by the GOK as well as the number of recipients, by industry, during the POI and each of the preceding three years. Specifically, we compared the amount of grants under the TDIPE program that were issued to the metals industry to the amount of grants that were issued to other industries under this program. We conducted the same analysis with regard to the number of recipients. See Preliminary De Facto Specificity Analysis Memorandum.

Based on our analysis of the data for the TDIPE program, we determine that the benefits received by Incheon Metal or the metals industry under this program were not de facto specific within the meaning of sections 771(5A) (D) (iii) (I) through (III) of the Act, i.e., we find no limitation as to the number of recipients, predominant use or disproportionate share, of the subsidy. Lastly, we determine that there is no evidence on the record of the investigation indicating that the GOK exercised discretion in the decision to issue TDIPE grants which indicates that the metals industry was favored over other industries within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

Consequently, the Department determines that the grants received by Incheon Metal under this program are neither de jure nor de facto specific and, therefore, not countervailable.

2. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (Formerly Article 8 of TERCL)

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 expenses related to the 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 companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three-percent reserve.

The Department has previously determined that firms that are entitled to establish a reserve up to the three percent level do not receive a countervailable subsidy. See, e.g. Preliminary Results of Countervailing Duty Administrative Review: Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 53413, 53419 (September 11, 2006) (unchanged in final results). Incheon Metal indicated in its questionnaire response that it established its reserve up to the three percent level. Consequently, we determine that Incheon Metal's use of the program is

not countervailable.

C. Programs Determined To Have Been Terminated

1. Energy Rate Reductions Under the Request Load Adjustment Program

Petitioner contends that the GOK provides reduced energy rates to companies that reduce their demand by twenty percent. Businesses are eligible for a discount of 440 won per kW under the Requested Load Adjustment program. The GOK reported in its response that the program had been terminated as of January 1, 2005, by the Korean Electric Power Corporation and did not provide any residual benefits. See GOK's April 8, 2009, response at 5. Information submitted by the GOK, including translated copies of the relevant regulation, shows that the regulation covering the program has been abolished. See GOK's April 28, 2009, supplemental response at 3 and Exhibits S-1 and S-2. The GOK also stated that it has not implemented a successor program. At the Department's verification of the GOK we confirmed that this program has been terminated. See GOK Verification Report at 4.

2. Reserve for Investment Funds

Petitioner alleged that this program allowed Korean firms engaged in manufacturing and mining outside of Seoul to establish a tax reserve. Petitioner further contended that the tax reserve allows eligible firms to reduce their taxable income in a given year and that the program is limited to a geographic area outside of Seoul. The GOK reported that the program was terminated on August 31, 1999, and that the relevant portion of the Restriction of Special Taxation Act was deleted. The GOK provided documentation demonstrating its assertion. See GOK's April 8, 2009, response at 7 and Exhibit 7. At the Department's verification of the GOK we confirmed that this program has been terminated. See GOK Verification Report at 4.

D. Programs Determined To Be Not Used

1. Short-Term Export Financing
2. Loans Under the Industrial Base Fund
3. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program
4. Subsidized Loans and Guarantees through the Korea Development Bank
5. Export Insurance and Guarantees through the Korea Export Insurance Corporation
6. SME Financing through the Industrial Bank of Korea.
7. Export and Import Credit Financing and Guarantees from the Korean Export-Import Bank
8. Export and Import Credit Financing and Guarantees from the Korean Export-Import Bank
9. Financial Aid, Training Assistance and Export Services through the Small and Medium Business Administration
10. Free Economic Zone of Incheon

V. Analysis of Comments

Comment 1: Tax Benefits under the Namdong National Industrial Complex Program

Petitioner: Petitioner states that during the POI Incheon received tax deferments and other benefits because it is located within the Namdong National Industrial Complex (NNIC). Petitioner contends that these benefits were authorized pursuant to the Framework Act on small and medium-sized enterprises enacted by the GOK. Any small and medium enterprises (SMEs) involved in manufacturing, transportation, or information technology can establish its facility within the geographical boundaries of the NNIC and receive assistance from the government. Under the program, firms inside the complex receive exemptions from acquisition and registration taxes due on real estate transactions.

Petitioner states that Incheon received tax exemptions during the POI. Petitioner argues that the POI is an insufficient time period for the Department to fully evaluate the extent to which Incheon has been benefitted by any of the various subsidy programs that are in place. Petitioner notes that Incheon was established in the NNIC many years prior to the initiation of the investigation and, as a result, has received ongoing benefits that have allowed Incheon to develop market advantages. Petitioner argues that the Department's preliminary calculations account for only a single year of the subsidies Incheon received under the program and, therefore, do not adequately reflect the ongoing benefits the company has received.

GOK: The GOK argues that in the Preliminary Determination the Department cited section 771(5A)(D) of the Act which states, "Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy is specific."

The GOK states that the provision limits its applicability to a designated area and furthermore, the GOK argues that if multiple regions are distributed throughout the country that are under the same program and receive the same benefits, specificity cannot be satisfied. At the Department's verification the GOK confirmed that the NNIC is not a specifically designated region, but rather one of thirty-six industrial complexes dispersed throughout the country. According to the GOK, the main purpose of the Industrial Cluster Development and Factory Establishment Act and its Enforcement Decree (Enforcement Decree) was ensuring industrial development throughout the country.

The GOK sites Article 2.2 of the World Trade Organization (WTO) Agreement on Subsidy and Countervailing Measures which describes that "a subsidy which is limited to certain enterprises located within a designated geographic region." The GOK asserts that all companies located within the thirty-six regions, not just Incheon, are eligible for benefits. Therefore, the GOK argues, the tax benefit is not a government program that "is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the benefit."

The GOK contends that there is a discrepancy between the U.S. law and the WTO Agreement on Subsidy and Countervailing Measures noting that the WTO agreement states, "the setting or

change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be specific subsidy for the purposes of this Agreement." The GOK concludes because the tax benefit is conferred to companies in a non-discriminatory manner through generally applicable tax rates, the tax benefit under Namdong Industrial Complex is not specific and that the Department should find the program not countervailable.

DOC Position: Under 19 CFR 351.524(a), the Department will allocate (i.e., expense) a recurring benefit to the year in which the benefit is received. Under 19 CFR 351.524(c) (1), the Department will normally treat benefits received under tax programs as recurring subsidies. In keeping with the principal established under 19 CFR 351.524, in the Preliminary Determination the Department treated as a recurring benefit the acquisition and registration tax exemptions that Incheon Metal received in connection with real estate located inside the NNIC that it acquired during the POI. See Preliminary Determination, 74 FR 31920; see also Preliminary Calculations Memorandum, of which the public version is on file in the CRU. For purposes of our preliminary calculations, we treated the benefit as having been received on the date in which Incheon Metal would have otherwise have had to pay the taxes, which corresponds to the date in which the real estate transactions took place. See 19 CFR 351.509(c). Therefore, under this approach, we expensed to the POI the tax exemptions Incheon Metal received in connection with the real estate it acquired inside the NNIC during the POI. Similarly, any tax exemptions Incheon Metal received prior to the POI under this program would be treated as recurring benefits and would have been fully expensed in those prior periods. Petitioner objects to this approach, but offers no compelling argument as to why the Department should depart from the standard practice of treating tax subsidies as recurring benefits, as directed under 19 CFR CFR 351.524(c). Therefore, we have not changed our benefit calculation methodology for this program.

Regarding the GOK's comments, we continue to find that the NNIC program provides subsidies that are de jure specific. Section 771(5A) (iv) of the Act states that:

> Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.

Benefits provided under this program are limited to companies located within the confines of the NNIC. On this basis, we find that the tax exemptions provided under the program are regionally specific, as defined by section 771(5A) (iv) of the Act.

Comment 2: Technical Development for Innovation Production Environment (TDIPE)

Petitioner: Incheon Metal's 2008 Annual Report indicated that it received grants from the GOK during the POI. Petitioner notes that responses from both Incheon Metal and the GOK demonstrated that Incheon Metal received two grants from the GOK's Small and Medium Business Administration (SMBA) under the TDIPE. Petitioner notes that in its questionnaire response Incheon Metal stated that SME's that "purchase equipment classified under the Harmonized Tariff System (HTS) Chapters 10 through 33 are eligible to receive grants under the TDIPE."

However, Petitioner states that the Department's Preliminary Determination states that the "GOK's description of the program and the portions of the TSIPE regulations and sample application forms do not make any reference to the grants being limited to purchases of equipment under the HTS chapters 10 through 33."

Petitioner argues that the grants are de facto specific because section 771(5A)(D)(iii) of the Act stipulates that a program is de facto specific if one or more of the following factors exist: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) An enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

According to the Petitioner Incheon Metal's own response states clearly that only companies producing goods as defined within Chapters 10 through 33 are eligible to receive grants under the TDIPE. The fact that the GOK did not report this information does not nullify Incheon Metal's answer.

Petitioner contends that because the GOK has not placed any information on the record to disprove Incheon Metal's response relating to the TDIPE grant, the Department must infer that the reported limitation on the availability of grant funding under the TDIPE persist. Petitioner cites the Department's decision in Tung Fong Indust. Co., Inc. v. U.S., 28 C.I.T. 459, 318 F. Supp. 2d 1321, 1325 (C.I.T. 2004) as an example of when the Department used facts otherwise available when it did not have complete information. Petitioner cites section 351.502 of the Department's regulations that if a subsidy is in some way limited in its apparent scope of application, or in its actual application, the Department is obligated to find de facto specificity and according to petitioner, the HTS categories are that limitation. Petitioner urges the Department to reconsider its Preliminary Determination that no de facto specificity exists with regard to the TDIPE grant.

GOK: The GOK reiterates that the Department should find that the TDIPE program is not countervailable and contends that Petitioner failed to demonstrate that the TDIPE satisfies all four conditions necessary to establish de facto specificity under section 771(5A)(D)(iii) of the Act. It argues that the GOK provided all necessary information to the Department in its questionnaires and at verification pertaining to this issue. The GOK further notes that it believes

it has administered this program in a manner fully consistent within international law and that the Department has already conducted a specificity analysis and concluded that the TDIPE program was not specific.

The GOK further disagrees with the contention that it has not placed information on the record to disprove Incheon's response relating to the TDIP grant and argues that it has provided all requested information in its questionnaires and at verification. Finally, the GOK argues that Petitioner is off point in its citation to Tung Fong Indust. Co., Inc. v. U.S. According to the GOI, Petitioner failed to include the latter half of the court's statement that stated, "the Commerce Department may use facts available where a respondent withholds information or fails to provide it on time or in the form requested, or where the information provided by the respondent cannot be verified." The GOK states that it provided full cooperation in providing any information requested by the Department, thus the case does not support the contention of Petitioner.

Incheon Metal: Incheon Metal notes that the Department has reviewed the documentation submitted by the GOK and Incheon Metal regarding the TDIPE. Based on its review of the relevant legislation, the Department concluded in the Preliminary Determination that the program was not a de jure specific subsidy program. See 74 FR at 31920. The Department conducted an analysis of information submitted by the GOK in order to assess whether the TDIPE was a de facto specific subsidy program and the Department concluded that the program was not de facto specific and, therefore, not a countervailable subsidy program. Respondent notes that nothing was collected at the Incheon Metal or GOK's verification that revealed any contradictory information to what the Department determined in its Preliminary Determination. Respondent notes that at the verification of Incheon Metal the Department confirmed that all small or medium sized businesses are eligible under the TDIPE, which is consistent with the information submitted by the GOK and verified by the Department.

Respondent concludes that under U.S. law and the Department's regulations, the Department will not regard a subsidy as specific solely because it is limited to small firms or to small-and-medium sized firms. See 19 CFR 351.502(e). According to respondent, all the information collected in this investigation demonstrates that the TDIPE targets only small-or-medium sized firms and is otherwise not de jure or de facto specific. Therefore, the Department should continue to find that the TDIPE is not a countervailable subsidy.

DOC Position: We agree with respondents. In the Preliminary Determination the Department determined that the grants received by Incheon Metal under this program were neither de jure nor de facto specific and, therefore, not countervailable. See 74 FR at 31920. Information reviewed at verification did not contradict our preliminary finding regarding the TDIPE. At verification, the Department learned that the GOK offers benefits under the TDIPE to SMEs that are engaged in manufacturing. See GOK Verification Report at 3, of which the public version is available in the CRU. We find that the pool of eligible companies under the TDIPE is a sufficiently large group such that the benefits provided under the program are not de jure specific, as defined under section 771(5A)(D)(i) of the Act. See Polyethylene Terephthalate Film, Sheet, and Strip from India, 72 FR 6,530 (February 12, 2007) (Final Results of Countervailing Duty Administrative Review). Concerning whether the TDIPE program is de facto specific, as described under 771(5A(D)(iii) of the Act, we find there is nothing on the

record that calls into question our preliminary finding that the actual recipients of benefits under the TDIPE are skewed in favor of the metals industry, in general, or Incheon Metal in particular.

Comment 3: Expanding the POI

Petitioner: Petitioner argues that the current POI is insufficient to capture the full-scope of the subsidization that is received by Incheon Metal. Petitioner argues that the Department should exercise its authority granted under 19 CFR 351.204(b) under which the "Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate." Petitioner argues that because the industry addressed in this investigation is relatively small and the producers are few, it would not be a burdensome undertaking for the Department to consider looking beyond the 2008 POI. Petitioner advocates that the Department consider the calendar year 2007 and the first two quarters of 2009.

GOK: The GOK argues that Petitioner fails to raise any legal reason or cite any case to support the proposition that the POI should be expanded. The GOK cites 19 CFR 351.204(b) (2) that "the Secretary will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question." The GOK argues that the standard for the POI is one fiscal year and the expansion is an exception, from which the Department has rarely departed.

The GOK notes that the regulation does not define "appropriateness" but a request for an expansion of the POI in the final stage of the investigation through allegations that an expansion would capture more subsidies, if granted, would undermine the fair and objective proceeding of the investigation to which the GOK has provided full cooperation.

The GOK cites Kerr-McGee Chemical Corp v. U.S. in which Petitioner failed to persuade the Court and the Department to expand the POI even through Petitioner there was able to demonstrate that an alleged subsidy program would be captured if the POI there were to have been extended for just a day. In this case, the GOK argues that the Petitioner has provided no factual basis for an expansion of the POI and it should be rejected.

Incheon Metal: Incheon Metal argues that Petitioner does not offer any explanation about why the Department should alter its current POI. Petitioner argues that the Department has the discretion to alter the POI under 351.204(b) (2) of its regulations, but has offered no factual basis for the Department to veer away from its practice.

In regards to the NICP, Petitioner claims that because Incheon Metal has been present in the Namdong Industrial Complex for multiple years, it provides no basis for the Department to alter the POI. As the Department is aware, non-recurring benefits received by Incheon Metal in prior years that continue to benefit the company during the POI are captured in the Department's countervailing duty margin calculation and petitioner has not alleged that Incheon Metal received non-recurring benefits as a result of the NICP. Additionally, respondent notes, the record does not reflect that Incheon Metal received any non-recurring benefits that might assist it.

Incheon Metal further contends that the petitioners request is untimely. During the course of the

investigation petitioner did not submit any factual information on the record that would support altering the POI. Incheon Metal notes that the record in the investigation closed on July 23, 2009, and 18 days prior to the scheduled final determination they have submitted a request in their Case Brief requesting the Department to collect facts on an expanded POI. Incheon Metal argues that the Department should reject this submission as untimely.

DOC Position: We disagree with Petitioner. As stated in 19 CFR 351.204(b)(2), the Department, in a CVD investigation, will normally rely on information pertaining to the most recently completed fiscal year for the government and exporters/producers under investigation. In keeping with this practice, we have appropriately measured subsidies for the period January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year of the GOK and Incheon Metal.

Our investigation of Incheon Metal included an examination of any non-recurring subsidies the company received prior to the POI. We find that Incheon Metal did not receive any non-recurring subsidies prior to 2008 that would have an allocated benefit to the POI. If a CVD order is issued in this investigation and a subsequent administrative review is requested for Incheon Metal, the Department, at that time, will examine subsidies received by Incheon Metal post calendar year 2008.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the Federal Register.

_____ Agree _____ Disagree

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

Date