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MEMORANDUM

DATE: August 23, 2002

TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the
Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod
from Germany

SUMMARY

On February 8, 2002, the Department of Commerce (“the Department”) published the preliminary determination in this investigation (Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 5991 (February 8, 2002) (“Preliminary Determination”). The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which also contains the Department’s responses 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 investigation for which we received comments and rebuttal comments from parties:

- Comment 1: Appropriate AUL for Saarstahl
- Comment 2: Appropriate AUL for IHSW
- Comment 3: Saarstahl’s Untimely Submission of Sales Data
- Comment 4: Use of Adverse Facts Available
- Comment 5: Schmiede’s Sales

- Comment 6: Saarstahl's Bankruptcy
- Comment 7: Assumption of Saarstahl's Legacy Costs
- Comment 8: Saarstahl's 1997 Reorganization
- Comment 9: Saarstahl's ECSC Article 54 Loans
- Comment 10: Saarstahl's Creditworthiness
- Comment 11: Saarstahl's Research and Development Assistance
- Comment 12: Previously Countervailed Programs for Saarstahl
- Comment 13: HSW's Change of Ownership
- Comment 14: Other Benefits Allegedly Conferred in the Sale of HSW
- Comment 15: Application of the "Same Person" Test to IHSW
- Comment 16: IHSW's Creditworthiness
- Comment 17: Cross-ownership Between Ispat and WDI
- Comment 18: ISRG's Intercompany Sales
- Comment 19: ISRG's Article 56 Grant
- Comment 20: ISRG's Rheinland-Pfalz State Government Grant

METHODOLOGY AND BACKGROUND INFORMATION

I. Changes in Ownership

A. Saarstahl

In the Preliminary Determination, we did not analyze changes in the ownership of Saarstahl AG ("Saarstahl"). We have done so for the final determination, however, because: 1) we are allocating Saarstahl's non-recurring subsidies over a different AUL than we used in the Preliminary Determination and, consequently, have determined that the benefits of a 1989 debt forgiveness are potentially allocable to the period of investigation ("POI"), and 2) we are now treating the 1997 restructuring as a change in ownership. As a result, we are now required to apply our change-in-ownership methodology to Saarstahl in 1989, 1994, and 1997, to determine whether the debt forgiveness provided to Saarstahl in 1989 continues to provide a countervailable subsidy to Saarstahl during the POI.

The first step in our change-in-ownership methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "same person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then

continue to countervail the remaining benefits of that subsidy.

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

1. 1989 Change in Ownership

As early as 1978, the Government of Saarland (“GOS”) and the German Federal Government (“GOG”) began restructuring the steel companies in the Saarland region. Through various restructurings and share transfers, the majority of the shares in Saarstahl Volkingen GmbH (“Saarstahl Volkingen”) were taken over by the GOS in 1986. The GOS sought a buyer for Saarstahl Volkingen and in 1989, the GOS and the French steel producer Usinor-Sacilor reached an agreement. Under the terms of the agreement, Saarstahl Volkingen (now renamed Saarstahl) and AG der Dillinger Huttenwerke (“Dillinger”) (an Usinor-Sacilor subsidiary) became wholly-owned subsidiaries of a newly created holding company, DHS - Dillinger Hutte Saarstahl AG (“DHS”). As a result of this transaction, Saarstahl, including its long products division that produces the subject merchandise, was owned by DHS, which was owned in turn by Usinor-Sacilor, Arbed, and the GOS.

2. 1994 Change in Ownership

Despite the new ownership structure, Saarstahl continued to be unprofitable. Consequently, in 1993, Saarstahl filed for bankruptcy. In 1994, during the pendency of the bankruptcy proceeding, DHS sold Saarstahl to the GOS for one German Mark (“DM”). See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990 (October 22, 1997) (“1997 German Wire Rod”). The repurchase of Saarstahl by the GOS was intended to support the bankruptcy trustees in their efforts to maintain the core operations of Saarstahl and to avoid dissolution of the company.

3. 1997 Change in Ownership

While Saarstahl was in bankruptcy, the bankruptcy trustees drew up a reorganization plan for the company. This reorganization occurred in 1997 and called for the GOS to transfer a portion of its shareholdings in Saarstahl AG to third parties. The recipients of this transfer were: (1) Dillinger, formerly part of DHS; (2) the Kreditanstalt fur Wiederaufbau (“KfW”), a bank funded

by the German federal and state governments, and; (3) Saarstahl Treuhand, a limited liability company established as part of the bankruptcy proceeding to hold and sell the remaining interest in Saarstahl. After the share transfer, the GOS held approximately 32 percent of Saarstahl's shares. The remaining 68 percent were divided as follows: (a) Dillinger – 19.9 percent; (b) KfW – 20 percent; and (c) Saarstahl Treuhand – 28.1 percent.

In December 1998, subsequent to the 1997 reorganization, KfW's shares were transferred to the Saarstahl Treuhand. In October 1999, the GOS sold 5.2 percent of Saarstahl's shares to Dillinger. Thus, as a result of the 1997, 1998, and 1999 changes in ownership, the ownership of Saarstahl was as follows: (a) Dillinger – 25.1 percent; (b) GOS – 26.8 percent; and (c) Saarstahl Treuhand – 48.1 percent.

4. *"Same Person" Test*

In the countervailing duty questionnaire transmitted to Saarstahl in this investigation, we asked the company, in detail, to address whether, as a result of its changes in ownership, there had been any fundamental changes in any of the following: the company's general business operations, production facilities, financial structure, level and composition of personnel, and control and direction of the company's finances and productive operations. In its November 21, 2001 questionnaire response, at II-24 - II-26, Saarstahl simply responded that the sale of shares had no effect on any of the foregoing factors. In addition, at verification, Saarstahl acknowledged that although the company had undergone a series of structural changes and changes in ownership since 1989, the company has maintained its operations as a steel manufacturer. See Memorandum to File, dated April 19, 2002, "Verification of the Countervailing Duty Responses from Saarstahl, AG., March 11-13, 2002" ("Saarstahl Verification Report"), at 1. Finally, our review of the evidence on the record of this investigation indicates that, throughout the various changes in ownership, Saarstahl was sold intact with all of its assets and liabilities, has continued to produce the same products and remain the same corporation, and has held itself out as the continuation of the previous enterprise by retaining the same name and maintaining the same customer base. Although Saarstahl's liabilities changed through debt forgiveness in 1989 and through the bankruptcy process in 1997, we determine that the company was unchanged in most respects by these changes in ownership.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Saarstahl continued to operate, for all intents and purposes, as the same "person" that existed prior to privatization and, thus, the pre-privatization subsidies continued to benefit Saarstahl even under private ownership.

HSW

In the Preliminary Determination, we applied our "same person" change-in-ownership methodology to the 1994 sale of Hamburger Stahlwerke GmbH ("HSW") to Ispat Hamburger Stahlwerke GmbH ("IHSW"). 67 FR at 5993-95. We determined that pre-sale IHSW was the same person

as respondent IHSW. Because no new information has been presented to warrant a different conclusion for the final determination, we continue to find that pre-sale IHSW is the same person as post-sale IHSW.

IHSW commented that HSW's pre-sale benefits should not be attributed to post-sale IHSW, consistent with certain recent Department redeterminations pursuant to court remands. For the reasons stated in Comment 15, we do not agree with IHSW. Consequently, we have continued to attribute HSW's pre-sale benefits to respondent IHSW for the final determination.

II. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Determination, we used an 11-year AUL to allocate non-recurring subsidies received by Saarstahl. For the final determination, for reasons stated below in Comment 1, we are using a different AUL. This AUL is a company-specific AUL that is significantly different from the AUL listed in the IRS Tables. The use of this new AUL requires us to examine non-recurring subsidies that Saarstahl received in 1989, and previously found countervailable in 1997 German Wire Rod.

For IHSW, the only non-recurring subsidy is the 1994 debt forgiveness (which is discussed further below). This subsidy was previously investigated and found to be countervailable in 1997 German Wire Rod. In that investigation, the 1994 debt forgiveness was allocated over a company-specific AUL of 10 years. Because the AUL period calculated in 1997 German Wire Rod is company-specific and because it is significantly different from the IRS tables as defined in 19 CFR 351.524(d)(2), we have continued to allocate IHSW's 1994 debt forgiveness over this 10-year AUL. This issue is addressed further in Comment 2, below.

For all non-recurring subsidies, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales in the year of receipt, the benefits are allocated to that year rather than being allocated over the AUL.

B. Creditworthiness

In the Preliminary Determination, we found Saarstahl to be uncreditworthy in 1996 and 1997 and IHSW uncreditworthy in 1994. Both Saarstahl and IHSW commented that they were creditworthy in these years.

Because we are finding that no non-recurring subsidies were given to Saarstahl in 1997, we do not need to make a final creditworthiness determination for that year. However, as discussed in Comments 10 and 16, respectively, we continue to find Saarstahl uncreditworthy in 1996 and

IHSW uncreditworthy in 1994. See also, Memorandum to File, “Creditworthiness Determination for Saarstahl”, dated August 23, 2002. (“Saarstahl Creditworthy Memo”)

C. Benchmark Loans and Discount Rates

In the Preliminary Determination, we explained our calculations of the uncreditworthy benchmark and discount rates. IHSW has argued that the Department used an incorrect uncreditworthy rate in the Preliminary Determination. For reasons stated in Comment 16, we disagree with IHSW and for the final determination have continued to use the uncreditworthy discount rate calculated for the Preliminary Determination.

D. Attribution

In the Preliminary Determination, we found that “cross-ownership” exists with respect to certain companies. First, because Saarstahl Burbach GmbH (“Burbach”) is a wholly-owned subsidiary of Saarstahl and produces the subject merchandise, we found that cross-ownership exists between Saarstahl and Burbach. Therefore, in accordance with 19 CFR 351.525(b)(ii), any subsidies received by Saarstahl and Burbach were attributed to the combined sales of Saarstahl and Burbach.

Since the Preliminary Determination, we have determined that cross-ownership also exists with respect to Saar-Schmiede GmbH Freiform-Schmiede (“Schmiede”). Schmiede is an incorporated division of Saarstahl. Therefore, subsidies received by Saarstahl, Burbach and Schmiede have been attributed to the sales of the products produced by the three companies. See 19 CFR 351.525(b)(iii).

Second, we found that IHSW and Ispat Walzdraht Hochfeld GmbH (“IWHG”) are wholly-owned subsidiaries of Ispat Germany, a non-producing holding company within the larger Ispat Group. Both IHSW and IWHG produce and export the subject merchandise. In addition, Ispat Germany has a third subsidiary, Ispat Stahlwerk Ruhrort GmbH (“ISRG”) which sells input products to IWHG that are primarily dedicated to the production of the subject merchandise. On this basis, we found that cross-ownership exists between IWHG, IHSW, See 19 CFR 351.525(b)(6)(ii) and ISRG. See 19 CFR 351.525(b)(6)(iv). Accordingly, we attributed the subsidies received by IWHG, IHSW, and ISRG to the combined sales of these three companies, net of intercompany sales. No new information has been presented, or discovered at verification, to warrant a reconsideration of our preliminary determination. Therefore, for the final determination, we continued to attribute the subsidies received by IWHG, IHSW, and ISRG to the combined sales of these three companies, net of intercompany sales.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

1. Forgiveness of Saarstahl's Debt in 1989

During the period 1978 to 1989, Saarstahl and its predecessor companies received massive amounts of assistance from the GOS and the GOG. Repayment of these funds eventually became contingent upon Saarstahl returning to profitability and earning a profit above and beyond the losses accumulated after 1978. This contingent repayment obligation was known as a Ruckzahlungsverpflichtung ("RZV").

In 1989, the GOS reached an agreement with Usinor-Sacilor to combine Saarstahl with Dillinger under a holding company, DHS. Pursuant to the combination agreement and as a condition for sale, in 1989 the GOG and GOS entered into a debt forgiveness contract (Entschuldungsvertrag, or "EV") which effectively forgave all the outstanding repayment obligations owed by Saarstahl to the two governments (i.e., a total of DM 3.945 billion in debt was forgiven). The EV specified, however, that if Saarstahl went bankrupt, the GOG and GOS claims could be revived, but their claims would be subordinated to those of all other creditors.

After several years of unprofitable operation, Saarstahl filed for bankruptcy in 1993 under the German Bankruptcy Regulations (Konkursordnung). In 1994, the GOS bought Saarstahl back from Usinor Sacilor for DM 1. At the time of its bankruptcy, Saarstahl's liabilities exceeded its assets by a factor of four, not including its liabilities to the GOG and GOS. Both governments filed claims against the Saarstahl bankruptcy estate based on the RZV debt that was conditionally forgiven in 1989. These EV-related claims were rejected by the bankruptcy trustee as invalid in 1995 on the grounds that they were so subordinated that the GOG and GOS would never be repaid. The GOG and GOS chose not to appeal the rejection of their bankruptcy claims on the grounds that the subordination of their claims made the likelihood of recovery very small, and not worth the high cost of litigating the matter.

In Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6233, 6234 (January 27, 1993) ("German Lead and Bismuth"), Final Affirmative Countervailing Duty Determination: Certain Steel Products from Germany, 58 FR 37315 (July 9, 1993), and 1997 German Wire Rod, we found that Saarstahl's RZVs and similar related debt were forgiven by the 1989 EV, thus conferring a countervailable benefit on Saarstahl as of 1989.

Consistent with our prior findings, we determine that the debt forgiveness constitutes a financial contribution in 1989 within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOG and GOS providing a benefit in the amount of the debt forgiveness, DM 3.945 billion. Additionally, we determine that the debt forgiveness provided to Saarstahl was specific, within the meaning of section 771(5A) of the Act, because it was provided to one

company.

To calculate the countervailable subsidy, we used our grant methodology as directed by 19 CFR 351.508(c). We divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 18.02 percent ad valorem for Saarstahl.

2. ECSC Article 54 Loans to Saarstahl

Article 54 of the European Coal and Steel Community (“ECSC”) Treaty authorizes lending money to coal and steel manufacturers at market rates. The European Community (“EC”) borrows money on international capital markets at market interest rates and then re-lends the funds to the companies at a slightly higher interest rate to cover the EC’s costs.

Saarstahl received an Article 54 loan in 1991 which was a rescheduling of an old Article 54 loan obtained by Saarstahl in the 1980s. The 1991 loan was partially repaid in 1995 as part of Saarstahl’s bankruptcy proceedings while the remaining balance was rescheduled as a new loan on December 2, 1996. This rescheduled loan, which was outstanding in the POI, had a maturity of 10 years.

We determine that Saarstahl’s Article 54 loan confers a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the EC providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by Saarstahl. We further determine that these loans are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to firms in the coal and steel industries.

To determine the benefit to Saarstahl from this Article 54 loan, we calculated the interest savings during the POI by comparing the benchmark interest rate to the interest rate paid by Saarstahl on the loan. We divided the interest savings by Saarstahl’s sales during the POI and on this basis, we determine the countervailable subsidy rate for this program to be .44 percent ad valorem for Saarstahl.

3. Research and Development Assistance to Saarstahl

In the Preliminary Determination, we described research and development assistance approved for Saarstahl under a program called New Materials for Key Technologies of the 21st Century (the MaTech program). We confirmed at verification that MaTech funds would not be disbursed to Saarstahl until 2001, i.e., after the POI. Therefore, because there would be no benefit under this program during the POI, we have not investigated it further.

We also noted in the Preliminary Determination that there was evidence of other R&D assistance to Saarstahl and that we would seek additional information on this assistance at verification. We confirmed at verification that Saarstahl received five R&D grants during the POI. Three of these

were paid to Saarstahl and the other two were to Schmiede.

Of the grants paid to Saarstahl, one was paid by the EC under the Brite/EuRAM Program. The Brite/EuRAM grant funded a research project related to processing of steelcord for tires.

Because assistance under the Brite/EuRAM program was not listed among the subsidies being investigated at the time of initiation, we did not seek nor did the EC provide information regarding the specificity of benefits provided under the Brite/EuRAM Project. We note that the Department examined the Brite/EuRAM Program in Certain Hot-rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 63 FR 18367, 18370 (April 15, 1998). No specificity finding was made in that proceeding because the amount received by the respondent was so small that it would not have impacted the ad valorem rate. The same is true here, *i.e.*, the amount received by Saarstahl under the Brite/EuRAM program during the POI is so small that the benefit would have no effect on Saarstahl's ad valorem rate. Therefore, we are not making a finding with respect to the countervailability of this program.

The two other grants received by Saarstahl were made under Article 55 of the of the Treaty of Paris establishing the ECSC. These grants are limited to industries under the auspices of the ECSC.

We determine that these grants provide a financial contribution in the form of a direct transfer of funds, with the benefit equal to the amounts of the grants, pursuant to section 771(5)(D)(1) of the Act and 19 CFR 351.504(a). We further determine that the Article 55 grants are specific because they are limited to coal and steel producers, pursuant to section 771(5A)(D)(i) of the Act. Therefore, the Article 55 grants received by Saarstahl provide a countervailable subsidy.

We have treated the grants as non-recurring subsidies and, in accordance with 19 CFR 351.524(b)(2), divided the amounts approved by Saarstahl's sales in the year of approval. Because the amounts approved were less than 0.5 percent of Saarstahl's sales in that year, we determine that the amounts disbursed should be expensed in the years of receipt. Consequently, we divided the benefits received in the POI by Saarstahl's POI sales. On this basis, we determine the countervailable subsidy rate for Article 55 R&D grants to be 0.00 percent ad valorem for Saarstahl.

Finally, as discussed above, information regarding Schmiede's subsidies and sales was not obtained until verification. Therefore, we have only limited information about the two R&D grants received by Schmiede during the POI. We lack, *inter alia*, information pertaining to the specificity of these grants. Therefore, we are not able to make a finding with respect to the countervailability of the program(s). However, if this investigation results in a countervailing duty order, we will seek further information regarding these grants in a future administrative review, in accordance with 19 CFR 351.311(c)(2).

4. Forgiveness of IHSW's Debt in 1994

Venuda purchased HSW in 1994. At the time of its sale, HSW owed the Hamburgische Landesbank Girozentrale ("HLB") DM 154.1 million. As explained in 1997 German Wire Rod, HLB, which is wholly-owned by the Government of Hamburg ("GOH"), had been extending credit to HSW since 1984. When HSW suffered significant losses in 1992 and 1993, HLB was unwilling to extend the credit line. However, the GOH intervened and assumed responsibility for the amounts loaned to HSW.

When Venuda purchased HSW, Venuda paid DM 10 million to HSW's owner. In addition, Venuda paid DM 60 million to HLB for the DM 154.1 million owed to it by HSW.

In 1997 German Wire Rod, we treated the sale of HSW and the sale of its debt as a single transaction, finding that Venuda paid DM 70 million for HSW and that the GOH through HLB forgave the DM154.1 million line of credit. The Department did so because the formula used to set the price for the debt (the difference between HSW's current assets and liabilities, less the debt owed to HLB) tied the value of the debt to the value of the company. Thus, the Department reasoned that the DM 60 million in payment was for the company and not for its debt, and that the entire debt amount of DM 154.1 million was forgiven.

We have reconsidered our treatment of this transaction in 1997 German Wire Rod and have determined that although the formula related the payment of debt to the book value of HSW, the GOH did not forgive the full amount of debt outstanding. Therefore, the debt forgiveness amounted to the difference between the full amount of the outstanding debt, DM 154.1 million, and the amount received for that debt from Venuda, DM 60 million, which equals DM 94.1 million.

We determine that this debt forgiveness constitutes a financial contribution in the form of a direct transfer of funds from the GOH, providing a benefit in the amount of DM 94.1 million received by IHSW in 1994. We further determine that the program is specific within the meaning of section 771(5)(A) of the Act because the debt forgiveness was provided to only one company, HSW. Therefore, the debt forgiveness provides a countervailable subsidy within the meaning of section 771(5) of the Act.

In accordance with 19 CFR 351.508(c), we have treated the debt forgiveness as a non-recurring subsidy. Because the amount of debt forgiven exceeded 0.5 percent of IHSW's sales in 1994, we have allocated the benefit over time using our standard grant allocation methodology as described in 19 CFR 351.524(d)(1). We divided the benefit allocated to the POI by the combined total sales of IHSW.

On this basis, we determine the countervailable subsidy rate for this program to be 1.11 percent ad valorem for IHSW.

5. ECSC Redeployment Aid Under Article 56(2)(b)

Under Article 56 of the ECSC Treaty, persons employed in the coal and steel industries who lose their jobs due to restructuring may receive readaptation aid for social adjustment. Payments from the EC are conditional upon an at least equivalent contribution from the government of the country in which the affected industry is located.

According to the EC's response, Article 56 worker assistance disbursed by the EC is funded from the ECSC's operational budget. The Department has previously found that because the ECSC's operational budget is funded by levies on coal and steel companies, the portion of the aid financed by the EC is not countervailable. *See, e.g., 1997 Wire Rod*, 62 FR at 54993 and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315, 37320-21 (July 9, 1993) ("Certain Steel from Germany").

Regarding the portion of the assistance that is financed by the national government, we have in two previous countervailing duty investigations of the German steel industry determined that only half of the amount paid by the GOG constitutes a countervailable subsidy if a social plan is in effect for the recipient company (*see Certain Steel from Germany*, 58 FR at 37321 and *1997 Wire Rod*, 62 FR at 54993).

ISRG received assistance under this program in the POI. In the Preliminary Determination, we found that there was no information on the record as to whether ISRG had a social plan in place when it received the Article 56 readaptation aid. Therefore, we countervailed the entire payment made by the GOG (*i.e.*, one half of the total amount received by ISRG) because it conferred a countervailable subsidy within the meaning of section 771(5) of the Act.

Since the Preliminary Determination, we have obtained a copy of the social plan that ISRG had in place when it received its grants under Article 56. Therefore, we determine that the readaptation assistance received by ISRG is a financial contribution in the form of a grant (*see* section 771(5)(D)(i) and, consistent with the Department's positions in Certain Steel Products and Steel Wire Rod, that the benefit to ISRG is one-half the amount paid by the GOG. We further determine that this assistance is specific under section 771(5A) because it is limited to firms in the coal and steel industries.

Worker assistance is a type of subsidy that the Department normally treats as recurring grants in accordance with 19 CFR 351.524(c). We, therefore, calculated the benefit by dividing half of the amount of the grant received by ISRG from the GOG by the combined total sales of IHSW.

On this basis, we determine the countervailable subsidy rate for this program to be 0.01 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

1. Subsidy Provided in Connection with the 1997 Reorganization of Saarstahl

As noted above, in 1993, Saarstahl filed an application for bankruptcy protection with the bankruptcy court. Bankruptcy proceedings against the company were begun in the same year. As part of these proceedings, Saarstahl's creditors were permitted to file claims against the bankruptcy estate. The claims were reviewed by the bankruptcy trustees, who were appointed by the court and approved by Saarstahl's creditors. Claims that were dismissed by the trustees could be appealed to the bankruptcy court.

Additionally, the bankruptcy trustees continued Saarstahl's business operations until the company's creditors decided whether Saarstahl should stay in business or whether the company should be liquidated. In September 1993, the creditors voted that Saarstahl should continue as a business. Consequently, the bankruptcy trustees were charged with developing a plan to bring the company out of bankruptcy. To do this, the bankruptcy trustees proposed a reorganization plan whereby a portion of the debt owed to secured and unsecured creditors of Saarstahl (including some interest) would be repaid, while the remaining debt claims would be dropped.

The amount to be paid to the creditors was DM 120 million. The funds were to be raised through capital contributions from four parties: the GOS, the KfW, Saarstahl Treuhand, and Dillinger. In exchange for their contributions, these parties would receive shares in Saarstahl equal to the portion of their contributions. Prior to the reorganization, these shares were held by the GOS, which purchased Saarstahl from its prior owner during the bankruptcy proceeding.

In the Preliminary Determination, we found that the debt elimination that occurred as a result of the bankruptcy proceeding did not confer a subsidy on Saarstahl. As explained further in Comment 6 below, we continue to find that bankruptcy protection is available to all types of companies in Germany and that Saarstahl was not treated differently than other companies. Therefore, we find no subsidy from the debt elimination.

We also found in the Preliminary Determination that the contributions made by the GOS, KfW, and Saarstahl Treuhand to finance the repayment of the remaining debt conferred a subsidy. We based our preliminary finding on the understanding that none of the entities were private and, therefore, that Saarstahl's owners generally continued to be government entities. (We acknowledged that Dillinger was not a governmental entity and did not find its contribution to be a subsidy.) Moreover, we understood at the time of the Preliminary Determination that the GOS's contribution was to be funded by cancelling its debt claims on Saarstahl.

At verification we learned that Saarstahl Treuhand was not a governmental entity. Instead, it was an independent, limited liability company with two of its three founders being the court-appointed bankruptcy trustees for Saarstahl. Saarstahl Treuhand received no funding from the GOS or other government entities. We learned further that the GOS's contributions to pay off Saarstahl's remaining debt as part of the reorganization were, in fact, funded by Saarstahl itself. Moreover, the debt Saarstahl owed to the GOS was repaid on the same terms that applied to all

other creditors of Saarstahl. See Verification Report of Saarstahl, April 19, 2002, page 8-9.

Based on this, we have revised our preliminary analysis and determine that Saarstahl did not receive a subsidy in the course of the 1997 reorganization. First, with respect to the GOS's and Saarstahl Treuhand's contributions, we find no financial contribution by the government. This issue is discussed further in Comment 8. Second, regarding KfW's contribution, we find no benefit to Saarstahl because KfW's investment was consistent with the usual investment practice of private investors in Germany, *i.e.*, KfW purchased its shares in Saarstahl on the same terms and conditions as the private investor, Dillinger. This issue is also discussed further in Comment 8.

In the Preliminary Determination, we stated our reasons for finding the following programs not countervailable. No new evidence has been presented or was discovered at verification to warrant a reconsideration of our preliminary findings. Therefore, for the same reasons as in the Preliminary Determination, we continue to find these programs not countervailable.

2. Ecological Tax Scheme
3. ECSC Article 56 Worker Readaptation (EC Portion)
4. Subsidy to Saarstahl Resulting from Delaying the Repeal of a Tax Exemption under the 1997 Act on the Continuation of Company Tax Reform
5. Treuhandstalt Assistance
6. Rheinland-Pfalz Second Directive on the Implementation of the Law on Handicapped Persons

III. Programs Determined To Be Not Used

In the Preliminary Determination, we found several programs to be not used. Except for the program entitled "1979 Investment Allowance Act," which we found to be terminated (see section below on "Programs Determined to be Terminated"), no new evidence has been presented or was discovered at verification to warrant a reconsideration of our preliminary findings for any of the other programs. Therefore, we continue to find those programs not used.

1. Joint Program: Upswing East
2. Aid for Closure of Steel Operations
3. Consolidation Funds
4. Special Depreciation
5. ECSC Loan Guarantees
6. ECSC Interest Rate Rebates
7. Regional Subsidies under the 1999 Investment Allowance Act

IV. Programs Determined To Be Terminated

In the Preliminary Determination, we found that certain programs alleged to provide subsidies

had been terminated. No new information has been presented or was discovered at verification to warrant a reconsideration of these findings. In addition to the programs listed in the Preliminary Determination, at verification, we also found that the program entitled “1979 Investment Allowance Act” had been terminated.

1. Structural Improvement Assistance Aids
2. Ruhr District Action Program
3. 1979 Investment Allowance Act

ANALYSIS OF COMMENTS

Comment 1: Appropriate AUL for Saarlustahl

Petitioners' Argument: The petitioners make three arguments for their position that the Department should rely on the 15-year AUL from the IRS Tables for all of Saarlustahl's subsidiaries, as opposed to the 11-year country-wide AUL used in the Preliminary Determination and previously used in 1997 German Wire Rod: 1) because Saarlustahl's company-specific AUL was rejected in 1997 German Wire Rod and because the country-wide AUL used in that case now appears unreliable, the Department must use the AUL from the IRS Tables, pursuant to the regulations; 2) the use of a previously-determined, 15-year AUL in German Lead and Bismuth would be consistent with the Department's policy against reamortizing the same countervailable subsidies to the same company; and 3) the company-specific AUL that Saarlustahl calculated in this investigation is aberrational and cannot be used.

First, the petitioners contend that the Department will normally rely on the AUL from the IRS Tables unless the respondent has submitted a company-specific AUL that complies with the Department's regulations. The petitioners claim that in 1997 German Wire Rod the Department rejected Saarlustahl's submitted company-specific AUL because the calculations were significantly distorted by the asset valuation methodology employed. As a result of this rejection, the petitioners state that the Department used a country-wide AUL taken from the German Technical Machinery and Equipment schedule. The petitioners argue, however, that the German Technical Machinery and Equipment schedule was then portrayed to the Department as being a steel industry standard. This, according to the petitioners, has now been verified to be wrong in this investigation.

Specifically, the petitioners claim that the Department will consider a country-wide AUL if 1) the AUL is for the industry under investigation and 2) the government has a system in place that provides a reliable representation of a company's AUL. According to the petitioners, at verification, the Department learned that the claimed country-wide AUL is not for the industry under investigation, but rather a “hybrid” AUL that represents a number of different industries and covers a broad range of products. Moreover, the petitioners argue that Saarlustahl and members of the steel producers' trade organization do not even follow this hybrid AUL (citing to Saarlustahl Verification Report).

Therefore, according to the petitioners, the country-wide AUL should be rejected and the Department's regulations require the use of the 15-year AUL from the IRS Tables.

Second, the petitioners contend that the Department's practice is to not re-amortize subsidies already being amortized in another proceeding involving the same company (citing to A.G. der Dillinger Huttewerke v. United States, 103 F. Supp 2d 1339, (CIT 2002) and Certain Cut-to-Length Carbon-Quality Plate from France, 64 FR 73277, 73280 (December 29, 1999) ("French Plate"). The petitioners claim that the Department has already countervailed Saarstahl's 1989 debt forgiveness using a 15-year AUL in German Lead and Bismuth. The fact that a different AUL period was used in 1997 German Wire Rod, according to the petitioners, was both erroneous (because it did not follow the policy against re-amortizing countervailed subsidies) and of no consequence (because the subsidies identified in 1997 German Wire Rod were never countervailed as a result of the ITC's negative injury determination in that case).

Therefore, according to the petitioners, because the relevant subsidies for Saarstahl are already being amortized over a 15-year AUL, the Department's practice requires the use of that previously calculated 15-year AUL.

Third, the petitioners claim that the Department should reject Saarstahl's calculation of its company-specific AUL in this investigation because that AUL is distortive.

Respondents' Argument: Saarstahl replies that the Department's practice is that, once it has determined an AUL for a specific subsidy given to a specific company, it will not calculate a new AUL in subsequent proceedings involving that same subsidy (citing to Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France, 64 FR 30774, 30778 (June 8, 1999), French Plate, 64 FR at 73280, and Final Affirmative Countervailing Duty Determination: Stainless Steel Bar From Italy 67 FR 3163 (January 23, 2002) and accompanying Issues and Decision Memorandum at "Subsidies Valuation Period: Allocation Period"). Saarstahl claims that the first proceeding in which the Department applied its new regulations to Saarstahl was in 1997 German Wire Rod. Having calculated an 11-year AUL in that case, Saarstahl argues that the Department must continue to use this AUL because we have already determined that this is the appropriate AUL for the subsidies at issue in this case.

Saarstahl contends that the Department should not use the 15-year AUL from German Lead and Bismuth because the practice at that time was to use the AUL from the IRS Tables as an irrebuttable presumption. This irrebuttable presumption, according to Saarstahl, was struck down by the Court of International Trade ("CIT") in British Steel plc. v. United States, 879 F. Supp. 1254 (CIT 1995) ("British Steel"). Because the AUL in German Lead and Bismuth was based on an illegal methodology, Saarstahl claims the Department cannot apply the 15-year AUL used in that case in this proceeding.

Furthermore, Saarstahl argues that the fact that a countervailing duty order was not issued in 1997 German Wire Rod had nothing to do with the Department's role in that proceeding (but

instead was due to the ITC issuing a negative final injury determination). In fact, according to Saarstahl, the Department has used the 11-year AUL subsequent to 1997 German Wire Rod (citing to Results of Redetermination Pursuant to Court Remand in AG der Dillinger Huttenwerke v. United States, Ct. No. 00-09-00437, Slip Op. 02025 (CIT Feb. 28, 2002) (April 30, 2002)).

Saarstahl also argues that Germany does have a system in place to calculate AULs for its industries and that this system provides a reliable representation of the country's AUL. According to Saarstahl, the GOG creates its depreciation tables using information collected in tax audits and in cooperation with industry organizations. Saarstahl claims that, although no single table is specific to the integrated steel manufacturing industry, steel companies are guided by the German depreciation tables for comparable equipment used by related industries. Saarstahl claims that, if a company chooses to stray from these tables, it must establish the reasonableness of the alternate depreciation period. Saarstahl argues that it is subject to tax audits which include a review of its depreciation expenses.

Saarstahl contends that the fact that it sometimes used a depreciable life greater than in the German depreciation table is of no import. This is because, according to Saarstahl, each time it used a different depreciable life, it was greater than those prescribed by the German depreciation tables. Therefore, Saarstahl claims it has not impermissibly shortened its AUL.

Finally, Saarstahl claims that its company-specific AUL is not distorted. Specifically, Saarstahl argues that, although it did take unusually high amounts of depreciation in 1993, the years after 1993 show correspondingly smaller depreciation charges. Therefore, according to Saarstahl, when viewed over a longer period, the 1993 special depreciation had no distortive impact. In fact, Saarstahl claims, its company-specific AUL has not exceeded 11 years for the past 19 years.

Regarding the country-wide AUL, the GOG contends that the German depreciation tables are based upon the results of tax audits and carefully produced in cooperation with industry organizations. These tables, according to the GOG are updated regularly and a company has the burden of establishing the reasonableness of any deviation from these tables. The use of a 15-year AUL from the IRS Tables, the GOG argues, would be improper as it has no connection to the actual experience in the German steel industry.

Department's Position: We disagree with the petitioners' position that we should use a 15-year AUL for Saarstahl and we disagree with Saarstahl's position that we should use an 11-year AUL.

Prior to 1995, the Department allocated non-recurring subsidies over the AUL from the IRS Tables as an irrebuttable presumption. In 1995, in British Steel, the CIT found that the Department's use of an AUL from the IRS Tables conflicted with Congress' intent because it did not reflect the actual commercial and competitive benefit of the subsidies to the recipient of the subsidy. In the redetermination pursuant to the remand in British Steel, the Department abandoned the use of an AUL from the IRS Tables altogether in favor of allowing companies to calculate company-specific AULs. See British Steel plc. v. United States, 929 F. Supp. 426, 433-

35 (June 4, 1996) (“British Steel II”). This company-specific allocation methodology was affirmed by the CIT. Id. at 439.

In applying this new methodology in cases following British Steel II, the Department found that a company-specific AUL allocation methodology, by itself, was more burdensome than envisioned in some cases. See Countervailing Duties; Final Rule, 63 FR 65348, 65396 (November 25, 1998) (“1998 CVD Regulations”). As a result, in the 1998 CVD Regulations, we again incorporated the IRS Tables into our allocation methodology because of its consistency, predictability, and simplicity. Id. Our regulations require that we presumptively use the AUL listed in the IRS Tables, unless a party claims and establishes that (1) the IRS Tables do not reasonably reflect the recipient company’s AUL or the country-wide AUL for the industry under investigation and (2) the difference between the two AULs is significant (*i.e.*, different by one year or more). 19 CFR 351.524(d)(2)(i) and (ii). Where the presumption is rebutted, we will use the company’s own AUL or the country-wide AUL as the allocation period. Id.

Parallel with the adoption of this regulation, we developed a practice of relying on previously calculated AULs, *i.e.*, once a subsidy had been allocated over a particular AUL, we used the same AUL for that subsidy in later segments of the same proceeding and in other proceedings involving the same company (absent evidence of changed circumstances regarding the initial AUL calculation). See, e.g., Certain Carbon Steel Products from Sweden: Final Results of Countervailing Duty Administrative Review, 62 FR 16549, 16549-50 (April 7, 1997) (“Swedish Certain Steel”) (used the same AUL in later segments of the same proceeding); 1997 German Wire Rod, 62 FR at 54990 (used the same AUL in across proceedings involving the same subsidy and company).

In the Preliminary Determination, we refined our practice of relying on previously calculated AULs in light of several considerations. *First*, our regulation is clear in requiring that the Department give parties in each investigation the opportunity to rebut the presumption in favor of the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut. *Second*, once the AUL from the IRS Tables has been rebutted and a particular subsidy has been allocated using a company-specific or country-wide AUL, we need not revisit the AUL determination even in subsequent proceedings (unless there is evidence that we miscalculated the initial AUL). This is because the previously calculated, company-specific AUL would be based on data more contemporaneous with the bestowal of the subsidy and, hence, would provide a more accurate measure of the benefit than newer data. See French Plate, 64 FR at 73293.

Third, we do not believe we can change the AUL used for allocating a particular subsidy in different segments of the same proceeding. This is because the Department amortizes a subsidy equally to each year of the allocation period using the AUL set in the investigation. If we were to decrease the AUL in a later segment of the same proceeding, we would find that not enough had been countervailed in preceding years (under-countervailing). Similarly, if we increased the AUL in a later segment of the same proceeding, we would find that too much was countervailed in preceding years (over-countervailing). Either outcome would violate our statutory obligation

to impose countervailing duties in the amount of the net subsidy. Also, the Department has stated that it would be unreasonable and impractical to reamortize subsidies in different segments of the same proceeding. See, e.g., Industrial Phosphoric Acid from Israel, 63 FR 13626, 13627 (March 20, 1998).

The reasons for not changing an AUL within a proceeding do not, however, apply across proceedings, *i.e.*, when the Department is investigating the same subsidy to the same company, but in a different proceeding. In these situations, because our regulation requires that we allow the presumption in favor of the IRS Tables to be rebutted in each investigation, and because a different AUL in a different proceeding does not lead to over or under countervailing, we will not rely on the previously-calculated AUL, unless that AUL was a company-specific or country-wide AUL which differed significantly from the AUL from the IRS Tables and was calculated closer in time to the bestowal of the subsidy.

In light of the above considerations, our refined AUL selection methodology follows these steps:

- (1) Establish the AUL from the IRS Tables for the industry under investigation in each investigation;
- (2) If the presumption to use the AUL from the IRS Tables has not previously been rebutted for a subsidy, with a *significantly-different, company-specific or country-wide AUL*, we will evaluate in each investigation any evidence that a company-specific AUL varies significantly from the AUL in the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut. If the difference is significant (*i.e.*, different by one year or more), we will allocate the subsidy over the company-specific or country-wide AUL. If not, we will allocate the subsidy over the presumed AUL from the IRS Tables.
- (3) Once the presumption to use the AUL from the IRS Tables has been rebutted, and an untied subsidy is allocated over a *significantly-different, company-specific or country-wide AUL*, we will continue to allocate that subsidy over the same AUL in future proceedings for the same respondent (unless there is evidence that we miscalculated the initial AUL).
- (4) In later segments of the same proceeding, *regardless of how that previous AUL was determined*, we will continue our longstanding practice of allocating the subsidy over the previous AUL.

Based on this methodology, the 15-year allocation period used in German Lead and Bismuth can not rebut the AUL listed in the IRS Tables because it was taken from the IRS Tables. Instead, we must examine the 11-year AUL relied upon in 1997 German Wire Rod to determine whether it rebuts the presumption in favor of the 15-year period in the IRS Tables.

The petitioners have pointed out that the company-specific AUL based on Saarstahl's depreciation and asset values was rejected in 1997 German Wire Rod. Instead, the Department

based the AUL for Sairstahl upon the depreciation period in the German Technical Machinery and Equipment schedule. Despite our characterizations of this AUL as a country-wide AUL in the Preliminary Determination (and the parties' statements in their briefs), this was not a country-wide AUL. This AUL is actually a company-specific AUL because the calculation was based on the actual depreciation periods used by Sairstahl's for its capital equipment.

As noted above, the Department's regulations require that we presumptively use the AUL listed in the IRS Tables, unless a party claims and establishes that the IRS Tables do not reasonably reflect the recipient company's AUL or the country-wide AUL for the industry under investigation. 19 CFR 351.524(d)(2)(i). However, we have not used the 11-year company-specific AUL calculated in 1997 German Wire Rod in this investigation because that AUL reflected a simple average of the depreciation periods Sairstahl uses for its different asset categories. That AUL was determined prior to the 1998 CVD Regulations. Under our current regulations, to calculate a company-specific AUL, we divide the aggregate of the annual gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation. 19 CFR 351.524(d)(2)(iii). This calculation results in what is essentially a weighted average AUL with depreciation periods for different asset categories weighted by the value of assets in each category. A simple average, as was calculated in 1997 German Wire Rod, does not yield this result and would not be in accordance with our regulations (i.e., the previously used AUL was not calculated correctly).

We have also not used a 10-year country-wide AUL based on the AfA tables because our regulations provide that a country-wide AUL will not be accepted unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL. While the AfA tables do outline depreciation periods for various assets, these tables are not required to be used by companies in Germany. In fact, Sairstahl uses the AfA tables for certain assets, but uses a longer period for other assets. While this is allowed under German law, under these circumstances, we do not find the AfA tables to provide a reliable measure of the AUL of assets in Germany.

Further, we have not used the AUL calculated by Sairstahl in this investigation using the company-specific methodology described in our regulations because we find this AUL to be distorted. This is because Sairstahl has taken large special depreciations in certain years and has switched from straight-line depreciation to accelerated depreciation within the 10-year period over which the Department uses to determine the AUL. We are not able to normalize these distortions. See 1998 CVD Regulations, 63 FR at 65397.

We find that the appropriate AUL for Sairstahl is the maximum period over which it depreciates different categories of assets (the actual period is proprietary and, thus, cannot be discussed here). While the Department's regulations provide specific methods to determine a company-specific or country-wide AUL in order to rebut the presumption to use the AUL from the IRS Tables (see 19 CFR 351.524(d)(2)(iii)), these methods, however, are designed to reach an average allocation period for a company or an industry. In this investigation, while we do not have the record information to perform the AUL calculation envisaged in the regulations, we do have on the

record of this investigation the actual periods over which Sairstahl depreciates various categories of production assets (*i.e.*, the end result of the calculations). Our review of this information indicates that the higher valued equipment is depreciated over the longest period. Thus, while we do not have weights to assign to each of the depreciation periods used by Sairstahl, we believe it is reasonable that any weighting of each of these depreciation periods by the gross value of the assets would result in a company-specific AUL very close to the longest period. The result is a company-specific AUL that differs significantly from the 15-year AUL period in the IRS Tables.

Moreover, we note that the record information shows that the AUL in Germany for steel assets is significantly less than the 15 years listed in the IRS Tables because the longest period that Sairstahl uses to depreciate its assets is significantly less than 15 years. Given the CIT's concern in British Steel that our allocation methodology reflect the actual commercial and competitive benefit to the subsidies recipient, we cannot ignore information indicating that the actual AUL experience of a respondent would be significantly less than the 15 years reflected in the IRS Tables. Consequently, we have not allocated non-recurring subsidies to Sairstahl over the AUL listed in the IRS Tables.

Comment 2: Appropriate AUL for IHSW

Petitioners' Argument: The petitioners make two arguments for their position that the Department should rely on the 15-year AUL from the IRS Tables for all of IHSW's subsidies, as opposed to the 10-year company-specific AUL previously used in the Preliminary Determination and in 1997 German Wire Rod. First, IHSW's company-specific AUL is aberrational. Second, because the country-wide AUL used in 1997 German Wire Rod now appears unreliable for the reasons discussed in Comment 1, the Department must use the IRS Tables according to its regulations.

Respondent's Argument: IHSW replies that its company-specific AUL is not aberrational as the Department found in 1997 German Wire Rod and the Preliminary Determination, and confirmed at verification. Specifically, IHSW claims that its AUL was found to tie to the financial report data without discrepancy at verification. IHSW also supports the GOG's arguments that the German depreciation tables are a reliable representation of average useful life. Because no new evidence has been presented to indicate that the circumstances with respect to the initial AUL decision have changed, IHSW requests that the Department continue to use IHSW's company-specific AUL for the final determination.

Department's Position: We have continued to use the 10-year AUL calculated in 1997 German Wire Rod. This AUL is company-specific and significantly different from the 15-year AUL in the IRS Tables, and was calculated closer in time to the granting of IHSW's subsidies. The petitioners' claims that IHSW's AUL is aberrational are proprietary and have been addressed in the Memorandum from Richard W. Moreland to Faryar Shirzad, dated August 23, 2002, "Discussion of Comments Containing Proprietary Information, Comment 2" ("Proprietary Comments Memorandum"), a public version of which is on file in the CRU. As explained in that memorandum, we disagree that the AUL for IHSW that was calculated in 1997 German

Wire Rod is aberrational. Consequently, use of the 10-year AUL is consistent with the AUL policy described in Comment 1.

Comment 3: Saarstahl's Untimely Submission of Sales Data

Petitioners' Argument: The petitioners argue that the Department should reject the revised sales figures presented by Saarstahl at verification. According to the petitioners, Saarstahl responded to the Department's questionnaire with data Saarstahl admits were incorrect and then Saarstahl waited until the beginning of verification to submit correct data.

The petitioners contend that the Department cannot use the sales data provided at verification because these data were not submitted by the deadline set by 19 CFR 301(c)(2) for filing questionnaire responses. Furthermore, according to the petitioners, factual data must be submitted no later than seven days prior to the beginning of verification, under 19 CFR 351.301(b)(1), and Saarstahl did not meet this deadline. In support of their position, the petitioners point to Acciai Speciali Terni v. United States, 142 F. Supp. 2d at 991-93 ("AST"), in which the court found that application of adverse facts available was appropriate when significant sales data were submitted after the questionnaire response deadline and no explanation was given for the reporting failure. Also, according to the petitioners, the Department made clear in its verification outline that verification should not be viewed as an opportunity to submit new factual information, unless so requested by the Department. The petitioners claim that the Department did not request the new information on sales and, hence, that Saarstahl's data did not fit within the exception.

Finally, the petitioners argue that Saarstahl did not permit verification of the data it originally submitted, instead focusing attention on the new "correct" data so that the Department did not attempt to verify the data submitted in the questionnaire response. Because of Saarstahl's tactics, the petitioners claim that they were denied the opportunity to submit comments on the new data until the case brief, which was too late for the Department to remedy the deficiencies.

Respondent's Argument: Saarstahl contends that the petitioners' argument is without merit. In Saarstahl's view, the revised data constituted a minor correction of the type described by the Department in its verification outline and permitted by the Department. The correction was necessary, in Saarstahl's view, because the originally submitted data were taken from the financial statements of Saarstahl and Burbach, not VGS, and, therefore, represented internal transfer prices between the production companies and the sales company, not sales to independent third parties. Saarstahl claims that the Department verified the revised sales information, and also verified the difference between the originally submitted data and the revised data. Therefore, Saarstahl argues, the Department should use the revised, verified sales data for the final determination.

Department's Position: As explained in the Saarstahl's Verification Report at 4, the sales value originally reported by SAG was taken from the records of the two production companies, Saarstahl and Burbach. However, both of the companies make their sales through the 100

percent affiliated company, VGS. Because the sales records of Sairstahl and Burbach reflect sales to VGS and, hence, inter-company sales, we prefer not to use them if information on total sales to unrelated customers exists and can be verified. In this case, Sairstahl provided the preferred measure of sales at the outset of verification and the revised data were verified. See Proprietary Comments Memorandum at comment 3.

We agree with Sairstahl that this correction was minor and of the type that the Department routinely accepts at verification. Thus, the deadlines referred to by the petitioners in 19 CFR 301(c)(2) and 19 CFR 351.301(b)(1) regarding submission of questionnaire responses and factual information, respectively, do not apply in this situation. Similarly, we do not agree that the CIT's ruling in AST is relevant to this proceeding. In AST, the court was addressing the situation where a company involved in an antidumping duty investigation reported some of its U.S. sales in an untimely manner. The Department declined to accept those sales because they were a significant portion of the respondent's U.S. sales and because the failure to report U.S. sales is a serious error in an antidumping case where such sales are at the heart of the analysis. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61747 (November 19, 1997). However, countervailing duty investigations, unlike antidumping duty investigations, do not examine individual sales to the United States. So, while accurate information on the value of a company's total sales is important for a countervailing duty investigation it does not play the same crucial role it plays in an antidumping investigation.

Regarding the petitioners' claim that the Department did not request this information at verification, had the Department attempted to verify the amount reported in the original response, it is likely that the Department would have questioned Sairstahl's use of inter-company sales and would have requested the very information that Sairstahl provided at verification: sales to unrelated customers, *i.e.*, sales by VGS. However, Sairstahl itself identified the potentially flawed methodology it used to report its sales in the questionnaire response, and offered corrected data which the Department verified. We note that regarding one item of information related to the FOB adjustment for export sales, the Department did question Sairstahl's methodology and, in response to our questions, Sairstahl provided different values for this adjustment which we verified.

Finally, we disagree with the petitioners' statement that Sairstahl focused attention on the revised data and did not permit the Department to verify the originally submitted amount. We verified the revised data and reviewed Sairstahl's reconciliation of the revised and originally calculated amounts. Based on the reconciliation, we were satisfied that the two amounts did not differ significantly and that we did not need to question the originally reported amount further. See Sairstahl's Verification Report at 5 and 6. The alleged deficiencies in the revised data raised by the petitioners involve proprietary information and are addressed in the Proprietary Comments Memorandum at Comment 3. Because these alleged deficiencies did not, in our view, undermine the revised data, we do not believe that the petitioners have been disadvantaged by the Department's use of the revised sales data submitted at verification.

Petitioners also agree that Saarlstahl's reporting errors related to f.o.b. adjustments serve as a basis for applying adverse facts available against Saarlstahl. The Department disagrees. Due to the business proprietary nature of the discussion, please see the Proprietary Memorandum at comment 3.

Comment 4: Use of Adverse Facts Available for Saarlstahl

Petitioners' Argument: The petitioners urge the Department to be suspicious of Saarlstahl's failure to explain why the data submitted in the questionnaire response were inaccurate and why the response data should be replaced with the data submitted at verification. Saarlstahl's "abandonment" of its reported data should be taken as strong evidence that the originally submitted sales data could not be verified, in the petitioners' view. Consequently, according to the petitioners, the Department should conclude that Saarlstahl knowingly submitted inaccurate and unverifiable data. Moreover, the petitioners claim, Saarlstahl's failure to check its records carefully in response to the Department's request to submit sales value information indicates that Saarlstahl did not act to the best of its ability. This, in the petitioners' view warrants application of total adverse facts available to Saarlstahl.

Respondent's Argument: Saarlstahl disagrees with the petitioners, stating that the Department should use the verified, revised sales data.

Department's Position: We have not applied adverse facts available to Saarlstahl's sales data. As discussed above in Comment 3, the information submitted by Saarlstahl is the type of correction normally accepted by the Department at verification, and the revised data was verified. Moreover, the approach taken by Saarlstahl to calculate sales for the questionnaire response was reasonable. The questionnaire merely asks: "What was the quantity and f.o.b. value of total sales (both subject and non-subject merchandise) to all markets (domestic and foreign)?" Saarlstahl replied with a value based on the sales records of its production companies. Although we believe there is a better method for reporting Saarlstahl's sales, *i.e.*, sales to unaffiliated parties by VGS, we cannot agree with the petitioners that Saarlstahl failed to act to the best of its ability. Instead, we have relied upon the revised, verified sales data.

Comment 5: Schmiede's Sales

Respondent's Argument: Saarlstahl contends that the Department should include sales of forged product by Saar Schmiede GmbH Formfreischmiede ("Schmiede") in Saarlstahl's total sales. In support of its position, Saarlstahl points to 19 CFR 351.525(b)(3), which states that domestic subsidies are attributed to all products sold by a firm, including exports.

Petitioners' Argument: The petitioners object to the inclusion of Schmiede's sales because this information, like the revised information on Saarlstahl's sales, was only brought forth at verification. Moreover, in the petitioners' view, including these sales would be illogical because given the relationship between Saarlstahl and Schmiede, the Department would be combining the inter-company sales of Schmiede to Saarlstahl with those of Saarlstahl/Burbach to VGS.

Department's Position: We have included Schmiede's sales in the total sales value for Saarstahl. At verification, it was the Department that sought information on subsidies to Schmiede and on Schmiede's sales. Schmiede is an incorporated division of Saarstahl and, thus, falls within 19 CFR 351.525(a)(6)(iii), which directs that subsidies received by parent should be attributed to the consolidated sales of the parent and its subsidiaries. Although Saarstahl does not consolidate its sales, we believe it is appropriate to attribute Saarstahl's (and Schmiede's) subsidies to the combined sales of the two companies because of their relationship. There is no reason to believe that there is any double counting of subsidies, because there is no evidence of inter-company sales between Schmeide - Saarstahl and Saarstahl Burbach.

Comment 6: Saarstahl's Bankruptcy

Petitioners' Argument: The petitioners object to the Department's preliminary finding that the massive debt relief obtained by Saarstahl through its bankruptcy proceeding was not countervailable. The Department preliminarily concluded that Saarstahl did not receive preferential or differential treatment. However, the petitioners claim, the Department learned at verification that the GOS's decision to purchase Saarstahl allowed the company to continue in operation. The Department also learned that most companies that file for bankruptcy are not able to continue their operations. Moreover, the petitioners claim, the GOS and GOG were instrumental in paying off the DM 120 million to Saarstahl's creditors. Because there is no evidence that other German companies facing bankruptcy received such government intervention and support, the petitioners argue that the Department should find the total debt relief received by Saarstahl through its bankruptcy proceeding to be a subsidy which is specific to Saarstahl.

Respondents' Argument: Saarstahl contends that the GOS's role was limited to that of a shareholder of Saarstahl, and that the GOS did not exercise any control over the bankruptcy proceedings. According to Saarstahl, the Department has previously and thoroughly reviewed Saarstahl's bankruptcy proceedings and has never found any item that has not strictly complied with German bankruptcy law (citing to 1997 German Wire Rod). Therefore, Saarstahl concludes, there is no basis to find a benefit to Saarstahl as a result of the bankruptcy proceeding.

According to the GOG, neither the GOG nor the GOS took any actions inconsistent with German bankruptcy law or general commercial practices in connection with Saarstahl's bankruptcy.

Department's Position: We continue to find that the evidence on the record of this proceeding does not support the petitioners' claim that Saarstahl received special or differential treatment in the bankruptcy process. The company followed established procedures when it filed for bankruptcy in bankruptcy court. The court appointed bankruptcy trustees who were subsequently approved by the creditors. These trustees oversaw the company until the creditors decided whether the company should continue in operation. The creditors also had to approve the restructuring plan that allowed Saarstahl to emerge from bankruptcy. While continuation of a company in bankruptcy may be rare, as acknowledged by GOG officials, the decision to maintain Saarstahl as an ongoing concern was made by Saarstahl's creditors upon the advice of the bankruptcy trustees. Regarding the governments' participation in the partial repayment to

creditors, we have determined that Saarlühl did not receive a benefit from this transaction, as discussed in the “Analysis of Programs” section.

We do not dispute that the GOS had an interest in keeping a large employer like Saarlühl in business and to further that goal purchased the company while it was in bankruptcy. According to company and government officials, this prevented liquidation of the company and facilitated its restructuring. However, that action in itself did not provide a financial contribution to Saarlühl. Moreover, there is no evidence to suggest that the GOS, as owner, took actions which caused the creditors to accept a lower level of repayment. Therefore, there is no basis for saying that the government’s ownership led to the debt forgiveness that occurred in the bankruptcy proceeding or that the amount of debt forgiven was higher because of government ownership.

Finally, we disagree with the petitioners that the mere fact of the governments’ participation in the bankruptcy and restructuring renders Saarlühl’s debt forgiveness specific. Despite the GOS’s ownership of Saarlühl in bankruptcy and both government’s participation in restructuring, the creditors, the bankruptcy court, and the bankruptcy trustees controlled the company during that period and there is no evidence to suggest that they gave the company favorable or preferential treatment.

Comment 7: Assumption of Saarlühl’s Legacy Costs

Petitioners’ Argument: The petitioners note that the Department learned at verification that the Pensions-Sicherungs-Verein assumed legacy costs related to the salaries of employees that Saarlühl laid off subsequent to its declaration of bankruptcy. The petitioners claim that the Pensions-Sicherungs-Verein is a quasi-governmental organization. Because this quasi-governmental organization assumed these expenses Saarlühl was relieved of employment costs that it normally would have incurred, according to the petitioners. Consequently, they argue, the Department should countervail the Government’s assumption of Saarlühl’s legacy payments.

Respondents’ Argument: Saarlühl counters that the Pensions-Sicherungs-Verein is not a “quasi-governmental” organization, but rather a mutual insurance association that insures corporate pension funds against insolvency. According to Saarlühl, this insurance association is funded solely by employer contributions in the form of insolvency insurance premiums. Therefore, Saarlühl contends that there is no financial contribution by a governmental authority.

Moreover, Saarlühl notes that the salary payments to laid-off workers were not assumed by the Pensions-Sicherungs-Verein, but rather were covered under Saarlühl’s bankruptcy social plan. Citing to 1997 German Wire Rod, 62 FR at 54993, Saarlühl points out that the Department has previously determined that payments under Saarlühl’s bankruptcy social plan are not countervailable. In the Preliminary Determination, the Department found that the petitioners had not provided any new information that would warrant reconsideration of this alleged subsidy.

The GOG contends that the Pensions-Sicherungs-Verein is financed through employer contributions in the form of insolvency insurance premiums and not with public funds.

Department's Position: We agree with Saarstahl that the specific payments described by the petitioners (salary payments to laid off workers), were made by Saarstahl under its bankruptcy social plan. Instead, it was Saarstahl's pension obligations that were assumed by the Pensions-Sicherungs-Verein, as indicated in the Saarstahl Verification Report, at 10.

We have reviewed information at the website cited by the petitioners and find no evidence that the Pensions-Sicherungs-Verein is a governmental or quasi-governmental organization. To the contrary, this information indicates that the organization is funded by member contributions. Consequently, there is no basis to countervail the Pensions-Sicherung-Verein's assumption of Saarstahl's legacy costs.

Saarstahl's citations to 1997 German Wire Rod and the Preliminary Determination, highlight the the Department's findings when the GOG makes contributions under Saarstahl's bankruptcy social plan. The payments in question here were made by Saarstahl, not the GOG. There is no evidence to indicate that the payments Saarstahl made to laid off workers in carrying out its obligations under the bankruptcy social plan conferred any subsidy on Saarstahl.

Comment 8: Saarstahl's 1997 Reorganization

Respondents' Argument: In the Preliminary Determination, the Department treated the contributions to Saarstahl by the GOS, Saarstahl Treuhand, and KfW in connection with Saarstahl's 1997 reorganization as countervailable subsidies. However, Saarstahl contends that, as demonstrated at verification, none of these contributions constituted countervailable subsidies as defined by section 771(5) of the Act (requiring a "financial contribution by a government authority" that confers a "benefit").

First, with respect to the GOS's contribution, Saarstahl claims this was funded entirely from Saarstahl's own operating profits and not by any government entity. Contrary to what the Department said in the Preliminary Determination, the GOS did not make its contribution by cancelling the debt owed to it by Saarstahl. Instead, the claims were repaid under the same conditions as those relating to all other preferred creditors.

Second, Saarstahl argues that the Treuhand's contribution is not countervailable because Treuhand is an independent limited liability company, established under German law, that is neither operated nor financed by the GOS. Accordingly, any payments made by Treuhand contributions from a private entity with no government involvement.

Finally, Saarstahl argues that the contributions by KfW were not countervailable subsidies because the record shows that KfW's investment decision was not "inconsistent with the usual investment practices of private investors." 19 CFR 351.507(a). Specifically, according to Saarstahl, KfW invested in Saarstahl on the same terms as a private company and, based on Saarstahl's net worth after the reorganization, KfW's ownership interest in Saarstahl had a value commensurate with the amount invested. Finally, as the Department verified, Saarstahl

Treuhand subsequently purchased the KfW shares for the full amount paid by KfW plus interest. Because the shares were purchased from KfW prior to the POI, they could not give rise to a benefit in the POI.

Petitioners' Argument: The petitioners contend that Saarlühl's arguments regarding the source of funds used to pay Saarlühl's debt are circular and that the Department should reaffirm its preliminary finding that the cash paid by the GOS, Saarlühl Treuhand, KfW constituted direct payments to Saarlühl's creditors to satisfy Saarlühl's debt obligations. The petitioners support their argument by pointing to a statement of Saarlühl's website to the effect that the DM 120 million debt relief was financed proportionately by shareholders based on share capital. The petitioners further state that the Department confirmed at verification that private sources of money were not used to provide debt relief to Saarlühl.

Regarding Saarlühl Treuhand, the petitioners assert that the Department correctly found in the Preliminary Determination that Saarlühl Treuhand is not a purely private entity, despite Saarlühl's representations.

Finally, the petitioners contend that Saarlühl's assertion that the KfW's contribution did not provide a benefit is not supported by the record. Specifically, as the Department found in the Preliminary Determination, KfW is an arm of the GOG so that this was not a typical private purchase of shares in the open market. Moreover, the shares that KfW received were only valuable because of the government-sponsored debt relief that Saarlühl received in its bankruptcy. The petitioners also object to Saarlühl's claim that KfW was repaid prior to the POI. There is no evidence, the petitioners state, that Saarlühl, the true subsidy recipient, repaid any subsidy.

Department's Position: As discussed above in the "Analysis of Programs" section, we have determined that Saarlühl did not receive a countervailable subsidy as a result of the shareholder contributions used to finance the 1997 restructuring. First, we determine that the GOS did not fund its contribution by forgoing preferred claims on Saarlühl. Instead, the contributions attributed to the GOS were made by Saarlühl from its own operating profits. Although the GOS owned all of Saarlühl's shares during the period leading up to the restructuring this does not mean that any profits earned by Saarlühl at the time should be viewed as government-sourced funds. These profits were never distributed to the owner and, because Saarlühl was in bankruptcy and essentially controlled by its creditors, it is doubtful that the funds could have been distributed to the GOS. Moreover, were we to take the position that the retained earnings of a government-owned corporation are government funds, we would find that every self-financed investment by a government-owned company constitutes a financial contribution. We might also have to find that any spending by a government-owned company for inputs or to pay interest is a financial contribution. Clearly, this would be a significant departure from our current practice of looking at government-owned firms as a potential recipients of subsidies bestowed by their governments and would seriously blur the distinction the Department maintains between companies and their owners (see Results of Redetermination Pursuant to Court Remand; Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA v. United States Court No.99-06-00364,

Remand Order (CIT February 1, 2002), which is posted on the IA website at www.ia.ita.doc.gov/remands).

We have also changed our preliminary finding regarding Saarstahl Treuhand. Based on additional information obtained at verification, we determine that it is not a governmental entity and that it received no government funds. Instead, Saarstahl Treuhand is an independent, limited liability company, with the bankruptcy trustees as two of its founding members. Saarstahl Treuhand was established as a temporary company which existed to hold Saarstahl's shares until they could be disposed of in accordance with the creditors' directions. We respond to additional, proprietary arguments made by the petitioners regarding Saarstahl Treuhand in the Proprietary Comments Memorandum at Comment 8.

Finally, with respect to KfW, we continue to find that KfW is a government entity for purposes of this final determination. However, in a change from the Preliminary Determination, we are now treating the 1997 contributions as equity purchases and the 1997 restructuring as a change in ownership. This is because, as discussed above, we no longer view Saarstahl Treuhand as a government entity. Consequently, with the 1997 restructuring, 48 percent of Saarstahl's shares passed into non-government hands and that figure increased to about 75 percent by the end of 1998, when KfW's shares were purchased by Saarstahl Treuhand and the GOS sold a portion of its shares to Dillinger.

When analyzing the 1997 restructuring as an equity purchase, it becomes necessary to recognize that Dillinger, a private company, also purchased shares in Saarstahl at that time. Dillinger purchased the same type of shares purchased by KfW and on the same terms. Consequently, under 19 CFR 351.507(a)(2), we determine that KfW's purchase of shares in Saarstahl was consistent with the usual practice of investors in Germany and, hence, that no benefit was conferred on Saarstahl in this transaction.

Comment 9: Saarstahl's ECSC Article 54 Loans

Respondent's Argument: Saarstahl argues that the Department erred in countervailing the ECSC Article 54 loans in the Preliminary Determination. First, record evidence establishes that the interest rate paid by Saarstahl on this loan was comparable to market rates. Thus, Saarstahl contends that the loan did not satisfy the test outlined in 19 CFR 351.505(a). Second, Saarstahl argues that the Department incorrectly used an interest rate for uncreditworthy companies as the benchmark. As Saarstahl argues in Comment 10, it was not uncreditworthy in 1996, the year in which the ECSC loan was renegotiated. Finally, Saarstahl argues that the ECSC loan was fully secured with an interest in Saarstahl's real estate and, therefore, it was not commercially inconsistent for the ECSC to base the interest rate upon current market rates for secured investments.

Petitioners' Argument: The petitioners argue that the Department should continue to value the benefit from this program to Saarstahl as it did in the Preliminary Determination. As discussed in Comment 10, the petitioners argue that Saarstahl was uncreditworthy at the time the ECSC

loan was provided to Saarlühl. Furthermore, the petitioners argue that existence of a security interest on the loan is not relevant for purposes of determining the benchmark interest rate for the program under 19 CFR 351.505. The petitioners further question whether the security provided for the loan was meaningful given Saarlühl's poor financial condition.

Department's Position: The petitioners are correct that the Department's loan methodology does not distinguish between secured and unsecured loans for purposes of benchmark selection (see, generally 19 CFR 351.505(a)). The fact that the loan was secured does not impact Saarlühl's creditworthiness. See Comment 10 regarding creditworthiness discussion. In Saarlühl's case, the Department found the company to be uncreditworthy in 1996. Consequently, under 19 CFR 351.505(a)(3)(iii), we applied an uncreditworthy benchmark rate to determine the benefit conferred by the ECSC Article 54 loans.

Comment 10: Saarlühl's Creditworthiness

Respondent's Argument: Saarlühl argues that the Department incorrectly determined that Saarlühl was uncreditworthy in 1996 and 1997. The Department reached this erroneous conclusion, Saarlühl contends, based on the assumption that Saarlühl operated at a loss during the years 1993 - 1997. In fact, Saarlühl states that it earned positive net income, which dramatically increased during this period. While Saarlühl concedes that the improvement in its financial ratios in 1996 and 1997 was due, in part, to the reorganization, Saarlühl also argues that its positive net income in the years immediately preceding the reorganization demonstrates that the company was operating with excellent returns. Saarlühl contends that the bankruptcy court and trustees, and Saarlühl's creditors would not have approved the company's reorganization had it not been operating at a profit for the previous years. Finally, Saarlühl argues, its future financial picture was positive. Its performance had steadily improved since 1993 and, as previously stated, the company's ability to operate successfully was a prerequisite to the 1997 reorganization plan.

Petitioners' Argument: The petitioners argue that the Department properly determined that Saarlühl was uncreditworthy in 1996 and 1997 based on numerous factors, including: (1) an analysis of Saarlühl's financial health, based on standard financial ratios; (2) Saarlühl's bankruptcy proceeding that was initiated in 1993; (3) the amount of debt forgiven in an attempt to sustain Saarlühl's business operations; and (4) the fact that Saarlühl continued to operate at a loss after the debt forgiveness. The petitioners contend that Saarlühl has not provided any new evidence that contradicts the Department's preliminary finding, and the positive net earnings that Saarlühl points to are only a single indicator of Saarlühl's position. Regarding Saarlühl's future financial health, the petitioners argue that no one knows how Saarlühl will operate without the support it has traditionally received from the government.

Department's Position: In the Preliminary Determination, we stated incorrectly that Saarlühl operated at a loss during the years 1993 - 1997. However, a review of the creditworthiness analysis memorandum prepared at that time shows that the Department properly considered that Saarlühl had positive (albeit low) returns during that period and not that it operated at a loss.

Despite these returns, we continue to find that Saarstahl was uncreditworthy based upon our analysis of Saarstahl's financial health (see Saarstahl Uncreditworthy Memo). Regarding Saarstahl's claims about the restructuring and its future prospects, the company has not pointed to any record evidence, such as an independent study that might have been performed, to show that the company could be expected to continue improving its financial position. Therefore, despite the Department's misstatement, the preliminary creditworthiness analysis is correct and the Department continues to find Saarstahl uncreditworthy in 1996 and 1997.

Comment 11: Saarstahl's Research and Development Assistance

Respondent's Argument: At verification, the Department discovered that Saarstahl received certain research and development ("R&D") grants through projects administered by the EC and the GOG. Saarstahl argues that the Department should not countervail these R&D grants because they were not specific to Saarstahl, but instead were paid under general programs available to companies throughout the EC and Germany. Accordingly, Saarstahl contends that the R&D grants do not meet the specificity requirements outlined in section 771(5A) of the Act.

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: As discussed above under the "Analysis of Programs" section, we have not made a finding with respect to the countervailability of certain small grants received by Saarstahl and Schmiede. However, this is because we did not have full information on these programs and not because we agree with Saarstahl that they were non-specific. We did find that the Article 55 R&D assistance provided by the ECSC was specific because it was limited to coal and steel producers, as reported in Saarstahl's Supplemental Questionnaire Response (February 26, 1999) in the 1997 Administrative Review of Certain Hot-rolled Lead and Bismuth Carbon Steel Products from Germany (p.13), which was incorporated in Saarstahl's response in this proceeding.

Comment 12: Previously Countervailed Programs for Saarstahl

Petitioners' Argument: In 1997 German Wire Rod, the Department found countervailable non-recurring subsidy programs for Saarstahl, including the 1989 forgiveness of debt and the liquidity assurance to private banks. The petitioners contend that the respondents have not offered any information requiring the Department to reverse its findings in 1997 German Wire Rod and that it is Department practice to retain such findings absent new factual information to the contrary (see, e.g., Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 66 FR 40987, 40990 (August 6, 2001)). Therefore, the petitioners contend, the Department should continue to countervail these programs.

Respondents' Argument: Saarstahl contends that, if the Department uses Saarstahl's 11-year AUL, none of the subsidies found to be countervailable in the 1997 German Wire Rod continue to provide Saarstahl with countervailable benefits during the POI of the current investigation. Even if the Department were to use a longer AUL, Saarstahl contends that the two programs

found to be countervailable in the 1997 German Wire Rod still would not provide any countervailable benefits during the current POI because Saarstahl was privatized in 1989 through an arm's-length transaction. Therefore, according to Saarstahl, any subsidies paid to the pre-privatization entity would cease to provide benefits to the new owners of Saarstahl after privatization. See, e.g., Delverde SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000); ILVA Lamiere E Tubi S.R.L. and ILVA S.p.A. v. United States, Slip Op. 2002-32 (CIT 2002) ("ILVA").

Furthermore, Saarstahl alleges that the temporary abandonment of the contingent repayment obligations between 1989 and 1993 did not provide Saarstahl with a countervailable benefit and that, pursuant to 19 CFR 351.505(d)(2), the vast majority of the benefits under the contingent repayment obligations should have been allocated to production in the years 1978 through 1988.

Finally, Saarstahl argues that the Department's treatment of private bank debt forgiveness as a countervailable subsidy has been rejected by a GATT dispute settlement panel. See United States - Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom, Report of the Panel, at para. 404 (Oct. 14, 1994). Moreover, evidence on the record of this investigation establishes that the debt forgiveness occurred on January 1, 1986, and not in 1989 as the Department has previously found.

Department's Position: For the reasons discussed in response to comment 1, we are not using the 11-year AUL developed in 1997 German Wire Rod. The AUL adopted for this proceeding is longer than 11 years. Consequently, the 1989 debt forgiveness falls within the AUL period.

Furthermore, as discussed in the "Change-in-Ownership" section, we have determined that Saarstahl was same person before and after the 1989 change in ownership. Therefore, under the Department's methodology, subsidies received prior to that change in ownership remained countervailable after the change in ownership. We disagree with Saarstahl that the cited court decisions require a different conclusion. See comment 15.

Regarding Saarstahl's claim that the benefits of the debt forgiveness should be allocated to earlier years, we addressed this argument in 1997 German Wire Rod and continue to take the same position in this proceeding. See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR at 54996. In particular, until these loans were forgiven in 1989, Saarstahl was obligated to repay them as the Department verified in 1997 German Wire Rod. Therefore, prior to 1989 these loans are properly treated as contingent liabilities, with the amount of benefit in years prior to 1989 calculated as the amount of interest Saarstahl did not pay. Although 19 CFR 351.505(d)(2) permits the Department to treat contingent liabilities as grants when "the event upon which repayment depends is not a viable contingency," information from those years prior to 1989 does not indicate that Saarstahl could not return to profitability at some point.

Finally, Saarstahl is correct that the liquidity assurances provided to the private banks by the

GOS caused the debt to be written off in 1986 (see 1997 German Wire Rod, 62 FR at 54992.) Because this occurred prior to the AUL period being used in this investigation, we determine that the benefits received by Sairstahl for the liquidity assurances have expired.

Comment 13: HSW's Change in Ownership Transaction

Respondent's Argument: IHSW argues that it did not receive a countervailable benefit from its purchase of HSW because the transactions were made at arms length and IHSW paid a commercial value. Furthermore, IHSW contends, HSW's debt was not forgiven by the GOG or the GOH.

According to IHSW, the specifics of the equity and debt purchases prove that the transactions did not confer a countervailable subsidy. On December 31, 1994, IHSW through its affiliate, Venuda Investments B.V. ("Venuda"), purchased all shares of HSW and purchased HSW's debt from its creditor, HLB, at market value. These transactions were brokered by the investment bank, M.M. Warburg ("Warburg"). After the purchase, HSW's name was changed to Dradenauer Stahlgesellschaft GmbH. ("DSG") and DSG sold its assets to IHSW. The debt purchased from HLB remained with DSG. DSG then used the proceeds from the sale of the assets to IHSW to repay its debt to Picaro, an affiliate of Venuda to which the debt claims had been transferred. IHSW states that HLB did not have any role in Venuda's treatment of the debt after the December 31, 1994 purchase.

IHSW contends that the Department "must look at the facts and circumstances of the transaction, to determine if the purchaser received a subsidy...for which it did not pay adequate compensation" when it applies the change in ownership methodology (citing to ILVA at 9). IHSW states that it paid HLB adequate compensation for HSW's debt, which IHSW and HLB considered a fair market price considering HSW's financial state at the time of the sale. Therefore, IHSW contends, the Department cannot treat the transaction as a debt forgiveness.

Finally, according to IHSW, the Department should also credit all payments made, and contractual obligations assumed, by IHSW against an alleged benefit because the net result of the HSW acquisition were to retire debt. At the very least, IHSW contends, the Department should deduct the cash payment made by IHSW for HSW's debt from the alleged subsidy amount. See Proprietary Comments Memorandum

The GOG disagrees that IHSW's purchase of HSW confers a debt forgiveness. The GOG contends that the petitioners base their subsidy allegation exclusively on 1997 German Wire Rod, which relies on incomplete and erroneous information. According to the GOG, IHSW offered and paid HLB the highest possible market price for HSW's debt. Acceptance of this price for the debt, was the only possibility for HLB to recoup part of HSW's outstanding loans and, thus, partially recoup its losses.

Petitioners' Argument: The petitioners first claim that, in 1997 German Wire Rod, the Department found that, although the sale of HSW was structured to have two components (the

sale of shares and debt for approximately), the Department treated these two events as a single transaction, and considered the payment made by Venuda to represent the price paid for HSW. In addition, the petitioners contend that the Department also found that the debt owed by HSW to HLB was forgiven by HLB, which was acting on behalf of the GOH. This debt forgiveness, according to the petitioners, was treated as a direct transfer of funds from the GOH and attributed to HSW. The petitioners request that the Department, in this investigation, likewise attribute a portion of the debt forgiveness to IHSW.

In their rebuttal brief, the petitioners claim that ISPAT mischaracterized the sale of HSW's shares and debt. According to the petitioners; 1) HLB granted HSW a line of credit in 1984 that was extended annually until 1994; and 2) the GOH guaranteed HLB 60%, and eventually 100%, of the line of credit, in the event of an HSW default. The petitioners contend that the purchase price paid by Venuda for HSW excluded all of the debt owed to HLB.

Department's Position: As in 1997 German Wire Rod, we do not believe that the two-part structure of the HSW sales transaction requires us to analyze separately IHSW's purchase of HSW and IHSW's purchase of HSW's debts to HLB. While it is theoretically true that HLB would have been willing to sell the debt separately to a party or parties not also purchasing HSW (if any could be found), the sale of HSW and its debt was structured from the outset as a package. This is evidenced, for example, by the statement in the Memorandum to File, dated May 7, 2002, "Verification of the Government of Germany, Government of Saarland, Government of Hamburg" ("Government Verification Report") at 6 that Warburg, the company hired to find a purchaser for HSW, evaluated and ranked the offers on the basis of, *inter alia*, the offer price and the amount of debt to be repaid by the bidder. Moreover, as we stated in 1997 German Wire Rod, the formula used for establishing the DM 60 million price was related to the value of HSW's assets. Thus, we do not agree with respondents that we should look at the sale of HSW's debt in isolation and find that it was not a subsidy because the debt was sold at fair value.

However, we believe 1997 German Wire Rod was in error in treating the combined payments for HSW and HSW's debt as payment simply for the company without regard to the debt. That analysis ignored the fact that prior to the transaction, HLB, HSW's creditor, was owed DM 154.1 million and after the transaction, HLB had approximately DM 60 million in cash. Moreover, while the DM 60 million price was based on the value of HSW's net current assets (excluding the debt owed to HLB), this was merely a formula proposed by IHSW and accepted by the GOH and HLB for arriving at the payment HLB would accept in return for releasing its claims on HSW (see Government Verification Report at 6). Thus, we determine that debt was forgiven in the sale of HSW, but that the amount of forgiveness equaled the difference between what HSW owed HLB prior to the sale and what HLB received as a result of the sale, approximately DM 94 million.

Regarding IHSW's argument that all payments and obligations undertaken by IHSW should be credited against the amount of debt forgiveness, we disagree. The payments in question are for ongoing expenses between the GOH and IHSW, and the obligations did not involve payments to HLB or the GOH.

Comment 14: Other Benefits Allegedly Conferred in the Sale of HSW

The petitioners claim that IHSW received an additional countervailable subsidy in conjunction with the 1995 change in ownership. Because most of the information regarding this alleged subsidy is proprietary, we have addressed this issue in the Proprietary Comments Memorandum, at Comment 14.

Comment 15: Application of the “Same Person” Test to ISHW

Respondent’s Argument: IHSW argues that, in Delverde III, the CAFC held that the Department must show that the subsidy passed through to the successor owner and determine whether the subsidy was directly or indirectly received without adequate remuneration. IHSW states that the “same person” test was developed as a result of this case. However, IHSW contends that the “same person” test should not be applied in the final determination because recent CIT decisions establish that this test does not properly examine the facts and circumstances surrounding the change-in-ownership transaction. According to IHSW, whether or not IHSW maintained the same facilities or retained a portion of HSW’s workforce should not be determinative of whether any alleged countervailable benefits obtained by HSW passed on to IHSW.

Petitioners’ Argument: The petitioners reply that IHSW would want the Department to view the purchase of a company in an arm’s length transaction for commercial consideration to lead automatically to the conclusion that the subsidy was erased. However, the CIT decisions that IHSW cites as support for this position, the petitioners argue, are not final decisions that the Department must follow. According to the petitioners, it is anticipated that whatever the final result, one or more of the CIT’s decisions will be appealed to the CAFC for ultimate resolution.

In addition, the petitioners claim that the Department, in its draft remand redetermination in ILVA, disagreed with the CIT’s interpretation of the law on privatization. Thus, the petitioners suggest that where the Department has not specifically been ordered by the CIT to follow a particular methodology that is inconsistent with the “same person” analysis, it should continue to apply the “same person” analysis.

Finally, the petitioners argue that the replacement analysis suggested by IHSW is nothing more than a prohibited per se test. This is because, they claim, according to the statute, an arm’s length change of ownership, by itself, does not require a determination that subsidies are erased

Department’s Position: We disagree with IHSW that the Department should not apply its “same person” change-in-ownership methodology because of the recent CIT decisions. In these decisions, various judges of the CIT have ruled on the Department’s “same person” test. Some found that this methodology was not in accordance with law and the cases were remanded to the Department for further proceedings: see Allegheny Ludlum 182 F. Supp. 2d 1357 (CIT 2002); GTS Industries S.A. v. United States, 182 F.Supp. 2d 1369 (CIT 2002); Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA v. United States, Slip Op. 2002-10 (CIT 2002); ILVA. In

another case, Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA v. United States, 206 F.Supp. 2nd 1344 (CIT 2002), affd., Slip. Op. 2002-82 (CIT 2002), the judge affirmed the Department's "same person" methodology, although it too was remanded for a further factual determination.

All of these cases, however, are subject to further appeal. Therefore, notwithstanding IHSW's arguments regarding the inappropriateness of our "same person" methodology, until there is a final and conclusive decision regarding the legality of the Department's change-in-ownership methodology in these cases, we will continue to apply it (as we did in the Preliminary Determination) for purposes of the final determination.

Comment 16: IHSW's Creditworthiness

Respondent's Argument: IHSW argues that the Department should find it creditworthy and use IHSW's actual credit expenses to calculate the benchmark interest rate, if the Department finds a countervailable debt forgiveness in IHSW's purchase of HSW. IHSW contends that its financial statements and its ability to obtain a normal market interest rate based on its credit experience are evidence of its creditworthiness. IHSW contends that the Preliminary Determination benchmark rate, which reflects that of an uncreditworthy firm, is unreasonably high and is not appropriate to use for IHSW. If the Department continues to find IHSW uncreditworthy, IHSW contends that the Department should use the benchmark rate calculated for the same transaction in 1997 German Wire Rod, because there is no compelling evidence or reason to depart from using that rate.

Petitioners' Argument: The petitioners argue that the Department should continue to find IHSW uncreditworthy in 1994 and use the benchmark rate calculated in the Preliminary Determination. The petitioners contend that using IHSW's actual credit expenses from 1998-2000, as suggested by IHSW, would be contrary to Section 351.524(d)(3) of the Department's regulations because the data is not from the year in which the subsidy was provided and IHSW was found uncreditworthy. Furthermore, the petitioners state, the Department calculated the benchmark rate correctly in the Preliminary Determination, in accordance with Section 351.505(a)(3)(iii) of the Department's regulations

Department's Position: We have continued to rely on our creditworthiness analysis in 1997 German Wire Rod and determine that IHSW was uncreditworthy in 1994. We agree with the petitioners that IHSW's recent experience is not relevant in setting a discount rate for a benefit received in 1994 (see 19 CFR 351.524(d)(3)). However, we are not using the uncreditworthy discount rate calculated in 1997 German Wire Rod because our methodology for calculating such discount rates was revised in the Department's regulation published in 1998. Therefore, we have used the revised methodology described in 19 CFR 351.524(d)(3)(ii) to calculate the uncreditworthy discount rate for IHSW in 1994.

Comment 17: Cross-ownership Between Ispat and WDI

IHSW contends that there is no cross-ownership, as defined by section 351.525(b)(6)(vi) of the Department's regulations, between IHSW and its affiliate, Westfälische Drahtindustrie Verwaltungsgesellschaft ("WDI"). The petitioners disagree.

Because most of the information regarding this issue is proprietary, we have addressed it in the Proprietary Comments Memorandum at comment 17.

Comment 18: ISRG's Intercompany Sales

Respondent's Argument: IHSW states that the Department verified its revised sales figures for sales from ISRG to IWHG.

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: The Department was informed of the error in reported intercompany sales the day before departure for verification. Therefore, due to time constraints, Ispat representatives presented the information at verification. At verification, the Ispat representatives explained that the amount reported in their supplemental response on January 25, 2002, was actually ISRG's total sales of all products to all customers. The team was able to verify the total sales of ISRG and its intercompany sales. See Memorandum to File, dated April 12, 02, "Verification of the Responses of Ispat Hamburger Stahlwerke, Ispat Stahlwerk Ruhort, and Ispat Walzdraht Hochfeld in the Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Germany" ("IHSW Verification Report") at 6 and 7. Therefore, because the change in intercompany sales was merely a correction and because the correct intercompany sales were verified by the Department, we have used the corrected intercompany sales for the final determination, because in Steel Wire Rod, the Department found that the pretense of a social plan made the benefit given by the GOG countervailable for retired workers. See Steel Wire Rod from Germany, 62 FR 54990.

Comment 19: ISRG's Article 56 Grant

Respondent's Argument: In the Preliminary Determination, the Department calculated a countervailable subsidy benefit for ISRG based on the full amount of funding ISRG received for worker assistance under Article 56 of the ECSC Treaty. In accordance with determinations made in prior investigations of the German steel industry, IHSW contends that the Department should calculate any countervailable benefit received under Article 56 of the ECSC Treaty based on one half of the funding received from the GOG. IHSW states that it provided the Department with proof that it had a social plan in place at the time it received the GOG funding.

Petitioners' Argument: The petitioners argue that the Department should reject IHSW's documentation as untimely because it was received after deadlines for questionnaire responses and submission of new factual information, and should continue to calculate the subsidy benefit as it did in the Preliminary Determination.

Department's Position: We disagree with the petitioners that the social plan constitutes new information. The social plan itself was not specifically requested by the Department in its various questionnaires but it was requested by the Department during verification and is included in the IHSW Verification Report at Exhibit 13. Thus, it is part of the record in this investigation. Accordingly, as has been our practice in prior investigations of the German steel industry, we have calculated the countervailable benefit based on one half of the funding received from the GOG. See 1997 German Wire Rod.

Comment 19: ISRG's Rheinland-Pfalz State Government Grant

Respondent's Argument: During verification, IHSW informed the Department that it received financial assistance from the Government of Rheinland-Pfalz for employing disabled workers. IHSW states that the Department verified that eligibility to receive assistance under this program is not limited to an enterprise or industry. Therefore, IHSW argues, this assistance is not countervailable because it does not meet the Department's specificity requirements.

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: Based on the information we received about this program at verification, we determine that the assistance provided is not specific and, hence, not countervailable.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related net subsidy calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE _____

DISAGREE _____

Faryar Shirzad
Assistant Secretary for
Import Administration

(Date)