which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The *Proposed Regulations* offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) A world market price for the input product.

In this instance, there is not another supplier in Austria of the input product, steel blooms. However, Kindberg does purchase the input product from an unrelated foreign supplier. Therefore, we have used the prices charged to Kindberg by the foreign supplier as the benchmark world market price.

Because the foreign supplier's prices are delivered, we made an upward adjustment to the domestic supplier's prices to account for the cost of freight between Kindberg and that supplier. Based on our comparison of these delivered prices for identical grades of steel blooms, we found no competitive benefit was bestowed on Kindberg during the POI. Therefore, we determine that Kindberg did not receive an upstream subsidy.

Interested Party Comments

Comment One: Attribution of VAAG subsidies to Kindberg

Respondents argue that in *British Steel plc* v. *United States*, the CIT established that ''a subsidy cannot be provided to a 'productive unit' or 'travel' with it unless the 'productive unit' is itself an artificial person capable of receiving a subsidy.'' Prior to 1987, Kindberg was not a separately incorporated company—Kindberg was not an ''artificial person.'' Therefore, respondents claim that subsidies received by VAAG prior to 1987 could not ''travel'' with Kindberg after the restructuring. Moreover, they argue that the requirements in British Steel also preclude the Department from attributing losses assumed at restructuring by VAAG to Kindberg because only subsidies received directly by Kindberg after its incorporation are countervailable.

Petitioners assert that British Steel is irrelevant to Kindberg because it involved cases where subsidized state-owned companies were privatized. However, in this investigation, the Austrian government still owns 100% of Kindberg (*i.e.*, Kindberg has not been privatized). Petitioners note that two types of corporate restructuring were identified in Certain Steel. Privatizations (*i.e.*, mergers, spin-offs, and acquisitions) were one type of corporate restructuring, while internal corporate restructurings were the other type. The 1987 VAAG restructuring was identified as an internal corporate restructuring. Petitioners note that an internal restructuring does not constitute a sale for purposes of evaluating the extent to which subsidies passed through to a new entity. Therefore, they assert that none of the issues addressed in British Steel are relevant.

DOC Position

Respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. First, British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Further, even if British Steel were a final decision, the issues contained in the opinion which relate to privatization are inapposite in this case. The entire British Steel opinion is premised on an actual privatization of a company, *i.e.*, a sale of all or part of the government's interest. In this case, Kindberg has not been privatized. Although the immediate parent of Kindberg changed through the restructuring, the ultimate equity owner was and remains the GOA. The *British Steel* opinion did not address a situation in which a company was restructured, but there was no sale of the government's interest.

Comment Two: Allocation Time-Period

Respondents argue that allocating benefits from nonrecurring grants and equity infusions over fifteen years, based on the IRS tables, contravenes established judicial precedent, as well as congressional intent. They state that a recent CIT decision (*i.e.*, *British Steel plc* v. *the United States*) held that this allocation methodology, used in *Certain Steel*, was contrary to law. Respondents argue that the Department should employ an allocation methodology which reasonably reflects the relevant commercial and competitive advantages enjoyed by Kindberg. Specifically, the Department should allocate benefits using the 3, 5, and 10-year schedules of depreciation found in Kindberg's balance sheet and statement of profit and loss.

Petitioners claim that the the CIT did not find that the Department's allocation methodology was unlawful *per se*. The court's specific concern was that the Department had not adequately explained how the IRS tables reflected the benefit from subsidies used for purposes other than the purchase of physical assets. The court recognized that, after engaging in an examination of the firms under investigation, the Department might still find that the IRS tables could serve as a proxy for allocating subsidy benefits.

Petitioners argue that Kindberg has not provided sufficient evidence that fifteen years does not reflect the benefit to Kindberg from non-recurring subsidies. Petitioners note that Kindberg did not provide cites for the 3, 5, and 10 year depreciation schedules. Moreover, Kindberg did not explain the relevance of these depreciation schedules, nor did it identify the assets that are subject to the depreciation schedules. Given the lack of contrary evidence in the record, the Department should determine that the 15-year allocation period reasonably represents the benefit to Kindberg from non-recurring subsidies.

DOC Position

As noted previously, respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Furthermore, renewable physical assets are essential to the continuation of a company's productive activity, which in turn affects the commercial and competitive position of a company. Therefore, the Department has determined that the average useful life of renewable physical assests is an appropriate measure of the commercial and competitive benefits from non-recurring subsidies (see, GIA, at 37227).

Comment Three: Assumption of Losses

Respondents argue that the evidence on record does not support the Department's preliminary finding that VAAG's assumption of losses provided a countervailable subsidy to Kindberg. According to respondents, it was determined at verification that the losses which remained on VAAG's books after the restructuring were incurred by other units of Voest-Alpine. Respondents claim that ''absent substantial evidence on the record attributing VAAG's losses to Kindberg,