

benefit to Kindberg. Therefore, the assumption of losses by VAAG did not provide a benefit to Kindberg.

While respondents may be correct that in certain circumstances losses have value, we concluded in *Certain Steel* that, "if VAAG had assigned these losses to its new companies, then each of the new companies would have been in a \* \* \* precarious financial position" (*Certain Steel*, 37221). Respondents' claim does not refute this; it merely posits that losses could be used to offset future tax liabilities (if any) of the VAAG subsidiaries. While we will review this argument further for the final determination, respondents' assertion is not sufficient to reverse the decision we reached in *Certain Steel*. Therefore, we have preliminarily determined that Kindberg benefitted by not assuming any losses.

We calculated the benefit by treating the losses not distributed to Kindberg as a grant in 1987. Kindberg's share of the losses was determined by reference to its asset value relative to total VAAG assets.

To allocate the benefit, we used the methodology described in *Equity Infusions to VAAG: 1983-84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 1.26 percent *ad valorem*.

4. *Equity Infusion to Kindberg: 1987*. A direct equity infusion from ÖIAG to Kindberg was made on January 1, 1987, pursuant to Law 298/1987. As under Law 589/1983, funds under Law 298/1987 were provided solely to the steel industry. Therefore, we preliminarily find this infusion to be specific. Moreover, since we have preliminarily determined that Kindberg was unequityworthy in 1987, these infusions were made on terms inconsistent with commercial considerations. Thus, we preliminarily determine this infusion to be countervailable.

To calculate the benefit for the POI, we treated the equity amount as a grant and allocated the benefit over 15 years (our treatment of equity as grants and our choice of allocation period is discussed in the *GIA*, at 37239 and 37225, respectively). Because the equity investment was made directly in Kindberg, and because Kindberg was separately incorporated as of that year, the entire benefit has been attributed to Kindberg. The portion allocated to the POI was divided by total sales of Kindberg during the POI to determine the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 5.13 percent *ad valorem*.

## B. Programs Preliminarily Determined Not To Benefit the Subject Merchandise

We initiated an investigation of subsidies provided after 1987 to VA Linz, VAAG and VAS based on petitioners' allegation that subsidies to these companies benefitted Kindberg. Based on information provided in the responses, we preliminarily determine that the following programs did not bestow a benefit on Kindberg. (See January 17, 1995, Concurrence Memorandum for a further discussion of this issue.)

1. 1987 Equity Infusion to VA Linz
2. Post-Restructuring Equity Infusions to VAAG
3. Post-Restructuring Grants to VAAG
4. Post-Restructuring Grants to VAS

## II. Analysis of Upstream Subsidies

The petitioners have alleged that Kindberg receives benefits in the form of upstream subsidies through its purchase of steel blooms from Donawitz II.<sup>1</sup> Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term "upstream subsidy" means any subsidy \* \* \* by the government of a country that:

- (1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
- (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
- (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, respondents have been able to show that a competitive benefit does not exist. Therefore, we have not addressed the first and third criteria.

## Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

<sup>1</sup> Petitioners originally alleged that the corporate interaction between Kindberg and Donawitz II is such that subsidies received by either company would benefit the production of the subject merchandise. Based on this analysis, petitioners continue to argue that these companies should be treated as a single entity. Both approaches are discussed in our January 17, 1995, Concurrence Memorandum.

\* \* \* a competitive benefit has been bestowed when the price for the input product \* \* \* is lower than the price that the manufacturer or producer of merchandise 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 Department's proposed regulations (*Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366 (May 31, 1989)) 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, Donawitz II is the sole 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 ex-factory 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 preliminarily determine that Kindberg did not receive an upstream subsidy.

## Verification

In accordance with section 776(b) of the Act, we will verify the information submitted by respondents prior to making our final determination.

## Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.