

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b) (2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**Disclosure and Public Comment**

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. See 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an

identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-20922 Filed 9-8-08; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[C-580-818]**

**Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products from the Republic of Korea (Korea) for the period of review (POR) January 1, 2006, through December 31, 2006. For information on the net subsidy for each of the reviewed companies, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. See the "Public Comment" section of this notice.

**DATES:** *Effective Date:* September 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak or Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14<sup>th</sup> Street and Constitution Ave., NW., Washington, D.C. 20230; *telephone:* (202) 482-2209 and (202) 482-3338, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On August 17, 1993, the Department published in the **Federal Register** the CVD order on corrosion-resistant carbon steel flat products (CORE) from Korea. See *Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993). On August 2, 2007, the Department published a notice of opportunity to request an

administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 42383 (August 2, 2007). On August 31, 2007, we received a timely request for review from Pohang Iron and Steel Co. Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu). On September 25, 2007, the Department published a notice of initiation of the administrative review of the CVD order on corrosion-resistant carbon steel flat products from Korea covering the POR January 1, 2006, through December 31, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On November 2, 2007, the Department sent its initial questionnaire to POSCO, Dongbu, and the Government of Korea (GOK). On December 20, 2007, the Department received questionnaire responses from POSCO, Pohang Steel Co., Ltd. (POCOS, a production affiliate of POSCO), POSCO Steel Service & Sales Co., Ltd. (POSTEEL, a trading company for POSCO),<sup>1</sup> and Dongbu. On January 7, 2008, the Department received questionnaire responses from the GOK. On March 4, 2008 and April 7, 2008, we issued supplemental questionnaires to POSCO and the GOK. On March 24, 2008 and April 14, 2008, we received responses to these supplemental questionnaires.

On April 28, 2008, the Department published in the **Federal Register** a notice of extension of the time period for issuing the preliminary results. See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 22920 (April 28, 2008).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are POSCO (and its affiliates POCOS and POSTEEL) and Dongbu.

**Affiliated Companies**

In the present administrative review, record evidence indicates that POCOS is a majority-owned production affiliate of POSCO. Under 19 CFR 351.525(b)(6)(iii), if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Department

<sup>1</sup> In these preliminary results, unless otherwise stated, we use POSCO to collectively refer to POSCO, POCOS, and POSTEEL.

will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. Thus, we attributed any subsidies received by POCOS to POSCO and its subsidiaries, net of intra-company sales. Dongbu reported that it is the only member of the Dongbu group in Korea that was involved with the sale of subject merchandise to the United States.

#### Scope of Order

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.9030, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

#### Average Useful Life

Under 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average

useful life (AUL) of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1997 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under examination and that the difference between the company-specific and/or country-wide AUL and the AUL from the IRS tables is significant. According to the IRS tables, the AUL of the steel industry is 15 years. No interested party challenged the 15-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 15-year AUL.

#### Subsidies Valuation Information

##### A. Benchmarks for Short-Term Financing

For those programs requiring the application of a won-denominated, short-term interest rate benchmark, in accordance with 19 CFR 351.505(a)(2)(iv), we used as our benchmark an annual average company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR. Where no such benchmark instruments are available, we used national average lending rates for the POR, as reported in the International Monetary Fund's (IMF) International Financial Statistics Yearbook. This approach is in accordance with 19 CFR 351.505(a)(3)(ii) and the Department's practice. *See, e.g., Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) (H Beams Investigation), and the accompanying Issues and Decision Memorandum (*H Beams Decision Memorandum*) at "Benchmarks for Short-Term Financing."

For Dongbu's document acceptance (D/A) loans rediscounted under the Korean Export Import Bank's (KEXIM's) rediscount program, we used, for benchmark purposes, Dongbu's usance loans issued by commercial banks. *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS Paper Investigation*) and accompanying Issues and Decision Memorandum at Comment 18 (*CFS Paper Decision Memorandum*).

##### B. Benchmark for Long-Term Loans

During the POR, POSCO and Dongbu had outstanding long-term won-denominated and foreign-currency denominated loans from government-owned banks and Korean commercial banks. Based on our findings on this issue in prior investigations and administrative reviews, we are using the following benchmarks to calculate the subsidies attributable to respondents' countervailable long-term loans obtained through 2006:

(1) For countervailable, foreign-currency denominated loans, pursuant to 19 CFR 351.505(a)(2), and consistent with our past practice, our preference is to use the company-specific, weighted-average foreign currency-denominated interest rates on the company's loans from foreign bank branches in Korea, foreign securities, and direct foreign loans outstanding during the POR. *See, e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30640 (June 8, 1999) (SSSS Investigation). Where no such benchmark instruments are available, and consistent with 19 CFR 351.505(a)(3)(ii), as well as our practice, we relied on the national average lending rates as reported by the IMF's International Financial Statistics Yearbook. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and the accompanying Issues and Decision Memorandum at "Benchmarks for Long-Term Loans and Discount Rates."

(2) For countervailable, won-denominated, long-term loans, our practice is to use the company-specific corporate bond rate on the company's public and private bonds, as we determined that the GOK did not control the Korean domestic bond market after 1991 and that domestic bonds may serve as an appropriate benchmark interest rate. *See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) (*Plate in Coils Investigation*); *see also* 19 CFR 351.505(a)(2)(ii). Where no such benchmark instruments are available, we used the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK), consistent with 19 CFR 351.505(a)(3)(ii). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils Investigation*, in which we

determined that, absent company-specific interest information, the corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea. *See Plate in Coils Investigation*, 64 FR at 15531; *see also* 19 CFR 351.505(a)(3)(ii).

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), our preference is to use the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark instruments are unavailable, we used interest rates from debt instruments issued during the POR as our benchmarks, as such rates better reflect a variable interest rate that would be in effect during the POR. This approach is in accordance with the Department's practice. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 8; *see also* 19 CFR 351.505 (a)(5)(ii).

## I. Program Preliminarily Determined To Confer Subsidies

### A. The GOK's Direction of Credit

In the *Plate in Coils Investigation*, 64 FR 15530, 15532–33 (March 31, 1999) and in the *SSSS Investigation*, 64 FR 30636, 30641–42 (June 8, 1999), the Department determined that the GOK controlled directly and indirectly the lending practices of most sources of credit in Korea through 1997. Furthermore, the Department determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development bank (KDB) was specific to the steel industry. In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73179 (December 29, 1999) (*CTL Plate Investigation*) and in the *H Beams Investigation* and H Beams Decision Memorandum at "GOKs Credit Policies from 1992 through 1998," the Department determined that the GOK's directed lending practices continued to

be specific with respect to the steel industry through 1998.

In every subsequent CVD investigation or administrative review of a Korean steel product covering a period of investigation (POI) or POR from 2000 to 2005, we provided the GOK an opportunity to present new factual information concerning the government's credit policies, which we would consider along with our findings in prior investigations. For every POI or POR covering the years 2000 to 2005, respondents decided not to provide new information on the GOK's lending policies for domestic banks. Therefore, with respect to each of the years from 2000 to 2005, consistent with section 776 of the Act, we found that the GOK's direction of credit policies to the steel industry continued through the period 2000 to 2005. *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102, (October 3, 2002) (*Cold-Rolled Investigation*), and accompanying Issues and Decision Memorandum at "GOK Directed Credit" (Cold-Rolled Decision Memorandum); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*SSSS 2004 Review*), and accompanying Issues and Decision Memorandum at "The GOK's Direction of Credit" (*SSSS 2004 Review Decision Memorandum*); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) (*CTL Plate 2007 Review*), and accompanying Issues and Decision Memorandum at "The GOK's Direction of Credit" (*CTL Plate 2007 Review Decision Memorandum*).

The Department's last determination of the GOK's directed credit policies not based on adverse facts available (AFA) was in the *H Beams Investigation*, which covered calendar year 1998. *See* H Beams Decision Memorandum at "GOK's Credit Policies from 1992 through 1998." In its June 7, 2000, memorandum regarding direction of credit in the *H Beams Investigation*, the Department noted that: (1) The history of GOK intervention in the credit market from the 1960s into the 1990s including the Heavy and Chemical Industry (HCI) promotion program that was introduced in the 1980s; (2) an IMF Working Paper that concluded that the GOK continued to favor priority sectors with credit and that financial institutions believed that the government would protect them on

risky lending on unprofitable projects;<sup>2</sup> (3) a 1999 OECD report that stated that the GOK exerted immense pressure and directed much of the country's lending activities, often on the basis of political whim rather than a proper evaluation of risk;<sup>3</sup> (4) a World Bank study illustrating Korea's selective allocation of credit which also concluded that the promotion of the steel industry was one of the top priorities of the GOK;<sup>4</sup> (5) an Agreement with the IMF in which the GOK explicitly stated it would stop directing credit;<sup>5</sup> (6) a Korean Presidential Commission report on the government's pervasive influence and intervention in the country's financial sector;<sup>6</sup> (7) the fact that the Korean steel industry was one of the top recipients of KDB lending during the time in which the KDB was the largest source of long-time financing in Korea; and (8) industry-specific costs of borrowing as reported in the *Bank of Korea's Financial Statement Analysis* and the steel industry's access to the foreign loan market that was controlled by the GOK. In the *H Beams Investigation*, the GOK argued that measures were taken in 1998 to liberalize the Korean financial sector. *See* H Beams Decision Memorandum at "GOKs Credit Policies from 1992 through 1998." However, in our analysis of the financial reforms for our final determination, the Department stated that while the GOK started to plan and implement reforms in the

<sup>2</sup> Borsesezstein, Eduardo and Jong-Wha Lee, *Credit Allocation and Financial Crisis in Korea* (an International Monetary Fund Working Paper), February 1999. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, "Information Regarding Reforms to the Korean Financial System," at Attachment 1 (August 11, 2008) (Direction of Credit Memorandum), a public document on file in the Central Records Unit, room 1117 of the Main Commerce Building.

<sup>3</sup> OECD, *Asia and the Global Crisis—The Industrial Dimension*, 1999. *See* Memorandum from Melissa G. Skinner, Director, Office of CVD/AD Enforcement VI to Holly A. Kuga, Acting Deputy Director for Import Administration, "Direction of Credit in Korea: Structural Steel Beams from the Republic of Korea" (June 7, 2000), which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response at Exhibit A-2 (Direction of Credit Memorandum for H Beams).

<sup>4</sup> World Bank, *Credit Policies and the Industrialization of Korea*, 1995 World Bank Study. *See* Direction of Credit Memorandum for H Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response at Exhibit A-2.

<sup>5</sup> *See, e.g.,* December 3, 1997, Letter of Intent of the Government of Korea to IMF, and December 5, 1997, Republic of Korea IMF Stand-By Arrangement, which are included as Attachment 2 of the Direction of Credit Memorandum.

<sup>6</sup> The Presidential Commission for Financial Reform, *Financial Reform in Korea: The Third Report*, 1997. *See* Direction of Credit Memorandum for H Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response, at Exhibit A-2.

financial sector during 1998, the record evidence indicated that the GOK's previous attempts at removing or reducing its controls and influence over lending in the country were not successful. We noted that, in the ten years prior to 1998, the GOK twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the GOK deemed the 1988 liberalization a failure because when interest rates began to rise, the GOK cancelled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. We also noted in the *H Beams Investigation* that, during 1998 and 1999, despite its apparent liberalization attempts, the GOK threatened to cut off credit to Korean companies unless the companies followed GOK policies. *Id.* In addition, during this period the GOK took control of five large commercial banks due to the financial crisis.

Thus, while the Department acknowledged in the *H Beams Investigation* that the GOK was attempting to make reforms in the financial sector in 1998 and 1999, we concluded that the then status of these reforms was not enough to change our affirmative direction of credit determination because: (1) The GOK had tried twice before within a ten-year period to implement financial reforms and failed at each attempt; and (2) the GOK was undermining its reform attempts by threatening to cut off lending to Korean firms and by taking control of large commercial banks. *Id.* Subsequent to our determination in the *H Beams Investigation*, the GOK did not provide any new information on financial reforms implemented after 1997 in any administrative review of any outstanding CVD order covering the Korean steel industry; therefore, the Department has not revisited our direction of credit determination with respect to the steel industry.

During the POR, POSCO and Dongbu had outstanding loans that were received prior to and/or during the 2006 POR. As in the prior proceedings, we requested that the GOK provide information pertaining to the GOK's direction-of-credit policies through 2006.

In its January 7, 2008, questionnaire response in the instant review, the GOK provided new information on the issue of directed credit and the status of reforms within the financial sector for

the period 2002 through 2006.<sup>7</sup> Based on this new information and the reforms implemented in the Korean financial sector after the 1997 Financial Crisis, the GOK concludes that the Department should now find that the GOK does not direct credit to the steel industry.

In this administrative review, the GOK states that, based on the significant and sweeping reforms of the Korean financial sector after the 1997 Financial Crisis, the Department held in *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Affirmative Countervailing Duty Determination (DRAMS Investigation)* that the Korean financial sector did not direct credit to the semiconductor industry after 1998. *See DRAMS Investigation*, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at "Direction of Credit and Other Financial Assistance" (DRAMS Decision Memorandum). The GOK states that reforms have continued at a fast pace since 1998, more banks have been privatized, and numerous reforms have been implemented in order to enhance the financial strength and independence of the banking sector. The GOK notes that the Corporate Restructuring Promotion Act requires banks to undertake ongoing evaluations of their customers and their financial health to avoid insolvency and to take steps to restructure the debtors that become credit risks.

The GOK states that when the Department made its initial finding of directed credit to the steel industry, the Department noted that the availability of long-term lending in Korea was predominantly controlled by the state-owned KDB. The GOK notes that there are now numerous sources of long-term funds available in the Korean market including loans from commercial banks. A comparison of outstanding loans from the KDB and loans sourced from commercial banks shows that commercial banks provide the majority of long-term lending in Korea. *See* Government of Korea's January 7, 2008 Questionnaire Response at Exhibit A-5 (GOK's January QR). Furthermore, there are now other means for companies to finance long-term debt such as issuing bonds and notes in Korea and

<sup>7</sup>The GOK stated that it chose not to respond to direction of credit questions in previous administrative reviews of steel products covering periods after 2000 because of the considerable burden of responding to the Department's questions and the very small impact of the Department's finding of directed credit on respondents (especially given that the aggregate company-specific subsidy rates were *de minimis*).

internationally. *See* GOK's January QR at 8.

According to the questionnaire response submitted by the GOK in this administrative review, in the wake of the 1997 Financial Crisis, the GOK launched a financial sector restructuring program aimed at maintaining a functioning financial system and, at the same time, making it more market-oriented. Nearly a quarter of Korea's financial institutions, including nine of 26 commercial banks at the time, were ultimately closed. To improve the supervisory framework, the Financial Supervisory Commission (FSC), a unified body covering banking, insurance, non-banks and the capital market, was established. The FSC was established under the Act on Establishment of Financial Supervisory Organizations enacted in December 1997 and last amended in 2003, with a view to contributing to the development of the national economy by establishing an orderly and sound credit system. The FSC supervises financial institutions, including commercial banks, and takes regulatory actions in accordance with the applicable statutes. Other than general regulatory functions, the FSC does not intervene in the daily operations, including credit evaluation or extensions decisions, of financial institutions. The FSC's supervisory functions in relation to bank's credit services are confined to ensuring compliance with credit limits, the provision of adequate reserves, and other ordinary affairs as necessary to determine the soundness of operation of the financial institution. Since the creation of the FSC in 1998, the Ministry of Finance and Economy's authority over the establishment of banks and the supervision of banks has shifted to the FSC.

The GOK also states that it does not intervene in the decision-making process for the direction or regulation of credit, or for deposit and lending rates, which are entirely reserved for the discretion of individual financial institutions. As a measure in the course of prudential regulation, the Financial Supervisory Service (FSS) issued a Sample Guideline for Credit Risk Assessment and a Notification to Financial Institutions Regarding Risk Evaluation System for Corporations, for the purpose of enhancing the risk evaluation system by individual financial institutions.<sup>8</sup> These documents

<sup>8</sup>The FSS was established on January 2, 1999, under the Act on the Establishment of Financial Supervisory Organizations by bringing together four supervisory bodies—Banking Supervisory Authority, Securities Supervisory Board, Insurance Supervisory Board, and Non-Bank Supervisory

provide simple basic guidelines but do not offer specific details for the banks to follow in managing their credit extensions. The GOK states that all bank-specific policies on lending and credit evaluation are established by individual banks.

The GOK states that it does not provide any guidance with regard to the commercial interest rates to be charged for loans by Korean commercial banks. Specific interest rates to be charged by financial institutions are only determined by the respective financial institution itself. As such, interest rates differ from bank to bank depending upon the policies taken by individual banks, the nature of the loans, the current conditions of the financial market, and the creditworthiness of the borrower.

The Prime Minister's Decree 408, enacted in November 2000, sets forth that the government should not intervene in the general management of the banks. Furthermore, the Depositors Protection Act, revised in January 2000, in turn sets forth that the officers and employees who are responsible for the financial troubles of the financial institutions should compensate for the damages personally and individually. Therefore, the GOK states, not only are GOK officials prohibited from intervening in the daily business operation of the banks, but also any GOK official making such an attempt would assume civil and criminal liability in a personal capacity.

According to the GOK's questionnaire response, during 2004 through 2006, no Korean commercial bank was taken over or administered by the GOK due to bank restructurings in Korea. Furthermore, the GOK has privatized most of the commercial banks that it took over as a result of the 1997 Financial Crisis. Many of these commercial banks, such as SC First and the Korean Exchange Bank (KEB), have majority ownership by foreign interests. For other commercial banks such as Kookmin, foreign shareholders are the major shareholders of the bank. Currently only one commercial bank, Woori, has majority ownership by the GOK. According to the GOK, the Korea Deposit Insurance Corporation owns approximately 80 percent of Woori.

With respect to other lending sources found countervailing in prior directed credit determinations, the National

Investment Fund (NIF) was liquidated on January 2, 2003. The NIF supported heavy and chemical industries during the period from 1974 to 1991 by extending loans raised through the issuance of national investment bonds to financial institutions. The GOK also noted that the Department determined that access to foreign securities and direct foreign loans after April 1999 is no longer countervailing.

Finally, the GOK argues that, in *Coated Free Sheet Paper from the Republic of Korea: Notice of Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17507 (April 9, 2007) (*CFS Paper Preliminary Determination*), the Department reaffirmed its finding in the *DRAMS Investigation* that: (1) Distinguished between banks that are government authorities and banks with some government ownership (as a result of the 1997 Financial Crisis) that acted as commercial banks and (2) measured the specificity of long-term loans to the paper sector only with respect to GOK-owned banks that were government authorities. See *CFS Paper Preliminary Determination* at 72 FR 17511–17512, 17517. The GOK noted that, in the *CFS Paper Investigation*, 72 FR 60639 (October 25, 2007), the specificity test used by the Department demonstrated that long-term loans from GOK-owned banks were not specific to the paper sector. See *CFS Paper Investigation* and *CFS Paper Decision Memorandum* at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.” The GOK states that a comparable analysis demonstrates that long-term loans from GOK-owned banks are not specific to the steel industry during the POR.

We find that the new information submitted by the GOK is sufficient to warrant a re-examination of the Department's direction of credit determination made with respect to the Korean steel industry. As noted above, the Department last reviewed new information in the *H Beams Investigation*, in which we stated that, although the GOK was starting to implement reforms of the financial sector, these reforms were, in part, undermined by the GOK's taking control of commercial banks and the fact that previous attempts at reforms were not successful. See *H Beams Decision Memorandum* at “GOK's Credit Policies from 1992 through 1998.”

Our determination in the *H Beams Investigation* reviewed the attempts of the GOK to reform the financial sector in 1998 and 1999. *Id.* The GOK has now provided new information on the details of the financial sector reforms that were

implemented in the wake of the 1997 Financial Crisis, arguing that these reforms have removed the controls that led to the Department's determination of direction of bank credit. While the information submitted by the GOK supports its arguments regarding reforms of the banking sector, our original directed credit determination relied on independent sources detailing GOK control and direction of bank credit. Thus, it is appropriate to also review those independent sources to determine if these sources substantiate the information submitted by the GOK in this administrative review. However, before this review of independent research on GOK financial reforms, it is important to review the Department's determinations regarding directed credit made in both the *DRAMS Investigation* and the *CFS Paper Investigation*.

In its questionnaire response, the GOK states that since the directed credit determination regarding the Korean steel industry, the Department has addressed directed credit in investigations of two non-steel products, the *DRAMS Investigation* and the *CFS Paper Investigation*, and reached different conclusions with respect to directed credit from Korean banks.

In the *DRAMS Investigation*, the Department first examined the GOK's credit policies through 1998. See *DRAMS Investigation*, and *DRAMS Decision Memorandum* at “The GOK's Credit Policies Through 1998.” The Department stated that it had found that the GOK controlled the lending practices of banks in Korea in prior cases involving the Korean steel industry and had determined in the *H Beams Investigation* that the GOK directed credit through 1998. Although in the *DRAMS Investigation* the Department provided the GOK with an opportunity to present new factual information concerning the GOK's direction of long-term lending through 1998, no new information was presented. See *DRAMS Decision Memorandum* at 12. Therefore, in the *DRAMS Investigation*, the Department determined that the GOK continued to control, directly and indirectly, the long-term lending practices of Korean domestic banks through 1998. See *DRAMS Decision Memorandum* at “The GOK's Credit Policies Through 1998.” However, the respondents in the *DRAMS Investigation* provided new information with respect to whether the GOK directed bank credit for the period 1999 through June 30, 2002. See *DRAMS Decision Memorandum* at “The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002.” Therefore, the Department

Authority—into a single supervisory organization. The primary function of the FSS is examination and supervision of financial institutions but can extend to other oversight and enforcement functions as charged by the Financial Services Commission (the former Financial Supervisory Commission) and the Securities and Futures Commission.

analyzed this information to determine whether the GOK continued to direct credit from domestic banks after 1999. Based on this analysis, the Department determined in the *DRAMS Investigation* that the GOK only directed credit to a group of companies that were part of the Hyundai group, including DRAMs manufacturer, Hynix. *Id.*

In the *CFS Paper Investigation*, the Department stated that, although the GOK exerted broad control over lending through 1998 that resulted in credit being directed specifically to strategic industries such as steel and semiconductors, there was not sufficient information to conclude that the paper industry was designated as a strategic industry by the GOK and, thus, a beneficiary of directed credit. See *CFS Paper Decision Memorandum* at "Direction of Credit to the Pulp and Paper Sector." In *CFS Paper Investigation*, the Department also separately examined the provision of long-term lending provided by the KDB and other GOK-owned institutions, and found that KDB lending was not specific to the paper industry. See *CFS Paper Decision Memorandum* at "Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions."

Our review of independent research on the post-financial crisis reforms within the Korean financial and banking sector, as discussed further below, support the statements made by the GOK in this review. Our review also provided no evidence of continued GOK systemic control of banking credit within Korea, including banking credit directed towards the Korean steel industry.

In the period after the 1997 Financial Crisis and leading up to 2002, the GOK implemented a number of reforms in the financial sector. As noted by many experts, the Korean financial sector was long characterized by government intervention and a discretionary implementation of rules where the GOK played a crucial role in credit resource allocation.<sup>9</sup> The Korean banking sector suffered due to inefficient internal management and GOK intervention in the financial sector prevented the development of market discipline. Furthermore, selective credit allocation by the government resulted in an inefficient and distorted financial system.<sup>10</sup>

<sup>9</sup>Kyung Tae Lee and Inkoo Lee, "Crisis, Reforms, and Structural Changes in the Korean Economy," October 6, 2007, at 4. See *Direction of Credit Memorandum*, at Attachment 3.

<sup>10</sup>Takatoshi Ito and Yuko Hashimoto, "Banking Restructuring in Asia: Crisis Management in the Aftermath of the Asian Financial Crisis and Prospects for Crisis Prevention—Korea," February 5,

The GOK controlled the allocated financial resources by managing both the commercial banks and the state-owned special banks.<sup>11</sup>

As discussed in the GOK's questionnaire response, after the 1997 Financial Crisis, the GOK implemented a number of reforms of the financial sector, many at the behest of the IMF. The GOK actively implemented the IMF's suggested reforms, which included structural reforms of the financial system.<sup>12</sup> For example, the GOK introduced a new financial supervisory system to prevent moral hazard. As discussed above, the FSS was created in an attempt to overcome inconsistent treatment of different institutions and to meet international standards of financial supervision.<sup>13</sup> The GOK increased the independence of the Bank of Korea (BOK) from the Ministry of Finance and Economy (MOFE), and stripped the regulatory powers out of both the BOK and MOFE and located them in an independent regulatory agency.<sup>14</sup>

Korea's progress in strengthening its supervision of financial institutions was especially significant; Korean commercial banks adopted Western-style board governance systems, where the majority of board members are outside directors.<sup>15</sup> During the restructuring process, the GOK pursued a policy of encouraging the entry of foreign banks and all the regulatory obstacles that stood in the way of foreign entry were eased.<sup>16</sup> The IMF has noted that the Korean banking system was transformed after the 1997 Financial Crisis and noted that Korean banks strengthened their commercial orientation, allowing them to refocus

2007, at 17. See *Direction of Credit Memorandum*, at Attachment 4.

<sup>11</sup>Jahyeong Koo and Sherry L. Kiser, "Recovery from a Financial Crisis: The Case of South Korea," Economic and Financial Review, Fourth Quarter 2001, Federal Reserve Bank of Dallas, at 25. See *Direction of Credit Memorandum*, at Attachment 5.

<sup>12</sup>Jai S. Mah, "The Restructuring in the Post-Crisis Korean Economy," November 2003. See *Direction of Credit Memorandum* at Attachment 6.

<sup>13</sup>Kyung Tae Lee and Inkoo Lee, "Crisis, Reforms, and Structural Changes in the Korean Economy," October 6, 2007, at 4. See *Direction of Credit Memorandum*, at Attachment 3.

<sup>14</sup>Stephan Haggard and Andrew MacIntyre, "The Politics of Moral Hazard: The Origins of Financial Crisis in Indonesia, Korea and Thailand," August 1999. See *Direction of Credit Memorandum*, at Attachment 7.

<sup>15</sup>Dr. Janet Yellen, President and CEO of the Federal Reserve Bank of San Francisco, "The Asian Financial Crisis Ten Years Later: Assessing the Past and Looking to the Future (Speech)," February 6, 2007. See *Direction of Credit Memorandum* at Attachment 8.

<sup>16</sup>Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, "Restructuring and Reforms in the Banking Industry," BIS Papers No. 28 at 267. See *Direction of Credit Memorandum*, at Attachment 9.

their activities on their most profitable lending activities.<sup>17</sup> The long-held belief that "banks never fail because the government will bail them out" faded away.<sup>18</sup> The reforms that were implemented by the GOK after the 1997 Financial Crisis changed the ways banks were operated as well as the patterns of the asset allocation behavior of banking institutions.<sup>19</sup> The IMF concluded that since the Financial Crisis, the GOK accelerated its shift towards a market-oriented development strategy and that directed credit was abolished.<sup>20</sup>

Based on the Department's decision on Korean directed credit policies in both the *DRAMS Investigation* and the *CFS Paper Investigation*, the information submitted by the GOK in this review regarding directed credit and reforms in the financial sector for the period 2002–2006, and our substantiation of this submitted information through independent research, we determine that the GOK no longer has a systemic practice of directing credit within the Korean financial sector and that directed credit within the Korean steel industry ended as of 2002.

With regard to the period prior to 2002, the GOK provided some information regarding its lending policies, and Dongbu and POSCO reported receiving long-term loans prior to 2002. However, even assuming that the GOK's actions during this period constituted direction of credit, any potential benefit to Dongbu and POSCO during this POR is less than 0.005 percent. As explained in *Coated Free Sheet Paper from the People's Republic of China: Final Determination of Countervailing Duty Investigation*, 72 FR 60645 (October 25, 2007) (*CFS Paper from China Investigation*), and accompanying Issues and Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration" (*CFS Paper from China Decision Memorandum*), where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total CVD rate. Hence, we preliminarily find

<sup>17</sup>International Monetary Fund (IMF), "IMF Country Report No. 04/44," February 2004, at 6. See *Direction of Credit Memorandum* at Attachment 10.

<sup>18</sup>Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, "Restructuring and Reforms in the Banking Industry," BIS Papers No. 28 at 259. See *Direction of Credit Memorandum*, at Attachment 11.

<sup>19</sup>Eui-Gak Hwang, "Banking Sector Restructuring in Korea After the 1997–1998 Crisis," at 13. See *Direction of Credit Memorandum*, at Attachment 12.

<sup>20</sup>International Monetary Fund (IMF), "IMF Country Report No. 05/49," February 2005, at 5. See *Direction of Credit Memorandum*, at Attachment 13.



that any long-term loans provided prior to 2002 and outstanding during the POR did not confer a measurable benefit to Dongbu or POSCO during the POR. Accordingly, it is unnecessary to make a finding as to the countervailability of the GOK's Direction of Credit program prior to 2002 for this administrative review.

Therefore, for purposes of this review, we determine that there is no directed credit to the Korean steel industry from 2002. This decision is restricted to the post-2001 period that was addressed by the GOK in its questionnaire response. Furthermore, our determination in this review does not change the decision that was made by the Department in *DRAMS Investigation* that there may still be instances in which the GOK may attempt to influence bank decisions on an *ad hoc* basis such as the government-led financial restructuring of Hynix. Accordingly, loans that were issued to the respondents from private Korean commercial banks and government-owned banks from January 1, 2002, onward are not countervailable. We note that, as described below, we are still examining loans provided by the KDB, as it is a government policy bank.

We have decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. In both the *DRAMS Investigation* and the *CFS Paper Investigation*, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.

This modification of our treatment of government-owned commercial banks has no effective impact on our directed credit determination, but it provides uniformity of treatment for all

government-owned entities and is more consistent with our regulations.

As discussed above, we are only countervailing directed credit provided prior to January 1, 2002. In accordance with 19 CFR 351.505(c)(2) and (4), we calculated the benefit for each fixed- and variable-rate loan received from GOK-owned or -controlled banks to be the difference between the actual amount of interest paid on the directed loan during the POR and the amount of interest that would have been paid during the POR at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the "Subsidies Valuation Information" section above. For foreign currency-denominated loans, we converted the benefits into Korean won using exchange rates obtained from the BOK. We then summed the benefits from each company's long-term fixed-rate and variable-rate won-denominated loans.

To calculate the net subsidy rate, we divided the companies' total benefits by their respective total f.o.b. sales values during the POR, as this program is not tied to exports or a particular product. In calculating the net subsidy rate for POSCO, we removed from the denominator sales made between affiliated parties.<sup>21</sup> On this basis, we preliminarily determine the subsidy rate under the direction of credit program to be less than 0.005 percent *ad valorem* for POSCO and less than 0.0005 percent *ad valorem* for Dongbu.

#### B. Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. The Department has previously found this program to be countervailable. For example, in the *CTL Plate Investigation*, the Department determined that this program was *de facto* specific under section 771(5A)(D)(iii) of the Act because the actual recipients of the subsidy were limited in number and the basic metal industry was a dominant user of this program. See *CTL Plate Investigation*, 64 FR at 73183. We also determined that a financial contribution was provided in the form of tax revenue foregone

<sup>21</sup> For POSCO, we also removed intra-company sales from the denominators of the net subsidy rate calculations of the other programs found countervailable in these preliminary results. This step was not necessary for Dongbu.

pursuant to section 771(5)(D)(ii) of the Act. *Id.* The Department further determined that a benefit was conferred within the meaning of section 771(5)(E) of the Act on those companies that were able to revalue their assets under TERCL Article 56(2) because the revaluation resulted in participants paying fewer taxes than they would otherwise pay absent the program. *Id.* No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. Evidence on the record indicates that, in 1989, POSCO made an asset revaluation that increased its depreciation expense. Dongbu reported that it did not use this program during the POR. To calculate the benefit to POSCO, we took the additional depreciation listed in the tax return filed during the POR, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit by POSCO's total f.o.b. sales. On this basis, we preliminarily determine the net countervailable subsidy to be 0.02 percent *ad valorem* for POSCO. This program was not used by Dongbu.

#### C. Research and Development (R&D) Grants Under the Industrial Development Act (IDA)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the IDA, including technology for core materials, components, engineering systems, and resource technology. The IDA is designed to foster the development of efficient technology for industrial development. To participate in this program a company may: (1) Perform its own R&D project, (2) participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. If the R&D project is not successful, the company must repay the full amount.

In the *H Beams Investigation*, the Department determined that through KNISTRA the Korean steel industry receives funding specific to the steel industry. Therefore, given the nature of KNISTRA, the Department found projects under KNISTRA to be specific. See *Preliminary Negative Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea*, 64 FR 69731, 69740 (December 14, 1999) (unchanged in the final determination and the H Beams Decision Memorandum, at “R&D Grants Under the Korea New Iron & Steel Technology Research Association (KNISTRA)”). Further, we found that the grants constituted a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and bestowed a benefit under section 771(5)(E) of the Act in the amount of the grant. *Id.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act and constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Dongbu reported that it did not use the program during the POR. POSCO reported receiving grants through KNISTRA during the POR; however, it claims that the research grants it received under the program are tied to non-subject merchandise. Upon review of the information submitted by the GOK and POSCO, we preliminarily determine that certain grants are tied to non-subject merchandise, and thus, we did not include these grants in our benefit calculations. See the GOK’s January 4, 2008, Questionnaire Response, at Exhibit G–6; POSCO’s April 18, 2008, Supplemental Questionnaire Response; and POSCO’s May 8, 2008, Supplemental Questionnaire Response.

However, POSCO also reported receiving certain other grants related to new technologies that can be applicable for both inputs of subject merchandise as well as subject merchandise. See POSCO’s December 20, 2007, Questionnaire Response, at Exhibit 6; and “Memorandum to the File through Eric Greynolds, “Factual Information Regarding the Steel Production Process” (September 2, 2008). Some of these R&D grants were examined in previous reviews of this case and found to provide countervailable benefits to POSCO. See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of*

*Korea: Final Results of Countervailing Duty Administrative Review*, 73 FR 2444 (January 15, 2008) (*2005 CORE from Korea*), and the accompanying Issues and Decision Memorandum at Comment 2 (2005 CORE from Korea Decision Memorandum). In this administrative review, as in the previous administrative review of this case, there is nothing on the record that demonstrates that the R&D projects in question could not be used in the production of subject merchandise or that this new technology is limited to the development of non-subject merchandise. Therefore, we find in these preliminary results, as in prior reviews, that the R&D grants in question provide a countervailable benefit to POSCO during the 2006 POR.

In addition, in the instant review POSCO provided information on several R&D projects for which 2006 is the first year that a grant was received. The GOK’s and POSCO’s information with respect to the R&D projects initially funded in 2006 indicates that some of these grants are tied specifically to non-subject merchandise. See GOK’s January 4, 2008, Questionnaire Response, at Exhibit G–6; POSCO’s April 18, 2008, Supplemental Questionnaire Response at page 1 and Exhibit G–10; and POSCO’s May 8, 2008, Supplemental Questionnaire Response, at page 2. Therefore, we did not include the grants that are tied to non-subject merchandise in our calculations in these preliminary results. With respect to the other R&D grants related to projects initially funded in 2006, there is no information provided in POSCO’s questionnaire responses that demonstrates that the new technologies developed in this R&D project are limited to non-subject merchandise and could not be used to develop a hot-rolled technology for the subject merchandise. See POSCO’s April 18, 2008, Supplemental Questionnaire Response at pages 1 and 2 and Exhibit G–10, and POSCO’s May 8, 2008, Supplemental Questionnaire at pages 1 and 2. Moreover, with respect to another project initially funded in 2006, we find that this project involves developing methods that could be applicable to inputs to both subject merchandise and non-subject merchandise. Under 19 CFR 351.525(b)(5), if a subsidy is tied to the production or sale of a particular product, the Department will attribute the subsidy only to that product. But, under sub-paragraph (ii), if a subsidy is tied to the production of an input product, then the Department will attribute the subsidy to both the input and downstream products produced by

a corporation, where the input is primarily dedicated to downstream products. Accordingly, we have attributed the grant related to a production process that can be used as an input into the production of subject merchandise to POSCO’s total sales.

To determine the benefit from the grants that POSCO received through KNISTRA, we calculated the GOK’s contribution for each R&D project. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over POSCO’s AUL by dividing the approved amount by POSCO’s total sales in the year of approval. Because the approved amounts were less than 0.5 percent of POSCO’s total sales in the year of receipt, we expensed the grants to the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by POSCO’s total f.o.b. sales during the POR. On this basis, we preliminarily determine POSCO’s net subsidy rate under this program to be 0.01 percent *ad valorem*.

#### *D. Exemption of VAT on Imports of Anthracite Coal*

Under Article 106 of Restriction of Special Taxation Act (RSTA), imports of anthracite coal are exempt from the value added tax (VAT). In the *Cold-Rolled Investigation*, we determined that the program is *de jure* specific under section 771(5A)(D)(i) of the Act. Because the GOK allows for only a few items to be exempt from VAT, the items allowed to be imported without paying VAT are limited. See *Cold-Rolled Decision Memorandum* at “Exemption of VAT on Imports of Anthracite Coal.” We also determined that the VAT exemptions under the program constitute a financial contribution under section 771(5)(D)(ii) of the Act, as the GOK is not collecting revenue otherwise due, and that the exemptions confer a benefit under section 771(5)(E) of the Act equal to the amount of the VAT that would have otherwise been paid if not for the exemption. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited, constitutes a financial contribution in the form of forgone revenue under section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the revenue



foregone within the meaning of 771(5)(E) of the Act.

Dongbu reported that it did not use the program during the POR. POSCO imported anthracite coal during the POR and, therefore, received a benefit in the amount of the VAT that it should have otherwise paid if not for the exemption. To determine POSCO's benefit from the VAT exemption on these imports, we calculated the amount of VAT that would have been due absent the program on the total value of anthracite coal POSCO imported during the POR. We then divided the amount of this tax benefit by POSCO's total f.o.b. sales. Based on this methodology, we preliminarily determine the POSCO received a countervailable subsidy of 0.06 percent *ad valorem*.

#### *E. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under Harbor Act*

##### 1. Provision of Land

As explained in the *Cold-Rolled Investigation*, the GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. See *Cold-Rolled Decision Memorandum* at "Provision of Land at Asan Bay." The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites. *Id.*

In the *Cold-Rolled Investigation*, we verified that the GOK, in setting the price per square meter for land at the Kodai Industrial Estate, removed the 10 percent profit component from the price charged to Dongbu. *Id.* In the *Cold-Rolled Investigation*, we further explained that companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. However, in the case of Dongbu, we found that the GOK provided an adjustment to Dongbu's final payment to account for "interest earned" by the company for the pre-payments. *Id.* POSCO reported that it did not use this program.

In the *Cold-Rolled Investigation*, we determined that the price discount and the adjustment of Dongbu's final payment to account for "interest earned" by the company on its pre-payments were countervailable subsidies. Specifically, the Department

determined that they were specific under section 771(5A)(D)(iii)(I) of the Act, as they were limited to Dongbu. *Id.* Further, the Department found the price discount and the price adjustment for "interest earned" constituted financial contributions in the form of grants under section 771(5)(D)(i) of the Act and conferred benefits in the amount of grants within the meaning of section 771(5)(E) of the Act. *Id.* No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we preliminarily continue to find that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is limited to Dongbu, constitutes a financial contribution in the form of grants under sections 771(5)(D)(i), and confers a benefit in the amount of the price discount and the price adjustment within the meaning of 771(5)(E) of the Act.

Consistent with the *Cold-Rolled Investigation*, we have treated the land price discount and the interest earned refund as non-recurring subsidies. *Id.* In accordance with 19 CFR 351.524(b)(2), because the grant amounts were more than 0.5 percent of the company's total sales in the year of receipt, we applied the Department's standard grant methodology, as described under 19 CFR 351.524(d)(1), and allocated the subsidies over a 15-year allocation period. See the "Average Useful Life" section above. To calculate the benefit from these grants, we used as our discount rate the rates described above in the "Subsidies Valuation Information" section. We then summed the benefits received by Dongbu during the POR. We calculated the net subsidy rate by dividing the total benefit attributable to the POR by Dongbu's total f.o.b. sales for the POR. On this basis, we determine a net countervailable subsidy rate for Dongbu of 0.20 percent *ad valorem* for the POR.

##### 2. Exemption of Port Fees Under the Harbor Act

Under the Harbor Act, companies are allowed to construct infrastructure facilities at Korean ports; however, these facilities must be deeded back to the government. Because the ownership of these facilities reverts to the government, the government compensates private parties for the construction of these infrastructure facilities. Because a company must transfer to the government its infrastructure investment, under the Harbor Act, the GOK grants the

company free usage of the facility and the right to collect fees from other users of the facility for a limited period of time. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure.

In the *Cold-Rolled Investigation*, the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port. See *Cold-Rolled Decision Memorandum* at "Dongbu's Excessive Exemptions under the Harbor Act." The Department also determined that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program. See *id.*

In the *Cold-Rolled Investigation*, the Department found the exemption from the fees to be a countervailable subsidy. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Thus, we preliminarily continue to find that the program is countervailable and is specific under section 771(5A)(D)(iii)(I) of the Act because the excessive exemption period of 70 years is limited to Dongbu. Moreover, we preliminarily determine that the GOK is foregoing revenue that it would otherwise collect by allowing Dongbu to be exempt from port charges for up to 70 years and, thus, the program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that the exemptions confer a benefit under section 771(5)(E) of the Act in the amount of the port charges that were not collected.

In the *Cold-Rolled Investigation*, the Department treated the program as a recurring subsidy and determined that the benefit is equal to the average yearly amount of harbor fee exemptions provided to Dongbu. *Id.* For purposes of these preliminary results, we have employed the same benefit calculation. To calculate the net subsidy rate, we divided the average yearly amount of exemptions by Dongbu's total f.o.b. sales for the POR. On this basis, we preliminarily determine that Dongbu's net subsidy rate under this program is 0.02 percent *ad valorem*.

#### *E. Short-Term Export Financing*

KEXIM supplies two types of short-term loans for exporting companies, short-term trade financing and comprehensive export financing. KEXIM provides short-term loans to

Korean exporters who manufacture export goods under export contracts. The loans are provided up to the amount of the bill of exchange or contracted amount less any amount already received. For comprehensive export financing loans, KEXIM supplies short-term loans to any small or medium-sized company, or any large company that is not included in the five largest conglomerates based on their comprehensive export performance. To obtain the loans, companies must report their export performance periodically to KEXIM for review. Comprehensive export financing loans cover from 50 to 90 percent of the company's export performance; however, the maximum loan amount is restricted to 30 billion won. In *Steel Products from Korea*, the Department determined that the GOK's short-term export financing program was countervailable. See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea*, 58 FR 37338, 37350 (July 9, 1993) (*Steel Products from Korea*); see also, Cold-Rolled Decision Memorandum at "Short-Term Export Financing." No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program countervailable. Specifically, we preliminarily determine that the program is specific, pursuant to section 771(5A)(B) of the Act, because receipt of the financing is contingent upon exporting. In addition, we preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(D)(i) of the Act and confers a benefit within the meaning of section 771(E)(ii) of the Act. POCOS, POSCO's affiliate, and Dongbu reported using short-term export financing during the POR.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section. To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of the respective company's total exports. On this basis, we determine the net subsidy rate to be less than 0.005 percent *ad valorem* for POSCO and less

than 0.005 percent *ad valorem* for Dongbu.

## II. Program Preliminarily Determined Not To Confer a Benefit During the POR

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

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three-percent reserve.

In a prior segment of this proceeding, we determined that this program is specific under section 771(5A)(D)(i) of the Act because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 72 FR 51602, 51607-08 (2005 Preliminary Results of CORE from Korea) (unchanged in 2005 CORE from Korea). We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone and that it provides a benefit under section 771(5)(E) of the Act to the extent that companies in the capital goods industry, which includes steel manufacturers, pay less in taxes than they would absent the program. *Id.* In 2005 Preliminary Results of CORE from Korea, we continued to find the program countervailable, but found that the companies under investigation only contributed to the reserve at the lower three-percent rate. Therefore, we found no countervailable benefit because the companies contributed at the lower rate, which was available to any Korean company. *Id.* No new information, or evidence of changed circumstances, was

presented in this review to warrant reconsideration of the approaches adopted in the 2005 Preliminary Results of CORE from Korea.

In this administrative review, POSCO and POCOS each reported contributing to the reserve at the three-percent rate during the POR. We continue to find this program to be potentially countervailable. However, as each company contributed to the reserve at the lower three-percent rate, and in light of the Department's approach in 2005 Preliminary Results of CORE from Korea, we preliminarily determine that no countervailable benefits were conferred under this program during the POR. Dongbu reported that it did not use this program during the POR.

### B. Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions From 2002 to 2006

In the CFS Paper Investigation, we found that long-term loans issued by such GOK institutions as the KDB constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act to the extent that interest payments on the government loans are lower than what would have been paid on comparable commercial loans. Regarding specificity, we found that long-term loans from the KDB are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because (1) they are not based on exportation, (2) they are not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law. We then examined whether such loans were specific as a matter of fact under section 771(5A)(D)(iii) of the Act, that is, whether the program is *de facto* specific. We found that there was no evidence indicating that these loans were *de facto* specific. See CFS Paper Decision Memorandum at "Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions."

Dongbu reported receiving long-term loans from a GOK-owned bank after 2001. However, upon calculating the benefit to Dongbu during the POR by applying the benchmark interest rates described above, we preliminarily determine that any potential benefit to Dongbu during this POR is less than 0.005 percent. As explained in CFS from China Investigation and CFS from China Decision Memorandum, where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total

CVD rate. Hence, we preliminarily find that these loans do not confer a measurable benefit to Dongbu.

Accordingly, it is unnecessary to make a finding as to the countervailability of this program for this POR. We will include an examination of this program in a future administrative review. POSCO and POSCOS reported that they did not receive any such lending after 2001.

### C. D/A Loans Issued by the KDB and Other Government-Owned Banks

In the *CFS Investigation*, the Department determined that D/A loans from the KDB and other government-owned banks constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determined that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of D/A loans is contingent upon export performance, we also determined that D/A loans from the KDB and other government-owned banks are specific within the meaning of section 771(5A)(B) of the Act. See *CFS Paper Decision Memorandum* at “D/A Loans Issued by KDB and Other Government-Owned Banks.”

Dongbu reported receiving short-term D/A financing from a government-owned bank during the POR. To calculate the benefit, we compared the amount of interest paid on the government loans to the amount of interest that would have been paid on comparable commercial short-term financing that could have been obtained on the market. See 19 CFR 351.505(a). We calculated the benefit to Dongbu by applying the benchmark interest rates described above. Because loans under this program are discounted (*i.e.*, interest is paid up front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from respondents’ respective company-specific weighted-average interest rates for short-term commercial loans. Because the benchmark interest rate was lower than the interest rates paid by Dongbu, we calculated a net subsidy rate of 0.00 percent *ad valorem* for Dongbu. Therefore, as explained above, it is unnecessary to make a finding as to the countervailability of this program for this POR. POSCO and POCOS did not report any D/A financing from

government-owned banks during the POR. We will include an examination of this program in a future administrative review.

### D. Document Acceptance (D/A) Financing Provided Under KEXIM’s Trade Rediscount Program

Under section 771(5)(B)(iii) of the Act, a subsidy can be found whenever the government “makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution\* \* \* to a person and a benefit is thereby conferred.” In the *CFS Investigation*, we determined that KEXIM’s trade bill rediscount program constitutes a payment to a funding mechanism because the rediscount ceiling KEXIM provides to banks participating under the program is contingent on banks subsequently lending the funds to exporters. Section 771(5)(B)(iii) of the Act also states that financial contributions from funding mechanisms can be a subsidy only if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by the government. This is the “government subsidy function” prong of an indirect financial contribution. Here, the banks are performing a government subsidy function and, therefore, their loans can qualify as subsidies. Therefore, we find that loans from banks under the rediscount program constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and confer a benefit upon exporters, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of the loans is contingent upon export performance, we also determine that KEXIM’s rediscount program is specific within the meaning of section 771(5A)(B) of the Act. We further found that subsidies on the loans under KEXIM’s trade bill rediscount program are tied to sales of subject merchandise to the United States in accordance with 19 CFR 351.525(b)(4) and (5). Accordingly, we limited our benefit calculations to D/A loans issued on sales of subject merchandise to the United States. See *CFS Paper Decision Memorandum* at “Export Loans by Commercial Banks Under KEXIM’s Trade Bill Rediscounting Program.”

Dongbu reported receiving short-term D/A financing from commercial banks that participated in KEXIM’s Trade Rediscount Program during the POR. To

calculate the benefit to Dongbu under this program, we compared the amount that Dongbu paid on all of its D/A loans from commercial banks outstanding during the POI to the amount it would pay on comparable commercial short-term financing that it could obtain on the market. See 19 CFR 351.505(a). We calculated the benefit to Dongbu by applying the benchmark interest rates described above. Because loans under this program are discounted (*i.e.*, interest is paid up front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Because the benchmark interest rate was lower than the interest rates paid by Dongbu, we calculated a net subsidy rate of 0.00 percent *ad valorem* for Dongbu. Therefore, as explained above, it is unnecessary to make a finding as to the countervailability of this program for this POR. POSCO and POCOS did not report any D/A financing from commercial banks during the POR. We will include an examination of this program in a future administrative review.

## III. Programs Preliminarily Determined To Be Not Used

### A. Overseas Resources Development Program

The GOK enacted the Overseas Resource Development Business Act in order to establish the foundation for ensuring the long-term secure supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. Pursuant to Article 11 of this Act, the Ministry of Commerce, Industry and Energy (MOCIE) annually announces its budget and the eligibility criteria to obtain an overseas resource development (ORD) loan. Any company that meets the eligibility criteria may apply for an ORD loan to MOCIE. The eligibility criteria for receiving an ORD loan are that the loan should be used for surveying, exploration, development, production, engineering services and financing for the development of overseas natural resources. The applicant submits its ORD plans to MOCIE in accordance with the Overseas Resources Development Business Act. MOCIE requests that the Korean Resources Corporation (KORES), a public corporation that is wholly owned by the GOK, conduct an eligibility review, feasibility study and credit evaluation. KORES was established in 1967 and has assumed a direct role in establishing and implementing the GOK’s resources development policy, whose purpose is to secure mineral

resources for Korea. In the selection process, KORES uses a loan evaluation committee to select the recipients based on the criteria for the project to develop strategic minerals (e.g., bituminous coal, uranium, iron ore, copper, zinc, nickel, etc.), including co-development with resource-owning countries, mining right of minerals, etc. KORES provides the evaluation result and its recommendation to MOCIE. If the result and recommendation are favorable, MOCIE approves the loan application and provides funds to KORES. KORES then lends the funds to the company for foreign resource development.

During the POR, POSCO reported in its December 20, 2007, Questionnaire Response that it received ORD loans. POSCO's loans were related to an investment in a nickel mine. Nickel is not an input used in the production of subject merchandise. Therefore, we preliminarily determine that POSCO did not use this program with respect to the subject merchandise during the POR. We will continue to examine this program in future reviews.

- B. Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41–45)
- C. Electricity Discounts Under the Requested Loan Adjustment Program
- D. Electricity Discounts Under the Emergency Load Reductions Program
- E. Export Industry Facility Loans and Specialty Facility Loans
- F. Reserve for Export Loss Under TERCL Article 16
- G. Reserve for Overseas Market Development Under TERCL Article 17
- H. Reserve for Export Loss Under TERCL Article 22
- I. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
- J. Tax Credits for Temporary Investments Under TERCL Article 27
- K. Tax Credits for Specific Investments Under TERCL Article 71
- L. RSTA Article 94: Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
- M. Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
- N. Emergency Load Reduction Program
- O. Local Tax Exemption on Land Outside of a Metropolitan Area
- P. Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
- Q. Industrial Base Fund
- R. Excessive Duty Drawback
- S. Private Capital Inducement Act
- T. Social Indirect Capital Investment Reserve Funds Under TERCL Article 28
- U. Energy-Savings Facilities Investment Reserve Funds Under TERCL Article 29
- V. Scrap Reserve Fund
- W. Special Depreciation of Assets on Foreign Exchange Earnings
- X. Export Insurance Rates Provided by the Korean Export Insurance Corporation

- Y. Loans from the National Agricultural Cooperation Federation
- Z. Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act

#### Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each of the producer/exporters subject to this administrative review. For the period January 1, 2006, through December 31, 2006, we preliminarily determine the net subsidy rate for POSCO to be 0.09 percent *ad valorem* and for Dongbu to be 0.22 percent *ad valorem*, both of which are *de minimis*. See 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailable duties all shipments of subject merchandise produced by POSCO and Dongbu, entered, or withdrawn from warehouse, for consumption from January 1, 2006 through December 31, 2006. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise produced by POSCO and Dongbu, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

#### Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results.

Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. See 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Pursuant to 19 CFR 351.305(b)(4), representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(i), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These preliminary results of review are issued and published in accordance with sections 7519(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–20918 Filed 9–8–08; 8:45 am]

**BILLING CODE 3510-DS-P**