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Sunset Review
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Third Sunset Reviews of the Countervailing Duty
Orders on Certain Cut-To-Length Carbon-Quality Steel Plate from
India, Indonesia and the Republic of Korea

I. Summary

We have analyzed the substantive responses of the interested parties in the sunset reviews of the countervailing duty (CVD) orders covering certain cut-to-length carbon-quality steel plate (CTL Plate) from India, Indonesia and the Republic of Korea (Korea). We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues that the Department of Commerce (Department) is addressing in these sunset reviews.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

II. History of the Orders

The Department published its final affirmative determinations in the CVD investigations of CTL Plate from India, Indonesia, and Korea in the *Federal Register* on December 29, 1999, and issued amended final determinations and CVD orders on February 10, 2000.¹

¹ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate*

India:

In the *CVD Amended Finals and Orders*, the Department found the following programs to confer countervailable subsidies on the Steel Authority of India (SAIL) and all other Indian producers/exporters of subject merchandise: (1) Duty Entitlement Passbook Scheme (DEPS); (2) Advance Licensing Program; (3) Special Import Licenses (SILs); (4) Export Promotion Capital Goods Scheme (EPCGS); (5) Pre-shipment and Post-shipment Export Financing Programs; and (6) Loan Guarantees from the Government of India. The Department found a net subsidy of 12.82 percent *ad valorem* for SAIL and for all other Indian producers/exporters of subject merchandise.²

The Department has not conducted an administrative review of this order since its issuance. In the previous sunset review of this order, the Department determined that revocation of the order would be likely to result in a continuation or recurrence of a countervailable subsidy at the rates determined in the underlying investigation.³ As a result of the previous sunset review of this order, this order was continued, effective January 4, 2012.⁴

Indonesia:

In the *Indonesia Final Determination*, the Department found the following programs to be countervailable: (1) 1995 Equity Infusion into Krakatau; (2) Pre-1993 Equity Infusions to Krakatau; (3) 1989 Equity Infusion to Cold Rolling Mill of Indonesia (CRMI) (4) Three-Step Equity Infusion to CRMI; (5) Two-Step Loan Program; and (6) Rediscount Loan Program. The Department found an estimated net subsidy of 47.71 percent *ad valorem* for P.T. Krakatau Steel⁵ and 15.90 percent *ad valorem* for all other manufacturers/producers/exporters of CTL Plate from Indonesia. The Indonesian steel producers P.T. Gunawan Steel and P.T. Jaya Pari were excluded from the order because they received a *de minimis* net subsidy.⁶

From India, 64 FR 73131 (December 29, 1999) (*India Final Determination*), *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR 73155 (December 29, 1999) (*Indonesia Final Determination*), *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 (December 29, 1999), and *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea*; and *Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CVD Amended Finals and Orders*).

² *CVD Amended Finals and Orders.*, 65 FR 6587.

³ See *Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, and the Republic of Korea: Final Results of Expedited Sunset Review*, 76 FR 12702 (March 8, 2011) (*Second Sunset Review*) and accompanying Decision Memorandum (Second Sunset Decision Memorandum).

⁴ See *Certain Cut-To-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea: Continuation of Antidumping and Countervailing Duty Orders*, 77 FR 264 (January 4, 2012) (*Second Continuation Orders*).

⁵ The net subsidy rate for P.T. Krakatau as determined in the final determination was actually 47.72 percent *ad valorem*, which is the sum of the individual program rates.

⁶ See *Indonesia Final Determination*, 64 FR 73155.

The Department has not conducted an administrative review with respect to this order since its issuance. In the previous sunset review of this order, the Department determined that revocation of the order would be likely to result in a continuation or recurrence of a countervailable subsidy at the rates determined in the underlying investigation.⁷ As a result of the previous sunset review of this order, this order was continued, effective January 4, 2012.⁸

Korea:

In the *CVD Amended Finals and Orders* the Department found a net subsidy of 3.26 percent *ad valorem* for Dongkuk Steel Mill, Ltd. (DSM) and “all other” Korean producers/exporters of subject merchandise, apart from Pohang Iron & Steel Co., Ltd. (POSCO). The Department found a *de minimis* estimated net countervailable subsidy of 0.82 percent for POSCO and, therefore, excluded POSCO from the order.⁹

In the *CVD Amended Finals and Orders* the Department determined the following programs to confer countervailable subsidies to Korean producers/exporters of subject merchandise:

- (1) the Government of Korea’s (GOK) Direction of Credit Policies (through 1991, and from 1992 through 1998);
- (2) GOK Infrastructure Investment at Kwangyang Bay;
- (3) Short-Term Export Financing;
- (4) Reserve for Export Loss;
- (5) Reserve for Overseas Market Development;
- (6) Technical Development Reserve Funds Under Article 8 of Tax Reduction and Exemption Control Act (TERCL)
- (7) Investment Tax Credits;
- (8) Electricity Discounts Under the Requested Load Adjustment Program;
- (9) Asset Revaluation Pursuant to TERCL Article 56(2);
- (10) Exemption of Bond Requirement for Port Use at Asan Bay;
- (11) Price Discount for DSM Land Purchase at Asan Bay;
- (12) POSCO’s Dual-Pricing Scheme;
- (13) Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43); and
- (14) Research and Development (R&D) Grants.

In the prior sunset review, the Department determined that the rate likely to prevail for DSM and all other Korean producers in the event of revocation of the Korean order to be 1.38 percent *ad valorem*.¹⁰ As a result, this order was continued effective January 4, 2012.¹¹

⁷ See *Second Sunset Review*, 76 FR 12702 and Second Sunset Decision Memorandum.

⁸ See *Second Continuation Orders*, 77 FR 264.

⁹ See *CVD Amended Finals and Orders*, 65 FR 6587

¹⁰ See *Second Sunset Review*, 76 FR 12702 and Second Sunset Decision Memorandum.

¹¹ See *Second Continuation Orders*, 77 FR 264.

In the *Second Sunset Review*, the Department noted that it had completed three administrative reviews of DSM covering calendar years 2004, 2005, and 2006.¹² In each of the reviews, the Department found that DSM continued to benefit from the GOK's direction of credit policies, asset revaluation pursuant to TERCL Article 56(2); and R&D grants. In addition, during the reviews covering calendar years 2005 and 2006, the Department found a new countervailable subsidy being provided to DSM through infrastructure at North Incheon Harbor. The net countervailable subsidy rates for DSM in the reviews covering calendar years 2004, 2005, and 2006 were 0.05 percent, 0.10 percent, and 0.29 percent *ad valorem*, respectively, all of which are *de-minimis*. Based on the Department's decision in the First Sunset Review¹³ to remove from the original CVD rate the subsidy of 0.90 percent attributable to POSCO's dual pricing scheme, which was a program the Department had previously determined no longer conferred countervailable subsidies, and on information from the three intervening reviews, the Department determined in the *Second Sunset Review* that the subsidy rate likely to prevail in the event of the revocation of the CVD order on CTL from Korea was 1.38 percent *ad valorem*.¹⁴

Since the completion of the *Second Sunset Review* and *Second Continuation Orders*, the Department has completed two administrative reviews involving DSM, covering calendar years 2012 and 2014, and one new shipper review of Hyundai Steel Company (Hyundai Steel) that was aligned with the 2014 administrative review of DSM.¹⁵ In the 2012 review, the Department found that DSM continued to benefit from the GOK's local tax exemption on land outside metropolitan areas, GOK facilities investment support, various government grants, wharfage fees expenses and asset revaluation in the 2012 review.¹⁶ For the 2014 administrative review, in which both DSM and Hyundai Steel participated, the Department found that DSM benefitted from local tax exemptions on land outside of metropolitan areas, grants, electricity programs and GOK Directed Credit. In the same review, the Department found that Hyundai Steel benefitted from local tax exemptions on land outside of metropolitan areas, grants, and electricity programs.

¹² See Second Sunset Decision Memorandum at 5, citing *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (2004 Review of CTL Plate from Korea); *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) (2005 Review of CTL Plate from Korea); and *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 73 FR 14770 (March 19, 2008) (2006 Review of CTL Plate from Korea).

¹³ See *Final Results of Expedited Sunset Review of the Countervailing Duty Order: Certain Cut-To-Length Carbon-Quality Steel Plate from Korea*, 70 FR 45689 (August 8, 2005) (*First Sunset Review*) and accompanying Decision Memorandum (First Sunset Review Decision Memorandum).

¹⁴ See Second Sunset Review Decision Memorandum at 9.

¹⁵ See *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2012, 79 FR 46770 (August 11, 2014) (2012 Review of CTL Plate from Korea) and accompanying Decision Memorandum (2012 CTL Plate Decision Memorandum); see also *Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review and New Shipper Review; Calendar Year 2014*, 81 FR 64138, (September 19, 2016) (2014 Review of CTL Plate from Korea) and accompanying Decision Memorandum (2014 CTL Plate Decision Memorandum).

¹⁶ See 2012 CTL Plate Decision Memorandum; see also 2014 CTL Plate Decision Memorandum.

The net countervailable subsidy rate for DSM in the 2012 review was 0.11 percent *ad valorem*, which is *de minimis*.¹⁷ The net countervailable subsidy rates for DSM and Hyundai Steel in the 2014 review were 0.01 percent and 0.23 percent *ad valorem*, respectively, which are *de minimis*.¹⁸

III. Discussion of the Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is conducting these reviews to determine whether revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b)(1) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the orders were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO *Agreement on Subsidies and Countervailing Measures (SCM)*.

A. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD orders on CTL Plate from India, Indonesia, and Korea would be likely to lead to the continuation or recurrence of a countervailable subsidy.¹⁹ They further state that as no administrative reviews or changed circumstances reviews of the CVD orders on India and Indonesia have been completed by the Department, there is no basis upon which to determine that the subsidy programs found during the original investigation have been affected or extinguished.²⁰

Domestic interested parties argue with respect to Korea that, in the first sunset review, the Department found only one of the original subsidy programs had been terminated but found that subsidization or recurrence would be likely to continue or recur because benefit streams from at least several other programs would continue. In addition, domestic interested parties note that in subsequent administrative reviews, DSM has continued to benefit from subsidy programs, albeit at a *de minimis* level, that programs continue to exist but were not used by DSM and Hyundai Steel, and that some were new programs through which benefits were awarded well after the investigation had concluded.²¹

¹⁷ See *2012 Review of CTL Plate from Korea*, 79 FR 46770.

¹⁸ See *2014 Review of CTL Plate from Korea*, 81 FR 64138.

¹⁹ See January 3, 2017, Substantive Response of domestic interested parties regarding CTL Plate from India (SR-India) at 7-8, from Indonesia (SR-Indonesia) at 11 and from Korea (SR-Korea) at 12-18.

²⁰ See SR-India at 4-5, SR-Indonesia at 13-14.

²¹ See SR-Korea at 18-19.

In addition, domestic interested parties state that official import statistics demonstrate that the CVD orders had an immediate and dramatic effect on imports of CTL Plate from India, Indonesia, and Korea. Specifically, import volumes from India and Indonesia have decreased drastically as a result of the issuance of the preliminary determination, continued to fall steadily after the issuance of the order, and although fluctuating since the 2005 continuation of the order,²² have remained well below pre-order levels.²³ Domestic interested parties argue that the Korean order has had an important impact on curtailing imports of subject merchandise from Korea, noting that the largest annual volume of imports over the past five years is significantly less than the volume of imports prior to the issuance of the order.²⁴ In conclusion, domestic interested parties argue that, were the orders to be revoked, it is highly likely that Indian, Indonesian, and Korean exporters would resume shipments of subsidized imports to the United States at levels observed before the original investigation.

Department's Position

There have been no administrative reviews of the orders on India or Indonesia. Further, no evidence has been submitted to the Department demonstrating that any programs found to be countervailable in the investigations of India or Indonesia have been terminated. During the first sunset review of Korea, the Department determined that one program was no longer countervailable and the benefits had been eliminated. In addition, the Department has since concluded five administrative reviews of the order on Korea, in which it identified an additional countervailable subsidy being provided. In the instant sunset reviews, the Department did not receive a response from a foreign government or from any other respondent interested party. Absent submitted evidence, we find that countervailable programs found during the underlying investigations on India, Indonesia, and Korea continue to exist and be used, with the exception of the provision of steel from POSCO at less-than-adequate remuneration through its dual pricing scheme in Korea, which the Department found was no longer countervailable due to the fact that ownership changes in POSCO resulted in it no longer constituting a government authority capable of providing a financial contribution.

Pursuant to section 752(b)(4) of the Act, a zero or *de minimis* net countervailable subsidy rate shall not by itself require a finding that revocation of a CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy. According to the Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.²⁵ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²⁶ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or

²² See *Continuation of Antidumping and Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and Korea*, 70 FR 72607 (December 6, 2005) (*Continuation of Orders*).

²³ See SR-India at 4-5 and SR-Indonesia at 12-14.

²⁴ See SR-Korea at 15-17.

²⁵ See SAA, H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

²⁶ *Id.*

replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.²⁷ Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.

The absence of information indicating the termination of countervailable programs from the investigation, as well as information indicating the continued existence or use of programs found countervailable in the investigation, is highly probative of the likelihood of continuation or recurrence of a countervailable subsidy if the order were revoked. Therefore, based on the lack of information indicating the termination of programs found countervailable in the India and Indonesia investigations, and information from administrative reviews affirmatively indicating the continued existence or use of countervailable programs from the Korea investigation, the Department concludes that revocation of the India, Indonesia, and Korea orders would be likely to lead to continuation or recurrence of a countervailable subsidy for each of the orders.

B. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties, citing to the SAA,²⁸ assert that the Department normally will select the rates from the investigations as the net countervailable subsidy likely to prevail if the orders were revoked, because those are the only calculated rates that reflects the behavior of exporters and foreign governments without the discipline of an order in place.²⁹ Additionally, the domestic interested parties note that the rates determined in the investigations need not have been based on the company's own information.³⁰ Therefore, domestic interested parties argue with respect to India and Indonesia that, as it did in the prior sunset reviews, the Department should determine that the net countervailable subsidy rates that are likely to prevail are identical to the rates determined in the original investigations, as amended -- 12.82 percent for SAIL and for all other Indian producers; and 47.72 percent for P.T. Krakatau Steel, and 15.90 percent for all other Indonesian producers.³¹

With respect to Korea, domestic interested parties argue that the Department has found the termination of only one program since the investigation. Domestic interested parties further argue that although the Department has found that DSM and Hyundai Steel received only *de minimis* subsidies during the periods of review, the programs from the investigation remain in place. Therefore, domestic interested parties argue that the appropriate rate remains the rate the Department found in the previous sunset review, 1.38 percent.³²

²⁷ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

²⁸ See *Statement of Administrative Action*, H.R. Rep. No. 103-316, vol. 1, 890 (1994) (SAA).

²⁹ See SR-India at 6-7, SR-Indonesia at 15-16 and SR-Korea at 18-19.

³⁰ *Id.*

³¹ *Id.*

³² See SR-Korea at 19.

Department's Position

As noted above, for India and Indonesia, the Department has not conducted an administrative review of either order. Additionally, there is no respondent participation in these sunset reviews. Absent administrative reviews, the Department has never found that substantive changes have been made to the programs found to be countervailable in either of these two cases. Therefore, as there is no evidence that changes have been made to any of the Indian or Indonesian subsidy programs, the Department determines that a net countervailable subsidy likely to prevail if the orders were revoked are the rates from the final determinations, as amended.³³

With respect to Korea, in the *Second Sunset Review*, we determined that the rate likely to prevail was 1.38 percent *ad valorem*.³⁴ As noted above, since the *Second Sunset Review*, the Department has conducted two administrative reviews covering DSM and one new shipper review covering Hyundai Steel.³⁵ Further, in the *2012 Review of CTL Plate from Korea*, the Department calculated subsidy rates for a new subsidy program, the Local Tax Exemption on Land Outside Metropolitan Areas in Connection with Restriction of Special Location Taxation Act (RSTA) Articles 78 and 120.³⁶ Thus, taking these new programs into account, we determine that the subsidy rate likely to prevail is 1.39 percent *ad valorem* for DSM and all other Korean producers in the event of revocation of the Korean order.³⁷

C. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the *SCM*. We note that Article 6.1 of the *SCM* expired effective January 1, 2000 (*see* Article 31 of the *SCM*).

The following programs are prohibited subsidies as described in Article 3 of the *SCM*.

India:

Duty Entitlement Passbook Scheme (DEPS): The DEPS was introduced on April 1, 1997, to replace the Passbook Scheme. Receipt of DEPS credits is contingent upon export performance. The pre-export DEPS program was abolished, effective April 1, 2000. The DEPS provides credits to passbook holders on a post-export basis. All merchant and manufacturing export units are eligible for DEPS credits. Because this program can only be used by exporters, we

³³ See *CVD Amended Finals and Orders; Indonesia Final Determination*

³⁴ See *Second Sunset Review Decision Memorandum* at 9.

³⁵ See *2012 Review of CTL Plate from Korea*, 79 FR 46770; *see also* *2014 Review of CTL Plate from Korea*, 81 FR 64138.

³⁶ We provide a description of this program below.

³⁷ The rate of 1.39 percent is the sum of the prior rate for DSM determined likely to prevail from the *Second Sunset Review*, 1.38 percent, plus the 0.01 percent subsidy rate calculated for DSM under the Local Tax Exemption on Land Outside Metropolitan Areas in Connection with Restriction of Special Location Taxation Act (RSTA) Articles 78 and 120 program in the *2012 Review of CTL Plate from Korea*, 79 FR 46770.

determined it to be a countervailable export subsidy.

Advance Licensing Program: Under the Advance License Program, exporters may import, duty free, specified quantities of materials required to produce products that are subsequently exported. Companies, however, remain contingently liable for the unpaid duties until they have exported the finished products. The quantities of imported materials and exported finished products are linked through standard input-output norms established by the Government of India (GOI). We found that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, we found the entire amount of import duty exemption earned by SAIL during the period of investigation constitutes a benefit. Because only exporters can receive advance licenses, this program constitutes an export subsidy.

Special Import Licenses (SILs): SILs are licenses granted to exporters which meet internationally-accepted quality standards for their products. SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a “Restricted List of Imports” in amounts up to the face value of the SIL but do not relieve the importer of import duties. We determined that the sale of SILs constitutes an export subsidy, because companies receive these licenses based on their status as exporters.

Export Promotion Capital Goods Scheme (EPCGS): Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of five years. Failing to meet the export obligation, a company is subject to payment of all or part of the duty reduction. Because this program is contingent on exports, we determined it to be a countervailable export subsidy.

Pre- and Post-Shipment Export Financing: The Reserve Bank of India, through commercial banks, provides pre-shipment export financing, or “packing credits” to exporters. Commercial banks extending export credit to Indian companies must charge interest on this credit at rates determined by the Reserve Bank of India. The post-shipment financing provide under this program consists of loans in the form of trade bills discounting or advances by commercial banks. The credit covers the period from the date of shipment of goods to the date of realization of export proceeds from the overseas customer. Because receipt of export financing under these programs was contingent upon export performance we determined that they constitute a countervailable export subsidy.

Indonesia:

Rediscount Loan Program: The Ministry of Industry and Trade, the Ministry of Finance, and the Bank of Indonesia (BI) provide support for certain exporters with the goal of achieving diversification of the Indonesian export base. Companies sell their letters of credit and export drafts at a discount to the BI through participating foreign exchange banks, which are commercial banks that have obtained a license to conduct activities in foreign currencies. The

sale of the letters of credit and export drafts provides companies with working capital at lower interest rates than they would otherwise pay on short-term commercial loans. This program constitutes an export subsidy.

Korea:

Reserve for Export Loss--Article 16 of the TERCL: Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance³⁸

Reserve for Overseas Market Development - Article 17 of the TERCL: A domestic person engaged in a foreign trade business can establish a reserve fund equal to one percent of its foreign trade business exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

Short-Term Export Financing: There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds to produce export merchandise or the production of raw materials used in the production of exported merchandise. We found this program to constitute an export subsidy because receipt of financing is contingent upon export performance.

The following programs do not fall within the meaning of Article 3 of the *SCM*. However, they could be a subsidy described in Article 6.1 of the *SCM* if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the *SCM*. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are a subsidy to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the

³⁸ We note that the Department found that on December 28, 1998, the Tax Reduction and Exemption Control Act (TERCL) was replaced by the Restriction of Special Taxation Act (RSTA), which continued to provide countervailable benefits. See *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), as amended, *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 7419 (February 17, 2004). See also, *Final Results of Expedited Sunset Review of Countervailing Duty Order: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 75513 (December 17, 2004) and referenced unpublished memorandum.

record of these reviews for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

India:

Government of India Loan Guarantees: The GOI, through the Ministry of Finance, extends loan guarantees to selected Indian companies on an ad hoc basis, normally to public sector companies' industries. Because this program is directed towards industries, we determined it to be countervailable.

Indonesia:

Equity Infusions: Equity infusions given to Krakatau and its subsidiary, Cold Rolling Mill of Indonesia, from the Government of Indonesia (GOInd) were inconsistent with the usual investment practices of private investors. The company could not attract investment capital from a reasonable investor in the year of the infusions, based on available information.

Two Step Loan Program: The GOI provided loans to Krakatau from "credit facilities" (*i.e.*, lines of credit) in the billing currencies of its equipment suppliers, who, in turn, receive payment from banks appointed by lenders. The loans, which were converted into rupiah based on the exchange rate on the drawing date, are repayable in the currency in which they were borrowed. Furthermore, Krakatau received a credit facility from the GOInd for "optimization projects for the slab steel plant and billet steel plant."

Korea:

GOK Infrastructure Investment at Incheon North Harbor: Under the Act on Participation of Private Investment in Infrastructure (the Harbor Act), signed in 2000, the GOK contracts with private companies to construct infrastructure facilities at Incheon North Harbor. The program is designed to encourage private investment in new infrastructure facilities at Incheon North Harbor. The government compensates private parties for a portion of the construction costs of these facilities. In addition, the company is given the right to operate the facility for a certain period of time. We found that the GOK's payments to DSM constitute grants that aid the construction of a facility which, due to the lengthy duration of the lease, is effectively owned and operated by DSM. On this basis, we determined that the reimbursements DSM received under the program constitute a direct financial contribution, in the form of grants, and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also found that the actual recipients of the grants, whether considered on an enterprise or industry basis, were limited in number and, thus, specific under section 771(5A)(D)(iii)(I) of the Act.

Direction of Credit Loans Inconsistent with Commercial Considerations: The GOK controls the practices of lending institutions in Korea and the steel sector receives a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits.

Kwangyang Bay: The GOK's infrastructure development at Kwangyang Bay constituted a

specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user of the infrastructure.

Technical Development Reserve Funds Under Article 8 of TERCL: Article 8 of the TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three-percent reserve. Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determined that the program is countervailable. We note that the Department determined that the TERCL was replaced by the RSTA on December 28, 1998 (Article 8 of the TERCL was replaced by RSTA Article 9).

Electricity Discounts Under the Requested Load Adjustment Program: The GOK introduced the Requested Loan Adjustment (RLA) in 1990 to address emergencies in Korea Electric Power Corporation's (KEPCO) ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into an RLA contract with KEPCO. Under this contract, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. Because the electricity discounts were only provided to a small number of customers, this program provides a countervailable benefit.

Selective Depreciation Due to Revaluation of Assets: TERCL Article 56-2 (Special Treatment for Revaluation of Assets at the Time of Going Public) allows a company that is making an initial public offering to revalue its assets without meeting the requirement in the Asset Revaluation Act of a 25-percent change in the wholesale price index since the company's last revaluation.

Exemption of Bond Requirement for Port Use at Asan Bay: The GOK waived the bond requirement for exclusive use of a port facility for POSCO. This program meets the specificity requirements under section 771(5A)(D) of the Act, and is therefore countervailable. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. For all these reasons, we determined that this program conferred a countervailable benefit.

Price Discount Land Purchase at Asan Bay: The Asan Bay Industrial Site is a GOK constructed industrial estate. We determined that steel companies received price discounts on purchases at Asan Bay. In addition, the GOK provided additional savings to the steel companies by exempting them from the registration tax, education tax, and the acquisition tax which would normally be paid on purchases of land. We determined, therefore, that this program was

countervailable.

Research and Development Grants: The GOK provides research and development grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. We determined that the benefits received under this program were steel specific and therefore countervailable.

Local Tax Exemption on Land Outside Metropolitan Areas in Connection with Restriction of Special Location Taxation Act (RSTA) Articles 78 and 120: Under this program, the GOK provides property and acquisition tax exemptions under Articles 78 and 120 of the RSTA to firms acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax. The tax exemptions are limited to companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country. The Department determined that benefits received under this program were limited to firms located in designated geographic regions.

Investment Tax Credits: Under the TERCL, companies in Korea are allowed to claim tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. Because Korean companies receive a higher tax credit for investments made in domestically produced facilities, investment tax credits received under Articles 10, 18, 25, 26, 27 and 71 constitute import substitution subsidies. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, a financial contribution is provided. This program is, therefore, countervailable.

Reserve for investment Under Article 43-5 of TERCL: Article 43 allows a company to claim a tax reduction or exemption for income gained from the disposition of factory facilities when relocating from a large city to a local area. The Department found this program to be limited under section 771(5A)(D)(iv) of the Act because the tax reductions were limited to enterprises located in designated geographical regions.

IV. Final Results of Reviews

As a result of these reviews, we find that revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
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India:

SAIL	12.82
All Others	12.82

Indonesia:

P.T. Krakatau Steel	47.72
All Others ³⁹	15.90

Korea:

Dongkuk Steel Mill, Ltd.	1.39
All Others ⁴⁰	1.39

³⁹ P.T. Gunawan Steel and P.T. Jaya Pari were excluded from the order on the basis of a *de minimis* net subsidy. *See CVD Amended Finals and Orders.*

⁴⁰ POSCO was excluded from the order on the basis of a *de minimis* net subsidy. *See CVD Amended Finals and Orders.*

V. Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the results of reviews in the *Federal Register* and notify the ITC of our determination.



Agree

Disagree

3/31/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance