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Sunset Review  
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August 30, 2005

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset  
Review of the Countervailing Duty Order on Structural Steel Beams from South  
Korea

### Summary

We have analyzed the substantive response of the interested parties in the sunset review of the countervailing duty ("CVD") order covering structural steel beams from South 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 in this sunset review for which we received a substantive response:

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

### History of the Order

The Department of Commerce ("the Department") published its final affirmative countervailing duty determination on structural steel beams from South Korea in the Federal Register on July 3, 2000.<sup>1</sup> In the final determination the Department found estimated net subsidy rates of 3.88 percent for Kangwon Industries ("Kangwon"), 1.34 percent for Dongkuk Steel Mill Co., Ltd. ("DSM"), 0.15 percent for Incheon Iron and Steel Co., Ltd. ("Incheon") and 3.87 percent for All Others. In the investigation, the Department found that

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<sup>1</sup> See Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea, 65 FR 41051 (July 3, 2000).

manufacturers/producers/exporters of structural steel beam received benefits under the following programs: the Government of Korea's ("GOK") direction of credit, Reserve for Export Loss under Article 16 of the Tax Exemption and Reduction Control Act ("TERCL"), Reserve for Overseas Market Development under TERCL Article 17, Investment Tax Credits under TERCL Article 25, Asset Revaluation under TERCL Article 56(2), Electricity Discounts under the Requested Loan Adjustment, Scrap Reserve Fund, Export Industry Facility Loans, Special Cases of Tax for Balanced Development in selected areas under TERCL Article 43, Price Discount for DSM Land purchase at Asan Bay, and R&D Grants under the Korea New Iron & Steel Technology Research Association.

On August 14, 2000, the Department issued the CVD order, utilizing the subsidy rates found in the original investigation. Because Inchon's net subsidy was de minimis, Inchon was excluded from the order. See Notice of Countervailing Duty Order: Structural Steel Beams from the Republic of Korea, 65 FR 49542 (August 14, 2000). The Department has not conducted an administrative review on this order.

### Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act") the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) 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 ("the ITC") the net countervailable subsidy likely to prevail if the order is 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").

Below we address the substantive responses of the interested parties.

#### 1. Continuation or Recurrence of a Countervailable Subsidy

#### Interested Parties' Comments

In its substantive response, domestic interested parties<sup>2</sup> argue that revocation of the CVD order on structural steel beams from South Korea will result in the continuation or recurrence of

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<sup>2</sup> Domestic interested parties include: the Committee for Fair Beam Imports and its individual members including Nucor Corp. ("Nucor"), Nucor-Yamato Steel Co. ("Nucor-Yamato"), Steel Dynamics, Inc. ("SDI"), and TXI-Chaparral Steel, Inc. ("TXI") (collectively "domestic interested parties").

a countervailable subsidy. The domestic interested parties assert that continuation, or temporary or partial termination, of a subsidy program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary.<sup>3</sup> Domestic interested parties contend that many of the programs found to be countervailable are allocated over a 15-year allocation stream, which would continue to provide a benefit through at least 2006 for long-term loans and 2013 for government-directed credit.<sup>4</sup> Therefore, domestic interested parties argue that revocation of the countervailing duty order would likely lead to continuation or recurrence of subsidies of subject merchandise.

### Department's Position

The continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.

In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. In addition, we agree with the domestic interested parties that the benefit stream of some programs continues through 2006. Therefore, because countervailable programs continue to exist and be used, the foreign government and other respondent interested parties did not participate in this review before the Department, and absent argument to the contrary, the Department concludes that revocation of the order would likely lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties' Comments

The domestic interested parties assert that the rate from the investigation is the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.<sup>5</sup> Further, in the absence of an administrative review, there is no basis to determine that any other rate would be appropriate. Therefore, domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to

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<sup>3</sup> See June 1, 2005, Substantive Response of domestic interested parties at page 5-6.

<sup>4</sup> See June 1, 2005, Substantive response of domestic interested parties response at page 6.

<sup>5</sup> See June 1, 2005, Substantive response of domestic interested parties response at page 7.

prevail is the rate from the original investigation: 3.88 percent for Kangwon, 1.34 percent for DSM and 3.87 percent for all others.

### Department's Position

As noted above, the Department has not completed an administrative review of this order. However, the Department has conducted administrative reviews on other Korean orders in which several of the programs found to provide benefits in the investigation of structural steel beams were reviewed. For example, 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. In addition, in Cold-Rolled from Korea we found that benefits under investment tax credits, TERCL Article 25, were eliminated after April 10, 1998, as the difference in tax rate between making domestic or foreign investment was eliminated. See 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) and the accompanying Issues and Decision Memorandum at page 12 ("Cold-Rolled from Korea"). Therefore, we find that this program no longer will provide a benefit to producers/manufacturers or exporters of subject merchandise. However, only Incheon, a company excluded from the order, used this program during the investigation. Therefore, the elimination of this program is not relevant to the other companies' rates or the "All Others" rate. As a result, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 3.88 percent for Kangwon, 1.34 percent for DSM and 3.87 percent for all others.

### 3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC information 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.

*Reserve for Export Loss under TERCL Article 16:* 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. As we determined in the final determination, this program is only available to exporters, thus, this program constitutes an export subsidy because the use of the program is contingent upon export performance.

*Reserve for Overseas Market Development under TERCL Article 17:* 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. As we determined in the final determination, this program is only available to exporters, thus, this program constitutes an export subsidy because the use of the program is contingent upon export performance.

*Export Industry Facility Loans:* The loans were disbursed by the Korean Development Bank, an institution that, according to information submitted on the record of the investigation, had a policy of directing loans specifically to the Korean steel industry. As stated in the final determination, we have determined that this program constitutes an export subsidy.

The following programs do not fall within the meaning of Article 3.1 of the SCM. However, they could be subsidies 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 subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record for the Department to make such a determination.

We are providing the ITC with the following program descriptions.

*GOK's direction of Credit through 1991 and from 1992 through 1998:* 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.

*Asset Revaluation under TERCL Article 56(2):* 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.

*Electricity Discounts under the Requested Loan Adjustment:* The GOK introduced the Requested Loan Adjustment (RLA) in 1990 to address emergencies in KEPCO's 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.

*Scrap Reserve Fund:* This program is administered by a GOK agency that purchases certain industries' inputs to production and then makes the inputs available to producers on credit. In order to reduce the burden on Kangwon and DSM of holding large inventories of scrap during the period of investigation, the GOK agency purchased steel scrap on behalf of the companies and then provided them with a five-month repayment option in the form of a loan.

*Special Cases of Tax for Balanced Development in selected areas under TERCL Article 43:* This tax article allows a company to claim a tax reduction or exemption for income gained from relocating factory facilities from a large city to a rural area. DSM was entitled to receive an exemption when it closed down its facility in Pusan and began production at its Pohang plant. This program is regionally specific and is therefore countervailable.

*Price Discount for DSM Land purchase at Asan Bay:* In 1995, DSM purchased land at the Asan Bay Industrial Site, a GOK constructed industrial estate. We found that there was a difference between the total cost of the land and the amount that DSM paid for the land. This difference was the result of the GOK reducing the land amount by ten percent and waiving of a management fee. This constitutes a benefit as foregone revenue to the GOK.

*R&D Grants under the Korea New Iron & Steel Technology Research Association:* This association supports R&D projects through private and public contributions. If the research is deemed successful, then 50 percent of the GOK's contribution will be repaid.

## Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/Exporter

Margin (percent)

Kangwon Industries	3.88
Dongkuk Steel Mill Co., Ltd.	1.34
All Others	3.87

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish in the final results of review in the Federal Register.

AGREE: \_\_\_\_\_

DISAGREE: \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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(Date)