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**DATE:** July 5, 2007

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum: Final Results of  
Countervailing Duty Administrative Review: Certain Cut-to-  
Length Carbon-Quality Steel Plate from the Republic of Korea  
(Final Results)  
Period of Review (POR): 01/01/2005–12/31/2005

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## Summary

We have analyzed the case brief comments submitted by Dongkuk Steel Mill Co., Ltd. (DSM) in the administrative review of the countervailing duty (CVD) order on certain cut-to-length carbon quality steel plate from the Republic of Korea for the period January 1, 2005, through December 31, 2005.<sup>1</sup> Below is the “Analysis of Comments” section, which contains the Department of Commerce’s (Department) response to the issues raised in the respondent’s brief. We recommend that you approve the position described in this memorandum.

Below is a complete list of the issues in this review for which we received comments from respondent.

Comment:     GOK Infrastructure Investment at Incheon North Harbor

## I.     SUBSIDIES VALUATION INFORMATION

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<sup>1</sup>Neither petitioners (Mittal Steel USA Inc.) nor the Government of Korea (GOK) submitted either a case or rebuttal brief.

A. 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 table 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.

B. Benchmarks for Long-Term Loans Issued through 2005

During the POR, DSM 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 respondent's countervailable long-term loans obtained in the years 1991 through 2005:

(1) For countervailable, foreign-currency denominated loans, pursuant to 19 CFR 351.505(a)(2)(ii), and consistent with our past practice to date, 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 received after 1991. 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) (Sheet and Strip Investigation); see also 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). Where no such benchmark instruments are available, and consistent with 19 CFR 351.505(a)(3)(ii) as well as our methodology in a prior administrative review, we rely on the lending rates as reported by the IMF's International Financial Statistics Yearbook. See 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 Section II. B "Subsidies Valuation Information."

(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. This benchmark is consistent with our decision in Plate in Coils Investigation, 64 FR at 15531, in which we determined that the GOK did not direct or control the Korean domestic bond market after 1991, and that the interest rate on domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year

corporate bonds, as reported by the Bank of Korea (BOK). For example, we note that the use of the three-year corporate bond rate from the BOK follows the approach taken in the Plate in Coils Investigation, in which we determined that, absent company-specific interest rate 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), our benchmarks take into consideration the structure of the government-provided loans. For 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 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 use weighted-average interest rates of all variable rate loans issued during the POR as our benchmark, 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 in similar cases. 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).

## **II. ANALYSIS OF PROGRAMS**

### **A. Programs Preliminarily Determined To Confer Subsidies**

#### **1. The GOK's Direction of Credit**

In the most recently completed administrative review of this CVD order, the Department reaffirmed earlier determinations that the GOK controlled and directed lending through year 2001. In addition, the Department noted that neither DSM nor the GOK provided any new information that would warrant a change in the Department's determination. Finding that the GOK did not act to the best of its ability, the Department employed an adverse inference and determined that the GOK continued its direction-of-credit policies from 2002 through 2004. See, e.g., Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (2004 CTL Plate Preliminary Results) (unchanged in final results 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 CTL Plate Final Results)).

During the POR, DSM had outstanding loans that were received prior to the 2002 period. As in the prior administrative review, in this review, we asked the GOK for information pertaining to the GOK's direction-of-credit policies for the period from 2002 through 2005. The GOK did not provide any new or additional information that would warrant a departure from these prior findings, stating instead that:

“ . . . the Government of Korea continues to believe that the evidence demonstrates that there has been no direction of credit to the Korean steel industry. Nevertheless, the Department has consistently found that long-term loans received by Korean steel producers were the result of the Korean Government’s direction, despite the Government’s repeated submission of evidence to the contrary. . . . Consequently, in this review, the Government will not contest the Department’s findings on direction of long-term loans.”

See September 12, 2006, GOK submission at page 9. Because the GOK withheld the requested information on its lending policies, the Department does not have the necessary information on the record to determine whether the GOK has continued its direction-of-credit policies through 2005; therefore, the Department must base its determination on facts otherwise available. See section 776(a)(2)(A) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, we determine that, in accordance with sections 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the final results for the determination of direction of credit for loans received from 2002 through 2005.

In this case, the GOK refused to supply requested information that was in its possession, even though the GOK had provided similar information in prior proceedings. See, e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176, 73178 (December 29, 1999) (CTL Plate Investigation). Therefore, consistent with section 776(a)(2)(A) of the Act, we find that the GOK did not act to the best of its ability and, therefore, are employing an adverse inference in selecting from among the facts otherwise available. As AFA, we find that the GOK’s direction-of-credit policies continued through 2005. As noted above, the GOK’s direction-of-credit policies provide a financial contribution, confer a benefit, and are specific, pursuant to sections 771(5)(D)(i), 771(5)(E)(ii), and 771(5A)(D)(iii) of the Act, respectively. Therefore, we find that lending from domestic banks and government-owned banks through 2005 are countervailable. Thus, any loans received through 2005 from domestic banks and government-owned banks that were outstanding during the POR are countervailable, to the extent that the interest amount paid on the loan is less than what would have been paid on a comparable commercial loan. The Department’s decision to rely on adverse inferences when lacking a response from the GOK regarding the direction-of-credit issue is in accordance with its practice. See, e.g., 2004 CTL Plate Preliminary Results (unchanged in final results 2004 CTL Plate Final Results).

DSM received long-term fixed- and variable-rate loans from GOK-owned or -controlled institutions that were outstanding during the POR and had both won- and foreign currency-denominated loans outstanding during the POR. 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.

To calculate the total benefit for all directed credit, we added the benefit received from foreign currency loans in Korean won to the benefit received from won-denominated loans. To calculate the net subsidy rate, we divided DSM’s total benefits by its respective total F.O.B. sales values during the POR, as this program is not tied to exports or a particular product. On this basis, we determine the net subsidy rate under the direction-of-credit program to be 0.01 percent ad valorem for DSM.

2. Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)

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. We also determined that a financial contribution was provided in the form of tax revenue foregone pursuant to section 771(5)(D)(ii) of the Act. See CTL Plate Investigation, 64 FR at 73182-83. 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 countervailable status 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 DSM revalued its assets under Article 56(2) of the TERCL in 1988. However, DSM reports that in 1998 it revalued its assets yet again. DSM states the revaluation in 1998 was not pursuant to TERCL Article 56(2) and, according to the GOK, was consistent with Korean Generally Accepted Accounting Principles (GAAP). DSM claims that the asset revaluations that were adopted in 1988 under Article 56(2) of TERCL were superseded when it revalued its assets in 1998. Hence,

the 1988 asset revaluation would only affect the calculation of depreciation costs for tax years prior to 1998. However, there were certain assets that were not revalued in 1998. For those assets which were not revalued in 1998, we identified the total amount of the change in depreciation expense attributable to the 1988 asset revaluation for 2004 (the tax return submitted during the POR). We then multiplied this amount by the tax rate for 2004 to determine the benefit under this program. This is the same approach the Department used in the previous review. See 2004 CTL Plate Preliminary Results (unchanged in final results 2004 CTL Plate Final Results). As this program is not tied to exports, we used the benefit amount as the numerator and DSM's total sales as the denominator. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent ad valorem, which, according to the Department's practice, is considered not measurable and is not included in the calculation of the CVD rate. See, e.g., the "Other Programs" section of the Issues and Decision Memorandum that accompanied the Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005).

### 3. 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.

Under the Harbor Act, DSM participated in an agreement with the Ministry of Maritime Affairs and Fisheries (MOMAF), under which DSM is constructing one of 17 piers at Incheon North Harbor. According to information submitted by the GOK, the government will retain title to the pier. However, upon completion of the project, DSM will receive free use of harbor facilities at Incheon Port and the right to collect fees from other users of the facility for a period of 50 years. At the end of the 50-year period, operating rights revert to the GOK. Further, under the Harbor Act, the GOK compensates DSM for 30 percent of the construction costs of the facility. DSM reported receiving payments during the POR from the GOK as reimbursements for construction costs it incurred from the fourth quarter of 2003 through the third quarter of 2004. As this is the first time DSM has reported receiving benefits to the Department, the Department has not previously examined this program.<sup>2</sup>

DSM and the GOK claim that the reimbursements DSM received under the program are not countervailable, "Because this program represents a government purchase of construction services, it does not constitute a "financial contribution" under the terms of the countervailing

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<sup>2</sup>The GOK indicated in its September 12, 2006, response that benefits received by DSM in 2003 were inadvertently not reported during the last POR, due to an oversight.

duty statute.” See GOK’s September 12, 2006, questionnaire response at 4; see also DSM’s September 12, 2006, questionnaire response at 38.

The record evidence indicates that the actual recipients of the grant, whether considered on an enterprise or industry basis are limited in number. The GOK reported that only a few companies representing limited industries received the grant. See DSM’s September 12, 2006, questionnaire response at Appendix G-6-C. Therefore, we determine that the program is de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. For purposes of these final results, we disagree with the claims of the GOK and DSM that the GOK’s payments to DSM constitute compensation for services provided in connection with the construction of the GOK’s pier. As we did in the preliminary results, we find that the 50-year duration of DSM’s lease of the pier facility is so long that it effectively renders DSM the owner of the facility. As such, we find 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 determine 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.

To calculate the benefit under this program, we first summed the amount of payments DSM received each year under the program. We determined that the reimbursements, DSM received under the program constitute a direct financial contribution, in the form of grants. Therefore, in accordance with 19 CFR 351.524(c), we are treating the grants DSM received under the program as non-recurring. Pursuant to 19 CFR 351.524(b)(2), the Department allocates non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of the relevant sales of the firm in question, during the year in which the subsidy was approved. The GOK provided the total approved amount with the date of approval.

We received a comment on this issue. See Comment: GOK Infrastructure Investment at Incheon North Harbor, below. After consideration of the comment received, we continue to find this program to be countervailable. However, based on the comment received, we have modified our characterization of calculation of the benefit from this program. In the preliminary results we found that the grants received by DSM under this program are tied to the production and sales of the subject merchandise. For the purpose of these final results we determine that the benefit DSM received from this program is not tied solely to the production and sale of subject merchandise. Rather, as a domestic subsidy, any benefit should be attributed to DSM’s total sales. Therefore, for the final results, the Department performed the 0.5 percent test by dividing the GOK contribution at the time of receipt by DSM’s total sales at the time of receipt. On this basis, we determine DSM’s net subsidy rate under this program to be 0.09 percent ad valorem.

4. Research and Development under Korea Research Association of New Iron and Steelmaking Technology (KANIST) (formerly KNISTRA)

Under the program, companies make contributions to KANIST, which also receives contributions from the GOK. KANIST then contracts with universities and other research institutions. Upon completion of the projects, KANIST shares the results of the research with the companies that participated in the projects.

The Department examined this program in the underlying investigation. In that segment of the proceeding, the Department determined that the GOK, through the Ministry of Commerce, Industry and Energy (MOCIE), provided research and development grants to support numerous projects designed to foster the development of efficient technology for industrial development. See CTL Plate Investigation, 64 FR at 73185. We found this program to be specific as the grants were provided directly to respondents and their affiliates that are steel-related, and that the grants provided a financial contribution. Id.; see also sections 771(5A)(D)(ii) and 771(5)(D)(i) of the Act. Moreover, pursuant to section 771(5)(E) of the Act, the Department determined that the benefit was the amount of the GOK's contribution allocated to the percentage of the company's contribution and was conferred at the time of receipt. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailable status of this program.

DSM reported that it participated in research and development projects coordinated by KANIST. In these projects, DSM and other Korean companies made contributions to KANIST, which also received contributions from the GOK. Specifically, DSM reported that it participated in four projects. The first project deals with the "Elimination of Accumulated Impurities and Metal Structural Non-detrimental Technology Development." DSM and the GOK made contributions to this project from 2002 through 2006. The remaining three projects are dedicated to the development of structural steel. See Exhibit D-6-A, Volume II, of DSM's September 12, 2006, questionnaire response; see also Exhibit G-B-4 of the GOK's September 12, 2006, questionnaire response. Based on the information in DSM's response, we determine that the projects aimed at structural steel development are tied to non-subject merchandise. We also determine that the remaining research and development project is relevant to the early stages of the production process and, therefore, attributable to DSM's total steel sales.

In keeping with the Department's practice, we calculated the benefits related to the project on the "Elimination of Accumulated Impurities and Metal Structural Non-detrimental Technology Development" by allocating the GOK's payments based on DSM's contributions to the project. See 2004 CTL Plate Preliminary Results, 71 FR at 11400 (unchanged in final results 2004 CTL Plate Final Results). Pursuant to 19 CFR 351.524(b)(2), the Department allocates non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of the relevant sales of the firm in question, during the year in which the subsidy was approved. However, neither the GOK nor DSM provided the total approved amounts nor the dates of approval. Therefore, we performed our analysis under 19 CFR 351.524(b)(2) by dividing DSM's portion of the GOK contribution at the time of receipt by DSM's total steel sales



at the time of receipt. This is consistent with our approach in the previous administrative review as well. Using this approach, the calculated percentages in each year were less than 0.5 percent. Therefore, we determine that all of the GOK's contributions were expensed in the year of receipt. To calculate the net subsidy rate under the program, we divided the contributions made by the GOK during the POR that were allocated to DSM by DSM's total steel sales during the POR. On this basis, we calculated a net subsidy rate for DSM to be less than 0.005 percent ad valorem, which, according to the Department's practice, is considered not measurable and is not included in the calculation of the CVD rate. See 2004 CTL Plate Preliminary Results and 2004 CTL Plate Final Results.

**B. Programs Found to Be Not Used**

We examined the following programs and determine that DSM did not apply for or receive benefits under these programs during the POR:

1. Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 43, 44, and 45) (Reserve for Investment Program)
2. Electricity Discounts (VRA, VCA, ELR and DLI Programs)
3. Price Discount for DSM Land Purchase at Asan Bay
4. Local Tax Exemption on Land Outside of Metropolitan Area
5. Exemption of VAT on Anthracite Coal

**C. Program Found to Be Not Countervailable**

1. Special Tax Credit for Boosting Employment

Under Articles 30-34 of the RSTA, the GOK created "The Special Tax Credit for Boosting Employment" in July 2004. The program expired in December 31, 2005. It was designed to boost employment, and tax credits were allowed for any Korean company that met the requirements of employing more full-time workers in 2004 and 2005 than it employed the previous year. It provided for a credit of one million won for each full-time worker employed in 2004 or 2005 in excess of the number of full-time workers employed the previous year. DSM reported receiving credits towards taxes payable under this program for its 2004 tax return, the tax return submitted during the POR.

Information supplied by DSM and the GOK indicates that this tax program is available to nearly all companies in Korea except for a small category of specialized businesses the GOK deems "harmful to juveniles, affecting public morales, certain private teaching institutes, and certain real estate businesses." See page 25, Exhibit I of DSM's September 12, 2006, questionnaire response. Based on information supplied by DSM and the GOK, we determine that this program is not specific within the meaning of section 771(5A)(D) of the Act. Therefore, the Department determines that this program is not countervailable.

**III. TOTAL AD VALOREM RATE**

The total net countervailable subsidy rate for DSM in this review is 0.10 percent ad valorem for 2005, which is de minimis.

#### IV. ANALYSIS OF COMMENTS RECEIVED

*Comment: GOK's Pier Construction at Incheon North Harbor*

Respondent argues that the Department incorrectly found in its Preliminary Results that the GOK's infrastructure investment at Incheon North Harbor confers a countervailable benefit. See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 72 FR 10163 (March 7, 2007) (Preliminary Results).

First, DSM claims that the program represents government purchase of construction services; therefore, it does not fall under the statutory definition of "financial contribution" under the terms of the countervailing duty statute. See Section 771(5)(D) of the Act.

Second, DSM argues that the Department's preliminary finding that the 50-year duration of DSM's lease on the pier effectively gives DSM ownership of the pier is flawed. DSM claims that assets retain residual value even after the depreciation period has fully run. DSM argues that there is no reason to believe that the AUL principle was accurately applied by the Department because the AUL identified in the IRS tables does not necessarily establish "the actual working life" of a pier similar to the one under construction by DSM. Moreover, DSM claims that there is no evidence that the IRS examined the construction of the pier or the conditions under which it would be operated. DSM argues that an "average" is just that, and does not preclude the use of a much longer useful life.

Third, DSM takes issue with the Department's preliminary finding that the pier will be used in the production or sale of subject merchandise. According to the information submitted by DSM, DSM does not produce subject merchandise at its Incheon production facility. Therefore, DSM argues there is no reason to believe that DSM will use the pier to unload materials for use in its Pohang production facility where DSM produces subject merchandise.

In conclusion, DSM argues that the evidence does not support the Department's preliminary finding that the GOK's infrastructure investment at Incheon North Harbor should be found countervailable. For the reasons stated above, DSM argues that the Department should reverse its preliminary finding.

Petitioners did not comment on this issue.

#### Department's Position

First, we disagree with DSM's claims that the GOK's payments to DSM constitute compensation for services provided for the construction of the pier at Incheon North Harbor because record evidence demonstrates that DSM was not merely hired by the GOK to perform constructions services at this site. Rather, the record shows that DSM reached an agreement with the GOK to construct a pier which, because of the terms of the lease agreement, is effectively owned and operated by DSM for its own use, and that the GOK contributed a substantial portion of the constructions costs to DSM for this pier. Therefore, we continue to find that the GOK's payments to DSM constitute grants that aid the construction of a pier facility. On this basis, we determine that the reimbursements DSM received under the program constitute a direct financial contribution in the form of grants, which confer a benefit to DSM within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Second, we also disagree with DSM's claim that the Department's reliance on the AUL for land improvements, including docks and wharves, which is 50 years, is flawed. DSM has not provided any evidence to supports its claim that the AUL cited by the Department in the Preliminary Results is not representative in this instance. The Preamble to the countervailing duty regulations specifically notes that, in the Department's experience, ". . .for most industries and most types of industries, the IRS tables have provided an *accurate and fair approximation* of the AUL of assets in the industry in question." See Preamble, Rules and Regulations, 19 CFR 351, Countervailing Duties Part III. 63 FR 65348, 65396, November 25, 1998. Moreover, we note that what is at issue is not the precise AUL of this specific pier, but whether DSM's 50-year lease of the pier, with terms that provide for the ability to charge unregulated user fees, is so long a period that it effectively renders ownership of the facility to DSM. In this respect, the average AUL for wharves and docks from the IRS tables is a useful point of reference that we have used to support our conclusion that the lease period constitutes a period of time so great that it effectively renders ownership of the pier to DSM.

Third, we agree with DSM that the benefit is not tied solely to the production and sale of subject merchandise. Therefore, for these final results, we have attributed the POR benefit over total DSM sales in accordance with 19 CFR 351.525(b)(3). However, we disagree with DSM's argument that the Pier Construction at Incheon North Harbor Project is not countervailable because the steel scrap imports at the Incheon facility are too distant to be used by the facility that produces subject merchandise. First, we note that the record indicates that DSM uses scrap inputs to produce steel. See DSM's September 12, 2006, questionnaire response at 9. See also DSM's November 28, 2006, questionnaire response at Appendix SD 9. Second, DSM's argument on this point is based on the manner in which the company intends to use the steel scrap imports once the construction of the pier is completed, specifically upon assumption that scrap will only be used at the Incheon production facility. As explained in the Preamble to our regulations in analyzing whether a benefit exists, "We are concerned with what goes into a company, such as enhanced revenues and reduced cost inputs in the broad sense. . . not with what the company does with the subsidy." See Preamble 63 FR at 65361.

### Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review and the final net subsidy rate for DSM in the Federal Register.

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Agree

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Disagree

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David. M. Spooner  
Assistant Secretary  
for Import Administration

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Date