

DATE: January 7, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Countervailing Duty
Administrative Review on Corrosion-Resistant Carbon Steel Flat
Products from the Republic of Korea

Summary

We have analyzed the comments of the interested parties on the preliminary results of the 2006 administrative review of the countervailing duty order covering corrosion-resistant carbon steel flat products from Korea. As a result of our analysis of the comments received from interested parties, we have not made any changes to our findings in the Preliminary Results. See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 52315 (September 9, 2008) (Preliminary Results). The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to Pohang Iron and Steel Co., Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu), the producers/exporters of subject merchandise covered by this review. Also, below is the “Analysis of Comments” section, which contains the Department of Commerce’s (Department’s) response to the issues raised in the parties comments.

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

Company-Specific Issues

POSCO

Comment 1: Whether Certain Research and Development (R&D) Grants Under the Industrial Development Act (IDA) Are Tied to Non-Subject Merchandise

Background

On September 9, 2008, the Department of Commerce (the Department) published the preliminary results of the countervailing duty administrative review of corrosion-resistant carbon steel flat products from the Republic of Korea (Korea). See Preliminary Results 73 FR 52315 (September 9, 2008). The products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. The period of review (POR) is January 1, 2006, through December 31, 2006. For a detailed discussion of the events which have occurred in this administrative review since the Preliminary Results, see the “Background” section of the Federal Register notice, which this memorandum accompanies. Based on our analysis of the comment received, we have not changed the rates assigned to Dongbu or POSCO.

Subsidies Valuation Information

I. Benchmarks for Loans and Discount Rates

A. Benchmarks for Short-Term Financing

For this review, we required the application of a won-denominated, short-term interest rate benchmark, to determine benefits received under the Short-Term Export Financing program. In the Preliminary Results, we used as our benchmark an annual company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR, consistent with 19 CFR 351.505(a)(2)(iv). See Preliminary Results, 73 FR at 52316. Where no such benchmark instruments are available, we used national average lending rates for the POR, as reported in the International Monetary Fund’s (IMF’s) International Financial Statistics Yearbook, pursuant to 19 CFR 351.505(a)(3)(ii).

In the Preliminary Results, for Dongbu’s document acceptance (D/A) loans rediscounted under the Korean Export Import Bank’s (KEXIM’s) rediscount program, we used, for benchmark purposes, Dongbu’s usance loans issued by commercial banks. Id.

Interested parties did not comment on our selection of short-term benchmarks. Our approach remains unchanged from the Preliminary Results.

B. Benchmarks for Long-Term Loans

In the Preliminary Results, POSCO and Dongbu had outstanding long-term won-denominated and foreign-currency denominated loans from government-owned banks and Korean commercial banks. Id. We used the following benchmarks to calculate the subsidies attributable to respondents’ countervailable long-term loans obtained through 2006:

(1) For countervailable, foreign-currency denominated loans, we used the company-specific, weighted-average foreign currency-denominated interest rates on the company’s loans from foreign bank branches in Korea, foreign securities, and direct foreign loans outstanding during the POR. Where no such benchmark instruments were available, and consistent with 19

CFR 351.505(a)(3)(ii), as well as our practice, we relied on the national average lending rates as reported by the IMF's International Financial Statistics Yearbook.

(2) For countervailable, won-denominated, long-term loans, we used the company-specific corporate bond rate on the company's public and private bonds, as we determined that the Government of Korea (GOK) did not control the Korean domestic bond market after 1991 and that domestic bonds may serve as an appropriate benchmark interest rate. Where no such benchmark instruments were available, we used the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK), consistent with 19 CFR 351.505(a)(3)(ii).

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), we used the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark instruments were unavailable, we used interest rates from debt instruments issued during the POR as our benchmarks, as such rates better reflect a variable interest rate that would be in effect during the POR.

Interested parties did not comment on our selection of long-term benchmarks. Our approach remains unchanged from the Preliminary Results.

C. Average Useful Life

In the Preliminary Results, we used a 15-year average useful life (AUL) to allocate any non-recurring subsidies. See Preliminary Results 73 FR at 52316. Further, for non-recurring subsidies, we applied the "0.5 percent test" described under 19 CFR 351.524(b)(2). Under this test, we compared the amount of subsidies approved in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Interested parties did not comment on this issue. Our approach remains unchanged from the Preliminary Results.

I. Program Determined to Confer Subsidies

A. The GOK's Direction of Credit

In the Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea, 64 FR 15530, 15532-33 (March 31, 1999) (Plate in Coils Investigation); and in the Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636, 30641-42 (June 8, 1999) (SSSS Investigation), the Department determined that the GOK controlled directly and indirectly the lending practices of most sources of credit in Korea through 1997. Furthermore, the

Department determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development bank (KDB) was specific to the steel industry. In the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176, 73179 (December 29, 1999) (CTL Plate Investigation) and in the Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) (H Beams Investigation), and accompanying Issues and Decision Memorandum at "GOKs Credit Policies from 1992 through 1998," the Department determined that the GOK's directed lending practices continued to be specific with respect to the steel industry through 1998.

In every subsequent CVD investigation or administrative review of a Korean steel product covering a period of investigation (POI) or POR from 2000 to 2005, we provided the GOK an opportunity to present new factual information concerning the government's credit policies, which we would consider along with our findings in prior investigations. For every POI or POR covering the years 2000 to 2005, respondents decided not to provide new information on the GOK's lending policies for domestic banks. Therefore, with respect to each of the years from 2000 to 2005, consistent with section 776 of the Tariff Act of 1930 (the Act), we found that the GOK's direction of credit policies to the steel industry continued through the period 2000 to 2005. See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102, (October 3, 2002) (Cold-Rolled Investigation), and accompanying Issues and Decision Memorandum at "GOK Directed Credit" (Cold-Rolled Decision Memorandum); Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (SSSS 2004 Review), and accompanying Issues and Decision Memorandum at "The GOK's Direction of Credit" (SSSS 2004 Review Decision Memorandum); and Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 72 FR 38565 (July 13, 2007) (CTL Plate 2007 Review), and accompanying Issues and Decision Memorandum at "The GOK's Direction of Credit" (CTL Plate 2007 Review Decision Memorandum).

The Department's last determination of the GOK's directed credit policies not based on adverse facts available (AFA) was in the H Beams Investigation, which covered calendar year 1998. See Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) and the accompanying Issues and Decision Memorandum at "GOK's Credit Policies from 1992 through 1998." In its June 7, 2000, memorandum regarding direction of credit in the H Beams Investigation, the Department noted: (1) the history of GOK intervention in the credit market from the 1960s into the 1990s including the Heavy and Chemical Industry (HCI) promotion program that was introduced in the 1980s; (2) an IMF Working Paper that concluded that the GOK continued to favor priority sectors with credit and that financial institutions believed that the government would protect them on risky lending on unprofitable projects;¹ (3) a 1999 Organization for Economic Cooperation and

¹Borsesztein, Eduardo and Jong-Wha Lee, *Credit Allocation and Financial Crisis in Korea* (an International Monetary Fund Working Paper), February 1999. See Memorandum to the File from Eric B. Greynolds, Program Manager, "Information Regarding Reforms to the Korean Financial System," at Attachment 1 (August 11, 2008)

Development (OECD) report that stated that the GOK exerted immense pressure and directed much of the country's lending activities, often on the basis of political whim rather than a proper evaluation of risk;² (4) a World Bank study illustrating Korea's selective allocation of credit, which also concluded that the promotion of the steel industry was one of the top priorities of the GOK;³ (5) an Agreement with the IMF in which the GOK explicitly stated it would stop directing credit;⁴ (6) a Korean Presidential Commission report on the government's pervasive influence and intervention in the country's financial sector;⁵ (7) the fact that the Korean steel industry was one of the top recipients of Korean Development Bank (KDB) lending during the time in which the KDB was the largest source of long-time financing in Korea; and (8) industry-specific costs of borrowing as reported in the Bank of Korea's Financial Statement Analysis and the steel industry's access to the foreign loan market that was controlled by the GOK. In the H Beams Investigation, the GOK argued that measures were taken in 1998 to liberalize the Korean financial sector. See H Beams Decision Memorandum at "GOK's Credit Policies from 1992 through 1998." However, in our analysis of the financial reforms for our final determination, the Department stated that while the GOK started to plan and implement reforms in the financial sector during 1998, the record evidence indicated that the GOK's previous attempts at removing or reducing its controls and influence over lending in the country were not successful. We noted that, in the ten years prior to 1998, the GOK twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the GOK deemed the 1988 liberalization a failure because when interest rates began to rise, the GOK cancelled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. We also noted in the H Beams Investigation that, during 1998 and 1999, despite its apparent liberalization attempts, the GOK threatened to cut off credit to Korean companies unless the companies followed GOK policies. Id. In addition, during this period the GOK took control of five large commercial banks due to the financial crisis.

(Direction of Credit Memorandum), a public document on file in the Central Records Unit, room 1117 of the Main Commerce Building.

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

³ World Bank, *Credit Policies and the Industrialization of Korea*, 1995 World Bank Study. See Direction of Credit Memorandum for H Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response at Exhibit A-2.

⁴ See, e.g., December 3, 1997, Letter of Intent of the Government of Korea to IMF, and December 5, 1997, Republic of Korea IMF Stand-By Arrangement, which are included as Attachment 2 of the Direction of Credit Memorandum.

⁵ The Presidential Commission for Financial Reform, *Financial Reform in Korea: The Third Report*, 1997. See Direction of Credit Memorandum for H-Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response, at Exhibit A-2.

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

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

In its January 7, 2008, questionnaire response (January QR) in the instant review, the GOK provided new information on the issue of directed credit and the status of reforms within the financial sector for the period 2002 through 2006.⁶ Based on this new information and the reforms implemented in the Korean financial sector after the 1997 Financial Crisis, the GOK concludes that the Department should now find that the GOK does not direct credit to the steel industry.

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

The GOK states that when the Department made its initial finding of directed credit to the steel industry, the Department noted that the availability of long-term lending in Korea was predominantly controlled by the stated-owned KDB. The GOK notes that there are now

⁶ The GOK stated that it chose not to respond to direction of credit questions in previous administrative reviews of steel products covering periods after 2000 because of the considerable burden of responding to the Department's questions and the very small impact of the Department's finding of directed credit on respondents (especially given that the aggregate company-specific subsidy rates were de minimis).

numerous sources of long-term funds available in the Korean market including loans from commercial banks. A comparison of outstanding loans from the KDB and loans sourced from commercial banks shows that commercial banks provide the majority of long-term lending in Korea. See Government of Korea's January 7, 2008 Questionnaire Response at Exhibit A-5 (GOK's January QR). Furthermore, there are now other means for companies to finance long-term debt such as issuing bonds and notes in Korea and internationally. See GOK's January QR at 8.

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

The GOK also states that it does not intervene in the decision-making process for the direction or regulation of credit, or for deposit and lending rates, which are entirely reserved for the discretion of individual financial institutions. As a measure in the course of prudential regulation, the Financial Supervisory Service (FSS) issued a Sample Guideline for Credit Risk Assessment and a Notification to Financial Institutions Regarding Risk Evaluation System for Corporations, for the purpose of enhancing the risk evaluation system by individual financial institutions.⁷ These documents provide simple basic guidelines but do not offer specific details for the banks to follow in managing their credit extensions. The GOK states that all bank-specific policies on lending and credit evaluation are established by individual banks.

⁷ The FSS was established on January 2, 1999, under the Act on the Establishment of Financial Supervisory Organizations by bringing together four supervisory bodies -- Banking Supervisory Authority, Securities Supervisory Board, Insurance Supervisory Board, and Non-Bank Supervisory Authority -- into a single supervisory organization. The primary function of the FSS is examination and supervision of financial institutions but can extend to other oversight and enforcement functions as charged by the Financial Services Commission (the former Financial Supervisory Commission) and the Securities and Futures Commission.

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

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

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

With respect to other lending sources found countervailable in prior directed credit determinations, the National Investment Fund (NIF) was liquidated on January 2, 2003. The NIF supported heavy and chemical industries during the period from 1974 to 1991 by extending loans raised through the issuance of national investment bonds to financial institutions. The GOK also noted that the Department determined that access to foreign securities and direct foreign loans after April 1999 is no longer countervailable.

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

See CFS Paper Investigation and CFS Paper Decision Memorandum at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.” The GOK states that a comparable analysis demonstrates that long-term loans from GOK-owned banks are not specific to the steel industry during the POR.

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

Our determination in the H Beams Investigation reviewed the attempts of the GOK to reform the financial sector in 1998 and 1999. Id. The GOK has now provided new information on the details of the financial sector reforms that were implemented in the wake of the 1997 Financial Crisis, arguing that these reforms have removed the controls that led to the Department’s determination of direction of bank credit. While the information submitted by the GOK supports its arguments regarding reforms of the banking sector, our original directed credit determination relied on independent sources detailing GOK control and direction of bank credit. Thus, it is appropriate to also review those independent sources to determine if these sources substantiate the information submitted by the GOK in this administrative review. However, before this review of independent research on GOK financial reforms, it is important to review the Department’s determinations regarding directed credit made in both the DRAMS Investigation and the CFS Paper Investigation.

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

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

in the ROK Lending Sector from 1999 through June 30, 2002.” Therefore, the Department analyzed this information to determine whether the GOK continued to direct credit from domestic banks after 1999. Based on this analysis, the Department determined in the DRAMs Investigation that the GOK only directed credit to a group of companies that were part of the Hyundai group, including DRAMs manufacturer, Hynix. Id.

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

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

In the period after the 1997 Financial Crisis and leading up to 2002, the GOK implemented a number of reforms in the financial sector. As noted by many experts, the Korean financial sector was long characterized by government intervention and a discretionary implementation of rules where the GOK played a crucial role in credit resource allocation.⁸ The Korean banking sector suffered due to inefficient internal management and GOK intervention in the financial sector prevented the development of market discipline. Furthermore, selective credit allocation by the government resulted in an inefficient and distorted financial system.⁹ The GOK controlled the allocated financial resources by managing both the commercial banks and the state-owned special banks.¹⁰

As discussed in the GOK’s questionnaire response, after the 1997 Financial Crisis the GOK implemented a number of reforms of the financial sector, many at the behest of the IMF.

⁸ Kyung Tae Lee and Inkoo Lee, “*Crisis, Reforms, and Structural Changes in the Korean Economy*,” October 6, 2007, at 4. See Direction of Credit Memorandum, at Attachment 3.

⁹ Takatoshi Ito and Yuko Hashimoto, “*Banking Restructuring in Asia: Crisis Management in the Aftermath of the Asian Financial Crisis and Prospects for Crisis Prevention – Korea*,” February 5, 2007, at 17. See Direction of Credit Memorandum, at Attachment 4.

¹⁰ Jahyeong Koo and Sherry L. Kiser, “*Recovery from a Financial Crisis: The Case of South Korea*,” Economic and Financial Review, Fourth Quarter 2001, Federal Reserve Bank of Dallas, at 25. See Direction of Credit Memorandum, at Attachment 5.

The GOK actively implemented the IMF's suggested reforms, which included structural reforms of the financial system.¹¹ For example, the GOK introduced a new financial supervisory system to prevent moral hazard. As discussed above, the FSS was created in an attempt to overcome inconsistent treatment of different institutions and to meet international standards of financial supervision.¹² The GOK increased the independence of the Bank of Korea (BOK) from the Ministry of Finance and Economy (MOFE), and stripped the regulatory powers out of both the BOK and MOFE and located them in an independent regulatory agency.¹³

Korea's progress in strengthening its supervision of financial institutions was especially significant; Korean commercial banks adopted Western-style board governance systems, where the majority of board members are outside directors.¹⁴ During the restructuring process, the GOK pursued a policy of encouraging the entry of foreign banks and all the regulatory obstacles that stood in the way of foreign entry were eased.¹⁵ The IMF has noted that the Korean banking system was transformed after the 1997 Financial Crisis and noted that Korean banks strengthened their commercial orientation, allowing them to refocus their activities on their most profitable lending activities.¹⁶ The long-held belief that "banks never fail because the government will bail them out" faded away.¹⁷ The reforms that were implemented by the GOK after the 1997 Financial Crisis changed the ways banks were operated as well as the patterns of the asset allocation behavior of banking institutions.¹⁸ The IMF concluded that since the Financial Crisis, the GOK accelerated its shift towards a market-oriented development strategy and that direct credit was abolished.¹⁹

¹¹ Jai S. Mah, "*The Restructuring in the Post-Crisis Korean Economy*," November 2003. See Direction of Credit Memorandum at Attachment 6.

¹² Kyung Tae Lee and Inkoo Lee, "*Crisis, Reforms, and Structural Changes in the Korean Economy*," October 6, 2007, at 4. See Direction of Credit Memorandum, at Attachment 3.

¹³ Stephan Haggard and Andrew MacIntyre, "*The Politics of Moral Hazard: The Origins of Financial Crisis in Indonesia, Korea and Thailand*," August 1999. See Direction of Credit Memorandum, at Attachment 7.

¹⁴ Dr. Janet Yellen, President and CEO of the Federal Reserve Bank of San Francisco, "*The Asian Financial Crisis Ten Years Later: Assessing the Past and Looking to the Future (Speech)*," February 6, 2007. See Direction of Credit Memorandum at Attachment 8.

¹⁵ Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, "*Restructuring and Reforms in the Banking Industry*," BIS Papers No. 28 at 267. See Direction of Credit Memorandum, at Attachment 9.

¹⁶ International Monetary Fund (IMF), "*IMF Country Report No. 04/44*," February 2004, at 6. See Direction of Credit Memorandum at Attachment 10.

¹⁷ Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, "*Restructuring and Reforms in the Banking Industry*," BIS Papers No. 28 at 259. See Direction of Credit Memorandum, at Attachment 11.

¹⁸ Eui-Gak Hwang, "*Banking Sector Restructuring in Korea After the 1997-1998 Crisis*," at 13. See Direction of Credit Memorandum, at Attachment 12.

¹⁹ International Monetary Fund (IMF), "*IMF Country Report No. 05/49*," February 2005, at 5. See Direction of Credit Memorandum, at Attachment 13.

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

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

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

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

This modification of our treatment of government-owned commercial banks has no effective impact on our directed credit determination, but it provides uniformity of treatment for all government-owned entities and is more consistent with our regulations.

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

To calculate the net subsidy rate, we divided the companies’ total benefits by their respective total free on board (f.o.b.) sales values during the POR, as this program is not tied to exports or a particular product. In calculating the net subsidy rate for POSCO, we removed from the denominator sales made between affiliated parties.²⁰ We determine the subsidy rate under the direction of credit program to be less than 0.005 percent ad valorem for POSCO and less than 0.005 percent ad valorem for Dongbu.

Interested parties did not comment on the Direction of Credit program. Our approach remains unchanged from the Preliminary Results.

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

In the Preliminary Results, the Department determined that Asset Revaluation Under Article 56(2) of the TERCL was countervailable. See Preliminary Results, 73 FR at 52321. Specifically, in the CTL Plate Investigation, the Department determined that this program was de facto specific under section 771(5A)(D)(iii) of the Act because the actual recipients of the subsidy were limited in number and the basic metal industry was a dominant user of this program. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea 64 FR 73176, 73183 (December 29, 1999). 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. 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. No new information, evidence of changed circumstances or comments from interested parties were

²⁰ For POSCO, we also removed intra-company sales from the denominators of the net subsidy rate calculations of the other programs found countervailable in these preliminary results. This step was not necessary for Dongbu.

presented in this review to warrant any reconsideration of the countervailability of this program. See Preliminary Results, 73 FR at 52321.

In the Preliminary Results, to calculate the benefit to POSCO, we took the additional depreciation listed in the tax return filed during the POR, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit by POSCO's total f.o.b. sales. On this basis, we determine the net countervailable subsidy to be 0.02 percent ad valorem for POSCO. This program was not used by Dongbu during the POR.

Interested parties did not comment on the Asset Revaluation program. Our approach remains unchanged from the Preliminary Results.

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

In the Preliminary Results, the Department determined that the GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the IDA, including technology for core materials, components, engineering systems, and resource technology. The IDA is designed to foster the development of efficient technology for industrial development. To participate in this program a company may: (1) perform its own R&D project; (2) participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology; and/or (3) participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. If the R&D project is not successful, the company must repay the full amount. See Preliminary Results, 73 FR at 52321.

In the Preliminary Results, the Department determined that R&D grants provided under the IDA are countervailable. Specifically, in the H Beams Investigation, the Department determined that through KNISTRA the Korean steel industry receives funding specific to the steel industry. Therefore, given the nature of KNISTRA, the Department found projects under KNISTRA to be specific. See Preliminary Negative Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea, 64 FR 69731, 69740 (December 14, 1999) (unchanged in the final determination). Further, we found that the grants constituted a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and bestowed a benefit under section 771(5)(E) of the Act in the amount of the grant. Id. In these final results, we continue to find that this program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act and constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

To determine the benefit from the grants that POSCO received through KNISTRA, we calculated the GOK's contribution for each R&D project. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over

POSCO's average useful life (AUL) by dividing the approved amount by POSCO's total sales in the year of approval. Because the approved amounts were less than 0.5 percent of POSCO's total sales in the year of receipt, we expensed the grants to the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by POSCO's total f.o.b. sales during the POR. On this basis, we determine POSCO's net subsidy rate under this program to be 0.01 percent ad valorem. Dongbu did not use this program during the POR.

POSCO commented on our findings with respect to the countervailability of the R&D grants it received under the IDA program. After considering POSCO's comments, our findings with respect to the countervailability of the R&D grants remain unchanged in these final results. See Comment 1 above.

D. Exemption of Value Added Tax (VAT) on Imports of Anthracite Coal

In the Preliminary Results, the Department determined that exemption of the VAT on imports of anthracite coal under Article 106 of Restriction of Special Taxation Act (RSTA) was countervailable. See Preliminary Results, 73 FR at 52322. Specifically, the Department determined that this program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited, constitutes a financial contribution in the form of forgone revenue under section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the revenue foregone within the meaning of 771(5)(E) of the Act. See Preliminary Results, 73 FR at 52322.

In the Preliminary Results, to calculate POSCO's benefit from the VAT exemption on these imports, we calculated the amount of VAT that would have been due absent the program on the total value of anthracite coal POSCO imported during the POR. We then divided the amount of this tax benefit by POSCO's total f.o.b. sales. Based on this methodology, we determine that POSCO received a countervailable subsidy of 0.06 percent ad valorem. Dongbu did not use the program during the POR.

Interested parties did not comment on the exemption of VAT on imports of anthracite coal program. Our approach remains unchanged from the Preliminary Results.

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

1. Provision of Land

In the Preliminary Results, we explained that in the Cold-Rolled Investigation the Department determined that with respect to Dongbu's purchase of land at the Kodai Industrial Estate in Asan Bay, the GOK's price discount and the adjustment of Dongbu's final payment to account for "interest earned" by the company on its pre-payments were countervailable subsidies. Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102, (October 3, 2002) (Cold-Rolled Investigation). Specifically, the Department determined that they were specific under section 771(5A)(D)(iii)(I) of the Act, as they were limited to Dongbu. See Preliminary Results, 73 FR at 52323 citing to the Cold-Rolled Investigation Cold-Rolled Decision

Memorandum (Cold-Rolled Decision Memorandum), at “Provision of Land at Asan Bay.” Further, the Department found the price discount and the price adjustment for “interest earned” constituted financial contributions in the form of grants under section 771(5)(D)(i) of the Act and conferred benefits in the amount of grants within the meaning of section 771(5)(E) of the Act.

To calculate the benefit conferred, we have treated the land price discount and the interest earned refund as non-recurring subsidies. See Preliminary Results, 73 FR at 52323. In accordance with 19 CFR 351.524(b)(2), because the grant amounts were more than 0.5 percent of the company’s total sales in the year of receipt, we applied the Department’s standard grant methodology, as described under 19 CFR 351.524(d)(1), and allocated the subsidies over a 15-year allocation period. See the “Average Useful Life” section above. To calculate the benefit from these grants, we used as our discount rate the rates described above in the “Subsidies Valuation Information” section. We then summed the benefits received by Dongbu during the POR. We calculated the net subsidy rate by dividing the total benefit attributable to the POR by Dongbu’s total f.o.b. sales for the POR. On this basis, we determine a net countervailable subsidy rate for Dongbu of 0.20 percent ad valorem for the POR. POSCO did not use this program during the POR.

Interested parties did not comment on the provision of land at Asan Bay program. Our approach remains unchanged from the Preliminary Results.

2. Exemption of Port Fees Under the Harbor Act

In the Preliminary Results, we stated that in the Cold-Rolled Investigation the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port. See Preliminary Results, 73 FR at 52323 (citing to Cold-Rolled Decision Memorandum, at “Dongbu’s Excessive Exemptions under the Harbor Act”). The Department also determined that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program. Id. The Department found that these exemptions from the fees were countervailable subsidies. Specifically, we found that the program is countervailable and is specific under section 771(5A)(D)(iii)(I) of the Act because the excessive exemption period of 70 years is limited to Dongbu. Moreover, we determined that the GOK is foregoing revenue that it would otherwise collect by allowing Dongbu to be exempt from port charges for up to 70 years and, thus, the program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, we determined that the exemptions confer a benefit under section 771(5)(E) of the Act in the amount of the port charges that were not collected.

To calculate the benefit conferred by these fee exemptions, the Department treated the program as a recurring subsidy and determined that the benefit is equal to the average yearly amount of harbor fee exemptions provided to Dongbu. Id. To calculate the net subsidy rate, we divided the average yearly amount of exemptions by Dongbu’s total f.o.b. sales for the POR. On this basis, we determine that Dongbu’s net subsidy rate under this program is 0.02 percent ad valorem. POSCO did not use this program during the POR.

Interested parties did not comment on the exemption of port fees under the Harbor Act program. Our approach remains unchanged from the Preliminary Results.

E. Short-Term Export Financing

In the Preliminary Results, we stated that in Steel Products from Korea, the Department determined that the GOK's short-term export financing programs through KEXIM were countervailable. See Preliminary Results, 73 FR at 52324 (citing to Steel Products from Korea, 58 FR at 37350). Specifically, the Department determined that the program is specific, pursuant to section 771(5A)(B) of the Act, because receipt of the financing is contingent upon exporting. The Department also determined that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(D)(i) of the Act and confers a benefit within the meaning of section 771(E)(ii) of the Act. *Id.* Pohang Steel Co., Ltd. (POCOS, a production affiliate of POSCO), and Dongbu used short-term export financing during the POR.

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

Interested parties did not comment on the short-term export financing program. Our approach remains unchanged from the Preliminary Results.

II. Program Determined Not to Confer a Benefit during the POR

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

As explained in the Preliminary Results, the reserve for research and manpower development fund under the Tax Reduction and Exemption Control Act (RSTA) Article 9 allows a company operating in manufacturing or mining to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three-percent reserve.

In the Preliminary Results, we explained that in a prior segment of this proceeding the Department found that this program is specific under section 771(5A)(D)(i) of the Act because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. See Preliminary Results, 73 FR at 52324. The Department also found that this program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone and that it provides a benefit under section 771(5)(E) of the

Act to the extent that companies in the capital goods industry, which includes steel manufacturers, pay less in taxes than they would absent the program. Although the Department found the program countervailable, the companies under investigation only contributed to the reserve at the lower three-percent rate during the POR. Therefore, we found no countervailable benefit because the companies contributed at the lower rate, which was available to any Korean company. Id.

Interested parties did not comment on the reserve for research and manpower development fund program. Our approach remains unchanged from the Preliminary Results.

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

As explained in the Preliminary Results, the Department found in the CFS Paper Investigation, that long-term loans issued by such GOK institutions as the KDB constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act to the extent that interest payments on the government loans are lower than what would have been paid on comparable commercial loans. See Preliminary Results, 73 FR at 52324 (citing CFS Paper Decision Memorandum at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions”). Regarding specificity, the Department found that long-term loans from the KDB are not de jure specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because: (1) they are not based on exportation; (2) they are not contingent on the use of domestic goods over imported goods; and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law. The Department then examined whether such loans were specific as a matter of fact under section 771(5A)(D)(iii) of the Act, that is, whether the program is de facto specific. The Department found that there was no evidence indicating that these loans were de facto specific. Id. (citing CFS Paper Decision Memorandum at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions”).

In the Preliminary Results, the Department explained that Dongbu received long-term loans from a GOK-owned bank after 2001. We calculated the benefit to Dongbu during the POR by applying the benchmark interest rates described above, and determined that any potential benefit to Dongbu during this POR is less than 0.005 percent. As explained in CFS from China Investigation, where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total CVD rate. See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination 72 FR 60645 (October 25, 2007) (CFS from China Investigation), and accompanying Issues and Decision Memorandum at “Programs Determined Not To Have Been Used or Not to Have Provided Benefits During the POI for GE” (CFS from China Decision Memorandum). Therefore, the Department found that these loans do not confer a measurable benefit to Dongbu. Accordingly, it was unnecessary to make a finding as to the countervailability of this program for this POR. The Department will include an examination of this program in a future administrative review. POSCO and POSCOS did not receive any such lending after 2001.

Interested parties did not comment on the long-term lending provided by the KDB and other GOK-owned institutions program. Our approach remains unchanged from the Preliminary Results.

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

As explained in the Preliminary Results, the Department determined in the CFS Investigation that D/A loans from the KDB and other government-owned banks constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. See Preliminary Results, 73 FR at 52325. In addition, the Department determined that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of D/A loans is contingent upon export performance, we also determined that D/A loans from the KDB and other government-owned banks are specific within the meaning of section 771(5A)(B) of the Act. Id. (citing CFS Paper Decision Memorandum at “D/A Loans Issued by KDB and Other Government-Owned Banks”).

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

Interested parties did not comment on the D/A loans issued by the KDB and other government-owned banks program. Our approach remains unchanged from the Preliminary Results.

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

In the Preliminary Results the Department explained that under section 771(5)(B)(iii) of the Act, a subsidy can be found whenever the government “makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution . . . to a person and a benefit is thereby conferred.” See Preliminary Results, 73 FR at 52325. In the CFS Investigation, the Department determined that KEXIM’s

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

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

Interested parties did not comment on the D/A financing provided under KEXIM’s trade rediscount program. Our approach remains unchanged from the Preliminary Results.

III. Programs Determined To Be Not Used.

A. Overseas Resources Development Program

In the Preliminary Results, the Department explained that the GOK enacted the Overseas Resource Development Business Act in order to establish the foundation for ensuring the long-term secure supply of essential energy and major material minerals, which are mostly imported

because of scarce domestic resources. See Preliminary Results, 73 FR at 52326. Pursuant to Article 11 of this Act, the Ministry of Commerce, Industry and Energy (MOCIE) annually announces its budget and the eligibility criteria to obtain an overseas resource development (ORD) loan. Any company that meets the eligibility criteria may apply for an ORD loan to MOCIE. The eligibility criteria for receiving an ORD loan are that the loan should be used for surveying, exploration, development, production, engineering services and financing for the development of overseas natural resources. The applicant submits its ORD plans to MOCIE in accordance with the Overseas Resources Development Business Act. MOCIE requests that the Korean Resources Corporation (KORES), a public corporation that is wholly owned by the GOK, conduct an eligibility review, feasibility study and credit evaluation. KORES was established in 1967 and has assumed a direct role in establishing and implementing the GOK's resources development policy, whose purpose is to secure mineral resources for Korea. In the selection process, KORES uses a loan evaluation committee to select the recipients based on the criteria for the project to develop strategic minerals (e.g., bituminous coal, uranium, iron ore, copper, zinc, nickel, etc.), including co-development with resource-owning countries, mining right of minerals, etc. KORES provides the evaluation result and its recommendation to MOCIE. If the result and recommendation are favorable, MOCIE approves the loan application and provides funds to KORES. KORES then lends the funds to the company for foreign resource development. See id.

In the Preliminary Results, the Department explained that POSCO received ORD loans during the POR. POSCO's loans were related to an input that is not used in the production of subject merchandise. Therefore, we preliminarily determined that POSCO did not use this program with respect to the subject merchandise during the POR. Id. We will continue to examine this program in future reviews.

Interested parties did not comment on the overseas resources development program. Therefore, for purposes of these final results, we continue to find that the overseas resources development program was not used during the POR, unchanged from the Preliminary Results.

- B. Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41-45)
- C. Electricity Discounts Under the Requested Loan Adjustment Program
- D. Electricity Discounts Under the Emergency Load Reductions Program
- E. Export Industry Facility Loans and Specialty Facility Loans
- F. Reserve for Export Loss Under TERCL Article 16
- G. Reserve for Overseas Market Development Under TERCL Article 17
- H. Reserve for Export Loss Under TERCL Article 22

- I. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
- J. Tax Credits for Temporary Investments Under TERCL Article 27
- K. Tax Credits for Specific Investments Under TERCL Article 71
- L. RSTA Article 94: Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
- M. Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
- N. Emergency Load Reduction Program
- O. Local Tax Exemption on Land Outside of a Metropolitan Area
- P. Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
- Q. Industrial Base Fund
- R. Excessive Duty Drawback
- S. Private Capital Inducement Act
- T. Social Indirect Capital Investment Reserve Funds Under TERCL Article 28
- U. Energy-Savings Facilities Investment Reserve Funds Under TERCL Article 29
- V. Scrap Reserve Fund
- W. Special Depreciation of Assets on Foreign Exchange Earnings
- X. Export Insurance Rates Provided by the Korean Export Insurance Corporation
- Y. Loans from the National Agricultural Cooperation Federation
- Z. Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act

We did not receive any comments from interested parties regarding programs B-Z listed above. Therefore, for purposes of these final results, we continue to find that these programs were not used during the POR unchanged from the Preliminary Results.

IV. Total Ad Valorem Rate

The total net subsidy rates for the respondents subject to this review are as follows:

Company Name	Total Net Subsidy Rate
POSCO	0.09 percent <u>ad valorem</u> , which is <u>de minimis</u>
Dongbu	0.22 percent <u>ad valorem</u> , which is <u>de minimis</u>

V. Analysis of Comment

Comment Regarding POSCO

Comment 1: Whether Certain R&D Grants Under the IDA Are Tied to Non-Subject Merchandise

POSCO notes that in the Preliminary Results the Department found that certain R&D grants received through the Korea New Iron and Steel Technology Research Association (“KNISTRA”) were tied to non-subject merchandise and therefore did not provide a countervailable subsidy to subject merchandise. POSCO further notes that the Department found that certain other grants received by POSCO were related to new technologies that could be applicable for inputs used in the production of subject merchandise. See Preliminary Results, 73 FR at 52322. POSCO contends that, in fact, none of the R&D projects in which POSCO was involved were related to subject merchandise.

POSCO argues that, as previously reported,²¹ the grants for two of the projects in question involve a new technology for producing a hot-rolled steel product that is still under development and that would be classified as a non-subject “other alloy steel” product under the Harmonized Tariff Schedule of the United States. POSCO asserts that the goal of these R&D projects is the development of technologies to achieve physical properties that are not standard characteristics of the hot-rolled coil used in the production of CORE. POSCO argues that the article attached to the Department’s Factual Information Memo, issued in conjunction with the 2004 administrative review,²² demonstrates that the high-strength steels in question are produced by processes that have specialized uses that differ from conventional CORE products. POSCO asserts that the production techniques being developed with these R&D grants are unnecessary to produce the conventional hot-rolled carbon steel coil used in the production of CORE. POSCO

²¹ See POSCO’s December 20, 2007, Questionnaire Response, at 20-22.

²² See POSCO’s March 24, 2008, Questionnaire Response at Exhibit G-3 providing Memorandum to the File “Factual Information Regarding the Steel Production Process in Preliminary Results of CVD Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea” (August 31, 2006) at Attachment: “Raising the Bar”, by Ronald P. Krupitzer and Dr. Roger A. Heimbuch, Metalforming, April 2005 at 35-36.

further argues that since the subject merchandise is a coated “carbon steel,” any hot-rolled steel produced using the technologies developed by means of these R&D grants could not be used as an input into the production of subject merchandise. Therefore, POSCO argues that the Department’s claim in its Factual Information Memo²³ that there is no information on the record that demonstrates that these R&D projects could not be used in the production of subject merchandise or that this new technology is limited to the development of “other alloy steel” is incorrect. POSCO asserts that the technology in question is only necessary for the production of specific types of “other alloy steels” and has no value in the production of the conventional grades of hot-rolled steel used in the production of subject merchandise.²⁴

With respect to the last sub-project, POSCO claims that the Department is incorrect in its statement in the Factual Information Memo that “the kinds of properties for which this project involves developing . . . methods could be applicable for both inputs to subject merchandise as well as non-subject merchandise.”²⁵ POSCO argues that since the properties of the product being developed under the first sub-project pertain to characteristics not necessary for the conventional grades of hot-rolled steel used to produce subject merchandise, the methods to be developed under this R&D project do not apply to methods used in the production of subject merchandise.

Petitioners did not comment on this issue.

The Department’s Position:

In our Preliminary Results we indicated that for grants received by POSCO related to certain R&D projects, nothing on the record demonstrates the grants in question could not be used in the production of subject merchandise or that this new technology is limited to the development of non-subject merchandise. See Preliminary Results, 73 FR at 52322. This determination was based on our review of information provided in POSCO’s December 20, 2007, Questionnaire Response, at Exhibit 6; POSCO’s April 18, 2008, Supplemental Questionnaire Response at 1-2 and Exhibit G-10; and POSCO’s May 8, 2008 Supplemental Questionnaire Response at 1-2.

With respect to product tying arguments presented by POSCO, we refer to 19 CFR 351.525(b)(5), which addresses the attribution of subsidies to a particular product. Section 351.525(b)(5)(i), states that if a subsidy is tied to the production or sale of particular products, the Secretary will attribute the subsidy only to those products. However, the respondent must

²³ See Memorandum to the File “Factual Information Regarding the Steel Production Process in Preliminary Results of CVD Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,” at 1 (September 2, 2008) (Factual Submission Memo).

²⁴ See POSCO’s May 8, 2008 Supplemental Questionnaire Response, at 1.

²⁵ See Memorandum to the File “Factual Information Regarding the Steel Production Process in Preliminary Results of CVD Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,” at 2 (September 2, 2008).

demonstrate that the subsidy is, in fact, tied to out-of-scope merchandise and could not benefit the production of in-scope merchandise. In the LEU Investigation, we attributed the benefit from research development subsidies to centrifuge production and certain production of other products, because we found that the R&D benefitted not only centrifuge production but also certain production of other products (i.e., aerospace and print rollers). See Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 21, 2001) (LEU Investigation), and accompanying Issues and Decision Memorandum, at Comment 14. In keeping with our practice under 19 CFR 351.525(b)(i), we found that the research and development subsidies could benefit the production of both in-scope merchandise as well as the out-of-scope merchandise that was produced using that same technology and therefore, we attribute the benefit from these subsidies to the company's total sales. Id.

In this case, POSCO claims that two of the R&D projects in question are related to "other alloy steel" that could not be used in the production of subject merchandise. Because POSCO's arguments concerning the R&D projects reference proprietary information, we addressed them in a proprietary memorandum that was issued concurrently with the Preliminary Results. See Memorandum to the File from Gayle Longest, Case Analyst, AD/CVD Operations, Office 3, through Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, "Factual Information Regarding the Steel Production Process" (September 2, 2008) (Steel Production Process Memorandum) at page 1, of which a public version is on file in the Central Records Unit, room 1117 of the Main Commerce Building. No new facts concerning the R&D projects in question have been placed on the record since the issuance of the Steel Production Process Memorandum and we find there is no basis to change the decisions reached in the memorandum. POSCO points to an article attached to the Department's Factual Information Memorandum in the 2004 administrative review and argues that this article demonstrates that the physical properties being developed under these new technologies to produce these "other alloy" high strength steels are so specialized that they would be of no benefit to the production of the hot-rolled carbon steel coil used in the production of CORE. See Factual Information Regarding the Steel Production Process submitted in POSCO's March 24, 2008, Questionnaire Response. However, POSCO does not explain why the R&D being developed is precluded from benefitting subject merchandise. In order for these two R&D grants to be considered "tied" to non-subject merchandise, under 19 CFR 351.525(b)(5), the burden is on the respondent to show this from evidence on the record. However, POSCO did not point to any record information demonstrating that the research to improve the development of optimal physical properties for "other alloy steel" is limited to "other alloy steel". Neither did POSCO point to record evidence that demonstrates that the R&D projects in question cannot be applied to the development of technologies related to other hot-rolled steel products, such as those used as inputs in the CORE production process. See Steel Production Process Memorandum at 1. Therefore, as in our past practice in the LEU Investigation, we are attributing these R&D grants to the total sales of POSCO (including subject merchandise). We continue to find that this project provides countervailable benefits in these final results.

With respect to POSCO's argument that its May 2008 supplemental questionnaire response demonstrates that the other R&D grants in question, related to two sub-projects, were

limited to non-subject merchandise, we do not agree. As we explained in the Steel Production Process Memorandum, although the first sub-project focused on the development of a non-subject steel product and its specifically targeted physical, chemical and mechanical properties; there is no information on the record that demonstrates the research development project is limited to the production of this non-subject steel product. See Steel Production Process Memorandum at page 1 - 2. Moreover, with respect to the second sub-project, there is no record evidence that the methods being developed are limited to non-subject merchandise. The physical, chemical, and mechanical properties for these sub-projects are still the kinds of properties that could be applicable for hot-rolled inputs used for the subject merchandise or for the subject merchandise itself. Moreover, POSCO does not explain why the R&D on the physical, chemical and mechanical properties of these projects is precluded from benefitting the subject merchandise. Therefore, we continue to find that this project provides countervailable benefits in these final results.

VI. Recommendation

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results in the Federal Register.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date