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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-851]

Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea

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

ACTION: Notice of preliminary affirmative countervailing duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of dynamic random access memory semiconductors from the Republic of Korea. For information on the estimated countervailing duty rates, see infra section on "Suspension of Liquidation."

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Melani Miller, Ryan Langan, Jesse Cortes, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-0116, (202) 482-2613, (202) 482-3986, and (202) 482-1540, respectively.

Petitioner

The petitioner in this investigation is Micron Technology, Inc. ("the petitioner").

Period of Investigation

The period for which we are measuring subsidies, or period of investigation ("POI"), is January 1, 2001 through June 30, 2002.

Case History

The following events have occurred since the publication of the Department of Commerce's ("the Department") notice of initiation in the Federal Register. See Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 67 FR 70927 (November 27, 2002) ("Initiation Notice").

On December 6, 2002**, we issued countervailing duty questionnaires to the Government of the Republic of Korea ("GOK") and the two major producers/exporters of dynamic random access memory semiconductors ("DRAMS" or "subject merchandise") in the Republic of Korea ("ROK"),** Samsung Electronics Co., Ltd. ("SEC") and Hynix Semiconductor Inc. ("Hynix") (formerly, Hyundai Electronics Industries Co., Ltd. ("HEI")).

On January 13, 2003, we published a postponement of the preliminary determination in this investigation until March 31, 2003. See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Determination of

Countervailing Duty Investigation, 68 FR 1597 (**January 13, 2003**).

We received the companies' responses to the Department's questionnaire on January 27, 2003, and the GOK's response on February 3, 2003. **On February 5 and 11, 2003, the petitioner submitted comments regarding these questionnaire responses.** We issued supplemental questionnaires to the companies and the GOK on February 11 and 19, 2003, and

received responses to those supplemental questionnaires on February 25 and March 4, 10, and 14, 2003. We issued a second supplemental questionnaire to SEC on March 25, 2003, and received a response to this questionnaire on March 28, 2003.

On February 20, 2003, the petitioner submitted several new subsidy allegations. The petitioner made further submissions regarding these new allegations on February 24 and 28, 2003. Hynix, SEC, and the GOK filed comments on these new subsidy allegations on February 25, 26, and 28, respectively. SEC filed additional comments on March 4, 2003. We addressed these new subsidy allegations in a March 7, 2003, memorandum to Susan Kuhbach, New Subsidy Allegations ("New Subsidy Allegations Memo"), which is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU"). Because we initiated an investigation of two of these newly-alleged programs (as discussed in the New Subsidy Allegations Memo), we issued a questionnaire to the each of the respondents with respect to these new programs on March 7, 2003. We received a response to these questionnaires on March 28, 2003.

Finally, both the petitioner and the respondents, as well as other interested parties, submitted comments on the preliminary determination on March 10, 14, 18, 21, 24, 27, and 28, 2003.

Scope of Investigation

The products covered by this investigation are DRAMS from the ROK, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the

scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics RAM, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from the ROK**, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this investigation remains dispositive.**

Injury Test

Because the ROK is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from the ROK materially injure, or threaten material injury to, a U.S. industry. On December 13, 2002, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the ROK of the subject merchandise. **See Drams and Dram Modules from Korea, 67 FR 79148 (December 27, 2002)**.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's

1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For DRAMS, the IRS Tables prescribe an AUL of 5 years. None of the responding companies or interested parties disputed this allocation period. Therefore, we have used the 5-year allocation period for all respondents. See, also, February 24, 2003 memorandum to the file entitled "Average Useful Life," which is on file in the Department's CRU.

Discount Rates and Benchmarks for Loans

Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company-specific cost of long-term, fixed-rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time.

Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. Section 351.505(a)(2) of the Department's regulations defines a comparable commercial loan as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate v. variable interest rate), the maturity of the loan (e.g., short-term v. long-term), and the currency in which the loan is denominated. In instances where no applicable company-specific comparable commercial loans are available, 19 CFR 351.505(a)(3)(ii) allows the Department to use a national average interest rate for comparable commercial loans.

Hynix and SEC reported that they had the following types of loans outstanding from the GOK or GOK-owned banks, ROK financial institutions, overseas creditors, or foreign banks with branches in the ROK during the POI: 1) long-term fixed- and variable-rate foreign currency

loans; 2) long-term fixed- and variable-rate won-denominated loans; 3) short-term fixed-rate won-denominated loans; and 4) short-term fixed-rate foreign currency loans. Some of these loans were received prior to 1992. Hynix also received non-recurring benefits during the POI, as discussed in the "Analysis of Programs" section, below.

We are using the following benchmarks and discount rates for this preliminary determination:

Discount Rates and Benchmarks for Long-Term Loans

The Department has previously determined that the GOK directed the lending practices of financial institutions in the ROK through 1991. See, e.g., Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, 58 FR 37338, 37339 (July 9, 1993) ("Certain Steel"); Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea, 65 FR 41051 (July 3, 2000) ("Structural Beams"); and 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 Steel"). Given the GOK's direction of banks, we determined that the best indicator of the commercial, long-term borrowing rate in the ROK through 1991 was the three-year corporate bond rate on the secondary market. No party in this proceeding **has submitted new evidence that would lead us to reconsider this benchmark**. Therefore, for the preliminary determination, we are using the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from domestic won-denominated loans obtained prior to 1992 that were still outstanding during the POI.

In subsequent determinations, the Department found that the GOK controlled directly or indirectly the lending practices of most sources of credit in the ROK between 1992 and 2000. See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (March 31, 1999) ("Plate in Coils"); Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73276 (December 29, 1999) ("CTL Plate"); and Structural Beams. In Plate in Coils, the Department further determined that the GOK does not exercise direct or indirect control over ROK branches of foreign commercial banks. Also, in Cold-Rolled Steel, we found that, subsequent to April 1999, companies no longer needed approval from the GOK to access direct foreign loans or issue foreign securities. Thus, we found that these types of loans were not countervailable and, thus, also normally represented an appropriate benchmark.

As explained below in the "Direction of Credit and Other Financial Assistance" discussion in the "Analysis of Programs" section, based upon these earlier findings and updated information, we have preliminarily determined in this investigation that: 1) the GOK still exercised substantial control over most lending institutions in the ROK from 1992 through 1998, and 2) that the GOK directed credit to Hynix during the period January 1999 through June 30, 2002. Moreover, consistent with our determinations in Plate in Coils and Cold-Rolled Steel, we continue to find that the government did not exercise direct or indirect control over ROK branches of foreign commercial banks, direct foreign loans obtained after April 1999, and foreign securities issued after April 1999. Thus, have we have generally continued to utilize such loans as benchmarks for SEC and Hynix, when available.

Based on the above, we are using the following benchmarks for the preliminary determination to calculate the benefits conferred by GOK-directed long-term loans obtained since 1992 which are still outstanding during the POI:

- For countervailable foreign-currency denominated long-term loans for creditworthy companies, we used, where available, the company-specific, weighted-average interest rates on the companies' comparable commercial foreign currency loans from foreign bank branches in the ROK. If this type of benchmark was unavailable, then, consistent with past cases (see, e.g., Cold-Rolled Steel), we relied on lending rates as reported by the International Monetary Fund's ("IMF") International Financial Statistics Yearbook.
- For countervailable won-denominated long-term loans for creditworthy companies, we used the company-specific corporate bond rate on the companies' won-denominated public and private bonds, where available. Use of this benchmark is consistent with Plate in Coils, 64 FR at 15531, in which we determined that the GOK did not control the ROK domestic bond market after 1991. Where company-specific rates were not available, we used the national average of the yields on three-year won-denominated corporate bonds as reported by the Bank of Korea ("BOK"). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in Plate in Coils, 64 FR at 15532, in which we determined that, absent company-specific interest rate information, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rate for won-denominated loans in the ROK.
- Finally, because **we have preliminarily determined that Hynix was uncreditworthy from January 1, 2000 through June 30, 2002** in accordance with 19 CFR 351.524(d)(3)(ii) (see, infra section on "Creditworthiness"), we have calculated for Hynix only long-term

uncreditworthy benchmarks and discount rates for 2000 through June 30, 2002. **According to 19 CFR 351.505(a)(3)(iii), in order to calculate these rates, the Department must specify values for four variables: 1) the probability of default by an uncreditworthy company; 2) the probability of default by a creditworthy company; 3)** the long-term interest rate for creditworthy borrowers**; and 4) the term of the debt. For the probability of default by** an uncreditworthy company**, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920-1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds** as published in Moody's Investor Service, "Statistical Tables of Default Rates and Recovery Rates" (February 1998)**. For the long-term interest rate that would be paid by a creditworthy company, we** are using 1) the national average of the three-year ROK won corporate bond rate as published by the BOK for won-denominated foreign currency loans and for the discount rate, and 2) the IMF's International Financial Statistics Yearbook for foreign-currency denominated long-term loans. For the term of the debt**, we used 5 years because all of the non-recurring subsidies examined were allocated over a 5-year period, as discussed in the "Allocation Period" section, above.**

Benchmarks for Short-Term Loans

As discussed below in the "Direction of Credit and Other Financial Assistance" section, we have found that the GOK directed credit for all loans to Hynix during the POI. Thus, we cannot rely on Hynix' company-specific commercial won- or foreign currency-denominated loans outstanding during the POI as our benchmark. Instead, for those programs requiring the

application of a short-term, fixed, won- or foreign currency-denominated interest rate benchmark, we used the money market rates as reported in the IMF's International Financial Statistics in accordance with 19 CFR 351.505(a)(3)(ii).

Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price for similar, newly-issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly-issued shares is greater than the price paid by private investors for the same, or similar, newly-issued shares.

If actual private investor prices are not available, then, pursuant to 19 CFR 351.507(a)(3)(i), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. In making the equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), the Department will normally determine that a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time. To do so, the Department normally examines the following factors:

1) objective analyses of the future financial prospects of the recipient firm; 2) current and past indicators of the firm's financial health; 3) rates of return on equity in the three years prior to the government equity infusion; and 4) equity investment in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department's regulations further stipulates that the Department will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

The equityworthiness analysis relating to Hynix' debt-to-equity conversions as part of the Hynix October 2001 Restructuring program is located in the "Analysis of Programs" section, below.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. <u>See</u> 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the

Department normally examines the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position.

With respect to item number one, above, pursuant to 19 CFR 351.505(a)(4)(ii), in the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee (either explicit or implicit), will normally constitute dispositive evidence that the firm is not uncreditworthy. However, according to the Preamble to the Department's regulations, in situations, for instance, where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness. (See Countervailing Duties; Final Rule, 63 FR 65348, 65367 (November 28, 1998) ("Preamble").)

In the Initiation Notice, we indicated that we would investigate Hynix' creditworthiness in 2000 through 2002. As discussed in the March 31, 2003 memorandum entitled "Creditworthiness" ("Creditworthiness Memo") (which is on file in the Department's CRU), we have found Hynix to be uncreditworthy in 2000 through June 2002. Therefore, we have used an uncreditworthy benchmark rate in calculating the benefit from loans received during this time period, and have also used an uncreditworthy discount rate in calculating any non-recurring benefits received by Hynix that were allocable to the POI.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Direction of Credit and Other Financial Assistance

The GOK's Credit Policies Through 1998

As discussed above in the "Discount Rates and Benchmarks for Loans" section, the Department has examined the issue of whether the GOK controlled the lending practices of banks in the ROK in past cases. For the period through 1991, we determined that the GOK's direction of credit policies resulted in countervailable subsidies to the ROK steel industry. See, e.g., Certain Steel, CTL Plate, and Structural Beams. In subsequent determinations, the Department found that the GOK continued to control, directly and indirectly, the long-term lending practices of most sources of credit in the ROK through 1998. See Plate in Coils and CTL Plate for our findings regarding 1997 and 1998, respectively.

Although we determined that the GOK directed the provision of loans by ROK banks in Plate in Coils and the Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636, 30639 (June 8, 1999) ("Sheet and Strip"), we concluded that loans from Korean branches of foreign banks (i.e., branches of U.S. and foreign-owned banks operating in Korea) did not confer countervailable subsidies. This determination was based upon our finding that credit from ROK branches of foreign banks was not subject to the government's control and direction. Additionally, because these loans were not directed or controlled by the GOK, we used them as benchmarks to establish whether loans from domestic banks conferred a benefit upon respondents.

We provided the respondents in the current proceeding an opportunity to present new factual information concerning the GOK's direction of long-term lending during this previously-examined period. No party contested or provided new information challenging the Department's findings prior to 1998. Moreover, **although certain respondents indicated that they were challenging the Department's finding for 1998, the respondents have not provided any new information that has not already been closely examined in past proceedings (e.g., CTL Plate and Structural Beams).** Therefore, we preliminarily determine that the GOK controlled, directly and indirectly, the long-term lending practices of most sources of lending in the ROK through 1998, with the exception of loans from Korean branches of foreign banks, as noted above, and, consequently, that the GOK entrusted and directed these banks to make loans as directed by the GOK.

Specificity

In the above-cited proceedings, we determined that government-directed loans provided a countervailable subsidy to the ROK steel industry. For the reasons explained below, we have preliminarily determined in this proceeding that the GOK also directed loans to the semiconductor industry through 1998.

In Structural Beams **and CTL Plate** , the Department found that the GOK directed credit to "strategic" industries, such as steel, automobiles, and consumer electronics, throughout the 1970s, 1980s, and 1990s. In 1976, it was clear that the semiconductor industry was one of the GOK's "strategic" industries and was designated to receive special treatment from the GOK, including loans. For example, in its Fourth Five-Year Plan, the GOK stated that "the electronics industry will be promoted as a major export industry through the development of new technology

products and the expansion of overseas sales activities. . .Semiconductors, computers and related items have been selected as strategic products."

This plan gave rise to the publicly financed Korea Institute of Electronics Technology ("KIET"). The KIET's primary function was to plan and coordinate semiconductor research and development; import, assimilate, and disseminate foreign technologies; provide technical assistance to Korean firms; and conduct market research. According to an October 1991 study, KIET essentially jump-started the semiconductor industry in the ROK and paved the way for SEC, HEI, and Goldstar Electron to enter the market as major DRAMS producers. In addition, the Heavy and Chemical Industry plans of 1974 and 1976 identified six strategic industries (chemicals, electronics, machinery, non-ferrous metals, and steel) which the GOK would support financially to "raise the selected industries' competitiveness and, consequently, to increase their exports."

For the next two decades, the semiconductor industry was repeatedly identified in national economic and development plans, as well as in industry promotion plans, as a "strategic" industry that would receive "a wide range of fiscal and financial investment incentives." Other examples of such policies include the Fifth Five-Year Economic and Social Development Plan (1981) and the Sixth Five-Year Economic and Social Development Plan (1986).

In Structural Beams, we found that, after the removal of the de jure preferences for "strategic" industries in 1985, the GOK continued to channel billions of dollars in lending into sectors favored by the government's industrial policies. We also found that, throughout the 1990s, "bankers in Korea {believed} that the {Korea Development Bank ("KDB")} is still known for preferring the semiconductor, shipbuilding, and steel industries." (See Structural Beams June

7, 2000 memorandum to the file, "Direction of Credit in Korea: Structural Steel Beams from the Republic of Korea," the public version of which is included as an appendix to the March 31, 2003 memorandum entitled "Direction of Credit Citations" ("Direction Citations Memo"), which is on file in the Department's CRU.)

In this investigation, there is substantial evidence illustrating the GOK's continued favoritism toward the semiconductor industry well after 1985. The GOK's Seven Year High Technology Development Plan (1990) ("Seven Year Plan") called for U.S. Dollar ("USD") 1.83 billion for the development of semiconductors, tax incentives to encourage private-sector investment, and the building of an industrial estate for the assembly of semiconductors, computers, and optical equipment. The Seven Year Plan also identified 16 and 64 megabit DRAMS for development through government-industry cooperation. Under the Seven Year Plan, the Highly Advanced National program ("HAN") was established to support the production of 256 megabit DRAMS by 1996 and one gigabit DRAMS by 2000 with USD 4.9 billion in government expenditures through 2001.

In 1994, the Ministry of Trade, Industry, and Energy ("MOTIE") announced its selection of five strategic investment sectors (semiconductors, liquid crystal displays ("LCD"), aircraft, satellites, and machine tools) to receive government support. "As for the semiconductor industry, 46.9 billion won will be spent on {research and development ("R&D")} for a 256-{megabit} DRAM this year and 20 billion won for LCD research. Of these amounts, 19.2 billion won and 10 billion won, respectively, will be extended from the government budget. By 1997, a total of 195.4 billion won. . .are to be invested in {semiconductors}." In a July 1997 interview, the Director General of the Electronics, Textile, and Chemical Industry Bureau of MOTIE stated,

"{t}he government's long-term strategy calls for {the ROK} becoming the world's largest producer of semiconductor chips in the year 2010."

Moreover, in Structural Beams, we found that the KDB provided a significant amount of the lending to "strategic" industries, such as steel, throughout the 1990s. Therefore, as in Structural Beams, in the instant investigation we reviewed a list of the largest recipients of KDB financing within the manufacturing sector in 1992 through 1997 as part of our specificity analysis. For this investigation, we requested similar information regarding the distribution of loans to industry sectors by specific institutions, including the KDB, and the Korean financial sector as a whole. The GOK provided information for 1997 and 1998 for broad industry sectors such as "Pulp, Paper, and Paper Products," and "Radio, Television, and Communication Equipment," which includes semiconductors. The GOK stated that it was unable to provide loan information on a more specific basis. Because this information does not cover the period we are examining in full, and because it is overly broad to use in our normal specificity analyses under 771(5A) of the Act, we intend to seek more detailed information during verification with respect to lending distribution in the ROK.

Notwithstanding the limited KDB lending data, we find that there is sufficient information on the record demonstrating the GOK's designation of the semiconductor industry as a "strategic" industry. Specifically, the GOK's national economic and development plans, as well as industry promotion plans, from the late 1970s through 1998, identified the semiconductor industry as a "strategic" industry.

Therefore, based on the above information, we preliminarily determine that the GOK directed credit specifically to the semiconductor industry through 1998 within the meaning of section 771(5A) of the Act.

The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002

The Department has also addressed GOK direction of credit in the years subsequent to 1998. In the Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 67 FR 1964 (January 15, 2002) and Cold-Rolled Steel, we provided the respondents with an opportunity to present new factual information concerning the government's credit policies in 1999 and 2000, respectively. No party provided any new information on the GOK lending policies for domestic banks in either case. Therefore, we determined in those cases that long-term lending from domestic commercial banks and from specialized banks, such as the KDB, was directed by the GOK in 1999 and 2000, respectively.

Additionally, with respect to direct foreign loans (i.e., loans from offshore banks) and offshore foreign securities issued by ROK companies, we found that, subsequent to April 1999, companies no longer needed approval from the GOK to access direct foreign loans or to issue foreign securities. See Cold-Rolled Steel. Thus, we determined that these loans were not directed or controlled by the GOK, and could serve as benchmarks. No party has challenged this past finding.

In the instant investigation, the petitioner has alleged that the GOK continued to influence and direct the practices of lending institutions in the ROK through the POI, and that the semiconductor sector received a disproportionate share of the benefits provided pursuant to this

direction, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. The petitioner has also alleged that, if the Department does not find that the semiconductor industry received a disproportionate share of financing during this period, this directed credit was specific to Hynix. The petitioner asserts, therefore, that the Department should countervail all loans and benefits from GOK owned/controlled/directed institutions that were received by the producers/exporters of the subject merchandise, or all loans and benefits received specifically by Hynix, obtained during this period that were outstanding during the POI.

We provided the respondents in this proceeding an opportunity to present new factual information concerning the GOK's credit practices from 1999 through June 30, 2002 which we would consider along with our findings in the above-noted prior investigations. Certain respondents challenged the Department's prior direction of credit findings for 1999 and 2000. Parties in this investigation also presented information concerning the GOK's role in the ROK financial lending sector from 2001 through June 30, 2002.

Because of the Department's prior determinations that the GOK controlled and directed credit provided by most ROK banks through 2000, discussed above, the burden of demonstrating that the GOK has changed its practices is placed, in large part, upon the respondents. Moreover, with respect to 1999 and 2000, because the Department has previously found that the GOK directed credit provided by most ROK banks in those years, new information or evidence of changed circumstances must be presented before the Department will revise or change its previous findings.

In its response, the GOK argued that the post-1997 financial reforms instituted following the ROK financial crisis have led to the liberalization of the ROK financial sector, and that the

GOK did not direct credit provided by domestic and government-owned banks from 1998 through the end of the POI. The GOK has also placed new information on the record to support its claim. As noted above, the Department has already addressed the impact of these reforms in 1998 in **CTL Plate** and **Structural Beams**. **However, for the subsequent period, the GOK has submitted new information which we have analyzed to determine whether the GOK continued to direct credit from** 1999 through June 30, 2002.

In our analysis, we have distinguished between banks that are themselves government authorities within the meaning of section 771(5)(B) of the Act and commercial banks that are not considered to be government authorities. In **CTL Plate and Structural Beams**, we found that, although changes had been made to the legislation regulating government-controlled specialized banks, such as the KDB, in the aftermath of the financial crisis, the respondents did not provide any evidence to demonstrate that the KDB has discontinued its practice of selectively making loans to specific firms or activities to support GOK policies.

Record evidence from the instant investigation indicates that the KDB and other specialized banks, such as the Industrial Bank of Korea ("IBK"), continue to be government authorities within the meaning of section 771(5)(B) of the Act. The term "authority" is defined in section 771(5)(B) of the Act as "a government of a country or any public entity within the territory of the country." As stated in the Preamble to the Department's regulations, ". . .we intend to continue our longstanding practice of treating most government-owned corporations as the government itself." See Preamble, 63 FR at 65402.

In order to assess whether an entity such as the KDB should be considered to be the government for purposes of countervailing duty investigations, the Department has in the past

considered the following factors to be relevant: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992); Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands, 52 FR 3301, 3302, 3310 (February 3, 1987); and Sheet and Strip, 64 FR at 30642-43.

According to the BOK in a February 2002 report on ROK financial institutions, most of the specialized banks are government-controlled banks. With regard to the KDB, all of the KDB's shares are held by the GOK. Additionally, according to the KDB Act, the KDB's purpose is "the supply and management of major industrial funds to promote industrial development and the advancement of the national economy." All of KDB's senior management and its auditor are appointed by the ROK President or the Ministry of Finance and Economy ("MOFE"). KDB's annual business plan must be approved on an annual basis by the MOFE, and the KDB is supervised by the MOFE (except for prudential supervision, which is carried out by the Financial Supervisory Commission ("FSC")). Any net losses suffered by the KDB are covered by the GOK according to Article 44 of the KDB Act.

The purpose of the IBK is "to promote independent economic activities for small and medium enterprises and to enhance their economic status in the national economy." The majority of the IBK's shares are held by the GOK. The IBK's top officials are appointed by the ROK President or by a GOK ministry. According to the IBK Act, one of the IBK's activities is to

"perform business entrusted by the Government and public entities," and to "achieve the purpose of the bank {as noted above} with the approval of the relevant Minister." The IBK's annual business plan and operations manual (including its lending methods) must be approved by the relevant minister. Any annual losses suffered by the IBK are covered by the GOK.

Based on this information and our past findings, we preliminarily determine that the KDB and the other specialized banks, such as the IBK, are government authorities. Hence, the financial contributions they made fall within section 771(5)(B)(i) of the Act.

As for the commercial banks in which the GOK owned a majority or minority stake, there is no evidence currently on the record that these entities are GOK authorities within the meaning of section 771(5)(B) of the Act. These banks act as commercial banks, and temporary GOK ownership of the banks due to the financial crisis is not, by itself, indicative that these banks are GOK authorities. Therefore, we must determine whether these banks, as well as other ROK lenders, were directed or entrusted by the GOK to provide funds to the respondents during the period 1999 through the end of the POI. See section 771(5)(B)(iii) of the Act.

In late 1997, the financial crisis that had been plaguing many countries in Asia came to a head in the ROK. A severe foreign exchange crisis, coupled with a sharp increase in interest rates and a drop in economic output, caused many large companies to be unable to meet their debt obligations and liquidity needs. As a result, many companies experienced serious financial difficulties, and many banks were weakened by the rapid increase in non-performing loans, a situation that threatened the stability of the financial system itself.

According to the GOK, this financial crisis in late 1997 brought about many market-oriented changes in the financial sector in the ROK. For example, as discussed in **CTL Plate**

and <u>Structural Beams</u>, in January 1998, the GOK announced closure of some banks, and in April 1998, it launched the FSC which, according to the GOK, is a central government organization established for the purpose of consolidating and improving the GOK's monitoring and supervision of financial institutions. (The FSC's authority was later expanded to also cover specialized banks.) According to the GOK, these changes were part of a larger package of reforms including legal, regulatory, and policy changes intended to transform the ROK financial sector into a better managed, better supervised, and more market-oriented sector of the economy.

As part of these reforms, in the period 1999 through 2002, several commercial banks in the ROK were closed or merged with other banks. The closure of weak financial institutions was, according to the GOK, one of the most dramatic policy changes in the ROK. The GOK also points to the opening of the financial markets to foreign ownership and investment as another major change. For example, majority ownership of Korea First Bank ("KFB") was sold to a foreign investor, and shares in other banks, such as Korea Exchange Bank ("KEB"), were sold to foreign investors. Additionally, the GOK worked to tighten rules on accounting and best practices by applying international standards.

Finally, as noted above, the GOK implemented many new laws, regulations, and practices with regard to the financial system. In May 1999, the KDB Act was amended to entrust the FSC with regulatory oversight of KDB's financial prudentiality. In January 2000, the Depositor Protection Act was revised to ensure that officers and employees of financial institutions that are responsible for financial troubles of their employer can be required to compensate the financial institution for damages. The Bank Act was also revised to set forth procedures for the licensing

and supervision of banks. In March 2000, the KDB enforcement decree was amended to expand to the KDB the loan exposure limits that applied to other banks. In October 2000, the Corporate Restructuring Vehicle Act was enacted to facilitate the resolution of bad loans held by financial institutions. The Financial Holding Company Act was also enacted, which established financial holding companies in the ROK for the first time. In November 2000, Prime Minister's Decree, Instruction No. 408 ("Prime Minister's Decree"), was issued, stating that government officials at financial supervisory organizations, such as the MOFE and the FSC, were not to interfere in the operations of commercial and specialized banks.

In December 2000, the Public Funds Management Act was enacted to enhance transparency in the use of public funds. The Depositor Protection Act was also revised to allow the **Korea Deposit Insurance Corporation ("KDIC") to request information directly from banks, and to request assistance from the FSC if a financial institution looks as if it may become insolvent. In September 2001, the Corporate Restructuring Promotion Act ("CRPA") was enacted to allow creditor banks to initiate prompt restructuring measures against potentially insolvent companies and to provide a more formal framework for** creditor financial institutions to work together. In April 2002, the Banking Act was revised to relax restrictions placed on bank ownership.

As is evidenced by the above-noted changes in the ROK financial system since the 1997 financial crisis, the GOK has taken many steps to reform the financial system in the ROK, steps for which the GOK has been widely praised. However, despite the changes noted above, events in the ROK financial system have led the GOK to continue its involvement there. Specifically, in the aftermath of the financial crisis, many corporations have suffered from liquidity problems,

especially as loans and other debt incurred during or after the financial crisis have begun to mature. These financial problems in the corporate sector necessarily have had a great impact on the creditors holding the outstanding liabilities of these corporations. Because many banks have suffered their own liquidity crises in light of the troubles in the corporate sector due to their debt holdings in these troubled companies, record evidence indicates that the GOK has inevitably had to stay closely involved in the financial system in order to ensure stability while corporate restructuring continues, and that the GOK's role exceeded the understandable function of financial supervision.

For example, record evidence indicates that the GOK had to inject trillions of won into ROK banks to keep them solvent following the financial crisis. According to an August 2001 Bank for International Settlements paper, this type of support was "inevitable and necessary in order to ensure the soundness of the financial system and to prevent systematic risk in the process of financial sector restructuring." As a result of these recapitalizations, many commercial banks have been nationalized by the GOK, and the GOK has become (and continued to be throughout the POI) the majority owner of several of the large ROK commercial banks, including Seoul Bank, the banks under the Woori Financial Holding Company umbrella (including Peace, Kwangju, and Kyongnam banks), Woori Bank (formerly Hanvit Bank), and Cho Hung Bank (although we note that there is conflicting information on the record with respect to bank ownership by the GOK during the POI). Moreover, in 2001, the BOK increased the aggregate credit ceiling in order to provide more funds to financial institutions to encourage the financial institutions to provide loans to the corporate sector. In doing so, the BOK also adjusted the

method of allocation in such a way as to supply more aggregate credit at low interest rates to financial institutions that expanded corporate lending.

While we do not contend that the GOK's ownership of ROK banks is by itself dispositive of the GOK's involvement in the banks' lending decisions, banks that are owned, in whole or in part, by the GOK are subject to the influence of their majority or minority shareholders. This point was made, for example, by a Morgan Stanley executive director and ROK chief, who stated in a September 2001 Asiamoney article regarding ongoing discussions relating to a potential debt-for-equity swap involving Hynix and its creditors (which eventually took place in Hynix' October 2001 restructuring) that "if creditor banks go down that road, there would be speculation that the decision was made in conjunction with the government." He continued, "{a}lthough Hynix argues that the creditors arrived at their decision {to participate in the debt-to-equity conversion} purely on economic grounds, the fact that most of them are state-owned does infer government intervention." Thus, the GOK's ownership position in certain banks indicates that the GOK does have an impact on lending decisions of certain government-owned banks.

Along with its increased ownership in the banks, the GOK's dual role as owner and regulator can also be seen as evidence of the GOK's influence over bank lending decisions. For instance, in July 2001 articles in the International Herald Tribune and the New York Times, Stanley Fischer, an IMF official who was an architect of the IMF's restructuring plan in the ROK, was quoted as saying that the GOK needed to get itself out of the financial sector and should stop supporting failing banks and corporations. With regard to the GOK, he stated that "they have got to get themselves out of the financial sector" and that "{t}here is a conflict of interest between the government as an owner and the government as a supervisor." This view was also reflected in

the August 2, 2001 IMF Public Information Notice (No. 01/79), which is included as an appendix to the Direction Citations Memo on file in the Department's CRU. In the notice, which was prepared as part of the IMF's post-crisis monitoring program, IMF directors expressed concern that "the role of the government as part-owner and supervisor of financial institutions, coupled with a significant role as guarantor of corporate debt, would hinder the pace of restructuring and risk impeding the development of a sound commercial banking system and a thriving capital market." There is also evidence on the record that the GOK has given authoritative instructions to financial institutions, including those involved in supporting Hynix. According to a November 2001 paper prepared by a World Bank employee, "press reports that the {Financial Supervisory Service ("FSS") (the FSC's enforcement body)} had instructed creditor banks to classify Hynix loans as normal further highlight the conflicts of interest that can arise when a financial supervisor is tasked with managing corporate/financial sector restructuring in a systemic crisis." The same World Bank report states that "it is reported in the press that the FSS - in contravention of its duty to safeguard the soundness of {the ROK's} financial sector - has been pressuring financial institutions to extend credits to distressed companies as promised in {out-of-court} workout {Memoranda of Understanding ("MOU")}."

Additional information on the record suggests that the corporate restructuring mechanism for distressed firms in the ROK would continue to require additional reforms to ensure that corporate workouts are conducted on commercial terms and without government intervention. In particular, the IMF took issue with the ROK's record with "out-of-court" workouts, suggesting that greater reliance should be put on court-supervised insolvency in order to accelerate the restructuring of distressed companies, and stressing the need for additional insolvency reform. In

this context, the IMF directors "urged the authorities to refrain from pushing creditors into bailing out troubled companies. . ." See February 1, 2001 IMF Public Information Notice (No. 01/8), which is included as an appendix to the Direction Citations Memo on file in the Department's CRU. The directors noted that some government intervention in the financial markets may have been justified as long as these measures were transitory, kept distortions to a minimum, were limited to viable firms with temporary problems, and avoided the perception that some companies are "too big too fail." Id. The Directors concluded that the basic restructuring framework was largely in place, but that it was now critical "for the government to step back from intervening in the operation of markets and economic decision making, and instead rely in the future on markets in imposing discipline." Id.

Even a year later, the IMF directors found that, while some progress in corporate restructuring had been made, the corporate sector remained "beleaguered" by the continued operation of loss-making companies. In particular, the directors "stressed that the orderly exit of nonviable companies should be accelerated, and that state-owned banks, in particular, need to accept reductions on their claims, including by allowing a company to be liquidated if losses become unmanageable." See February 12, 2002 IMF Public Information Notice (No. 02/09), which is included as an appendix to the Direction Citations Memo on file in the Department's CRU.

The GOK has claimed that the GOK-owned banks make their lending and credit decisions based on commercial criteria. However, there is information on the record indicating that the GOK continues to direct, and otherwise apply pressure to, certain ROK lenders with regard to their lending and credit decisions. Specifically, there are numerous reports on the

record that indicate that the GOK was involved in certain bank lending and credit decisions during the POI to ensure that debt-ridden companies, particularly Hynix and other current or former Hyundai Group affiliates, would have access to financing or other funds provided by the banks.

For example, in September 2002, an ROK National Assembly member chastised the GOK in a press statement for compelling financial institutions to support the Hyundai Group and Hynix since the beginning of Hyundai's liquidity crisis in mid-2000. The report stated "{f}or two years following the outbreak of liquidity crisis in the Hyundai Group, the government of Dae-Joong Kim has provided astronomical sums of special support to the Hyundai Group, amounting to a total of 33.6 trillion won by mobilizing the resources of financial and government-run institutions."

A January 2001 Wall Street Journal article states that ROK banks have "been more accustomed to following government orders than making sound credit decisions." It further states that, when KFB (a bank that is 51 percent foreign-owned) refused to participate in a GOK debt restructuring program (that was focused primarily on Hyundai Group companies) at the request of the FSS, the FSS applied pressure to KFB and "strongly urged" KFB to participate in the plan lest it risk losing some of its clients. Commenting on this, an executive at a GOK-owned bank said that the nationalized banks were "green with envy," as "nobody wants to increase their exposure to these corporations that still have a long way to get their acts together." The article states that the FSS asked creditor banks to participate in this program, and only KFB refused.

An April 2001 Korea Herald article notes that the FSS threatened to fine Hana Bank if it failed to provide emergency liquidity to Hyundai Petrochemical, which was a part of the Hyundai Group that was going through the corporate workout process. In a June 2001 Dow Jones International news article, it was reported that KorAm Bank reversed its decision not to participate in the Hynix June 2001 convertible bond offering after the FSS warned of a possible sanction against KorAm if it did not participate. In February 2001, the managing director at UBS Warburg in Seoul stated that "the impression that we get is that while the government claims {the banks} are totally independent, behind-the-scenes pressure is being applied so that they lend to certain entities." In July 2001, with regard to corporate restructuring packages, an official at the MOFE stated that "we've decided to force all creditor financial institutions {both local and foreign} to take part in {creditor} meetings in order to prevent some of them from refusing to attend and pursuing their own interests by taking advantage of bailout programs."

According to a July 2002 Institutional Investor International article, "{a}mong the biggest concerns is the true extent of banking independence. Yes, there are plenty of signs that this autonomy holds sway - notably, KFB's stance toward the *chaebol*." The article continues, stating that although GOK officials state that there is no government pressure at all, not everyone is convinced. "The government has changed its policies quite a bit, but it still may assert influence," said a Credit Suisse First Boston ("CSFB") senior economist in Hong Kong. "Nobody can rule out intervention." According to a March 2002 New York Times article, "{m}any analysts say that privatization is needed to foster management independence and lending discipline. 'There's a suspicion that the government mucks around with the banks,' said an analyst at the IMF. With one-quarter of Korean companies losing money, he said, banks often

face political pressure to keep them on life support." Finally, an April 2001 Korea Times article notes: "{W}hether the Kim administration likes it or not, the Korean banks are now under tight state control. The government jawboned banks to bail out insolvent firms, including Hyundai Engineering and Construction {("HEC")}. The independence of the central bank was compromised, as the {BOK} must get approval for its budget from the {MOFE}."

(For a more detailed list of record information on the issue of direction, see Direction Citations Memo, noted above, which is on file in the Department's CRU.)

Moreover, although the GOK states that it has taken affirmative measures, such as the Prime Minister's Decree, to ensure that government officials at financial supervisory organizations do not interfere in the operations of commercial and specialized banks, record evidence indicates that GOK interference has continued, in some instances, and that the de jure measures contain sufficient ambiguities which would allow the GOK to become involved in the banking system. For instance, the Prime Minister's Decree at Article 5 states that the financial supervisory agencies can request cooperation from financial institutions for the purpose of the stability of the financial market, or to attain the goals of financial policies. As noted above, the financial system in the ROK has been going through a crisis that could be the type of situation in which this exception would be applied. A further exception that would allow GOK influence over the banks is included in Article 6 of the Prime Minister's Decree. Article 6 states that "the Minister of MOFE and KDIC shall, unless they exercise their rights as shareholders of any of the Financial Institutions, procure that the Financial institution, which was invested by the {GOK} or KDIC, can be operated independently under the direction of the Board of Directors thereof" (emphasis added). As noted above, because the GOK is part-owner in many commercial banks,

an exercise of its shareholder rights could allow the GOK an opportunity to become involved in the operations of the banks.

Finally, Article 17 of the Public Fund Oversight Special Act stipulates that when the GOK provides public funds to a financial institution (such as the recapitalization of a bank as occurred several times during this period), the GOK will enter into an MOU which will set financial soundness, profitability, and asset quality targets, and will consist of a detailed implementation plan for implementation of these targets. Pursuant to Article 14, the GOK will review the implementation of this plan on a quarterly basis. The GOK in this manner can be directly involved in the fiscal operations of the bank.

Thus, although record evidence does indicate that the GOK's financial system reforms have been positive and are beginning to take hold, evidence on the record indicates that, in certain instances, these reforms have yet to fully erase the GOK's direction of the banks, nor have they prevented the GOK from acting, through financial institutions involved in the ROK market, to ensure that Hynix received necessary financing. Therefore, based on the above, we preliminarily find that the GOK directed the lending and credit practices of certain sources of credit in the ROK from 1999 through June 2002 in limited situations, including the case of Hynix, as discussed below.

Before addressing the issue of whether credit is directed to a specific enterprise or industry in the ROK, we note that, in past cases, we have found that loans from ROK branches of foreign banks are not subject to the direction of the GOK. (See, e.g., Plate in Coils and Cold-Rolled Steel.) Specifically, we found that loans from Citibank were not directed by the GOK. (See, e.g., Plate in Coils memorandum dated March 4, 1999, "Analysis Concerning Post 1991

Direction of Credit," which is included as an appendix to the Direction Citations Memo on file in the Department's CRU.) Based on these past findings, we have preliminarily determined that the lending and credit practices of Citibank are not directed by the GOK. However, we intend to seek further information with regard to Citibank prior to the final determination.

Specificity

As discussed above, we have preliminarily determined that the GOK directed credit to the semiconductor industry through 1998. However, for the period 1999 through June 30, 2002, record evidence in this proceeding indicates that the GOK directed or provided loans and other benefits to a specific company or group of companies. The group of companies to which the GOK directed or provided loans during this period comprises companies that continue to be or were part of the Hyundai Group, including one of the respondents in this proceeding, Hynix.

As evidenced by many of the articles cited above regarding GOK direction of credit in this period, many of the statements that were made relating to government instructions to, and pressure on, banks related to financing for Hyundai Group companies or Hynix, or programs, such as the Fast Track program, discussed below, that were directed to Hyundai Group companies.

For example, as discussed above, in September 2002, a National Assembly member spoke out against the GOK's direction of credit to the Hyundai Group companies. However, National Assembly members were not the only ones speaking of this practice. The official response to the National Assembly Report from President Kim's office was as follows: "{w}e are doing what is deemed necessary to save companies leading the country's strategic industries." Another Blue House official said in January 2001 that "Hyundai is different from Daewoo. Its

semiconductors and constructions are Korea's backbone industries. These firms hold large market shares of their industries, and these businesses are deeply-linked with other domestic companies. Thus, these firms should not be sold off just to follow market principles."

In January 2001, the Korea Times stated that "cash-starved {Korean} companies claimed that the government's measures were only aimed at certain larger companies such as {Hyundai Merchant Marine, Co. Ltd ("HMM")}, HEI, and Korea Industrial Development." According to a March 2001 article in the Korea Herald, "{o}nce again, the government appears to have backtracked on reform pledges, as it allegedly forced creditors to extend trillions of won in fresh financial aid to three Hyundai Group firms - {HEI, HEC}, and Hyundai Petrochemical." And in May 2001, a senior KEB official stated that "{i}f Hynix is placed under receivership, Korea's exports will be severely battered {because} Hynix accounts for 4 percent of exports. As far as I know, the government is now working out a series of powerful measures to ensure the survival of Hynix Semiconductor."

The National Assembly member, quoted above, charged that the GOK provided "astronomical sums of special support to the Hyundai Group, amounting to a total of 33.6 trillion won by mobilizing the resources of financial and government-run institutions" from May 2000 to June 2002. The National Assembly Report relied on data relating to the corporate restructuring measures taken by the following Hyundai Group companies from May 2000 through June 2002: HEC, Hynix, Hyundai Petrochemical Co., Ltd., and HMM (collectively, "Hyundai Group"). During this period, ROK financial institutions participated in the Hyundai Group's restructuring measures, which included new loans, equity swaps, the acceleration of debt acquisition, the extension of debt maturities, convertible bond purchases, and debt exemptions for a total of

244,106 billion won; the total for Hynix was 120,017 billion won. During the same period, GOK authorities (the KDB and the Export-Import Bank of Korea, among others) provided support to the Hyundai Group totaling 115,365 billion won (Hynix data is not reported separately from these figures). Hynix' share of restructuring measures from financial institutions accounted for nearly 50 percent of the Hyundai Group's total.

In considering whether this program was de facto specific, we are mindful of other scenarios where there have been debt restructuring programs in situations of national financial difficulty. For example, in the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001) ("Thai Hot-Rolled Steel"), the Department found that a debt restructuring program was not specific to the respondent steel company because it was not limited to an enterprise or industry. There, the evidence showed that the program was broadly available across many industries, and the Department's evaluation showed that there was no predominant user or disproportionate share of the program, as well as other factors. (See Thai Hot-Rolled Steel, 66 FR 50410 and accompanying September 21, 2001 Decision Memorandum at Section III.A.4.) By contrast, here we find a number of indicators of ROK activity specifically focused on aiding Hynix and the Hyundai Group of companies.

Because record evidence indicates that the GOK's actions with respect to its direction of credit were specific to current or former Hyundai Group companies, we preliminarily find that this program is specific for Hynix pursuant to section 771(5A)(D)(iii)(I) of the Act. Further, we preliminarily determine that the GOK did not direct credit to SEC or the semiconductor industry as a whole during this period. Therefore, we preliminarily determine that any loans or other

benefits provided to SEC during this period pursuant to the allegations of direction of credit are not countervailable according to section 771(5) of the Act.

Specific Financial Contributions Made Pursuant to the GOK's Direction of Credit

Having preliminarily determined that the GOK directed credit to the semiconductor industry through 1998, and to Hynix subsequently, we now examine the financial contributions made by the directed financial institutions and the benefits conferred by those financial contributions.

1. *Hynix Financial Restructuring and Recapitalization*

In the fall of 2000, because of the weakness in the ROK financial system in the wake of the 1997 financial crisis, many companies, like HEI, were continuing to have trouble securing financing for their operations or to refinance maturing debt. HEI, specifically, had serious looming financial troubles, with several trillion won in short-term debt that was coming due in 2001.

According to Hynix, and as further discussed below, the first step taken by HEI and its financial advisors, Citibank and Salomon Smith Barney ("SSB"), was to work with HEI's creditors to borrow funds to meet immediate liquidity needs. These funds were arranged for in December 2000 in the form of a won 800 billion syndicated bank loan, which was organized by Citibank. Hynix reports that this was a stop-gap measure to cover certain immediate financial needs while a more comprehensive restructuring and recapitalization plan was being developed and implemented. At the same time, HEI was also nominated by its creditors to participate in a new GOK program starting in January 2001, the KDB Fast Track Debenture Program (discussed in greater detail below). Also in January 2001, Hynix arranged with its creditors to secure an

increase in its documents against acceptance ("D/A") line of credit from USD 800 million to USD 1.4 billion.

In March 2001, as part of its corporate restructuring, HEI changed its name to Hynix. This step was taken in advance of its official August 2001 separation from the Hyundai *chaebol*. At the same time, a group of Hynix' 17 major creditors formed the first Hynix Creditors' Financial Institution Council ("Creditors' Council"). According to the GOK, this Creditors' Council was based on the corporate workout process established by the GOK in June 1998 pursuant to the Corporate Restructuring Act ("CRA"), which was an informal agreement that comprised 210 ROK financial institutions. Under the CRA, the FSC would identify the lead creditor of the troubled corporation (normally the financial institution with the most outstanding debt). The lead creditor, which would be responsible for negotiating any corporate work-out terms, headed the Creditors' Council, a council made up of the troubled corporation's creditor banks. (In September 2001, the CRA was replaced by the CRPA, a more formal mechanism under ROK law which codified the corporate workout methods that were being utilized under the CRA.) However, although this Creditors' Council was based on the CRA councils, according to the GOK, it was not part of the CRA program but was a voluntary agreement among Hynix' creditors based on experience acquired while pursuing other workout agreements.

Hynix and SSB presented this Creditors' Council with an overall restructuring proposal for Hynix. This proposal included recapitalization in the form of a won 1 trillion convertible bond issuance and an issuance of USD 1.25 billion in common shares in the form of Global Depository Shares ("GDS"), and rescheduling and restructuring of Hynix' debt through maturity extensions and greater availability of short-term debt instruments. Hynix and its creditors

formally agreed to this restructuring plan in May 2001. As a result, in June 2001, Hynix issued won 994.1 billion in convertible bonds, borrowed won 5.9 billion in the form of a separate loan, participated in a successful USD 1.25 billion GDS issuance on foreign and domestic capital markets, and had many of its maturing debts rescheduled or refinanced. Hynix also was able to continue to access short-term usance and overdraft financing.

Despite these restructuring efforts, by summer of 2001, it became apparent that more restructuring would be necessary due to the unexpectedly prolonged downturn in the DRAMS market and Hynix' continuing financial troubles. Thus, Hynix and its advisors worked with Hynix' creditors to develop a new restructuring package that was adopted in October 2001. As part of this package, which was negotiated pursuant to the new CRPA, Hynix' new CRPA Council developed three options for Hynix' creditors: 1) for creditors that agreed to extend new loans, the creditors could convert D/A balances to general long-term loans, swap convertible bonds and unsecured loans to new convertible bonds (which would be subsequently converted into equity), and refinance or extend the remaining loans; 2) creditors that did not agree to extend new loans, but did agree to the debt-to-equity conversion, could convert all of their secured loans and 28 percent of their unsecured loans into the convertible bonds that would subsequently be swapped for equity, with the remainder of the unsecured loans to be forgiven; 3) creditors that did not agree to either new loans or the debt-to-equity conversion could exercise their appraisal rights for all of their secured debt and 25 percent of their unsecured debt based on Hynix' liquidation value as of September 31, 2001 (as established by an external consultant), and have the remainder of the debt forgiven. The various creditors of Hynix selected among these options, with the result that won 2.993 trillion in debt was swapped for equity on December 6, 2001, won

1.45 trillion in debt was forgiven, some new loans were issued, and numerous loans were extended or refinanced.

As discussed above in the "Direction of Credit and Other Financial Assistance section, we have preliminarily determined that the GOK directed Hynix' creditor banks to participate in these restructuring programs and to provide credit and other funds to Hynix in order to assist it through its financial difficulties. As indicated in the overview of the Hynix restructurings, the financial assistance provided to Hynix by its creditors took various forms. We preliminarily determine that these different means of supporting Hynix were financial contributions as described in section 771(5)(D) of the Act. Specifically, the loans, convertible bonds, extensions of maturities (which we view as new loans), D/A financing, usance financing, overdraft lines, debt forgiveness, and debt-for-equity swaps are direct transfers of funds from the GOK-directed financial institutions to Hynix. (See section 771(5)(D)(i) of the Act.)

We determined the benefits to Hynix from the various instruments as follows:

- For the long-term loans and new bonds that were issued as part of the restructuring program, we compared the interest rates on the directed long-term loans and new bonds to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above, in accordance with section 771(5)(E)(ii) of the Act. For the period January 2000 through June 2002, we used an uncreditworthy benchmark rate because we determined that Hynix was uncreditworthy during this period (as discussed above in the "Creditworthiness" section and the accompanying Creditworthiness Memo). For long-term variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate

methodology as described in 19 CFR 351.505(a)(5) and 19 CFR 351.505(c)(4). For long-term fixed-rate loans and bonds, consistent with Cold-Rolled Steel, we calculated the benefit using the Department's standard fixed-rate methodology specified in 19 CFR 351.505(c)(2). We summed these benefits to determine the total benefit during the POI from the long-term loans and bonds.

- For short-term loans, we calculated the benefit using the methodology specified in 19 CFR 351.505(c)(1) and (2). We summed these benefits to determine the total benefit during the POI from these short-term loans.

We treated the D/A financing as short-term debt. According to record information, this form of debt involved the discounting of receivables. Because we did not have the imputed interest rate on this type of debt, we assumed, as gap-filling facts available, that the interest rate was the same as the short-term rate on Hynix' other short-term debt that was denominated in the same currency. To calculate the benefit, we compared this short-term rate to the benchmark short-term rate.

Also, regarding the usance financing and overdraft lines, the ceilings and terms for both types of credit are normally renegotiated on an annual basis. However, as part of the May and October restructuring packages, both the usance and overdraft ceilings were extended for a longer period than the normal one-year agreement. For instance, in the May package, both the usance and overdraft credit lines were extended from December 2001 to June 30, 2003. The lines were further extended in the October package to December 2004.

Because the ceilings and terms were extended beyond one year and it is unclear at this point whether these loans could be outstanding for greater than one year, we treated these loans as long-term loans on the assumption that the loans could be outstanding for greater than one

year. For the period before the extensions (January through April 2001), we treated these loans as short-term loans.

Debt-to-Equity Swaps

As discussed above, as part of the October 2001 restructuring package, certain of Hynix' creditors swapped some of their outstanding debt for equity. To determine whether these equity purchases conferred a benefit on Hynix, we followed the methodology described in 19 CFR 351.507.

According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price paid by private investors for similar newly-issued equity. However, pursuant to 19 CFR 351.507**(a)(iii),** if a private investor's purchases of newly issued shares is not significant, the Department will not use the market price paid by the private investor for comparison purposes.

According to record information, Hynix was involved in a GDS issuance in June 2001 that was spearheaded by SSB. According to Hynix, the GDS issuance was oversubscribed by 1.5 times, which is a testament to its success. The GDSs were priced at twelve USD each and were equivalent to five shares of Hynix common stock.

In April 2001, prior to the GDS issuance, SSB issued a report on Hynix stating that it expected DRAMS prices to stabilize at USD 2.40 in the second quarter of 2001 and begin to rebound in the third quarter of 2001. In addition, SSB touted, "Hynix should offer tremendous potential upside to new and existing equity holders as the market improves this year." However,

shortly thereafter, SSB's positive forecasts proved to be the exact opposite of what happened to Hynix and the worldwide DRAMS market.

By July 2001, DRAMS prices had fallen 75 percent from their July 2000 levels, reaching USD 1.10. Morgan Stanley Dean Witter ("MSDW") stated in a July 2001 equity report on Hynix, "**{i}n view of the weakness in DRAMS fundamentals, the company's loss of competitiveness in the DRAMS business by not investing effectively, and its huge debt, which will likely continue to impair shareholders' value, we see no reason to be positive on the stock." MSDW slashed its earnings per share projections for Hynix by 51 percent for 2001, and 604 percent for 2002, based on this assessment.**

Echoing MSDW's concerns, CSFB, in July 2001, increased its forecast of Hynix' net losses from won 2.5 trillion to won 3.9 trillion for 2001, and from won 1.7 trillion to won 2.4 trillion for 2002. In August 2001, despite the worsening of the DRAMS market and Hynix' financial state, SSB continued to see Hynix in a positive light. SSB, however, revised its 2001 revenue estimates for Hynix to won 4.3 trillion, down from Hynix' own revenue estimates of won 8.7 trillion made in April 2001.

By September of 2001, investors worldwide voiced their pessimism towards the DRAMS market in the stock exchanges. According to Dow Jones International, by September 2001, Hynix' GDSs had lost 72 percent of their issuance value, a loss of USD 900 million to investors. By October of 2001, the DRAMS market had changed dramatically from January, and even June, 2001. According to the Wall Street Journal, DRAMS prices were below cost industry-wide. In an October 8, 2001, article, the Wall Street Journal stated, "{a}lthough chip makers worldwide are taking a loss with each chip they sell, Hynix,

according to industry analysts, is in the worst financial shape. In early September, Hynix' future looked shaky. Now, as the global economic outlook gets grimmer, {Hynix'} looks worse."

Because of the extreme differences in the condition of the global DRAMS market as a whole, and Hynix' financial state at the time of the two equity infusions, we do not believe that the GDS issuance in June 2001 supports a conclusion that the October 2001 equity purchase (i.e., debt-to-equity conversion) was consistent with the usual investment practices of private investors (see section 771 (5)(E)(i) of the Act). Clearly, the earlier, rosy expectations for a rebound in DRAM demand and prices, which were necessary for Hynix to improve its position, were not bourne out. Therefore, we have not considered the GDS issuance in our analysis of the usual investment practices of private investors. Nor have we used the prices paid for the GDS as a measure of what a private investor would pay for Hynix' stock in October 2001.

Citibank was one of Hynix' creditors that opted to swap debt for equity in the October 2001 debt restructuring. As discussed above, we have preliminarily determined that Citibank's participation in the Hynix restructuring was not directed by the GOK. Therefore, we must consider whether Citibank's decision to swap debt for equity demonstrates that the other creditors' decision to swap their debt for equity was consistent with the private investor standard in section 771 (5)(E)(i) of the Act.

Pursuant to 19 CFR 351.507(a)(2)(3), if a private investor's purchases of newly issued shares are not significant, the Department will not use the market price paid by the private investor for comparison purposes**. Although we cannot reveal the actual portion of the equity**

purchase accounted for by Citibank because it is proprietary, we preliminarily determine that Citibank's purchase was insignificant.

In discussing the requirement in 19 CFR 351.507(a)(2)(3), "the amount of shares purchased by a private investor must be significant in order to provide an appropriate benchmark," the Preamble refers to Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy, 60 FR 31992, 31994 (June 19, 1995) ("Pipe from Italy"). In Pipe from Italy, the Government of Italy ("GOI"), and numerous private investors participated in the same equity issuance. The GOI purchased 81.6 percent of the shares, while private investors purchased the remaining 18.4 percent, at the same price. The Department, in Pipe from Italy, considered the private investors' participation in the equity issuance significant and, therefore, did not find the GOI's equity infusion inconsistent with the usual investment practice of private investors. The portion of equity obtained by Citibank in Hynix' October restructuring was less than the private investors' participation in **Pipe from Italy**.

Because we did not have actual private investor prices to use as a comparison to the price paid by Hynix' other creditors, we examined other indicators of Hynix' equityworthiness, pursuant to 19 CFR 351.507(a)(4). From 1997 through 2001, Hynix reported losses in every year except 1999. In 2000, Hynix' net income was negative 28 percent and in 2001, its net income was negative 127 percent. Based on Hynix' financial statements, its return on equity was negative in 1998 (negative 6 percent), 1999 (negative 3 percent), 2000 (negative 40 percent), and 2001 (negative 97 percent). MSDW estimated Hynix' return on equity for 2002 at negative 76 percent. Additionally, for the years 1997

through 2001, Hynix' debt-to-equity ratios ranged from 688 percent in 1997 to 129 percent in 2001. These figures clearly demonstrate Hynix' poor condition throughout the late 1990s and through 2001.

Based on these indicators, we preliminarily determine that Hynix was unequityworthy at the time of the October 2001 debt-to-equity swap. In accordance with 19 CFR 351.507(a)(6), we have treated the amount of equity purchased by Hynix' creditors, other than Citibank, as a grant.

As discussed above, Hynix' October restructuring package included the conversion of won 2.99 trillion in convertible bonds, and secured and unsecured loans into new convertible bonds which carried an obligation to convert the bonds into equity. These bonds were issued on December 6, 2001. Because the new convertible bonds carried a conversion obligation, Hynix recorded the debt-to-equity swap as a capital adjustment in its 2001 financial statements. **Therefore, we have treated the benefit as having been provided to Hynix in 2001.**

In accordance with 19 CFR 351.507(c), we allocated the benefit of the debt-to-equity conversion over the AUL using the uncreditworthy discount rate as described in the "Subsidies Valuation Information" section, above.

Debt Forgiveness

Under 19 CFR 351.508(c), the benefit conferred by a debt forgiveness is the amount of the debt forgiven. To calculate the benefit to Hynix received during the POI from the October 2001 debt forgiveness, we allocated the entire amount of debt forgiven over the AUL using an uncreditworthy discount rate.

KDB "Fast Track" Debenture Program

In the aftermath of the 1997 financial crisis, many ROK companies had to borrow heavily to service their USD-denominated debts, which soared as the value of the won plummeted against the USD. Many companies did so through corporate bond issues, most of which were set to mature in late 2000 and 2001. However, when it came time for these bonds to mature, difficulties in the financial market, including unwillingness by investors to invest in the bond market due to heightened risk, especially in companies with poor credit ratings, made it difficult for many companies to refinance or service their maturing bonds. Moreover, many financial institutions could not extend further financing to companies because of loan exposure limits put in place following the financial crisis.

Due to this situation, many ROK companies, especially those with below-investment grade bond ratings, were left with serious liquidity problems. Furthermore, the won 65 trillion in corporate bonds coming due in 2001 threatened to overwhelm the capital markets. Therefore, the GOK instituted several programs to try to address this situation. In June 2000, the GOK established the Collateralized Bond Obligation ("CBO") and Collateralized Loan Obligation ("CLO") programs in order to support the refinancing of corporate bonds. Through these programs, the GOK purchased debentures and loans from ROK companies, repackaged them into portfolios that included many bonds from different companies, and sold securities backed by those bonds and loans to investors with a partial guarantee from the Korea Credit Guarantee Fund ("KCGF"). No more than 10 percent of the debt of any one company could be placed into a single bundle of bonds or loans. According to the GOK, any company with maturing bonds was eligible to participate in the CBO and CLO programs.

Because many companies had much greater debt than could be handled by each CBO/CLO portfolio due to the 10 percent exposure limit, the GOK created the KDB Fast Track or Debenture Program to address this problem. Under the Fast Track program, which was administered by the KDB, companies selected to participate in this program first had to redeem 20 percent of their bonds that were maturing in 2001; the remaining 80 percent of the maturing bonds were purchased by the KDB, and were subsequently replaced with new bonds issued by the participating companies. Of the bonds purchased by the KDB that were replaced by new issues, 10 percent of the new bonds issued were kept by the KDB, 20 percent of each new issue was purchased by the company's creditors (a blanket waiver was issued by the GOK in order to allow the creditors to surpass their loan exposure limits), and the remaining 70 percent of each new issue was bundled with other bonds and sold as CBOs or CLOs (which were partially guaranteed by the KCGF). As part of the agreement that had to be signed by the participating companies, each company was required to purchase a certain percentage of its subordinated bonds bundled with other bonds in the CBOs and CLOs (three percent in the case of a CBO, and five percent for a CLO). The program ceased to operate at the end of 2001.

According to the GOK, in order to participate in the Fast Track program, companies had to be nominated by their Creditors' Councils. Companies eligible to participate in this program, as established in Article 8 of the Creditor Financial Institutions and Corporate Credit Guarantee Fund Council Agreement to Facilitate Bond Offerings, are those that 1) are experiencing temporary liquidity problems due to a large-scale maturation of corporate bonds but have the ability to redeem at least 20 percent of those bonds; 2) are nominated by their Creditors' Council; and 3) that are not distressed companies that are undergoing corporate reorganization or workout

programs. According to record evidence, only six companies participated in this program, four of which were current or former Hyundai affiliates.

Hynix was selected to participate in the Fast Track program in January 2001. According to Hynix, won 1.208 trillion of its bonds were refinanced through this program. Of this total, the KDB purchased won 120.8 billion (or 10 percent) of the maturing bonds, the creditor banks purchased won 241.6 billion (or 20 percent) of the maturing bonds, and the CBO/CLO funds purchased 70 percent of the remaining new issues, won 845.6 billion. Upon incorporation into the CBO and CLO funds, Hynix then repurchased back the specified proportion of the subordinate bonds through the CBOs and CLOs. Hynix participated in the program only until August 2001.

As discussed above, we have preliminarily determined that the GOK's direction of credit was specific to Hynix and other current or former Hyundai Group companies. Additionally, we preliminarily determine that the Fast Track program was de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the participants in this program were limited in number. However, we preliminarily determine that the bonds that were placed in the CBO and CLO funds as part of this program did not provide a countervailable subsidy to Hynix because, according to record information, those programs were available to anyone with maturing bonds that wanted to participate and we have found no evidence of de jure or de facto specificity in the application of the program.

To determine the benefit received by Hynix as a result of the Fast Track program, we compared the interest rates on the directed bonds to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above. We calculated the benefit from these bonds

using the Department's standard fixed-rate methodology described in 19 CFR 351.505(c)(2). We summed these benefits to determine the total benefit during the POI.

2. *Other Loans Provided from 1999 through the POI*

With the exceptions noted below, for all other loans obtained by Hynix during this period that were outstanding during the POI, we calculated the benefit using the methodology described above for the Hynix restructuring loans.

Hynix stated in its questionnaire responses that it obtained Long-Term Usance loans, as well as loans under the Fund for Promotion of Informatization and the Fund for Promotion of Defense Industry, during this period that were outstanding during the POI. Hynix reported that these loans were for projects involving non-subject merchandise. Thus, for the purposes of this preliminary determination, we have not included these loans in our benefit calculations for Hynix. We note that Hynix' questionnaire responses on this matter will be subject to verification.

3. *Loans Provided Prior to 1999*

As explained above, the Department has preliminarily determined that the GOK directed credit to the semiconductor industry in the period through 1998. We further determine that these GOK-directed loans to Hynix and SEC are financial contributions as described in section 771(5)(D)(i) of the Act.

The directed loans received by Hynix and SEC through 1998 that were outstanding during the POI were long-term fixed- and variable-rate foreign currency loans and long-term

fixed- and variable-rate won-denominated loans. In order to determine whether a benefit was received by Hynix or SEC as a result of the long-term loans that were received through 1998 (with the exception of those noted below), we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above. For long-term variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate methodology as described in 19 CFR 351.505(a)(5) and 19 CFR 351.505(c)(4). For long-term fixed-rate loans, consistent with Cold-Rolled Steel, we calculated the benefit using the methodology specified in 19 CFR 351.505(c)(2). We summed the benefit amounts during the POI to determine the total benefit for each company.

Hynix reported that it did not directly receive loans under the Energy Savings Fund ("ESF") (loans made from this fund are discussed in Plate in Coils, 64 FR at 15533, and Structural Beams, 65 FR 41051 and accompanying July 3, 2000 Decision Memorandum at page 12, Section I.A.2). The GOK, on the other hand, reports that Hynix did in fact maintain an outstanding ESF loan balance during the POI. The basis for Hynix' claim that it did not participate in the ESF program is that funding for Hynix projects was disbursed to third-party energy savings companies ("ESCOs"), which completed the Hynix ESF projects under contract.

The record indicates that Hynix and the ESCOs submitted applications jointly to the Korea Energy Management Corporation in order to obtain ESF funding. Information concerning these transactions is not on the record, and, accordingly, we are not making a determination concerning Hynix ESF loans at this time. Instead, we will request further information on this

matter during the course of this proceeding and will make a finding on this matter in the final determination.

SEC reported that certain loans received under the Science and Technology Promotion Fund prior to 1999 were tied to non-subject merchandise (loans made from this fund are discussed in Structural Beams, 65 FR 41051 and accompanying July 3, 2000 Decision Memorandum at page 13). Furthermore, both Hynix and SEC stated in their questionnaire responses that their loans from the Fund for Promotion of Informatization and the Fund for Industrial Technology Development that were obtained during this time period were for projects involving non-subject merchandise. Thus, for the purposes of this preliminary determination, we have not included these loans in our benefit calculations. We note that Hynix' and SEC's questionnaire responses on this matter will be subject to verification.

Countervailable Subsidy Rates for Hynix and SEC

We used the above mentioned methodologies to calculate the benefit from all of the financial contributions discussed above, and summed the benefit amounts from all financial contributions. We then divided the total benefit by each respective company's total sales values during the POI. On this basis, we determine the net countervailable subsidy to be 57.23 percent ad valorem for Hynix and 0.01 percent ad valorem for SEC.

B. Tax Programs Under the Tax Reduction and Exemption Control Act ("TERCL") and/or the Restriction of Special Taxation Act ("RSTA")

Under ROK tax laws, ROK companies are allowed to claim tax credits for various kinds of investments. If the investment tax credits cannot be used entirely during the year they are claimed, then the company may carry them forward for use in subsequent years.

Until December 28, 1998, these investment tax credits were provided under the TERCL. On that date, the TERCL was replaced by the RSTA. Pursuant to this change in the law, tax credits based on eligible investments made after December 28, 1998 were provided under the authority of RSTA.

In past proceedings, the Department found that companies that invested in domestically-produced facilities (i.e., facilities produced in the ROK) received higher tax credits than companies that invested in foreign-produced facilities under these programs. See CTL Plate, 64 FR at 73182. Under section 771(5A)(C) of the Act, subsidies that are contingent upon the use of domestic goods over imported goods are specific. Accordingly, the Department determined that the higher tax credits for investments made in domestically-produced facilities constituted import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK had foregone the collection of tax revenue otherwise due under this program, the Department determined that a financial contribution was provided as described in section 771(5)(D)(ii) of the Act, with a benefit to the recipients in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Therefore, the Department determined that this program was countervailable. See CTL Plate, 64 FR at 73182.

In Cold-Rolled Steel, the Department found that changes had been made in the manner in which at least some of these investment tax credits are determined. See Cold-Rolled Steel, 67 FR 62102, and the accompanying September 18, 2002 Decision Memorandum at page 12, Section I.F. **Pursuant to amendments made to the TERCL on April 10, 1998, the distinction between investments in domestic and imported goods was**

eliminated for certain programs, including the Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA) and the Tax Credit for Investment in Specific Facilities (Article 25 of RSTA). Accordingly, the Department determined that tax credits received under these programs for investments made after April 10, 1998 are no longer countervailable. However, companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998 amendment to the tax law. Consistent with Cold-Rolled Steel, the Department continues to find countervailable the use of investment tax credits earned on investments made before April 10, 1998.

The specific Articles under the TERCL and the RSTA that we are investigating in the instant investigation are discussed separately below:

Temporary Tax Credit for Investment (Article 26 of RSTA)

The tax credit program under Article 26 of RSTA was enacted to promote investment in facilities during periods of economic slowdown. It provides a tax credit equal to ten percent of the investments made by companies in certain eligible industries specified in the implementing Presidential Decree, which includes the computer industry. Article 26 of RSTA was not among the programs found in Cold-Rolled Steel to have eliminated the import substitution advantage for eligible investments made after April 10, 1998.

Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program. SEC claimed credits and received tax benefits under this program in its 2001 tax return for tax year 2000, but not in its 2002 tax return for tax year 2001.

As discussed above, we found in CTL Plate that tax programs offered as part of the RSTA and the TERCL bestowed a financial contribution in the form of foregone revenue, as described in section 771(5)(D)(ii) of the Act, with a benefit to the recipients in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Moreover, as discussed above, we determined in CTL Plate and Cold-Rolled Steel that tax benefits offered through the RSTA and the TERCL are de jure specific pursuant to section 771(5A)(C) of the Act, to the extent that they are contingent upon the use of domestic goods over imported goods. As noted above, this Article of the RSTA was not one of the programs for which the distinction between domestic and foreign-produced merchandise was eliminated. Therefore, because ROK companies received a higher tax credit for investments made in domestically-produced facilities,
we preliminarily find that this program is specific pursuant to section 771 (5A)(C) of the Act. Thus, we preliminarily determine that this program conferred countervailable subsidies upon SEC during the POI.

In calculating the benefit for SEC, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received by SEC during the POI by SEC's total sales during the POI. On this basis, we preliminarily determine that a countervailable benefit of 0.15 percent ad valorem exists for SEC under this program.

C. Electricity Discounts Under the Requested Load Adjustment ("RLA") Program

The GOK introduced an electricity discount under the RLA program in 1990 to address emergencies in the Korea Electric Power Company's ("KEPCO") ability to supply electricity.

Under this program, customers with a contract demand of 5000 kilowatts or more who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3000 kilowatts or more are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kilowatt is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load.

During the POI, SEC received an RLA discount for July and August 2001. Hynix did not participate in the program during the POI.

The Department has previously found this program to be countervailable. See Sheet and Strip, 64 FR 30636, and Cold-Rolled Steel, 67 FR 62102 and accompanying September 23, 2002 Decision Memorandum at page 18, Section I.M. Specifically, we found this program specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. A financial contribution is provided within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government, with the benefit being a discount on the company's monthly electricity charge. No party has provided any new information to warrant reconsideration of this determination. Therefore, we preliminarily determine this program to be countervailable pursuant to section 771(5) of the Act.

Consistent with Sheet and Strip and Cold-Rolled Steel, because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which SEC received from KEPCO under the RLA program during the POI. We then divided that amount by SEC's total sales value for the POI. On this basis, we determine a net countervailable subsidy of 0.00 percent ad valorem for SEC.

D. Operation G-7/HAN Program

Under the Framework Act on Science and Technology, the GOK made direct financial contributions in the form of interest-free loans to respondent companies under the Operation G-7/HAN Program**. These loans were provided as matching funds in support of the Next Generation Semiconductor Technology Project from 1993 through 1997 through the Ministry of Science and Technology ("MOST"), the Ministry of Commerce, Industry, and Energy, and other administrative authorities.**

Both Hynix and SEC report that they had loans that were outstanding during the POI under this program.

We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited to the semiconductor industry. In addition, we preliminarily determine that a financial contribution was provided under section 771(5)(D)(i) of the Act in the form of direct loans from the GOK. Finally, pursuant to section 771(5)(E) of the Act, we preliminarily determine that the benefit conferred by this program is the difference between the amount the companies paid on the loans and the amount the companies would pay on comparable commercial loans.

Consistent with section 771(5)(D)(i) of the Act and 19 CFR 351.505(c)(2), we calculated the benefit from these loans by comparing the interest actually paid on the loans during the POI to what the companies should have paid during the POI. We used as our benchmarks the rates described in the "Discount Rates and Benchmarks for Loans" section, above. We then divided the total benefit from the loans for each company by the company's total sales in the POI to calculate the total countervailable subsidy. On this basis, we preliminarily determine that countervailable benefits of 0.14 percent ad valorem and 0.01 percent ad valorem exist for Hynix and SEC, respectively.

E. 21st Century Frontier R&D Program

The 21st Century Frontier R&D program is a GOK program established in 2000 that provides loans to semiconductor manufacturers in the form of matching funds for research and development to overcome the technological limits of next-generation semiconductor technology, among other goals. The GOK made direct financial contributions under this program in the form of interest-free loans through the MOST and other administrative authorities.

SEC claims that it did not receive any loans under this program. Hynix reports that it had loans outstanding during the POI under this program.

We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(i) of the Act, because it is limited to the semiconductor industry. In addition, we preliminarily determine that a financial contribution was provided under section 771(5)(D)(i) of the Act in the form of direct loans from the GOK. Finally, pursuant

to section 771(5)(E) of the Act, we preliminarily determine that the benefit conferred by this program is the difference between the amount the companies paid on the loan and the amount the companies would pay on comparable commercial loans.

Consistent with section 771(5)(D)(i) of the Act, we calculated the benefit from these loans by comparing the interest actually paid on the loans during the POI to what the companies should have paid during the POI. We used as our benchmarks the benchmarks discussed in the "Discount Rates and Benchmarks for Loans" section above. We then divided the total benefit from the loans for each company by the company's total sales in the POI to calculate the total countervailable subsidy. On this basis, we preliminarily determine that a countervailable benefit of 0.00 percent ad valorem exists for Hynix.

II. Programs Preliminarily Determined to Be Not Countervailable

Tax Programs Under the TERCL and/or the RSTA

1. *Reserve for Research and Human Resources Development (formerly Technological Development Reserve) (Article 9 of RSTA / formerly, Article 8 of TERCL)*

Article 8 of the TERCL permits an ROK company operating in manufacturing or mining, or in a business prescribed by a Presidential Decree, to set aside funds into a reserve account to cover a company's planned expenditure for the "development or innovation" of technology. These funds are reported as a loss in the current taxable year, thus reducing the company's tax liability. Article 8 specifies that capital goods producers and technology-intensive companies can establish a reserve of up to five percent of revenue, while companies in other industries are

limited to a three percent reserve. After a two-year grace period, funds set aside for the reserve must be allocated as income over a three-year period.

Hynix established a fund in 1996, and evenly distributed the fund as taxable income in years 1999 through 2001. SEC created a reserve under this program in 1999; it did not allocate any portion of this fund as taxable income through the end of the POI.

In CTL Plate, 64 FR at 73181, we determined that this program was countervailable for companies that could claim a five percent tax reserve, but not for companies that could claim a three percent tax reserve. Both Hynix and SEC claim that they are only eligible for the three percent tax reserve. Therefore, we preliminarily determine that this program is not countervailable with respect to Hynix and SEC because neither was eligible for the countervailable reserve.

2. *Tax Credit for Research and Human Resources Development Expenses (Article 10 of RSTA/ Article 9 of TERCL)*

Article 10 of the RSTA replaced Article 9 of the TERCL at the beginning of 2001. It provides a tax credit for certain qualifying expenses related to research and human resources development ("R&HRD"), deductible from individual or corporate income tax. Under Article 9 of the TERCL, the credit was limited to certain mining, manufacturing, or other businesses (including computer companies), as specified by the implementing Presidential Decree. Under Article 10 of the RSTA, however, eligibility was extended to all domestic businesses, except for those in real estate or consumptive services. There are two methods for calculating the credit, under which the amount is equal to either 1) 50 percent of the amount by which the R&HRD expense incurred for the relevant tax year exceeds the

yearly average of R&HRD expenses incurred over the four years preceding the tax year; or 2) 15 percent of R&HRD expenses for the tax year. Persons other than small and medium enterprises, however (e.g., large corporations) may claim credits only pursuant to the first method.

Hynix claims it was not eligible for this program during the POI and, hence, claimed no tax credits and received no benefits under the program during the POI. SEC claimed credits and received tax benefits under this program in its tax returns for 2000 and 2001, which were applicable to its tax liabilities during the POI.

Based on the record evidence, we find no indication that this program is specific on any basis under section 771(5A). Therefore, we preliminarily determine that benefits received under this program are not countervailable.

3. *Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA /Article 25 of TERCL)*

Article 24 of the RSTA, which is the Tax Credit for Investment in Facilities for Productivity Enhancement, provides tax credits for investments in specified capital equipment. We have previously determined that tax credits received pursuant to these investment programs for investments made after April 10, 1998 are not countervailable because a distinction between investment in domestic versus foreign-made goods was eliminated. See 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 March 10, 2003 Decision Memorandum at page 11, Section III.A.8.

Both SEC and Hynix claimed exemptions under Article 24 of the RSTA. All of SEC's tax credits resulted from investments made after April 10, 1998. Therefore, we preliminarily conclude that SEC did not receive countervailable benefits under this program. **Additionally, Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program.**

4. *Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)*

Article 25 of the RSTA provides tax credits equal to three percent of the company's investment in specified facilities related to, among other things, environmental and health and safety measures. The credits are deducted from the company's corporate income tax liability. Article 25 of the RSTA was among the programs found in Cold-Rolled Steel to have eliminated the import substitution tax advantage for eligible investments made after April 10, 1998. Thus, tax credits based on investments made after that date are not countervailable.

Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program. SEC claimed credits under this program in its 2001 tax return for tax year 2000, but not in its 2002 tax return for tax year 2001. However, SEC reports that all tax credits it earned under the program for the POI were based on investments made after April 10, 1998. Moreover, SEC reports that it did not carry forward any tax credits from years prior to April 10, 1998. Therefore, we preliminarily find that neither Hynix nor SEC received a benefit from this program during the POI.

III. Programs Preliminarily Determined Not To Have Been Used

Based on the information provided in the responses, we determine no responding companies applied for or received benefits under the following programs during the POI:

A. Short-Term Export Financing

B. Tax Programs Under the TERCL and/or the RSTA

1. *Reserve for Overseas Market Development (formerly, Article 17 of TERCL)*

2. *Reserve for Export Loss (formerly, Article 16 of TERCL)*

3. *Tax Exemption for Foreign Technicians (Article 18 of RSTA)*

4. *Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)*

C. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/ FIPA (Formerly Foreign Capital Inducement Law)

D. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

E. Export Insurance

The Korean Export Insurance Corporation ("KEIC") was established pursuant to the Export Insurance Act of 1968 for the purpose of providing export insurance. Insurance policies issued to ROK companies through this program provide protection from risks such as payment refusal and buyer's breach of contract. Claims are paid from the Export Insurance Fund, which is managed by the KEIC and is funded by contributions from the GOK and the private sector via premium payments. The KEIC determines premium rates by considering numerous factors,

including the creditworthiness of the importing party and the term of the policy. Hynix and SEC both participated in this program during the POI.

To determine whether an export insurance program provides a countervailable benefit, we first examine whether premium rates charged are adequate to cover the program's long-term operating costs and losses. See 19 CFR 351.520(a)(1). In doing so, the Department will analyze both the viability of the program and the overall commercial health of the entity operating the program. In examining whether rates are manifestly inadequate, the Department will examine a five-year period, POI inclusive. See Preamble, 63 FR at 65385.

The GOK reports that the KEIC export insurance program has experienced operating losses for all of these years, and that the GOK has been covering the losses incurred by this program. Therefore, we preliminarily determine that the premium rates that are being charged are inadequate pursuant to 19 CFR 351.520(a)(1). If the Department determines that premium rates are inadequate, pursuant to 19 CFR 351.520(a)(2), the benefit amount is calculated as the net amount of compensation received (compensation received less premium fees paid). Thus, consistent with the Final Affirmative Countervailing Duty Determination: Carbon Steel Butt-Weld Pipe Fittings From Israel, 60 FR 10569, 10571 (February 27, 1995), we examined export insurance expressly related to DRAMS exported to the United States. SEC did not make any claims or receive any pay-outs from the KEIC related to DRAMS during the POI; Hynix reported that it also did not receive any pay-outs during the POI. Therefore, we preliminarily determine that neither SEC nor Hynix received a countervailable benefit pursuant to this program within the meaning of section 771(5)(E) of the Act during the POI.

IV. Program Preliminarily Determined to Not Exist

Based on the information provided in the responses, we preliminarily determine that the following program does not exist:

Won 680 Billion Bond Guarantee

V. Programs For Which We Did Not Make A Preliminary Determination

As noted above, because we received several new subsidy allegations from the petitioner only 40 days prior to this preliminary determination, and were not able to initiate an investigation of two of these programs until four weeks before the preliminary determination (as discussed in the New Subsidy Allegations Memo), we had insufficient time prior to this preliminary determination to properly analyze the data and information submitted in response to these new programs. However, **we will make a finding on the following new programs in the final determination:**

A. Import Duty Reduction for Cutting Edge Products

B. **Permission for Hynix and SEC to Build in Restricted Area**

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates for Hynix and SEC to be the following:

Producer/Exporter	Net Subsidy Rate
Samsung Electronics Co., Ltd.	0.16 percent
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	57.37 percent
All Others	57.37 percent

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the "all others" rate as Hynix' rate because the rate for SEC, the only other investigated company, is de minimis.

Pursuant to section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of DRAMS from the ROK (except for entries from SEC) that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise (except for entries from SEC) in the amounts indicated above. Entries from SEC are not subject to this suspension of liquidation because we have preliminarily determined its rate to be de minimis. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such

information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and

(3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

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Joseph A. Spetrini

Acting Assistant Secretary

for Import Administration

Date