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October 17, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
Import Administration

RE: Countervailing Duty Investigation: Coated Free Sheet Paper from
the Republic of Korea

Subject: Issues and Decision Memorandum for Final Determination

I. SUMMARY

We have analyzed the case briefs and rebuttal comments of interested parties in the above-referenced countervailing duty (CVD) investigation covering January 1, 2005, through December 31, 2005. After analyzing the comments, we have made certain modifications to the Preliminary Affirmative Countervailing Duty Investigation: Coated Free Sheet Paper from the Republic of Korea, 72 FR 17507 (April 9, 2007) (Preliminary Determination).¹ The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to EN Paper Mfg. Co., Ltd. (EN Paper) (formerly Shinho Paper Co., Ltd. (Shincho)), Kyesung Paper Co., Ltd. (Kyesung), Moorim Paper Co. Ltd. (Moorim) (formerly Shinmoorim Paper Mfg. Co., Ltd.), and Hansol Paper Co., Ltd. (Hansol) (collectively, respondents). Also below is the “Analysis of Comments” section, which contains the Department of Commerce’s (the Department) response to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

¹ The Preliminary Determination was revised. See Notice of Amended Preliminary Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea, 72 FR 26074 (May 8, 2007) (Amended Preliminary Determination).

Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from interested parties:

- Comment 1: Whether the GOK Directed Credit to the Pulp and Paper Industry
- Comment 2: Stainless Steel Is Not Applicable to Poongman's Restructuring
- Comment 3: GOK Assisted and Directed Credit to Poongman During its Restructuring
- Comment 4: Poongman Was Unequityworthy and Uncreditworthy
- Comment 5: Poongman Did Not Benefit from Debt Forgiveness
- Comment 6: Evidence of Entrustment or Direction of Shinho's Creditors
- Comment 7: GOK Ownership of Shinho's Creditors and the Corporate Restructuring Process
- Comment 8: Whether Shinho Was Uncreditworthy During its 1998, 2000, and 2002 Restructurings and 2004 Syndicated Loan
- Comment 9: Whether Shinho Was Unequityworthy During its 1998, 2000, and 2002 Restructurings
- Comment 10: The Validity of the Analyses of Shinho's Financial Status Conducted by Third Parties
- Comment 11: Donghae Pulp's Sale of Chemical Pulp for Less Than Adequate Remuneration
- Comment 12: Commerce Correctly Calculated the Benefits from Donghae Pulp Based On Monthly Weighted-Average Prices
- Comment 13: If the Department Continues to Calculate Monthly Weighted-Average Prices for Donghae Pulp, Certain Methodological Corrections Are Required
- Comment 14: Hansol's Arguments that Donghae Pulp is Owned or Controlled by the GOK
- Comment 15: The Benefit Calculation for Donghae Pulp's Sale of Pulp Must Account for Prevailing Market Conditions
- Comment 16: Whether Usance and Document Acceptance Loans Provided Outside of the ACCL Program Are Countervailable
- Comment 17: Whether the Department Should Pro-Rate Benefits on D/A Loans Under the Korea Export Import Bank (KEXIM) Program
- Comment 18: Source Data of the Benchmark To Be Applied to D/A Loans Under the KEXIM Rediscount Program and Usance Loans Issued by GOK Authorities
- Comment 19: Calculation of Benchmark To Be Applied to D/A Loans Under the KEXIM Rediscount Program

- Comment 20: Whether Commercial Paper and Corporate Procurement Loans are Countervailable
- Comment 21: Use of Company-Specific Benchmark to Measure the Benefit to Hansol Under KEXIM's Export and Import Credit Financing Program
- Comment 22: Use of Non-Company-Specific Benchmarks for KEXIM's Import and Export Credit Financing Program
- Comment 23: Whether Hansol Received Countervailable Benefits Through the KDB's Placement of its Corporate Bonds
- Comment 24: Whether Loans from the Industrial Base Fund (IBF) Constitute Countervailable Export Subsidies
- Comment 25: Benchmark Rates for Long-Term Korean Won-Denominated Loans

II. SCOPE COMMENTS

On August 20, August 28, and September 10, 2007, the petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of coated free sheet (CFS) paper from Indonesia, Korea and the People's Republic of China to include coated free sheet paper containing hardwood BCTMP. Because this request affected all six investigations, the Department set up a general issues file to handle this scope request. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by the petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, entitled "Scope Clarification Request: NewPage Corporation" (Scope Memorandum), which is appended to the "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China." All comments submitted by the parties to all six investigations are addressed in the Scope Memorandum.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) for which we are measuring subsidies is January 1, 2005, through December 31, 2005, which corresponds to the most recently completed fiscal year for all of the respondents. See 19 CFR 351.204(b)(2).

IV. SUBSIDIES VALUATION INFORMATION

A. Benchmark for Short-Term Loans

The benefit calculation for Export and Import Credit Financing from the Export-Import Bank of Korea (KEXIM) requires the application of a won-denominated, short-term interest rate benchmark. Our analysis of commercial paper and corporate procurement loans under the Aggregate Credit Ceiling Loan (ACCL) program also requires a short-term benchmark denominated in won. Absent a company-specific interest rate, we used as our benchmark the lending rate for won-denominated loans for the POI, as reported in the International Monetary Funds (IMF) International Financial Statistics. This approach is unchanged from the Preliminary Determination and the September 6, 2007, Memorandum to David M. Spooner, Assistant Secretary, for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Decision Memorandum Regarding the Industrial Base Fund and Short-Term Financing" (Preliminary Decision Memorandum).

We received comments from interested parties regarding the use of won-denominated short-term benchmarks. See Comments 20 through 22.

The benefit calculation for document acceptance (D/A) loans rediscounted under KEXIM's rediscount program requires the application of benchmarks denominated in U.S. dollars, Japanese yen, and euros. For U.S. dollar-denominated loans, we used as our benchmark usance loans issued by commercial banks. Where no such data were available, we used the U.S. dollar lending rate, as published in the IMF's International Financial Statistics. As discussed below, we have determined that short-term usance loans issued by Government of Korea (GOK)

authorities are not de facto specific within the meaning of section 771(5A)(D)(iii) of the Tariff Act of 1930 (as amended) (the Act) and, therefore, are not countervailable. Certain respondents had short-term usance loans from such GOK authorities as the Korea Development Bank (KDB) outstanding during the POI. However, in accordance with 19 CFR 351.505(a)(2)(ii), we are not considering loans from government-owned special purpose banks (i.e., development banks) to be commercial loans for purposes of selecting a loan to compare with a government-provided loan.

Regarding countervailable loans denominated in yen and euros, we had no company-specific loans that could be used as benchmarks. Therefore, in the case of countervailable loans denominated in yen and euros, we used the money market rate and the corporations-stock interest rate, respectively, as published in the IMF's International Financial Statistics. This approach is unchanged from the Preliminary Decision Memorandum.

For all short-term benchmarks, regardless of currency denomination, we used benchmark rates issued in the same year that the government short-term loans were issued. See 19 CFR 351.505(a)(2)(iv). We received comments from interested parties regarding the use of foreign-currency short-term benchmarks. See Comments 18 and 19.

B. Benchmark for Long-Term Loans

We used the benchmarks described below to calculate the subsidies attributable to respondents' countervailable long-term loans that were outstanding during the POI.

For countervailable, foreign-currency denominated loans for creditworthy companies, we used, where available, the company-specific interest rates on the companies' comparable commercial, foreign currency loans. Where no such benchmark instruments were available, consistent with 19 CFR 351.505(a)(3)(ii) as well as our methodology in prior Korea CVD cases, we relied on the prime lending rates as reported by the IMF's International Financial Statistics. See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMS Investigation), and accompanying Issues and Decision Memorandum at "Discount Rates and Benchmark for Loans" (DRAMS Investigation Memorandum).

For countervailable, won-denominated long-term loans, we used, where available, the company-specific interest rates on the companies' comparable commercial, won-denominated loans. If such loans were not available, we used the company-specific corporate bond rate (for commercial debt found to be not countervailable) on the companies' won-denominated public and private bonds. See 19 CFR 351.505(a)(3)(iii). 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). This approach is consistent with the Department's past practice. See the "Discount Rates and Benchmark for Loans" of the DRAMS Investigation Memorandum.

Further, in accordance with 19 CFR 351.505(a)(2), our benchmarks take into consideration the structure of the government-provided loans. For fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For variable-rate loans outstanding during the POI, pursuant to 19 CFR 351.505(a)(5)(i), our preference is to use the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark

instruments were unavailable, we used interest rates from loans issued during the POI as our benchmark, as such rates better reflect a variable interest rate that would be in effect during the POI. This approach is in accordance with the Department's practice in cases with similar facts. See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea, 68 FR 13267 (March 19, 2003) (Stainless Steel Sheet and Strip 2003), and accompanying Issues and Decision Memorandum, at Comment 8; see also 19 CFR 351.505(a)(5)(ii).

Our approach concerning long-term benchmarks is unchanged from the Preliminary Determination. We received comments concerning our long-term benchmarks. See Comments 23 and 25.

C. Benchmark Discount Rates

Certain programs examined in this investigation require the allocation of benefits over time. Thus, we have employed the allocation methodology described under 19 CFR 351.524(d). Pursuant to 19 CFR 351.524(d)(3)(i), we based our discount rate upon data for the year in which the government agreed to provide the subsidy. Under 19 CFR 351.524(d)(3)(i)(A), our preference is to use the cost of long-term, fixed-rate loans of the firm in question. Thus, where available, we used company-specific long-term loan benchmarks of corporate bond rates on public and private bonds. Where those benchmarks are unavailable, pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average of the yields on three-year corporate bonds, as reported by the BOK. This approach is unchanged from the Preliminary Determination.

D. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System (IRS tables), as updated by the U.S. Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture products such as CFS paper, the IRS tables prescribe an AUL of 13 years. Interested parties did not contest the Department's application of a 13-year AUL in the Preliminary Determination. Therefore, we have continued to employ a 13-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

V. CROSS-OWNERSHIP

For the countervailable subsidy benefits enjoyed by Kyesung and Namhan Paper Co., Ltd. (Namhan)/Poongman Paper Co., Ltd. (Poongman) and Moorim and Moorim SP, we attributed those benefits in accordance with 19 CFR 351.525(b)(6)(ii), which states that if two (or more) corporations with cross-ownership produce the subject merchandise, the Department will attribute the subsidies received by either or both companies to the products produced by both companies. Therefore, we calculated a single CVD ad valorem rate for Kyesung and Moorim, respectively, by dividing the combined subsidy benefits for the cross-owned companies by the companies' consolidated total sales, or consolidated total export sales, as appropriate. This approach is unchanged from the Preliminary Determination. See 72 FR at 17509.

VI. CREDITWORTHINESS

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 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 CVD 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 Antidumping Duties; Countervailing Duties, 62 FR 27296, 65367 (May 19, 1997) (Preamble).

Regarding Poongman, we continue to find that it was uncreditworthy in 2004, in accordance with 19 CFR 351.505(a)(4). As a result, we calculated Poongman's 2004 benchmark interest rate using the formula proscribed under 19 CFR 351.505(a)(3)(iii) and applied it to calculate the benefits from the countervailable subsidies received in 2004. This approach is unchanged from the Preliminary Determination. See 72 FR at 17510; see also Memorandum to Melissa G. Skinner, Director, Operations Office 3, from Preeti K. Tolani, Import Compliance Specialist, regarding Uncreditworthiness Allegation for Poongman Paper Co., Ltd. (March 29, 2007). For further discussion, see Comment 3 and the Poongman Analysis Memorandum. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, from Melissa G. Skinner, Director, Office 3, Operations, regarding Analysis Memorandum on Case

Brief Arguments concerning the Poongman Restructuring (Poongman Analysis Memorandum) (October 17, 2007).

Regarding Shinho's creditworthiness in 1998 through 2004, the period corresponding to its three restructurings, we find the company was creditworthy for all years. We find that record evidence does not indicate that the lending provided by commercial creditors during the 1998 through 2004 period was accompanied by a government guarantee nor were Shinho Paper's commercial lenders entrusted or directed by the GOK. Therefore, we conclude that the participation of commercial creditors provides sufficient indication that Shinho received the loan on commercial terms. This approach is unchanged from the Preliminary Determination. See 72 FR at 17510. For further discussion, see Comment 8.

VII. 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. See 19 CFR 351.507(a)(2)(i).

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.

Regarding the Poongman debt-for-equity swap, in the Preliminary Determination we

stated that the decision by Poongman's creditors to swap debt for equity was not inconsistent with the usual practice of private investors and did not confer a countervailable benefit to Poongman.² See 72 FR at 17513. However, as explained in the accompanying Poongman Analysis Memorandum, we have revised our approach to the company's restructuring from the Preliminary Determination. As a result, we have determined that Poongman was unequityworthy in 2004 within the meaning of section 19 CFR 351.507(a)(4). See Comment 3 and the Poongman Analysis Memorandum.

Regarding Shinho, as above, we find that Shinho's commercial creditors were not directed or entrusted to participate in the company's restructurings. Also, we find that private creditors swapped their debt for equity on the same terms as GOK authorities in 1998, 2000, and 2002. Because private creditors participated in the debt-for-equity swaps, we find that there are significant private investor prices actually available to use as benchmarks. See 19 CFR 351.507(a)(2). For these reasons, we find that the equity infusions by GOK authorities during each of these years did not confer a benefit on Shinho and that they are, therefore, not countervailable. Accordingly, Shinho's equityworthiness is not an issue for this final determination, pursuant to 19 CFR 351.507(a)(3)(i). We received comments from interested parties concerning this issue. See Comment 9.

VIII. PROGRAMS DETERMINED TO BE COUNTERVAILABLE

A. Poongman Restructuring

In the Preliminary Determination, we found, consistent with Stainless Steel, that because the creditors' debt-for-equity swap took place on the condition of Poongman's merger into Namhan, Poongman's creditors were effectively exchanging their debt for equity in Namhan, an equityworthy company. See Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (Stainless Steel), and accompanying Issues and Decision Memorandum (Stainless Steel Decision Memorandum). We, therefore, examined the post-merger entity (*i.e.*, Namhan) as the reference for analyzing equityworthiness and determined that the decision by Poongman's creditors to swap debt for equity in Namhan was consistent with the usual practice of private investors and did not confer a benefit to Poongman. Therefore, we preliminarily found that the debt-for-equity swap that occurred in 2004, on condition of the merger with Namhan, was not countervailable. See Preliminary Determination, 72 FR at 17512-13.

Based on clarification received after the Preliminary Determination about Poongman's restructuring, we have revised our approach to the company's restructuring, which involved creditors swapping debt for equity and extending loan maturities and a government entity and private investors injecting cash into the company. See Poongman Analysis Memorandum. Specifically, we now determine that it is Poongman's, and not Namhan's, equityworthiness that must be analyzed. Based on our examination, we determine that Poongman was unequityworthy in 2004, within the meaning of 19 CFR 351.507(a)(4). The facts on which the Department's

² We also found that the debt extensions that accompanied the debt-for-equity swaps in 2004 were not countervailable.

reasoning is based are proprietary and cannot be further discussed in this document. For the Department's analysis, see Poongman Analysis Memorandum at the comment entitled "GOK Assisted and Directed Poongman's Creditors."

In addition, we have examined the KDB's debt-for-equity swap and extension of loan maturities and a government entity's cash infusion into Poongman in the context of Poongman's 2004 restructuring. Regarding these events, we determine that they constitute financial contributions made to Poongman within the meaning of section 771(5)(D)(i) of the Act and that such assistance is de facto specific to Poongman within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the restructuring is limited to Poongman. The facts on which the Department's reasoning is based are proprietary and cannot be further discussed in this document. For the Department's analysis, see id.

To determine the benefit conferred to Poongman from the debt-for-equity swap and cash infusion, we followed the methodology described in 19 CFR 351.507(a)(6). Specifically, we found that a benefit to Poongman exists in the amount of the equity infusion by the KDB and the other GOK authority. In accordance with 19 CFR 351.507(c), we allocated the benefit of the debt-for-equity swap and cash infusion over a 13-year AUL. For the long-term loans that were extended by the KDB in 2004 (which we are treating as new loans), in accordance with 19 CFR 351.505(c)(2), we calculated the benefit from the loans by comparing the interest actually paid on the loans during the POI to what the company would have paid on a comparable commercial loan during the POI. Because we continue to find Poongman to be uncreditworthy in 2004, we used the uncreditworthy interest rate as described in the "Subsidies Valuation Information" section, to calculate the benefit from the long-term loans and grants. On this basis, we determine a net countervailable subsidy rate of 0.88 percent ad valorem for Kyesung.

We received comments from interested parties on this issue. See Comments 2 through 5 and the Poongman Analysis Memorandum.

B. Export and Import Credit Financing from KEXIM

In the Preliminary Determination, we found that export financing provided by KEXIM constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act. We further found that the program was specific within the meaning of section 771(5A)(B) of the Act because financing from KEXIM is contingent upon export sales. See 72 FR at 17513. Hansol was the only respondent with KEXIM financing outstanding during the POI.

We received comments regarding this program. See Comment 21. However, comments from interested parties do not warrant a reconsideration of our approach in the Preliminary Determination.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan during the POI. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section.

To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of Hansol's total exports for 2005. On this basis, we determine the net subsidy rate for Hansol to be 0.11 percent ad valorem.

C. Sale of Pulp for Less Than Adequate Remuneration

The Donghae Pulp Company (DP) is the sole domestic producer/supplier of chemical pulp to the Korean pulp and paper industry. DP sells one type of chemical pulp to CFS producers, specifically bleached woodcraft pulp from the broadleaf trees. The key input into the production of CFS paper is chemical pulp, which respondents either import or purchase domestically from DP. During the POI, all respondents purchased chemical pulp directly from DP.³

DP was originally Daehan Chemical Pulp (DCP), established in January 1974, under the laws of the Republic of Korea, as a government-funded enterprise to manufacture and sell chemical pulp. DCP changed its name to DP in June 1977, and in 1987, the GOK sold its interest in DP to several companies that were end users of chemical pulp. Since June 1989, the shares of DP have been listed on the Korea Stock Exchange. In April 1998, DP declared bankruptcy and applied to the court for company reorganization. Soon thereafter, DP began operating under court receivership.⁴ In September 1999, as part of the reorganization, the shares of some companies were retired without compensation.⁵ In November 1999, the shares of the remaining shareholders were consolidated and the creditors swapped their debt for equity shares in DP. As a result of this debt-to-equity conversion, KDB became DP's largest shareholder. Officials from the KDB are directors on DP's board of directors.

In the Preliminary Determination, we found DP to be a government authority under section 771(5)(B) of the Act. Upon review of comments received from interested parties, we continue to find that DP is a GOK authority. See Comments 11 through 15. Therefore, we find that DP's provision of chemical pulp constitutes a financial contribution because it is the provision of a good as defined in section 771(5)(D)(iii) of the Act. We also find that provision of chemical pulp is specific in accordance with section 771(5A)(D)(iii)(I) of the Act, because it is limited to the pulp and paper industry.

To determine whether there is a benefit from the provision of a good, the Act specifies that the Department must examine whether the good was provided for less than adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good shall be determined in relation to prevailing market conditions for the good being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Under 19 CFR 351.511, the Department sets forth, in order of preference, the benchmarks that

³ DP sells chemical pulp directly to end users. There are no distributors of chemical pulp in Korea.

⁴ During the POI, DP remained in court receivership.

⁵ Specifically, as part of DP's reorganization, the shares of Kyesung, Namhan, Poongman, Moorim, Moorim SP, and Hankuk Paper Co., Ltd. were retired without any compensation.

we will examine in determining the adequacy of remuneration. As discussed under 351.511(a)(2)(i), the first preference is to compare the government price to a market-determined price resulting from actual transactions within the country, including imports. In this case, as DP is the only domestic supplier of chemical pulp, there is no domestic price that can serve as a benchmark price. However, the respondents imported chemical pulp comparable, in terms of quality and quantity, to that purchased from DP during the POI.

To calculate the benefit under this program we compared the price respondents paid for chemical pulp from DP to the price they paid for imported chemical pulp. See 19 CFR 351.511(a)(2)(i). However, based on information collected at verification and on arguments presented by interested parties we are revising our benefit calculation. In the Preliminary Determination the Department used the tax invoice price that the respondents paid to DP not the final monthly price that was paid. After verification the Department requested that respondents submit data detailing the actual price paid on a monthly benefit. The Department is using the actual price respondents paid to DP for our calculations.

To calculate the net subsidy rate, we divided the benefit by each company's total sales value for the POI. On this basis, we determine the net subsidy rates for the respondents to be: 0.04 percent ad valorem for EN Paper, 0.06 percent ad valorem for Hansol, 0.09 percent ad valorem for Kyesung, and 0.00 percent ad valorem for Moorim.

D. Sales of Pulp From Raw Material Reserve for Less Than Adequate Remuneration

The Korean Public Procurement Service (PPS),⁶ established in January 1949, is a government procurement agency that stockpiles certain raw materials (e.g., aluminum, copper, and nickel), basic necessities (e.g., salt), and industrial use materials (e.g., chemical pulp and natural rubber) using government funds. PPS facilitates the short- and long-term supply of goods and seeks to stabilize consumer prices, pursuant to the Government Procurement Act.

Each year the PPS formulates a storage plan in accordance with the economic policies of the GOK. The release of stored items is carried out in accordance with the yearly plan. The GOK reported that prices for released items are determined based on the cost and market price at home and abroad and that in certain circumstances goods could be released for a price lower than the purchase price. The PPS publicly announces the stockpile release sales via its website and sells directly to end users. During the POI, PPS sold chemical pulp, some of which was purchased by Moorim SP.

We find that PPS's provision of chemical pulp constitutes a financial contribution because it is the provision of a good as defined in section 771(5)(D)(iii) of the Act. We also find this provision of chemical pulp to be specific in accordance with section 771(5A)(D)(iii)(I) of the Act because it is limited to end users of pulp or entities associated with end users of pulp.

To calculate the benefit under this program, we compared the price that Moorim SP paid to PPS for chemical pulp and the import price that Moorim paid to a foreign supplier for comparable chemical pulp. See 19 CFR 351.511(a)(2)(i). We determined the price differential and then multiplied that differential by the quantity of pulp purchased from PPS. We next

⁶ The PPS is a subsidiary agency of the Ministry of Finance and Economy.

divided the price savings by the company's total sales value for the POI. On this basis, we determine the net subsidy rate for Moorim to be less than 0.005 percent ad valorem.

This approach is unchanged from the Preliminary Determination. Interested parties did not comment on this issue.

E. Reduction in Taxes for Operation in Regional and National Industrial Complexes

Under Article 46 of the Industrial Cluster Development and Factory Establishment Act (ICDFE Act), a state or local government may provide tax exemptions as prescribed by the Restriction of Special Taxation Act. In accordance with this authority, Article 276 of the Local Tax Act provides that entities that acquire real estate in a designated industrial complex for the purpose of constructing new buildings or enlarging existing facilities are eligible for acquisition, registration, and property tax exemptions. Property taxes are reduced by either 50 or 100-percent for five years from the date the tax liability becomes effective. The 100 percent property tax exemption applies to land, buildings, or facilities located in industrial complexes outside of the Seoul metropolitan area. The GOK established the tax exemption program under Article 276 in December 1994, to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country. During the POI, Namhan received a property tax exemption under Article 276 for the enlargement of its manufacturing facility located in the Chongup Industrial Complex, which is designated under the ICDFE Act.

We find that the property tax exemption that Namhan received under the program constitutes a financial contribution and confers a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We further find that the program is regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to an enterprise or industry located within a designated geographical region.

To calculate the benefit, we divided Namhan's property tax exemption by the company's total sales value for 2005. On this basis, we determine the net subsidy rate under this program to be less than 0.005 percent ad valorem for Kyesung.

This approach is unchanged from the Preliminary Determination. Interested parties did not comment on this issue.

F. Duty Drawback on Non-Physically Incorporated Items and Excess Loss Rate

The Korean duty drawback system is administered by the Customs Policy Division of the Ministry of Finance and Economy (MOFE). The Act on Special Cases Concerning the Refundment of Customs Duties, Etc., Levied on Raw Materials for Export governs the duty drawback program. Under the Korean duty drawback system, for a company to receive duty drawback the imported material must be physically incorporated into merchandise that is exported within two years from the time the input material is imported. A company can seek a refund of duties through either a company-specific method or fixed amount refund method (see discussion below) by filing certain documentation with its local customs office.

Under the duty drawback system only import duties can be refunded; no other import fees (e.g., value added tax, customs brokerage, unloading charges, etc.) are eligible for

drawback. There is no import duty on chemical pulp, the most important raw material used to produce CFS paper. Therefore, CFS producers are not eligible to claim duty drawback on imports of chemical pulp. CFS producers, however, can seek duty drawback for import duties paid on other materials used in the production of CFS paper, e.g., clay, latex, starch, pigment, and talcum. Each material has its own single import duty rate.

Under 19 CFR 351.519(a)(1)(i), in the case of drawback of import charges, a benefit exists to the extent that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowance for waste. Section 351.519(a)(4)(i) states that the entire amount of such remission or drawback will confer a benefit, unless the Department determines that the government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

At verification, we discussed with Korean customs authorities the system in place to monitor which inputs are consumed in the production of the exported products and in what amounts. See Memorandum to Melissa G. Skinner from the Team Regarding the Questionnaire Responses Submitted by the Government of Korea (July 23, 2007) (GOK Verification Report) at 25 and 26. Korean Customs administers the duty drawback system under two methods: (i) the company-specific method, and (ii) the fixed amount refund method. The Korean authorities stated that the fixed amount refund method is only available to companies designated as small to medium-sized enterprises whose duty drawback amount is less than KRW 400 million for the two prior years. Id. at 25.

Under the company-specific method, a company's duty drawback is based upon its "statement of accounts for the required amount." This statement, which contains a formula specific to each company, demonstrates the amounts of import duty paid on imports and the amount of imports used to produce the exported product.⁷ Korean Customs examines the reasonableness and accuracy of the required quantity reported in the company's statement along with the company's duty drawback application, import permits, and export permits. Id. at 26. The company-specific formula is subject to verification by the local Customs authority if, for example, the ratio calculated by the company is higher than the ratio calculated by other companies in the same industry for the same product. During the POI, EN Paper, Hansol, Moorim, Moorim SP, and Namhan used the company-specific method.

At verification, we confirmed, for these respondents, the amount of import duties paid and the amount of duty drawback received under the company-specific method. Based on this information, we find that these companies did not receive refunds of import duties on materials that were not physically consumed in the production of the exported products and that the refund

⁷ Specifically, the duty drawback amount is calculated according to the following two-step formula:

(1) Required Quantity = Export Quantity * Required Per Unit Quantity. The "required per unit quantity" is determined by each company's production experience. This usage rate is determined based on the company's prior fiscal year experience. The GOK reported that if the usage rate changes from one year to the next the company must report its revised usage rate.

(2) Duty Drawback Amount = Total Import Duty Paid * Required Quantity/Total Import Quantity.

amounts were not excessive. We further determine that the system the GOK has in place for duty drawback under the company-specific method is reasonable and effective for the purposes intended, as set forth in 19 CFR 351.519(a)(4)(i).

Under the fixed amount refund method, Korean Customs sets a fixed amount refund rate by harmonized schedule (HS) code number for items for export. The fixed amount refund rate, which was verified, is calculated on the basis of the average company-specific refund amount of duties and recalculated annually.⁸ Specifically, Customs calculates annually the average company-specific refund amount per product. Customs then recalculates the average by removing from the equation the company-specific refund amounts that are above the average. Customs uses the lower of the two averages as the basis for the fixed refund amount to ensure that companies that use the fixed refund amount receive a duty drawback amount that is lower than the industry-wide average. See GOK Verification Report at 26.

The GOK also stated that under the fixed amount refund method, Customs does not require companies to submit import permits to apply for duty drawback; such documentation, however, is required from companies that apply for duty drawback under the company-specific method. The GOK officials explained that import permits are not required from companies using the fixed amount refund method in order to avoid having to track the numerous submissions that would result. Id. However, it is through an import permit that a company demonstrates the payment of duties on the imported goods. Because Korean Customs does not require companies applying for duty drawback under the fixed amount refund method to submit import permits documenting the payment of import duties and does not confirm which inputs are consumed in the production of the exported product, we find that the fixed amount refund method is not reasonable and effective within the meaning of 19 CFR 351.519(a)(4)(i). Further, Korean Customs does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts, within the meaning of 19 CFR 351.519(a)(4)(ii). Therefore, the entire amount of duty drawback received under the fixed amount refund method constitutes a benefit. This determination is consistent with our findings in other CVD cases where we found that the duty drawback system did not meet the requirements in our regulations. See e.g., India PET Resin, 70 FR 13460 (March 21, 2005) and Thai Hot Rolled Steel, 66 FR 50410 (October 3, 2001).

During the POI, Kyesung and Poongman used the fixed amount refund method to receive duty drawback on imports used in the production of exported goods. We therefore find that the GOK provided to Kyesung and Poongman a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone and conferred a benefit, as defined by section 771(5)(E) of the Act. We further find that duty drawback is specific under section 771(5A)(B) of the Act, as it is contingent upon export performance. To calculate the benefit received by Kyesung and Poongman, we summed the duty drawback that Kyesung and Poongman received under the fixed-rate method in 2005, and divided that total amount by the company's consolidated export sales value for 2005. On this basis, we determine the net subsidy

⁸ For the subject merchandise the fixed amount of duty refunded per 10,000 KRW of FOB export value is

70 (which is the per-unit duty refund). The HS code is 4810.19-1000. See GOK's March 16, 2007, questionnaire response at Exhibit E-7.

rate under this program to be 0.35 percent ad valorem.

G. Loans Under the Industrial Base Fund (IBF)

The IBF, managed by Ministry of Commerce, Industry, and Energy (MOCIE), provides policy loans to companies that expand their facilities and make investments in projects that strengthen the competitiveness and productivity of national industries. The IBF consists of eight separate parts, one of which, the Promotion of Industrial Parts and Material, provided loans to Namhan that were outstanding during the POI. The application that Namhan filed with MOCIE includes a section on the anticipated “effects” of the project, including the degree to which the project will promote exports and import substitution. Evidence collected at verification indicates that export and import substitution activities are one of several factors considered by MOCIE when providing loans under the Promotion of Industrial Parts and Material sub-program of the IBF. No other respondent received loans from the IBF.

We find that the loans Namhan received from MOCIE constitute a financial contribution, in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, and confers a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount companies pay under the program is less than what they would pay on comparable commercial loans they could obtain on the market. We also find that, because Namhan’s receipt of the loans was contingent upon export performance, the Promotion of Industrial Parts and Material sub-program of the IBF is a de jure specific export export subsidy within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we compared the amount of interest paid on the government loan to the amount of interest that would have been paid on comparable commercial short-term financing that could have been obtained on the market. See 19 CFR 351.505(a). For our benchmark, we have used a company-specific interest rate on a commercial long-term loan the terms of which were established in the same year as the government loan. See 19 CFR 351.505(a)(2)(iii).

Because we determine Namhan’s IBF loan to be an export subsidy, we calculated the net subsidy rate by dividing the benefit by Namhan’s total export sales during the POI. In this manner, we calculated a net subsidy rate of 0.14 percent ad valorem for Kyesung.

Our finding on this issue is unchanged from the Preliminary Decision Memorandum. We received comments from interested parties regarding this issue. See Comment 24.

H. Export Loans by Commercial Banks Under KEXIM’s Trade Bill Rediscounting Program

The GOK enacted KEXIM’s Trade Bill Rediscount program in July 1998. From July 1998 to May 2004, KEXIM rediscounted the actual D/A and export letter of credit (L/C) (e.g., export usance loans) financing of exporters that had first been discounted by commercial banks. However, after May 18, 2004, KEXIM switched to a rediscount ceiling method with Korean commercial banks that is similar to the ceiling method under the BOK’s ACCL program.⁹ Under

⁹ The GOK provided KEXIM’s Handling Guide for Trade Bill Rediscounts with Domestic Financial Institutions in Exhibit N-24 of the GOK’s June 11, 2007 submission. See also VE KEXIM-1 of the GOK

the ceiling method, KEXIM calculates the rediscount ceiling for participating commercial banks on a quarterly basis based on the total D/A or export L/C financing provided by the banks during the previous period, the banks' projected rediscounts, and the banks' credit rating.¹⁰ Under the trade bill rediscounting program, exporters first discount their D/As and export L/Cs with banks that are participating in the program. The banks, in turn, discount promissory notes with KEXIM. Moorim, Hansol, and EN Paper had D/A loans outstanding under the program during the POI from banks that participated in the KEXIM rediscount program. Regarding usance loans, we find that all of respondents' usance loans outstanding during the POI were loans for the importation of raw materials that were not contingent on export performance and, thus, were not eligible for rediscounting under KEXIM's trade bill rediscounting program.¹¹ Regarding Kyesung, none of its export usance loans were for sales to the United States.¹²

Under section 771(5)(B)(iii) of the Act, a subsidy can be found whenever the government "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution . . . to a person and a benefit is thereby conferred." We find that KEXIM's trade bill rediscount program constitutes a payment to a funding mechanism because the rediscount ceiling KEXIM provides to banks participating under the program is contingent on banks subsequently lending the funds to exporters. Section 771(5)(B)(iii) of the Act also states that financial contributions from funding mechanisms can be a subsidy only if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by the government. This is the "government subsidy function" prong of an indirect financial contribution. Here, the banks are performing a government subsidy function and, therefore, their loans can qualify as subsidies. Therefore, we find that loans from banks under the rediscount program constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and confer a benefit upon exporters, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of the loans is contingent upon export performance, we also determine that KEXIM's rediscount program is specific within the meaning of section 771(5A)(B) of the Act.

Verification Report for additional translations of the regulation submitted in Exhibit N-24 of the GOK's June 11, 2007, submission.

¹⁰ See Memorandum to Melissa G. Skinner from the team Regarding Verification of the Questionnaire

Responses Submitted by the Government of Korea (July 23, 2007) (GOK Verification Report) at 19. See also GOK Verification Report at page 16 of VE KEXIM-3 for the section of the KEXIM regulation that discusses how KEXIM sets the rediscount ceiling for banks under the program.

¹¹ See Memorandum to Eric B. Greynolds from the Team Regarding Verification of the Questionnaire

Responses Submitted by Moorim (July 25, 2007) (Moorim Verification Report) at 6, Memorandum to Melissa G. Skinner from the Team Regarding the Questionnaire Responses Submitted by EN Paper (July 27, 2007) (EN Paper Verification Report) at 20, and Memorandum to Eric B. Greynolds from the Team Regarding the Verification of the Questionnaire Responses Submitted by Hansol (July 25, 2007) (Hansol Verification Report) at 5.

¹² See Memorandum to Eric Greynolds from Team regarding Verification of the Questionnaire Responses

Submitted by Kyesung Paper Co. Ltd., Namhan Paper Co., Ltd., and Poongman Paper Co., Ltd. (July 25, 2007) (Kyesung/Namhan Verification Report) at 13 and 14.

We further find that subsidies on the loans under KEXIM's trade bill rediscount program are tied to sales of subject merchandise to the United States in accordance with 19 CFR 351.525(b)(4) and (5). Accordingly, for EN Paper, Hansol, and Moorim, we have limited our benefit calculations to D/A loans issued on sales of subject merchandise to the United States.

We also find that companies do not know whether commercial banks subsequently rediscount their D/A loans with KEXIM nor does KEXIM link rediscounts to individual loans or exporters. Further, we find that KEXIM's rediscount ceiling represents only a portion of participating banks' total discounts on export loans during the POI. Therefore, we are pro-rating benefits under this program by the percentage of loans each bank rediscounted with KEXIM under the program.

To calculate the benefit, we first compared the amount the respondent firms paid on all of their D/A loans outstanding during the POI to the amount they would pay on comparable commercial short-term financing that respondents could obtain on the market. See 19 CFR 351.505(a). For our benchmark, we have used the respondents' respective weighted-average interest rate on their foreign currency, commercial short-term loans outstanding during the POI. See 19 CFR 351.505(a)(2)(iv). Where unavailable, in accordance with 19 CFR 351.505(a)(3)(ii), we have used the short-term lending rate for 2005, as published in the IMF's International Financial Statistics. Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Therefore, for benchmark interest rates that were not already discounted, it was necessary to derive a discounted benchmark interest rate from respondents' respective company-specific weighted-average interest rates for short-term commercial loans. We next summed, by bank, the difference between the amounts paid on the D/A loans and the benchmark loans. Next, for each bank, we multiplied the difference between the amounts paid on the D/A loans and the benchmark by each banks' percentage of loans rediscounted under the program. We then summed the benefits calculated by bank to arrive at the total benefit. Next, we converted the foreign currency-denominated benefit into won. For additional information, see respondents' calculation memoranda.

Because we have determined that D/A loans under this program are tied to sales of subject merchandise to the United States, we calculated the net subsidy rate by dividing the benefit by the respondents' total sales of CFS paper to the United States during the POI. In this manner, we calculated a net subsidy rate of 0.00 percent ad valorem for Hansol and 0.00 percent ad valorem for Moorim. For EN Paper, we determine that there is no benefit to the company because the benchmark interest rate is lower than the interest rates that the company actually paid.

Our approach on this program is unchanged from the Preliminary Decision Memorandum. We received comments from interested parties regarding this issue. See Comments 16 and 17.

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

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

Of the D/A loans rediscounted under KEXIM's trade bill rediscount program,

respondents received several D/A loans from such government-owned banks as the KDB. We find that that D/A loans from the KDB and other government-owned banks constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of D/A loans is contingent upon export performance, we also determine that D/A loans from the KDB and other government-owned banks are specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we compared the amount of interest paid on the government loan to the amount of interest that would have been paid on comparable commercial short-term financing that could have been obtained on the market. See 19 CFR 351.505(a). For our benchmark, we have used the respondents' respective weighted-average interest rate on their commercial short-term loans outstanding during the POI. See 19 CFR 351.505(a)(2)(iv). Where unavailable, in accordance with 19 CFR 351.505(a)(3)(ii), we have used the short-term lending rate for 2005, as published in the IMF's International Financial Statistics. Because loans under this program are discounted (i.e., interest is paid up-front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from respondents' respective company-specific weighted-average interest rates for short-term commercial loans. We converted the foreign currency-denominated benefit into won. As explained above, we determine that D/A loans are tied to sales of subject merchandise. Accordingly, we have limited our benefit calculation to loans issued on sales of subject merchandise to the United States.

Because we have determined that D/A loans are tied to sales of subject merchandise to the United States, we calculated the net subsidy rate by dividing the benefit by the respondents' total sales of CFS paper to the United States during the POI. In this manner, we calculated a net subsidy rate of 0.00 percent ad valorem for Moorim and 0.00 percent ad valorem for Hansol.

We received comments from interested parties regarding this issue. See Comments 16 and 17.

IX. PROGRAMS DETERMINED TO BE NOT COUNTERVAILABLE

A. Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions

In the Preliminary Determination, we found that long-term loans issued by such GOK institutions as the KDB constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act to the extent that interest payments on the government loans are lower than what would have been paid on comparable commercial loans.

Regarding specificity, we find that long-term loans from the KDB are not de jure specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because (1) they are not based on exportation, (2) they are not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law.

Where there are reasons to believe that a subsidy may be specific as a matter of fact, the Department must then examine the program under section 771(5A)(D)(iii) of the Act. If the Department finds that one of the following factors exist, then the program is de facto specific.

- (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- (II) An enterprise or industry is a predominant user of the subsidy.
- (III) An enterprise or industry receives a disproportionately large amount of the subsidy.
- (IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Pursuant to section 771(5A)(D)(iii)(I) and (II) of the Act, we find there is no evidence to indicate that the actual recipients of the KDB's long-term loans are limited in number or that the pulp and paper industry is a predominant user. In the Preliminary Determination, we determined that KDB lending to the paper sector was specific in accordance with section 771(5A)(D)(iii)(III) of the Act because the paper sector received a disproportionate share of KDB loans between 1999 and 2005 when compared to the overall Korean Gross Domestic Product (GDP). See 72 FR at 17511.

However, we have revised our specificity finding from the Preliminary Determination. First, we have modified the manner in which we have conducted the GDP test. In this final determination we have confined our analysis to industries comprising Korea's manufacturing sector. Our revision is based on the fact that the bulk of the KDB's long-term loans are issued to firms in the manufacturing sector. Thus, we find that our approach in the Preliminary Determination, which divided the pulp, paper, and wood sectors' share of KDB lending over their share of Korea's total GDP overstated the resulting index.¹³ In this final determination, we modified our approach by dividing the pulp, paper, and wood sectors' share of KDB lending to the manufacturing sector by the sectors' share of manufacturing GDP.

As explained in the Preliminary Determination, with regard to KDB's lending to the paper sector in the years 1993 through 1998, we do not have on the record KDB-specific lending data for these years. The GOK reported that the KDB no longer maintains lending data for newly issued loans for this period either in electronic or paper form. See GOK's January 26, 2007 questionnaire response at 26 and March 6, 2007 questionnaire response at 16. However, for the years 1993 through 1998, we have on the record KDB loans outstanding, by industry. These data include KDB loans outstanding to the pulp and paper industry. See GOK's January 26, 2007 questionnaire response at page 20 and Exhibit 8. Therefore, in the Preliminary

¹³ In the Preliminary Determination, we explained that in reporting economic activity that contributes to the Korean GDP, the BOK does not report a category particular just to the paper sector. The paper sector's contribution to GDP is contained within the category "wood, paper, publishing, and printing." Therefore, to conduct our GDP analysis, we used this broad category. To the extent that we could, we combined the lending data for "wood, paper, publishing, and printing" to achieve an "apples-to-apples" comparison between share of GDP and share of loans for this sector. See 72 FR at 17511. In this final determination, we have continued to include data from the wood sector in our analysis.

Determination, for 1993 through 1998, we examined the paper sector’s share of total lending to the paper sector’s share of GDP in each of those years. See 72 FR at 17511. We have continued to use this data in the final determination. However, as explained above, we have confined our GDP test to industries comprising Korea’s manufacturing sector.

In addition, we note that on the issue of specificity, the Court of Appeals for the Federal Circuit (CAFC) has stated, “Determinations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case.” See AK Steel Corp. v. United States, 192 F.3d 1367, 1385 (CAFC 1999) (AK Steel). In the instant investigation the facts of the case also include nominal usage data from the GOK indicating the amount of KDB loans outstanding, by industry, for years 1995 through 2005.¹⁴ See GOK’s January 26, 2007 submission at Exhibit 8. We note officials from the Department verified the KDB lending data. See GOK Verification Report at 9 and 10.

Thus, in light of AK Steel, we have relied on the modified GDP test described above as well as on nominal usage data when analyzing whether the KDB issued a disproportionate amount of long-term loans to the pulp and paper industry within the meaning of section 771(5A)(D)(iii)(III) of the Act. Based on our review of this information, we determine that the pulp and paper industry did not receive a disproportionate amount of KDB lending during the years 1995 through 2005. For additional information, see the Memorandum to the file from Eric B. Greynolds, “De Facto Specificity Test for Long-Term and Short-Term Loans from the Korea Development Bank,” (October 17, 2007).

We lack the data that would allow us to directly analyze whether loans issued by the KDB in 1993 and 1994 were de facto specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii)(III) of the Act. However, given our finding that the pulp and paper sector did not receive a disproportionate share of KDB loans in each year 1995 through 2005, we also determine that the paper sector did not receive a disproportionate share of KDB loans in 1993 and 1994.

In addition, as indicated below in the “Direction of Credit to the Pulp and Paper Sector” section of this final determination, we find there is no evidence indicating that the GOK exercised discretion in the decision to issue long-term loans that indicates that the pulp and paper industry was favored over others within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

On this basis, we determine that the KDB’s provision of long-term loans to the pulp and paper industry was not specific under section 771(5A) of the Act during the years 1993 through 2005. This finding does not affect our determination with respect to KDB loans and other financial contributions as part of company-specific restructurings.

B. Direction of Credit to the Pulp and Paper Sector

In the Preliminary Determination, we found that there was no GOK direction of credit specific to the paper industry that would provide a benefit during the POI. We explained that

¹⁴ The GOK loan data for the pulp and paper and wood products industry were used in the numerator of our GDP specificity test in the Preliminary Determination.

though the GOK exerted broad control over lending in Korea through 1998 that resulted in credit being directed specifically to such “strategic” sectors as the steel and semiconductor industries, the record evidence in the instant investigation was not sufficient to support a conclusion that the paper industry was likewise a “strategic” sector to which the GOK specifically directed credit. See Preliminary Determination, 72 FR at 17517.

We continue to find that there is not sufficient evidence to conclude that (1) for the period up through 1998, the GOK designated the paper industry as a “strategic” sector to which credit was specifically directed, and (2) for the period subsequent to 1998, the GOK had a policy favoring the paper industry or engaged in a pattern of practices to act upon that policy, thereby entrusting or directing private creditors to provide financial contributions to paper producers.

We received comments from interested parties on this issue. See Comment 1.

C. Usance Loans Issued by the KDB and Other Government-Owned Banks

For the same reasons discussed above in the “D/A Loans Issued by KDB and Other Government-Owned Banks” section of this memorandum, we determine that usance loans from the KDB and other government-owned banks constitute financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount companies pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market.

Regarding specificity, we find that usance loans issued by the KDB and other GOK authorities are not de jure specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act, because (1) they are not based on exportation, (2) they are not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law.

Regarding de facto specificity under section 771(5A)(D)(iii) of the Act, we find they are not specific under sub-paragraphs (I) through (IV) for the same reasons discussed above in the “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions” section of this decision memorandum.

As discussed above, we have revised our de facto specificity test involving lending from such GOK authorities as the KDB. Under our revised approach, we have confined our analysis to industries comprising Korea’s manufacturing sector. We are also incorporating into our final analysis nominal usage data across industries from the GOK indicating the amount of short-term usance loans issued by the KDB for years 2003 through 2005. Based on this revised approach, we find that the short-term usance loans issued by the KDB are not de facto specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii)(III) of the Act.

We note that the KDB provided the majority of usance loans from GOK-owned institutions. Thus, we are using the usage data we obtained from the KDB as a proxy for purposes of our specificity analysis of usance loans issued by other GOK-owned institutions. Accordingly, we determine that usance loans from other GOK-owned banks are not de facto specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii)(III) of the Act.

D. Shinho Restructuring

As outlined in the Preliminary Determination, the Shinho Group experienced severe financial difficulties due to Korea's financial crisis in 1997. See 72 FR at 17518. As a result, Shinho Paper and its creditors implemented financial restructuring or "workout" plans in 1998 and 2000 under the Corporate Restructuring Act (CRA) and in 2002 under the Corporate Restructuring and Promotion Act (CRPA). These "workout" plans included swaps of unsecured debt for equity and convertible bonds, conversions of convertible bonds to equity, extensions of debt maturities, reductions of interest obligations, and new loans. Ultimately, in 2004, Shinho Paper's remaining unsecured debt was repackaged into a large syndicated loan, and Shinho Paper was sold to Aram Financial Service Inc., through a public bidding process.

We determine that, through its participation in Shinho's "workout" plans and the syndicated loan, the GOK provided Shinho Paper direct financial assistance from GOK-owned public lending institutions (*i.e.*, GOK authorities) in order to assist Shinho Paper through its financial difficulties. With regard to Shinho Paper's other creditors, we determine that there was no direction of credit to the paper industry during these periods. See the "Direction of Credit to the Pulp and Paper Sector" section of this decision memorandum. Further, the evidence on the record is insufficient to demonstrate the existence of a GOK policy to provide financial assistance to Shinho Paper or the existence of a GOK pattern of practices to do so. We thus determine that the GOK did not entrust or direct Shinho Paper's non-GOK creditors to participate in financial restructuring plans and the syndicated loan. We therefore determine that, in participating in the various events of Shinho's restructuring, these creditors (*i.e.*, the non-GOK lenders) did not provide financial contributions to Shinho Paper within the meaning of sections 771(5)(B)(i) and (iii) of the Act and that, therefore, their actions are not countervailable. Furthermore, because these creditors were not entrusted or directed by the GOK, we determine that the participation by creditors other than GOK lending institutions is suitable for benchmark purposes in assessing whether Shinho Paper benefitted from the assistance provided by the GOK-owned public lending institutions.

Our analysis in making these determinations is guided by the Department's determinations in the DRAMs Investigation and Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 71 FR 14174 (March 21, 2006) (Final Results of 1st DRAMs Review) as well as other investigations and administrative reviews.¹⁵ First, we examined whether the GOK had in place a governmental policy to assist Shinho Paper with its financial difficulties and to prevent the company's failure. As explained below, we determine that, from 1998 to 2005, the

¹⁵ See the "Hynix Financial Restructuring and Recapitalization" section of the DRAMS Investigation Memorandum. See also the "SSI and PPC Debt Restructuring" of the decision memorandum that accompanied the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001), Comment 6 of the decision memorandum that accompanied the Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 (August 30, 2002), and the Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 1512, 1518 (January 10, 2006), unchanged in the Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006).

GOK did not have such a policy with respect to either the Shinho Group or Shinho Paper. See the Department’s position to Comment 6 “Evidence of Entrustment or Direction of Shinho’s Creditors” of this decision memorandum and Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, from Melissa G. Skinner, Director, Office 3, Operations, regarding Proprietary Analysis Memorandum on Case Brief Argument Concerning Evidence of Entrustment or Direction of Shinho’s Creditors (EN Paper Analysis Memorandum) (October 17, 2007).

Next, we examined whether the GOK engaged in a pattern of practices to entrust or direct Shinho Paper’s creditors to provide financial contributions to Shinho Paper. In conducting our examination, we considered whether there was evidence that the GOK influenced financial dealings through entrustment or direction of Shinho Paper’s creditors. We also considered whether the Creditors Councils established to oversee and administer the “workouts” were dominated by GOK-owned or -controlled lending institutions. Because the facts in this investigation do not so indicate, we determine that the Creditors Councils established to oversee and administer the financial restructurings of Shinho Paper were not dominated by GOK-owned or -controlled lending institutions. See the Department’s position to Comment 7 “GOK Ownership of Shinho’s Creditors and the Corporate Restructuring Process.”

Additionally, we determine that the GOK did not engage in various types of actions that would be indicative of entrustment or direction. For example, there is insufficient evidence that GOK officials attended meetings of Shinho’s creditors, that the GOK coerced or threatened Shinho’s creditors to participate in the restructurings, or that the GOK used Shinho’s lead bank to effectuate a policy of bailing out Shinho, among other things. See e.g., DRAMS Investigation Memorandum, at Comment 1.

1. Debt-to-Equity Swaps and Conversion of Convertible Bonds to Equity

Under the first Shinho Paper “workout” plan, the Creditors Council authorized for Shinho Paper debt-to-equity swaps and conversion of debt to convertible bonds. Under the second “workout” plan, the Creditors Council approved debt-to-equity swaps and the conversion of convertible bonds to equity. Under the third “workout” plan, the Creditors Council again authorized debt-for-equity swaps. EN Paper reported the total amount of debt, convertible bonds, and unpaid interest that was swapped for equity.

To determine whether these conversions of debt and convertible bonds to equity conferred a benefit on Shinho Paper, we followed the methodology described in 19 CFR 351.507. Under 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. Because private banks that participated in the restructuring converted debt to equity at the same time and terms as the GOK lending institutions, we determine that there is evidence on the record that the price paid by the GOK lending institutions was a market price paid by private investors. See 19 CFR 351.507(a)(2). Consequently, we determine that the debt-to-equity swaps by the GOK lending institutions were conducted consistent with the usual investment practice of private investors and thus do not provide a benefit to Shinho Paper. See 19 CFR 351.507(a). Accordingly, it is unnecessary to reach findings with regard to specificity.

We note that, as outlined in the Initiation Checklist, petitioner alleged that Shinho Paper received additional debt forgiveness from reductions or eliminations of interest obligations and debt write-offs which respondents explain are accounting adjustments pertaining to the numerous debt-for-equity swaps and conversions of convertible bonds to equity. As noted above, EN Paper reported that, in addition to unpaid principal, unpaid interest was also converted to equity. However, EN Paper also reported that the total amount of debt, convertible bonds, and unpaid interest that was converted to equity was less than the total amount approved for conversion by the Creditors Council. At verification, we examined whether any unpaid interest was forgiven as a result of Shinho Paper's restructuring process and whether EN Paper provided a complete reporting of its debt and bond conversions. We did not find any such evidence and therefore determine that EN Paper provided a complete breakdown of the debt and interest that was converted to equity.

2. Extension of Debt Maturities

As part of the "workout" plans, the Creditors Council approved reductions in interest rates for Shinho Paper's outstanding loans and bonds, and evidence on the record indicates that Shinho Paper also received extensions of debt maturities. Most of Shinho Paper's debt and bond obligations were either converted through the equity conversions described above or paid off prior to the POI with funds from the syndicated loan that Shinho Paper received in late 2004. However, in addition to the 2004 syndicated loan, EN Paper reported Korean won and foreign-currency long-term capital leases and other long-term debt denominated in won from GOK lending institutions.

Because these capital leases were renewed as part of the "workout plans," we are including them in our analysis of the Shinho restructuring process and not in our analysis of the KDB Long Term loan program, above. For these long-term leases, we followed the methodology described at 19 CFR 351.505 to determine whether the amount that Shinho paid on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market.

As indicated in the Initiation Checklist, petitioner alleged that Shinho was uncreditworthy from 1998 to 2005. To determine whether use of an uncreditworthy benchmark interest rate was necessary, we examined whether there was evidence on the record indicating that Shinho Paper could not have obtained comparable long-term loans from conventional commercial sources. Because private lenders not entrusted or controlled by the GOK extended and restructured these long-term capital leases, we find that Shinho obtained commercial loans within the meaning of 19 CFR 351.505(a)(2)(ii). Because the terms and rate structure decreed by the Creditors Council were applied equally to these long-term capital leases and to those provided by GOK lending institutions, we find that these were comparable to the government-provided loans within the meaning of 19 CFR 351.505(a)(2)(i). Consequently, we find that these private loans constitute dispositive evidence that Shinho Paper was not uncreditworthy during the years that the new loan structures were applied. See 19 CFR 351.505(a)(4)(ii).

The record evidence indicates that, upon the decree of the Creditors Council, both the government and commercial creditors received the same interest rate and structure for their long-term capital leases. Further, the record evidence does not indicate that the leases provided by the

commercial creditors were accompanied by government guarantees.¹⁶ Therefore, pursuant to 19 CFR 351.505(a), we determine that the GOK lending institution capital leases outstanding during the POI do not provide a benefit to Shinho Paper. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

With regard to other long-term debt that EN Paper reported as outstanding during the POI, we note that the debt was not a part of EN Paper's restructuring. Therefore, we have analyzed this long-term debt in the context of the long-term lending from the KDB and other GOK authorities. As explained in the "Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions" section of this decision memorandum, we have determined that such long-term loans from the KDB and other GOK authorities are not de jure or de facto specific within the meaning of section 771(5A) of the Act. Therefore, we find that EN Paper's additional long-term debt outstanding during the POI is not countervailable.

3. New Loans

For the syndicated loan received by Shinho Paper during 2004, which was used to repay Shinho's creditors, including GOK lending institutions, we followed the methodology described under 19 CFR 351.505(a) to determine whether the amount Shinho paid on the government-provided loans was less than the amount Shinho would otherwise have to pay on a comparable commercial loan that Shinho could actually obtain on the market. The record evidence indicates that all lenders, *i.e.*, both the government and commercial creditors, participated in the syndicated loan on the same terms, such as the interest rate and structure of the loan. Further, the record evidence does not indicate that the lending provided by the commercial creditors was accompanied by a government guarantee. Consequently, we determine that the participation of commercial creditors in the syndicated loan provides sufficient indication that Shinho received the loan on commercial terms. Therefore, we determine that the contributions provided by the GOK lending institutions in the syndicated loan do not provide a benefit to Shinho Paper. Accordingly, it is unnecessary to reach findings with regard to specificity.

X. OTHER PROGRAMS: LOANS UNDER THE ACCL PROGRAM

A. Trade Financing Under the ACCL Program

We find that information obtained at verification indicates that respondents' outstanding D/A loans and usance loans do not constitute countervailable trade financing under the ACCL Program. Therefore, we find that respondents did not use trade financing under the ACCL program during the POI. Our approach is unchanged from the Preliminary Decision Memorandum.

We received comments from interested parties on this issue. See Comment 16.

¹⁶ The record indicates that these restructured long-term capital leases may have been covered by the general payment guarantees approved by the Creditors Council, which were borne proportionally and on identical terms by all the creditors, and which, therefore, we do not consider to be "government -provided guarantees" within the meaning of 19 CFR 351.505(a)(4)(ii).

B. Commercial Paper Loans Under the ACCL Program

Regarding commercial paper loans, firms discount promissory notes or bills of exchange, received as a result of sales of goods or services, with commercial banks that are participating in the ACCL program. Commercial banks conduct the transaction using funds they have received under the ACCL program. Commercial paper financing under the ACCL program is only available to those firms that qualify as small and medium-sized enterprises (SMEs), as defined by Article 3 and Annex 1 of the Framework Act on Small and Medium Sized Enterprises. Annex 1 of the Framework Act on Small and Medium Sized Enterprises indicates that manufacturers with less than 300 employees and paid-in-capital of less than KRW 8,000 million qualify as SMEs. Commercial paper is the only form of financing under the ACCL program that requires recipients to be SME's. Commercial paper loans are not contingent on export activity. Moorim was the only eligible company with commercial paper loans outstanding during the POI.

In the Preliminary Decision Memorandum, we explained that assuming arguendo that commercial paper loans constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, they would not result in a measurable net subsidy rate (i.e., a net subsidy rate greater than or equal to 0.005 percent ad valorem). As such, we found that it is not necessary to reach a finding on this program because it does not have any quantitative impact on the outcome of the case. See, e.g., Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy, 66 FR 30414, 30417 (June 6, 2001) (unchanged in final determination) (Steel Bar from Italy).

We based our preliminary finding on the use of the won-denominated short-term lending rate for 2005, as published in the IMF's International Financial Statistics. We explained that our reliance on interest rate information from the IMF in the absence of company-specific benchmark information is consistent with our approach in past CVD proceedings. See e.g., Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34905 (May 16, 2002) (PET Film), and the accompanying Issues and Decision Memorandum, at "Octroi Refund Scheme" (PET Film Decision Memorandum). Because loans under this program are discounted (i.e., interest is paid up-front at the time the loans are received), the effective rate paid by Moorim on its commercial paper loans is a discounted rate. Therefore, in the Preliminary Decision Memorandum, we discounted our benchmark interest rate. We also explained that our approach is consistent with the methodology employed in Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636, 30644 (June 8, 1999) (SSSS from Korea). We further noted that our preliminary finding is based on the assumption that the percentage of loans Moorim received under the ACCL program is equal to the ratio the GOK uses to determine the amount of commercial paper loans provided under the program. For further information, see the Moorim Calculation Memorandum.

We received comments from interested parties regarding this program. See Comment 20. However, we find that comments from interested parties do not warrant a reconsideration of our finding from the Preliminary Decision Memorandum. Therefore, we continue to find that this program is not measurable and, therefore, does not require a countervailable finding.

C. Corporate Procurement Loans Under the ACCL Program

For corporate procurement loans, commercial banks use ACCL program funds to assist eligible firms with their acquisition of materials from suppliers. Under this type of financing, firms borrow funds from participating commercial institutions and pay their suppliers in cash rather than with commercial bills. The purchasing firms then repay the loans at terms established with commercial banks. Pursuant to Article 2 of the detailed regulations, corporate procurement loans are available to all firms provided they are not in the top 29 debtor groups and are not in bankruptcy proceedings. Corporate procurement loans are not contingent on export activity. Kyesung and Moorim were the only eligible respondents with corporate procurement loans outstanding under the ACCL program during the POI.

In the Preliminary Decision Memorandum, we explained that assuming arguendo that corporate procurement loans constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, they would not result in a measurable net subsidy rate (i.e., a net subsidy rate greater than or equal to 0.005 percent ad valorem) for Moorim. We explained that there is no benefit to Kyesung as the benchmark interest rate is lower than the interest rates the company paid against the corporate procurement loans. As such, we preliminarily found that it is not necessary to reach a finding on this program because it does not have any quantitative impact on the outcome of the case. See Steel Bar from Italy.

Our finding in the Preliminary Decision Memorandum is based on the use of the won-denominated, short-term lending rate for 2005, as published in the IMF's International Financial Statistics. Because loans under this program are discounted (i.e., interest is paid up-front at the time the loans are received), the effective rate paid by Moorim and Kyesung on their corporate procurement loans is a discounted rate. Therefore, in the Preliminary Decision Memorandum we discounted our benchmark interest rate. We also explained that our approach is based on the assumption that the percentage of loans Moorim and Kyesung received under the ACCL program is equal to the ratio the GOK uses to determine the amount of corporate procurement loans provided under the program. For further information, see the Moorim and Kyesung Calculation Memoranda.

We received comments from interested parties regarding this issue. See Comment 20. However, we find that comments from interested parties do not warrant a reconsideration of our finding from the Preliminary Decision Memorandum. Therefore, we continue to find that this program is not measurable and, therefore, does not require a countervailable finding.

D. Electronically Processed Secured Receivables Loans

We find that respondents did not use these loans under the ACCL program during the POI. Our finding is unchanged from the Preliminary Decision Memorandum. Interested parties did not comment on this issue.

E. Funds for the Production of Basic Materials or Parts

We find that respondents did not use these loans under the ACCL program during the POI. Our finding is unchanged from the Preliminary Decision Memorandum. Interested parties

did not comment on this issue.

XI. TERMINATED PROGRAMS

A. Loans Under the KDB's Rediscount Program

We find that this program no longer exists and was not used during the POI. Our finding is unchanged from the Preliminary Decision Memorandum. Interested parties did not comment on this issue.

XII. ANALYSIS OF COMMENTS

Comment 1: Whether the GOK Directed Credit to the Pulp and Paper Industry

Petitioner contends that the Department incorrectly concluded in the Preliminary Determination that there was insufficient evidence to show that the paper industry was designated as a strategic industry by the GOK in the years prior to 1999. See Preliminary Determination, 72 FR at 17517. Citing to various GOK economic development plans during the period 1967 through 1981, press accounts, and GOK publications that it provided prior to initiation as well as in its pre-preliminary determination comments, petitioner argues that the evidence, in fact, demonstrates that the GOK targeted the paper industry as a strategic industry. In particular, petitioner asserts that the GOK targeted the paper industry in a series of economic development plans during the years 1967 through 1981, facilitated the construction of DP in an effort to provide the paper industry with a stable supply of wood pulp, selected the paper sector as an industry subject to "intensive targeting" in 1996, and pledged support for environmental and technological development programs aimed at the paper sector. Petitioner also argues that the Department's finding in the Preliminary Determination that the KDB provided a disproportionate amount of loans to the pulp and paper industry relative to the industry's share of GDP constitutes further evidence that the GOK targeted the pulp and paper industry through 1998. See Preliminary Determination, 72 FR at 17511.

Petitioner further argues that the Department incorrectly concluded in the Preliminary Determination that there was insufficient evidence to show that after 1998 the GOK had a policy to support the paper industry or that the GOK had taken actions to further such a policy. See Preliminary Determination, 72 FR at 17518. Petitioner argues that the Department's sole basis for its preliminary conclusion was that there were no statements by GOK officials that the industry was strategic, or that the industry was "too big to fail." Id. Petitioner asserts that such an approach amounts to one in which the evidence must precisely match the evidence reviewed in the DRAMs Investigation in which the Department found the GOK assisted a company and industry in financial distress. Petitioner maintains that there can be more than one basis that suggests government entrustment or direction and that such direction can arise when a government seeks to accelerate development of an industry beyond that which the free-market forces could or would enable. In the case of the paper industry, petitioner argues that evidence it submitted in the petition and in its pre-preliminary determination comments indicates that after 1998 the GOK continued its policy of building a domestic paper manufacturing base and

nurturing the industry's export capabilities. In particular, petitioner maintains that in 2001 MOCIE issued a report committing the GOK to increase investment in the paper industry and restructure the paper industry, together with six other industries, as part of the GOK's "New Big Deal" policy. Petitioner also asserts that the New Big Deal was, in effect, a GOK-sponsored attempt to bail out certain ailing Korean industries. Petitioner also notes that after 1998, the KDB took actions that favored the paper sector. For example, petitioner argues that the KDB, in a 2002 report, designated the paper industry as an "Industry of Korea" that was important to the country's economy.

Petitioner further contends that the GOK took active steps to further its support of the paper industry, which is primarily evidenced by the GOK's overwhelming level of ownership of the creditors that assisted respondents, such as Shinho in 1998, 2000, and 2002.¹⁷ Petitioner also argues that the ownership data regarding the CFS industry's creditors that it submitted is more reliable and complete than the data submitted by the GOK in its January 26, 2007, submission. Petitioner argues that a complete data set is important because it reveals the leverage the GOK had over creditors, in the form of majority ownership, during the periods in which Shinho and Poongman underwent their restructurings. Petitioner further argues that beyond majority ownership, the information it supplied demonstrates the degree to which the GOK maintains control over lenders based on its status as the single largest shareholder. Petitioner argues that pursuant to its approach in the DRAMS proceeding, the Department relies on such factors when determining whether control exists.

Petitioner argues that its claim that the GOK's policy of assisting the paper industry continued after 1998 is particularly compelling considering that the GOK owned a significant number of shares of some of the largest creditors involved in Shinho's 1998, 2000, and 2002 restructurings. Petitioner further asserts that the extent of the GOK's control over lenders goes beyond the GOK's ownership of lending institutions. For example, petitioner contends that such large Korea banks as Woori, Shinhan, Kookmin, and the Korea First Bank (KFB) indicate in reports filed with the Securities and Exchange Commission (SEC) that the GOK might require them to take actions in support of government policies that the banks would not normally undertake. Petitioner claims the Department found such statements by banks to the SEC were "highly indicative of the general susceptibility of GOK-owned banks and commercial banks to GOK influence." See page 37 of the Issues and Decision Memorandum that accompanied the Final Results of 1st DRAMs Review. Petitioner notes that the statements in the SEC filings refer to the GOK's policies in the present or past tense and not in the conditional tense.

Petitioner further argues that the GOK exerts its control over Korean lending institutions by means of memoranda of understanding (MOUs) it signs with banks. According to petitioner, the GOK has entered into MOUs with such Korean banks as KFB, Seoul Bank, Woori Bank, Chohung Bank, and the KEB. Petitioner also notes that the Korea Insurance Deposit Corporation (KDIC) has continued to inject capital into many Korean creditors during the period 2003 and 2004. Petitioner argues that in the DRAMs proceeding, the Department found that the GOK exerted control over financial institutions through MOUs and capital injections. See page

¹⁷ Petitioner submitted information relating to GOK ownership in each of the creditors that assisted respondents in 1998, 2000, and 2002 in Exhibits 36 through 28 of its March 8, 2007, submission.

38 of the decision memorandum that accompanied Final Results of the 1st DRAMs Review. Petitioner also argues that the Department verified that the creditors of the CFS paper industry received significant levels of capital infusions over the period 1997 through 2006 and that the GOK entered into MOUs with those creditors for which the KDIC acquired either 50 percent or more shares with voting rights or 30 percent or more shares with voting rights where the KDIC was the largest shareholder. See GOK Verification Report at 5.

Petitioner argues that the enactment of the CRPA is another important element of the GOK's control of the paper industry's creditors that indicates entrustment or direction. Citing to evidence from the DRAMs Investigation, petitioner claims the GOK created the CRPA in order to prevent banks from avoiding participating in corporate restructurings. See GOK Verification Report at 8 submitted in the DRAMs Investigation, which was included as Exhibit 55 in petitioner's March 8, 2007, submission. Petitioner claims this fact was confirmed in the CFS proceeding during the verification of the GOK. See page 2 of the GOK Verification Report. Petitioner argues that the existence of the CRPA coupled with the level of the GOK's ownership of the creditors participating in Shinho's restructuring enabled the GOK to control the decisions made by the creditors during the restructuring process.

Petitioner asserts that the GOK also wielded influence over the paper industry's creditors through Section 5 of Prime Minister Decree #408, which petitioner claims permitted supervisory agencies to request "cooperation" from financial institutions for the purpose of the stability of the financial market. See GOK's January 26, 2007, submission at Exhibit B-7. Petitioner contends the decree also ensured the GOK's ability to exercise its shareholders' rights, which include the right to vote for bank directors and bank management.

Respondents argue that the Preliminary Determination was consistent with the conclusion in the DRAMs Investigation in which the Department found that the GOK no longer directed credit to the semiconductor industry after 1998. See DRAMs Investigation Memorandum at Comment 2. Respondents contend that petitioner's evidence on the direction of credit issue was already considered by the Department in the Preliminary Determination and merely consists of isolated statements that are taken out of context. For example, respondents note that evidence presented by petitioner includes citations to various GOK five-year Economic Development Plans covering the period 1976 through 1981. Respondents point out that, in light of the Department's prior findings that the GOK removed de jure preferences for "strategic industries" after 1985, there is no basis to find the development plans relevant to any of the outstanding debt at issue in the current investigation. See e.g., Preliminary Determination, 72 FR at 17517. Regarding petitioner's claims that the GOK's involvement in the construction of DP demonstrates how it targeted the paper sector for development, respondents argue that the construction of a pulp mill nearly 30 years ago does not constitute sufficient evidence that the GOK targeted the paper sector during the years relevant to the POI. Respondents also argue that the GOK's privatization of DP 20 years ago undercuts petitioner's claims that the GOK sought to somehow use DP as a means of advancing the interests of the paper industry.

Respondents further assert that the remaining evidence referenced by petitioner provides no proof that the paper sector was targeted by the GOK for preferential financing from commercial banks. They further note that the CAFC has previously found that reliance upon government statements regarding support for a given industry does not necessarily indicate aggressive targeting of that industry. See AK Steel.

Respondents also disagree with petitioner's claim that the GOK's targeting of the paper sector is evident in light of the Department's preliminary finding that the level of KDB lending to the paper industry was disproportionate relative to the paper sector's share of the Korean economy. Respondents maintain that the Department's preliminary finding goes only to the issue of de facto specificity as it pertains to the KDB's lending to the paper industry. They contend such a finding provides no proof that the GOK targeted the paper sector. Referencing statements made in the GOK's January 26 and March 6, 2007, questionnaire responses, respondents further argue that, regarding the Department's preliminary finding that the KDB's loans to the paper industry were de facto specific: 1); usage data indicate that the paper industry received a small share of KDB loans, when compared to other industry recipients, 2); the KDB data include loans from the Energy Savings Fund, a funding source which respondents argue was found not countervailable in the DRAMS Investigation, and 3); a disproportionality analysis based on GDP is distortive and simplistic.

Respondents further argue that there is no evidence indicating that the GOK had any policy to favor the paper sector or that the GOK acted upon any policy by entrusting or directing commercial banks to provide preferential lending to the paper sector. Respondents note that in the Preliminary Determination the Department found that there were no government statements that the paper sector was critical or strategic nor were there any statements, like those in the DRAMs Investigation, that any paper company was "too big to fail." See 72 FR at 17518. Respondents also maintain that the Department made clear at the outset of its analysis that it had considered all the record evidence submitted by petitioner in making its Preliminary Determination. See 72 FR at 17517.

Respondents argue that the evidence submitted by petitioner does not support the conclusion that the GOK had a policy to target the paper industry. Respondents take issue with petitioner's characterization of a 2001 MOCIE report. Respondents argue that the report, in fact, states that the pulp sector leads all other sectors in terms of facility investment and, therefore, indicates that the pulp sector was in no need of special incentives from the GOK. They further argue that the report focuses primarily on industries other than the pulp and paper industry. In addition, respondents argue that petitioner provides no evidence that the programs mentioned in the report were put into place by the GOK for the benefit of the pulp and paper industry.

Respondents also disagree with petitioner's statements regarding the "New Big Deal." Respondents claim that there is no GOK policy or program called the "New Big Deal." They argue the phrase is merely the title of a newspaper story. They further argue that the information addressed in media reports relates to measures taken by the GOK and Korean conglomerates to restructure and align nearly all of Korea's industrial sectors in the wake of the 1997 Asian financial crisis.

In addition, respondents disagree with petitioner's claims concerning the KDB. Respondents point out that the information cited by petitioner is from a 2002 report that contained an analysis of the development of 27 industries, including the paper industry. Respondents explain that the KDB's report is issued every three years and that the 2005 version does not include the paper industry, thereby demonstrating that the report does not serve to target certain sectors. Respondents further argue that the KDB's statements concerning the importance of the paper industry to the Korea's economy were made for purposes of assessing the risk associated with KDB lending in the pulp and paper sector. Thus, according to respondents, the

statements made by the KDB simply indicate that the risk of lending to companies in the pulp and paper sector would be lower since it produces products that are important to the economy.

Respondents also take issue with petitioner's claim that Shinho's restructuring constitutes evidence of the GOK's policy of directing financing to the paper sector. Respondents argue that the Department treated the direction of credit issue and Shinho's restructuring as separate programs in the Preliminary Determination and found that neither program conferred countervailable benefits to Shinho. See Preliminary Determination, 72 FR at 17517 and 17518.

Respondents next rebut petitioner's arguments that the GOK took affirmative steps to further its policy of targeting the paper industry. Respondents explain that the centerpiece of petitioner's argument is information regarding the level of GOK ownership in certain creditors of the respondent companies, namely Shinho. Respondents assert that the GOK's capital infusions into financial institutions in the wake of the Asian financial crisis were not specific to Shinho's creditors. Respondents also disagree with petitioner's citations to SEC filings made by Korean banks, which petitioner claims contain evidence that the GOK directs Korean banks to act according to the government's interest. Respondents contend that the statements in the SEC reports were conditional and were not specific to the paper industry. Respondents further contend that petitioner's citations to the DRAMs Investigation, in fact, undermine rather than strengthen the probative value of the statements made in the SEC filings because in the DRAMs Investigation the Department concluded that the GOK did not direct credit to the semiconductor industry after 1998. See DRAMs Investigation Memorandum at Comment 2.

Respondents also disagree with petitioner's argument that capital infusions and MOUs between banks and the KDIC are a vehicle by which the GOK controls lending institutions. Respondents assert that the KDIC does not interfere with banks' operations and that the Department verified that, pursuant to the terms of the MOUs, the KDIC's role is to monitor the performance of commercial banks. See GOK Verification Report at 5.

Further, respondents disagree with petitioner's arguments that the CRPA is another vehicle by which the GOK controlled the creditors of the paper industry. Respondents point out that the CRPA was created at the request of lending institutions in order to prevent creditors from "sitting out" of the restructuring process while other creditors worked to recoup creditors' loans.

Lastly, respondents take issue with petitioner's remarks concerning Prime Minister Decree #408. Referencing the decree, respondents contend that its purpose was to enhance the "autonomous operation and management of financial institutions by encouraging the government to go under objective and transparent procedures in formulation of financial policies. . ." See GOK's January 26, 2007, submission at Exhibit B-7.

Department's Position: In the Preliminary Determination, we found that there was no GOK direction of credit specific to the paper industry that would provide a benefit during the POI. We explained that the Department has found that the GOK exerted broad control over lending in Korea through 1998 and that this resulted in credit being directed specifically to such "strategic" sectors as the steel and semiconductor industries. However, we noted that although the paper industry was an important part of the Korean economy, we found that the record evidence in the instant investigation is not sufficient to support a conclusion that the paper industry was likewise a "strategic" sector to which, consequently, credit was specifically directed by the GOK through

its wide control of lending. See Preliminary Determination, 72 FR at 17517.

For the period subsequent to 1998, in the Preliminary Determination, we examined the paper sector using the two-part test articulated in the DRAMS Investigation, i.e., whether the GOK had a governmental policy favoring that sector and, whether record evidence establishes a pattern of practices by the GOK to act upon that policy to entrust or direct creditors to provide financial contributions to the paper sector. Under this analytical approach, we found in the Preliminary Determination that the evidence did not support a finding that a GOK policy existed favoring the paper sector during the relevant period. See 72 FR at 17518. For example, we found that there are no government statements indicating that the paper sector is a critical or strategic economic sector of the Korean economy. We also stated that there are no statements by Korean officials claiming any paper company was “too big to fail” and that we did not find sufficient evidence to support a finding that the GOK acted on any policy to entrust or direct the paper sector’s creditors to make financial contributions to the paper sector. Consequently, we preliminarily determined that there was no government entrustment or direction of private creditors, that is, no direction of credit,¹⁸ specific to the paper sector that is comparable to the Department’s earlier direction of credit findings regarding the steel and semiconductor sectors. Id.

Petitioner takes issue with the Department’s preliminary finding. However, in its case brief petitioner largely relies on the same information that was before the Department at the time of the Preliminary Determination. Regarding such information, we continue to find that it does not constitute sufficient evidence to conclude that (1) for the period up through 1998, the GOK designated the paper industry as a “strategic” sector to which credit was specifically directed, and (2) for the period subsequent to 1998, the GOK had a policy favoring the paper industry or engaged in a pattern of practices to act upon that policy, thereby entrusting or directing private creditors to provide financial contributions to paper producers. For example, much of the information cited by petitioner references time periods that pre-date the POI by many years (e.g., GOK economic plans from 1967 through 1981). In addition, although petitioner provides information, such as press articles, that describes the GOK’s intentions with respect to industries including the paper sector, there is no evidence indicating that the GOK took steps to carry out any specific actions for the paper industry or that the GOK entrusted or directed private banks to do so.

We disagree with petitioner’s claims that, with respect to the direction of credit issue, the Department improperly held the Korean paper industry up to the same standard applied in Korean steel and semiconductor proceedings. It is our practice to examine direction of credit allegations on a case-by-case basis. Thus, we acknowledge that an affirmative finding in a given proceeding need not hinge on whether the facts exactly mirror those of a proceeding in which the Department found direction of credit in those prior cases. However, as discussed above, we evaluate direction of credit allegations pursuant to a common standard. Unlike the semiconductor and the steel proceedings, the record of this investigation lacks sufficient

¹⁸ The term “direction of credit” is a short-hand term for an indirect subsidy whereby a government

entrusts or directs the provision of a financial contribution. Both “entrustment” and “direction” are included in this short-hand term, unless the context indicates otherwise.

evidence to conclude that the GOK targeted the paper industry or that the GOK entrusted or directed commercial banks to lend to the paper industry.

Petitioner also argues that the GOK's overwhelming ownership of the commercial banks holding the debt of Shinho and Poongman as well as the GOK's heavy involvement in the restructurings of the companies further demonstrate the extent to which the GOK seeks to assist the paper industry. Under the CRA and CRPA, creditors holding 75 percent of a company's debt can set the terms of the restructuring for all the creditors. Regarding Shinho, as discussed elsewhere in this decision memorandum, our findings indicate that in 1998 and 2002, the years in which Shinho's debt swaps occurred, GOK entities and commercial banks potentially subject to GOK control did not account for 75 percent of the voting rights specified under the CRA and CRPA. Our finding in this respect is based on the conservative assumption that the potential for GOK control of a commercial bank can arise in instances in which GOK entities own 25 percent or more of the bank. This is consistent with the Final Results of 1st DRAMs Review, where we analyzed the creditors' council voting rights of banks with 25 percent GOK ownership. See Comment 1C of the decision memorandum that accompanied the Final Results of 1st DRAMs Review. Therefore, with respect to 1998 and 2002, the GOK's ownership of Shinho's creditors was not large enough for it to dominate or dictate the decision-making process of Shinho's creditors council. In light of this evidence, we disagree with petitioner's contention that the Shinho restructuring demonstrates that the GOK directed credit to paper producers on an industry-wide basis.

In addition, although we have found Poongman's restructuring to be countervailable, our finding is limited to the equity infusions and restructured loans provided by GOK entities. Though GOK entities, like the KDB, played a large role in the Poongman restructuring, this is not a sufficient basis to conclude that the GOK entrusted or directed lending to the paper sector as a whole or that loans by GOK entities were systematically made pursuant to government policies to target the paper industry. Moreover, we note that we have based our specificity finding with respect to Poongman on the fact that the GOK's actions were limited to a particular enterprise and not on the GOK's actions with respect to the paper industry as a whole. Thus, we disagree with petitioner that the GOK's involvement with a single company necessarily indicates that the GOK implemented an industry-wide policy favoring the paper sector. We note our approach in this respect is consistent with the Department's findings in the DRAMs Investigation in which the Department concluded that while the GOK provided countervailable subsidies specifically to Hynix as part of its restructuring, during the same period the GOK did not direct commercial banks to lend to the semiconductor industry as a whole. See the "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002" section of DRAMs Investigation Memorandum.

We also disagree with petitioner's argument that the enactment of the CRPA is an important element of the GOK's control of the paper industry's creditors that indicates entrustment or direction. Petitioner bases its argument on this point on a citation from the GOK Verification Report from the DRAMs Investigation. See DRAMs Investigation Memorandum, Comment 1, footnote 19, referencing page 8 of the GOK Verification Report:

Moreover, under the CRPA, all creditor banks were obligated to participate in the workout system, which provided the dominant GOK-owned and -controlled (entities)

with the ability to establish the financial restructuring terms over many more creditors. This Act was introduced by the National Assembly “to make sure that the banks could not avoid participating in workouts.”

The Department’s statements in the DRAMs Investigation regarding the CRPA were made in the context of the Hynix restructuring, which the Department found countervailable on the grounds that the GOK had a policy to support Hynix and took actions in furtherance of this policy. The CRPA was one of the mechanisms by which the GOK could exercise its influence over Hynix’s creditors and creditors council during the restructurings. It is still a mechanism by which GOK-owned or -controlled creditors can exercise influence over a creditors’ council during a restructuring. But it is not necessarily evidence of GOK entrustment or direction of all of the creditors to an industry, outside the context of a restructuring.

Regarding petitioner’s arguments concerning statements in the SEC filings of certain Korean commercial banks, we acknowledge that the Department took note of such information in the DRAMs Investigation. However, as respondents point out, the Department concluded that the GOK did not direct credit to the semiconductor industry after 1998, thereby indicating that the Department did not use the information in the SEC filings as the basis for making an industry-wide finding. *Id.* The same can be said with respect petitioner’s arguments concerning MOUs signed between GOK institutions and commercial banks.

We also disagree with petitioner’s claims that the Department’s preliminary finding that the KDB lends funds in disproportionate amounts to the paper industry indicates that the GOK directs commercial banks to lend to paper producers. As explained elsewhere in this decision memorandum, we have revised our de facto specificity analysis concerning the KDB’s long-term loan program. Based on this new analysis, we no longer find that the KDB’s long-term lending is de facto specific to the paper sector within the meaning of section 771(5A)(D)(iii)(III) of the Act. Therefore, petitioner’s arguments on this point are moot.

In addition, we disagree with petitioner’s claim that Section 5 of Prime Minister Decree #408 demonstrates that the GOK exerts control over lending institutions in a manner that results in credit being directed to the paper industry. Although the Department found Prime Minister Decree #408 to be relevant in the DRAMs Investigation, it was part of a whole body of evidence of entrustment or direction of Hynix’s creditors. There is not similar evidence of entrustment or direction of creditors of the paper industry in this investigation.

Comment 2: Stainless Steel Is Not Applicable to Poongman’s Restructuring

Petitioner contends that the Department erred in applying Stainless Steel as case precedent to the Poongman restructuring in the Preliminary Determination for several reasons. Petitioner specifically argues that, unlike in Stainless Steel, Poongman’s debt for equity swap and merger into Namhan were not inextricably linked events. Petitioner charges that even though there was an agreement among Poongman, Namhan, and Poongman’s creditors on the restructuring and merger, Poongman’s debt-for-equity swap was not contingent upon Poongman’s merger with Namhan. Petitioner asserts that the restructuring agreement was only “an agreement to agree” to merge and did not make the merger legally enforceable.

As support for this position, petitioner states that at the time of the debt-for-equity swap by the KDB and Hana Bank, the necessary legal requirements for the merger had not yet occurred, *i.e.*, Poongman and Namhan had not yet entered into a merger agreement and Namhan's board had not yet approved the merger. Petitioner discusses that in Stainless Steel the shareholders of Kangwon and Inchon approved the merger more than two months before Kangwon's creditors converted Kangwon's debt-for-equity. *See* Comment 3, "Kangwon's Debt-for-Equity Swap" of the decision memorandum that accompanied Stainless Steel (Stainless Steel Memorandum).

Respondents argue that the merger of Poongman into Namhan and the acquisition of Namhan shares in the debt-for-equity swaps by Poongman's creditor banks was an integral and irrevocable part of the restructuring agreement from the beginning.¹⁹ They add that the merger occurred and the creditor banks acquired their shares in Namhan as provided for in the restructuring agreement and that these events were modeled on the merger of Inchon and Kangwon,²⁰ where the Department found no countervailing benefit resulting from a debt-for-equity swap contingent upon a merger with an equityworthy company. *Id.*

Department's Position: We find that Poongman's creditors did not effectively exchange their debt for equity in Namhan and that Stainless Steel is inapposite to the facts of the instant investigation. The facts on which the Department's reasoning are based are proprietary and cannot be further discussed in this document. For the Department's analysis of this comment, *see* the Poongman Analysis Memorandum.

Comment 3: GOK Assisted and Directed Credit to Poongman During its Restructuring

Petitioner argues that the GOK directed or entrusted Poongman's restructuring. Petitioner discusses that the KDB was the lead creditor in Poongman's restructuring, which was a restructuring compelled by the KDB. Petitioner charges that throughout the restructuring, the KDB was Poongman's main benefactor. Specifically, petitioner notes that in 2002, to alleviate Poongman's financial burden, the KDB extended loan maturities and in 2004, the KDB converted a portion of the company's debt into equity and again extended loan maturities. Petitioner notes that, as a result of the debt-for-equity swap, the KDB obtained ownership in Poongman. Petitioner contends that in instances of liquidation, shareholders' debt is subordinated to that of creditors and, therefore, the KDB's decision to subordinate its position is inconsistent with the usual practice of private investors. (Note: This comment has been summarized from its original proprietary form, which is fully summarized and addressed in the Poongman Analysis Memorandum). For these reasons, petitioner argues that the Department should determine that the KDB's assistance constitutes direct government assistance under

¹⁹ *See* Namhan's February 2, 2007 questionnaire response at 5-15 and Exhibits L-16 through L-36; Kyesung/Namhan's March 13, 2007 questionnaire response at 17-22 and Exhibits L-37 through L-46; *see also* Kyesung/Namhan Verification Report at 4-9 and the referenced verification exhibits.

²⁰ *See* Kyesung/Namhan's March 13, 2007 questionnaire response at 18 and Exhibit L-44 at Chapter VII, Section 3.2.2.

section 771(5)(D)(i) of the Act, confers a benefit under sections 771(5)(E)(i) and (ii), and is specific under section 771(5A)(D)(iii)(III).

Petitioner also argues that another participant in Poongman's debt-for-equity swap is a government entity and, therefore, the Department should countervail the full amount of the equity infusion made by that entity as a direct government contribution. Concerning Hana Bank, petitioner argues that it also provided countervailable assistance to Poongman in the form of extended loan maturity and debt-for-equity swap that was entrusted or directed by the GOK.

Respondents argue that the issue is not whether the KDB was actively involved in Poongman's restructuring, but whether such involvement provided a countervailable benefit to the company. They contend that the record evidence demonstrates that there was no countervailable benefit. They further assert that the facts before the Department for the final determination regarding Poongman's restructuring and merger into Namhan are the same facts which the Department analyzed at the Preliminary Determination, where the Department found that Poongman did not receive countervailable benefits from its debt restructuring and debt-for-equity swaps. See Preliminary Determination, 72 FR at 17512.

Respondents discuss that in a debt restructuring, a creditor's goal is to address the debtor's cash flow problems and structure a loan repayment schedule in order to facilitate the borrower's normalization and maximize the creditor's recovery of its loans. They assert that the KDB's goal in Poongman's restructuring was no different. Concerning the KDB's decision to work with Poongman on its outstanding debts, respondents note that Poongman had a history of making interest payments. They add that the KDB did not provide the company with preferential interest rates, but interest rates consistent with Poongman's credit rating.

With regards to the debt-for-equity swaps, respondents state that the KDB and Hana Bank both agreed to swap a portion of their outstanding loans and that these swaps occurred in conjunction with the capital injections made by private investors. Respondents discuss that the acquisition price of Poongman shares for all investors was based on Poongman's par value and that, in conjunction with the merger of Poongman and Namhan, the Poongman shares would subsequently be converted into Namhan shares based upon an independently determined merger ratio. Respondents assert that the KDB acquired its shares in Poongman, and subsequently in Namhan, at the same time and on the same terms as Hana Bank and the other private investors. They add that, contrary to petitioner's assertion, there is no evidence on the record that these private investors made their investment decisions on information other than on their own commercial considerations. (Note: This comment has been summarized from its original proprietary form, which is fully summarized and addressed in the Poongman Analysis Memorandum).

Department's Position: As explained above, we have revised our finding from the Preliminary Determination. We find that the financial support provided to Poongman by the KDB and other GOK authorities are countervailable. The facts on which the Department's reasoning are based are proprietary and cannot be further discussed in this document. For the Department's analysis, see Poongman Analysis Memorandum.

Comment 4: Poongman Was Unequityworthy and Uncreditworthy

Petitioner disagrees with the Department's preliminary finding that Poongman's equityworthiness is not relevant to the issue of benefit because the debt-for-equity swap and debt maturity extensions granted to Poongman in 2004 were conditioned on Poongman's merger with Namhan. See Preliminary Determination, 72 FR at 17512-13. Petitioner argues that Poongman's restructuring in 2004 and merger into Namhan were events inconsistent with the usual practices of private investors and, therefore, the Department should conduct an equityworthiness analysis of Poongman because the company was unequityworthy. Petitioner additionally argues that the Department should treat the entire amount of the debt-for-equity swaps as a grant. Petitioner also contends that, with regard to the 2002 and 2004 extensions of Poongman's debt maturities by the KDB and Hana Bank, the Department should treat them as new loans consistent with its past practice and apply uncreditworthy benchmark interest rates in the benefit calculation.

Respondents assert that the KDB acquired its shares in Poongman, and subsequently in Namhan, at the same time and on the same terms as Hana Bank and the other private investors and, therefore, pursuant to 19 CFR 352.507(a)(3), the issue of equityworthiness does not arise. They add that contrary to petitioner's assertion, there is no evidence on the record that these private investors made their investment decisions on information other than on their own commercial considerations

Department's Position: We analyzed whether Poongman was equityworthy in response to the comment entitled "GOK Entrusted or Directed Poongman's Creditors During its Restructuring" of the Poongman Analysis Memorandum. As outlined in the Department's position to that comment, we determine that Poongman was unequityworthy in 2004 and that the debt-for-equity swap by the KDB and the cash infusion by a government entity provided countervailable benefits to Poongman. See Poongman Analysis Memorandum. We also determine that the KDB's extension of debt maturities in 2004 provided new loans to Poongman. We applied an uncreditworthy benchmark to calculate the benefit as we continue to find Poongman uncreditworthy in 2004. Id., see also "Creditworthiness" section, above.

Comment 5: Poongman Did Not Benefit from Debt Forgiveness

Respondents argue that Poongman did not benefit from debt forgiveness provided by the KDB because the company made interest payments against its rescheduled Korean won and foreign currency loans over the period 2002 through 2004. Respondents state that evidence of Poongman's interest payments was submitted to and verified by the Department at both the GOK and Kyesung/Namhan verifications.

Petitioner argues that irrespective of whether Poongman made interest payments during the period 2002 through 2004, the Department should countervail the loans, which Poongman received from the KDB and Hana Bank that were outstanding during the POI. Petitioner states that the Department was correct in preliminarily finding Poongman to be uncreditworthy in 2004 and, for the final determination, should find Poongman to also be uncreditworthy in 2005 because there is no information indicating any change in Poongman's financial condition until its

merger with Namhan. Therefore, petitioner asserts that the Department should find the loans outstanding in 2005 to be countervailable government-provided loans and apply an uncreditworthy benchmark in calculating the benefit.

Department's Position: We preliminarily determined that the KDB had forgiven the interest due on loans, which were rescheduled in 2002 as part of Poongman's restructuring, and found that the interest forgiveness constituted a countervailable subsidy. See Preliminary Determination, 72 FR at 17512-13. At the GOK and company verifications, we confirmed that Poongman made interest payments against the rescheduled Korean won and foreign currency loans during the two-year period, 2002-2004. See Kyesung/Namhan Verification Report at 10 and VE-7 at 8-12, and GOK Verification Report at 6 and verification exhibit KDB-11 at 8-12. Because there was no forgiveness of the interest on Poongman's rescheduled loans by the KDB, we determine that there was no financial contribution by the GOK and no countervailable benefit to Poongman from forgiveness of debt.

We also preliminarily determined that the KDB loans outstanding in 2005 were countervailable. See Preliminary Determination, 72 FR at 17512. In 2004, Poongman requested and the KDB agreed to extend the maturities of the loans as part of the company's restructuring. It is the Department's practice to treat the extension of maturities as new loans. See DRAMS Investigation Memorandum at 21. Therefore, consistent with the Department's practice, for this final determination, we are treating the loans extended in 2004 as new loans received in 2004. Because we continue to find that Poongman was uncreditworthy in 2004, we used an uncreditworthy benchmark to calculate the benefit from the KDB loans during the POI. For this final determination, we are treating Poongman's loan maturity extension from the KDB as part of Poongman's restructuring, for which we are calculating a single program rate. See Poongman Analysis Memorandum.

In addition, because there were no new loans provided to Poongman in 2005, the issue of whether the company was uncreditworthy in 2005 is moot. Also, we disagree with petitioner's argument to countervail Poongman's loans from Hana Bank that were outstanding during the POI. There is no evidence on the record demonstrating that Hana Bank was entrusted or directed by the GOK to provide the loans to Poongman.

Comment 6: Evidence of Entrustment or Direction of Shinho's Creditors

Citing to press reports included in its pre-preliminary determination comments, petitioner claims that as part of its "New Big Deal Policy," the Financial Supervisory Service (FSS) demanded that Shinho's lead bank agree to a debt-for-equity swap in order to save the company. See petitioner's March 8, 2006, submission at Exhibits 25 and 26 and petitioner's November 6, 2006, submission at Exhibits 12 and 13. Petitioner argues that it is no surprise that the GOK attempted to dispute the validity of the press reports. Petitioner notes, however, that the fact that GOK officials did not attempt to deconstruct the FSS's intervention on behalf of Shinho further enhances the credibility of the press articles submitted by petitioner.

Petitioner contends information submitted by Shinho provides strong evidence of GOK entrustment or direction. Petitioner argues that a credit rating analysis conducted by the KDB at the time Shinho completed its restructuring process indicates the high degree to which Shinho

enjoyed government support. See GOK Verification Report at 6. Petitioner argues that the GOK's support of Shinho is also evident in KDB internal memoranda and asserts that the memoranda indicate that KDB based its decision to participate in Shinho's first restructuring on factors other than the financial viability of the company. See page 8 of the GOK Verification Report. Petitioner argues that additional memoranda also indicate that in 1999 the KDB agreed to undertake measures based on non-financial factors. See GOK Verification Report at 4 through 6 and Exhibit KDB-18. Petitioner also contends that information obtained during verification regarding certain KDB actions is also evidence of entrustment or direction of Shinho's creditors. Petitioner also notes that KFB sent Shinho a warning letter demanding corrective action. See EN Paper's February 2, 2007, submission at 7 and 8 and Exhibit K-8. Petitioner also notes that KDB's status as a large creditor prior to each of Shinho's restructurings. See EN Paper Verification Report at Exhibit 13. Further, Petitioner takes issue with creditors' refusal to participate in a voluntary workout process after the expiration of the CRA and certain provisions in the workout plans which force the company's creditors to agree to the terms of the restructuring. (Note: These comments have been summarized from their original BPI forms, which are included and addressed further in the EN Paper Analysis Memorandum; see also Petitioner's August 13, 2007, submission at 19-22).

Respondents argue that negotiations with individual creditors, such as foreign creditors, that were not part of the CRA or CRPA, or creditors that had opted out of the workout process, demonstrate that there was no GOK direction or control of Shinho's debt restructuring and that all creditors shared in the debt restructuring. They note, for example, that Shinho negotiated settlements and that certain creditors that opted out of the restructuring process. Thus, argue respondents, even creditors that were not parties to the formal restructuring were willing to swap debt for shares of Shinho at the same conversion rate used by creditors participating in the restructuring process.

Respondents also disagree with petitioner's claim that the creditors' refusal to participate in a voluntary workout process after the expiration of the CRA demonstrates that legal frameworks like the CRA and CRPA forced creditors to participate in the Shinho restructuring against their will. Respondents note that the creditors continued to abide by their restructuring commitments even after the expiration of the CRA. Respondents further argue that the creditors' reluctance to participate in a voluntary workout without the legal framework of a CRA or CRPA actually confirms their willingness to participate in the restructuring so long as it operated under established rules to avoid other creditors from acting as "free riders." Respondents point out that one of the main goals of the CRPA was to avoid the problem of "free riders."

In all cases, respondents argue that commercial lending institutions and GOK entities, such as the KDB, sought to maximize the recovery of their loans to Shinho. Regarding the KDB, respondents cite to Exhibit 13 of the EN Verification Report, which contains the salient features of the KDB's decision to approve the workout plan. Citing to page 8 and Exhibit 17 of the EN Verification Report, respondents point to KDB's expected recovery from the workout. Respondents disagree with petitioner's challenges to the reasonableness of the KDB's decision to undertake certain measures. Respondents argue that petitioner fails to recognize that loans for the purchase of raw materials for a company under a restructuring are provided to maintain the company's going-concern value while allowing the creditors time to restructure the company and its debts in order to maximize loan recovery. Respondents further argue that, as with \$70

million in usance loans approved for the purchase of raw materials, the repayment of new loans was given first priority. (Note: These comments have been summarized from their original BPI forms, which are included and addressed further in the EN Paper Analysis Memorandum. See Respondent's August 22, 2007, submission at 25-27.)

Department's Position: We disagree with petitioner's argument that creditors were entrusted or directed by the GOK to participate in Shinho's restructurings in 1998, 2000, and 2002. The evidence on the record, taken as a whole, does not demonstrate a GOK policy to assist Shinho or that the GOK engaged in a pattern of practices amounting to entrustment or direction. The facts on which the Department's reasoning are based are proprietary and cannot be further discussed in this document. For the Department's analysis, see EN Paper Analysis Memorandum.

Comment 7: GOK Ownership of Shinho's Creditors and the Corporate Restructuring Process

Petitioner states that corporate workouts under the CRA and CRPA require the consensus of at least 75 percent of the debt of the restructured company. Petitioner argues that in each of Shinho's 1998, 2000, and 2002 restructurings, the GOK's ownership of Shinho's creditors was such that it was able to control the restructuring process carried out under the CRA and CRPA. Petitioner further argues that the GOK expressly directed Shinho's restructuring.

Respondents explain that in a corporate workout unsecured creditors must operate under exigent circumstances and that bankruptcy and restructuring procedures are set up in order to maximize credit recovery and minimize credit losses. Respondents argue that the Department has recognized that such mechanisms are a standard feature of restructurings and bankruptcies. They note that in Stainless Steel, the Department found that restructurings conducted in the context of bankruptcy proceedings are only countervailable if the procedures are not available to all companies, and thus the bankruptcy protection is specific or, even if the procedures are generally available, the treatment granted to a particular producer was inconsistent with typical practice and therefore specific. Respondents explain that the Department found the restructuring at issue in Stainless Steel was not countervailable and maintain that the facts in the current investigation are comparable.

Respondents argue that for each of the three restructurings that occurred as part of Shinho's workout program, the creditors council hired independent consultants to evaluate Shinho's current situation and make recommendations to return Shinho to normal operations. They explain that most of Shinho's creditors agreed to accept the creditors counsel's proposals that were adopted in response to the consultants' reports. Respondents contend that those creditors that did not follow the consultants' proposals could not do so because they were in liquidation, faced exposure limits due to Korea's banking laws, or had to negotiate individual settlements.

Respondents take issue with petitioner's claim that the GOK's ownership of Shinho's creditors was such that it was able to control the restructuring process carried out under the CRA and CRPA. According to respondents, petitioner's definition of government control appears to consider any GOK share ownership in a creditor by any government entity as a basis for the GOK's control of that creditor. Referencing the Preliminary Determination and the DRAMs Investigation Memorandum at page 17, respondents maintain that the Department distinguishes

between lending institutions that are “government authorities” (e.g., the KDB) and commercial banks with some GOK ownership. Respondents add that the Department has found that the GOK’s temporary ownership of commercial banks due to the financial crisis is not, by itself, indicative that such institutions are government authorities. See Preliminary Determination, 72 FR at 17517, in which the Department references the DRAMs Investigation Memorandum.

Respondents further argue that petitioner characterized several commercial banks as GOK authorities when, in fact, the GOK held only a minority interest throughout the 1998 through 2002 period. Respondents also note that petitioner’s arguments of GOK control included commercial banks into which the GOK had injected capital during the financial crisis. According to respondents, petitioner has provided no other evidence of GOK control of the commercial institutions. Respondents argue that if the Department limits its analysis of GOK control to established GOK authorities (e.g., the KDB, IBK, NACF, etc.), it would find that such institutions controlled less much less of Shinho’s debt. Thus, according to respondents, proposals before Shinho’s creditors council required the agreement of commercial institutions which held a substantial, if not a majority, share of Shinho’s debt.

Respondents argue that in the case of Shinho, the Department must determine whether private and public lenders (e.g., GOK authorities) participated in the debt restructuring and the conversion of debt to equity on the same terms and at the same time as the GOK lending institutions. Respondents note the Department made such a finding in the Preliminary Determination and that the information collected during the verification of the GOK and Shinho confirm its preliminary finding. For example, referencing the Department’s verification report, respondents argue that Shinho’s creditors (including the KDB) participated in the debt restructuring in proportion to the amount of their outstanding unsecured debt. See EN Paper Verification Report at 5. They note that the participating creditors diverted from the allocation methodology in instances in which a creditor was in bankruptcy, creditors faced exposure limits under Korea’s bank laws, or when the amount allocated to a particular creditor was so small as to be impractical.

Respondents further argue that the conversion rate utilized by the creditors during the debt-to-equity swaps is further evidence that all creditors were treated equally throughout Shinho’s restructuring process. They explain that the creditors based the purchase price for shares when converting to debt on the par value of Shinho’s shares. Respondents note that the par value of a company’s shares does not change, and all conversions occurred on the same terms whether creditors converted their debt in 1998, 2000, or 2002. Respondents argue that by using Shinho’s par value for converting debt to equity, all unsecured debt outstanding at any time during the workout program was treated as equal and afforded equal treatment to all creditors throughout the restructuring process. They contend that using a current share price (i.e., the price of the limited amount of Shinho shares traded on the Korean stock market), would have treated some debt as more valuable than other debt, depending on the date the shares were converted.

Department’s Position: We agree with respondents that there was not a pattern of dominance by GOK lending institutions that would have enabled the GOK to entrust or direct the creditors on the Creditors Council. Under the CRA and CRPA, voting rights on the Creditors Council are assigned according to each participating creditor’s proportional share of the total amount of

unsecured debt, and restructuring decisions required the agreement of creditors holding at least 75 percent of the total voting rights of the Creditors Council. In the DRAMs first administrative review, the Department assessed whether banks with a GOK ownership level of 25 percent held at least 75 percent of the voting rights on Hynix's creditors council. See Comment 1C of the decision memorandum that accompanied the [Final Results of 1st DRAMs Review](#). Using information placed on the record by both petitioner and respondent, we applied this same approach to determine whether creditors of Shinho, with at least 25 percent GOK ownership, accounted for 75 percent or more of the voting rights of the Creditors Council at the time each of the three workout plans was approved. See Memoandum to file entitled "Calculation of the Proportion of Voting Rights Held by Creditors with 25 Percent Government Ownership Levels."

Our analysis indicates that creditors with at least 25 percent GOK ownership ratios held less than 75 percent of the voting rights for the "workout" plan approval votes in 1998 and 2002. This evidence further supports the Department's finding that there is insufficient evidence to conclude that the GOK entrusted or directed Shinho's creditors to provide financial contributions in the 1998 and 2002 restructurings.

Regarding Shinho's 2000 restructuring, creditors with GOK ownership levels of at least 25 percent held more than 75 percent of the voting rights of the creditors council. However, as discussed in Comment 1 of this decision memorandum and the EN Paper Analysis Memorandum, we find that the facts on the record do not support a finding that the GOK entrusted or directed commercial banks to lend funds or take special actions with respect to Shinho. In addition, there is no evidence of direct influence (*i.e.*, attendance of creditors council meetings by GOK officials, coercion, etc.) by the lending institution potentially subject to GOK control that participated in the meetings leading up to the 2000 restructuring. Thus, in light of our findings, the fact that percentage of voting rights held by creditors with GOK ownership ratios exceeded 75 percent in 2000 does not, by itself, constitute sufficient evidence that the GOK entrusted or directed the actions of Shinho's creditors during the company's 2000 restructuring. Our finding in this respect is consistent with the Department's finding in the [Final Results of 1st DRAMs Review](#), in which the Department based its finding of the GOK's entrustment and direction of Hynix's creditors in Hynix's 2002 restructuring not only on the GOK's dominance of the company's creditors council but also on its conclusion that the GOK had a policy in place to save Hynix and instituted a pattern of practices pursuant to that policy. See Comments 1A, 1B, and 1C of the decision memorandum that accompanied the [Final Results of 1st DRAMs Review](#).

We further find that in the absence of evidence of GOK influence over the decision-making ability of the Creditors Council, we determine that the loans extended or restructured by Shinho Paper's commercial lenders constitute comparable commercial loans within the meaning of 19 CFR 351.505(a)(2) that may serve as benchmarks for the government contributions. Further, record evidence indicates that the restructuring plans imposed no distinction in the treatment of debt held by GOK lending institutions and Shinho's other creditors. Therefore, because all creditors agreed to the same debt-to-equity conversion rates, loan terms, and other terms and conditions, consistent with 19 CFR 351.505(a)(1), we determine that Shinho Paper did not receive a benefit from any GOK-provided financial contribution as part of the 1998, 2000, or 2002 workout plans.

Comment 8: Whether Shinho Was Uncreditworthy During its 1998, 2000, and 2002 Restructurings and 2004 Syndicated Loan

Petitioner argues that in 1998, Shinho was not able to pay its debts and, thus, entered into a restructuring program. Petitioner contends that from 1998 through its 2002 restructuring, Shinho was unable to operate normally as a going concern. Petitioner also asserts that company officials admitted that Shinho could not receive a new loan from private sources throughout the restructuring period, except for payment guarantees it obtained from its creditors for raw material purchases. Regarding payment guarantees for the raw material purchases, petitioner contends that such financing cannot be reasonably considered as evidence of Shinho's ability to secure long-term loans because the payment guarantee was less than one year. Petitioner further maintains that the decision to provide the payment guarantees is not based on Shinho's credit status, but merely on the orders Shinho had secured from customers. Petitioner argues that proprietary information obtained during the GOK verification also confirms the fact that Shinho could not raise funds from conventional sources.

In addition, petitioner argues that the rejection of Shinho's request for a voluntary workout by its creditors in 2000 demonstrates that they were reluctant to undertake additional restructurings and lending without some form of legal framework such as the CRPA. See EN Paper Verification Report at 14 and 15. According to petitioner, the creditors' reluctance to participate in additional restructurings demonstrates that no single financial institution wanted to support Shinho unless it was forced to do so through a government-mandated restructuring.

Based on the information discussed above as well as on Shinho's financial ratios during the period, petitioner argues that the Department should find that Shinho was uncreditworthy during 1998, 2000, and 2002. Accordingly, when calculating the benefit on Shinho's countervailable loans outstanding during the POI, petitioner argues that the Department should calculate the benchmark using the uncreditworthy benchmark methodology described under 19 CFR 351.505(a)(3)(iii).

Respondents note that in the Preliminary Determination, the Department found that long-term leases that had been restructured as part of the workout process were not countervailable because the terms of the loans were the same for all lenders that participated in the restructuring, including lenders that are not GOK lending institutions. See 72 FR at 17519. As such, respondents argue that there is no basis for the Department to find the long-term loans issued by GOK lending institutions to be countervailable in the final determination. They further argue that because the commercial lending institutions meet the requirement for comparable commercial loans, Shinho's creditworthy status is also not an issue.

Respondents further contend that petitioner's arguments concerning Shinho's creditworthy status fail to recognize that debt rescheduling through the extension of maturities, either with or without interest rate reductions, is a common feature of workout programs. They add that it is a given that a company undergoing a workout or bankruptcy proceeding is in financial difficulty. However, they argue that to use such financial difficulty as the basis for an uncreditworthy finding would, in turn, make it impossible for any new lending or restructuring of loans to be on commercial terms during a workout or bankruptcy proceeding. Respondents argue that petitioner's suggested approach is not the relevant legal standard utilized by the Department. They contend that, as applied, the Department's legal standard is whether the terms

on which the government creditors restructured debt or provided new loans were the same as the terms provided by the commercial creditors and also whether the procedures followed are typical procedures followed. Respondents maintain that when there is no difference in the terms provided by government and commercial creditors, as was the case with Shinho, there is no benefit provided by the government and no need for the Department to undertake its creditworthy analysis.

Department's Position: Under 19 CFR 351.505(a)(4)(ii), we determine a company's creditworthiness by first examining whether there is dispositive evidence of a long-term commercial loan actually received by the company during or prior to the period at issue. If such loan exists and it is not accompanied by a government guarantee, the Department normally finds that the company is not uncreditworthy.

We do not agree with petitioner that Shinho was unable to obtain new long-term loans during the restructuring period. As explained above, it is the Department's practice to treat any material change to an outstanding loan as a new loan. See DRAMS Investigation Memorandum at 21. Therefore, we determine that the loan extensions received by Shinho from its creditors as part of the "workout" plans constitute new long-term lending within the meaning of 19 CFR 351.505(a)(4)(ii).

The record indicates that Shinho Paper received new loans from its commercial lenders in 1998, extensions of long-term loans and capital leases from its commercial lenders throughout the restructuring period, and a large syndicated loan in 2004. The record also indicates that the same terms and rate structures applied equally to the long-term loans and capital leases held by all of the lenders that participated in the restructuring, including lenders that were not GOK lending institutions. With regard to the large syndicated loan received by Shinho Paper during 2004, the record evidence also indicates that all lenders, *i.e.*, both the government and commercial creditors, participated in the syndicated loan on the same terms, such as the interest rate and structure of the loan. Finally, the record evidence does not indicate that the lending provided by the commercial creditors was accompanied by a government guarantee.²¹

We also disagree with petitioner's argument that the creditors' refusal to participate in a voluntary restructuring in 2000 indicates that the creditors were acting at the behest of the GOK and, thus, should not be considered in examining Shinho's creditworthiness. As noted above, we find that the creditors' rejection of the request merely indicated the desire of the creditors to conduct the restructuring under a formalized procedure such as the CRPA. In addition, as discussed below, we find that the GOK did not entrust or direct Shinho's creditors.

Therefore, we continue to find that Shinho was not uncreditworthy during its 1998, 2000, and 2002 restructurings and when it received its syndicated loan in 2004. Our finding regarding Shinho's creditworthiness is unchanged from the Preliminary Determination. See also the March 29, 2007, Memorandum from Robert Copyak to Melissa G. Skinner regarding Unequityworthiness and Uncreditworthiness. Allegations for EN Paper (Shinho Preliminary Creditworthy and Unequityworthy Memorandum).

²¹ The record indicates that these restructured long-term loans may have been covered by the general payment guarantees approved by the Creditors Council, which were borne proportionally and on identical terms by all the creditors, and which, therefore, we do not consider to be "government -provided guarantees" within the meaning of 19 CFR 351.505(a)(4)(ii).

Comment 9: Whether Shinho Was Unequityworthy During its 1998, 2000, and 2002 Restructurings

Petitioner argues that Shinho was equityworthy during 1998, 2000, and 2002, the years in which Shinho's creditors swapped their debt for equity in the company. Petitioner contends that the Department incorrectly concluded that private creditors' decision to convert their debt into equity on the same terms as the GOK was evidence that the private creditors were acting in their self interest, thereby indicating that Shinho was equityworthy. Petitioner argues that record evidence indicates that Shinho's private creditors acted at the behest of the GOK and, thus, the Department cannot view their participation as evidence that the debt-for-equity swaps were market based. Petitioner points to the fact that Shinho's creditors rejected Shinho's request for a voluntary workout in the absence of the CRPA as well as to the actions of certain foreign creditors as evidence that no single financial institution wanted to support Shinho unless forced to do so.

Petitioner contends that the conversion rate utilized by the creditors during the debt swaps deviated from the market rate, thereby providing an enormous windfall to Shinho. Petitioner contends the conversion rate applied in the debt swaps demonstrates that the creditors' behavior was not consistent with normal investment practices of private investors. Petitioner therefore argues that the conversion rates employed during Shinho's debt swaps indicate that the company was unequityworthy in 1998, 2000, and 2002.

In addition, petitioner asserts that the Shinho's creditors may have considered the company's stock worthless, and in this respect the conversion rate applied in the debt swaps would not have made any difference to them. Petitioner argues that Shinho's creditors considered the company's convertible bonds worthless as evidenced by the fact that many creditors, when given the choice of either forgiving interest on existing debt or swapping debt for convertible bonds, chose to forgive interest rather than participate in the debt swap. According to petitioner, the creditors' behavior indicates that they considered the stocks and convertible bonds resulting from the debt-for-equity swaps to have virtually no value such that the debt swaps constituted debt forgiveness.²

Petitioner argues that sufficient evidence exists for the Department to reject the notion that the involvement of Shinho's creditors constituted the actions of market-based participants. Petitioner further argues that the Department should treat each of the debt-for-equity swaps as grants in accordance with 19 CFR 351.507(a)(6), using an uncreditworthy benchmark interest rate as the discount rate to allocate the benefit, as described under 19 CFR 351.524(d)(3)(ii).

Respondents explain that in the Preliminary Determination the Department found that Shinho's government and commercial creditors participated in the debt-for-equity swaps at the same time and on the same terms and that an equity acquired by the commercial creditors represented a significant portion of the debt converted to equity. Respondents state that the Department, accordingly, found that Shinho did not received a countervailable subsidy as a result of the debt-for-equity swaps that occurred as part of the restructuring. See 72 FR at 17519. Respondents note that pursuant to 19 CFR 351.507(a)(3), the question of a firm's equityworthiness arises only if actual private prices are not available. Respondents contend that since there is ample evidence indicating the participation of commercial investors on terms equal

to those of the government creditors, Shinho's equityworthiness is not an issue in the current investigation.

Respondents further note that in the Preliminary Determination, the Department found that the "various workout plans that were conducted for use by the creditors council to determine the price and terms of the debt-for-equity swaps during each of the restructuring periods from 1998 through 2004" were "objective analyses within the meaning of 19 CFR 351.507(a)(4)(ii)" and thus no further inquiry was required. See Shinho Preliminary Creditworthy and Unequityworthy Memorandum at 2. Respondents further argue that workouts and restructurings normally involve a reduction of claims by all creditors which are apportioned based on the amount of their claims and the mere fact that such a reduction occurred in the case of Shinho cannot be used as a basis for finding the company unequityworthy or its restructurings countervailable.

Department's Position: As we explained above, we disagree with petitioner's contentions that Shinho's non-GOK creditors were entrusted or directed to swap their unsecured debt for equity in Shinho Paper and that these creditors are not proper benchmarks for the GOK-entities' financial contributions

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. Pursuant to 19 CFR 351.507(a)(2), an equity infusion is considered inconsistent with usual investment practice if the price paid by government for newly issued shares is greater than the price paid by private investors for the same newly issued shares. Further, only if significant private investor prices are unavailable do we reach the issue of equityworthiness. See 19 CFR 351.507(a)(3)(i).

We determine that the equity investment by Shinho's non-GOK creditors is significant within the meaning of 19 CFR 351.507(a)(2) and provides us with private investor prices to use as benchmarks. Accordingly, the issue of Shinho's equityworthiness is moot. See 19 CFR 351.507(a)(3)(i). There is no benefit from the equity infusions made by GOK authorities in Shinho.

Comment 10: The Validity of the Analyses of Shinho's Financial Status Conducted by Third Parties

Petitioner takes issue with the Department's finding in the Preliminary Determination that the financial analyses of Shinho that were conducted by outside parties for use by Shinho's creditors were objective. Petitioner argues that the analyses were in no way objective and, therefore, should serve as a basis for finding that Shinho was equityworthy at the time of the debt swaps in 1998, 2000, and 2002. Petitioner claims that the financial advisors hired by Shinho's creditors applied discount rates in an arbitrary manner in order to inflate Shinho's going-concern value higher than the liquidation value. Petitioner contends the arbitrary nature of the discount rates is apparent when comparing the discount rate used in 1998 to the rate applied in 2000. Petitioner further argues that the discount rate used by the financial advisor to calculate Shinho's going-concern value in 2000 was extremely aggressive and out of sync with the range of rates utilized by financial experts in 1998.

Petitioner notes that the 2000 going-concern value calculated by the consulting firm utilized a positive growth rate. Petitioner notes that it was inappropriate to assume a positive growth rate for a company undergoing a restructuring. Petitioner contends that absent the use of a positive growth rate, Shinho's going-concern value would have been less than its liquidation rate. Petitioner asserts that the use of such an inappropriate assumption violates the procedures for valuing companies under in-court reorganizations, which require the use of conservative estimates. According to petitioner, given the extremely aggressive and overly optimistic assumptions contained in the consultants' reports of 1998, 2000, and 2002, they cannot serve as a means of evaluating the equityworthiness of Shinho in those years.

Respondents take issue with petitioner's criticisms of the consultant reports issued in 1998, 2000, and 2002. Respondents explain that the particular target of petitioner's criticism is the 2000 consultant report, which calculated Shinho's going-concern value using a discount rate that was lower than the one used to calculate the company's going-concern value in 1998. Respondents argue that petitioner fails to point out that interest rates declined after 1998 and investor risk lessened as Asian economies emerged from the financial crisis, which was at its height in 1998. Thus, respondents maintain that the discount rate utilized by the consultants in the 2000 report was in line with market rates in effect in 2000. In response to petitioner's claim that the discount rate applied in the 2000 report was overly optimistic, respondents contend that the discount rate applied in the 2000 consultant report included a suitable risk premium that was set out by Korea's bankruptcy court. Respondents further argue that the reports prepared by independent consultants hired by Shinho's creditors counsel provided a considerable range of going-concern values, based on various discount rates and growth rates. Respondents contend that it was up to the creditors to evaluate the reports and determine whether to proceed with the restructurings or liquidate the company, based on their conclusion as to which procedure provided the best opportunity for maximum credit recovery. Respondents note that at each stage the creditors chose to continue with the restructurings.

Department's Position: Whether or not objective studies were conducted to assess the reasonableness of investment in a firm is an issue we examine in the context of an equityworthiness determination. See 19 CFR 351.507(a)(4)(i)(A). We are not examining Shinho's equityworthiness because there are significant private investor prices available. Accordingly, we are not examining the issue of the studies further.

Comment 11: Donghae Pulp's Sale of Chemical Pulp for Less Than Adequate Remuneration

Petitioner disputes respondents' contention in the Preliminary Determination that DP, a producer of chemical pulp for Korean producers of CFS paper, cannot be considered a government authority because it was under court receivership. They request that the Department reject this argument and affirm its Preliminary Determination, which considered the following five 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.

Petitioner adds that the KDB held a majority ownership in DP during the POI. Petitioner

disputes respondents' argument that the nature of the receivership process in Korea precluded any ability of the KDB to direct or control DP's business activities. Petitioner notes that under DP's reorganization plan, shareholders of the company have a right to vote on adoption of the company's reorganization plan and can later demand modification of the existing reorganization plan.

Petitioner also explains that former KDB officials were present on DP's board, one of which was a receiver. Petitioner further argues that one of DP's receivers served as an executive of the KDB immediately prior to his appointment as receiver. Petitioner contends that the receiver is nothing more than an employee of the KDB who executes the bank's and the GOK's policy.

Petitioner asserts that the GOK, through the KDB, has controlled DP since its creation, either as a creditor or as a shareholder. Petitioner contends that because of the KDB's control of DP, the bank was able to select its receiver and modify the company's reorganization plan. Petitioner cites to various instances on the record of the investigation that it claims demonstrates that DP was created and maintained by the government for the benefit of the Korean paper industry to "secure a stable supply of wood pulp and to enhance the self-sufficiency rates" of the industry.

Finally, petitioner disputes the respondents' contention that Stainless Steel Sheet and Strip 2003 establishes a precedent that should lead the Department to determine that DP is not a government entity. Petitioner agrees with the Department's preliminary finding that the facts are different than in Stainless Steel Sheet and Strip 2003, where the Department examined respondent's court receivership in the context of cross-ownership and the attribution of benefits, whereas in the current investigation the Department is assessing whether DP should be considered a government entity of for the purpose of examining whether a countervailable benefit is being provided.

Respondents contend that the Department erred in its Preliminary Determination with respect to both its finding that DP is a government authority and its methodology for determining whether respondents received countervailable benefits through their purchase of chemical pulp from DP during the POI. Respondents note that when the Department considered whether DP was a government authority it considered five factors: (1) the government's ownership; (2) the government's presence of the company's board of directors; (3) the government's control over the company's activities; (4) the company's pursuit of governmental policies or interests and (5) whether the company was created by statute. Respondents contend that the Department failed to give proper weight to DP's current status. Although DP was established as a government-funded enterprise, it was completely privatized when the GOK sold its shares to 17 private companies and ceased having any ownership interest in the company. Respondents argue that when DP went bankrupt and entered into court receivership, the company had no GOK ownership. Respondents contend that the KDB's majority ownership came about while DP was under court receivership as part of a debt-for-equity swap. Respondents note that the Department verified that DP is still under court receivership, there are no meetings of the board of directors because it is under court receivership, and the directors execute directions issued by the court receiver. In addition, the court receiver must approve any significant purchases by DP as well as the monthly changes in its prices.

Furthermore, respondents assert that while the Department relied upon the fact that the

GOK established DP in 1974, it ignored its privatization in 1987. Moreover, the KDB's majority shares were acquired through a debt-for-equity swap that was part of the company's reorganization plan approved by the receiver of the court, which controls the daily operations of DP. Three directors have no connection with the KDB and the receiver and auditor had prior positions at the KDB. Apart from one of the directors, the board members do not hold current positions with other companies.

Respondents assert that with respect to the five factors the Department considered for determining whether DP was a government authority, the facts are as follows: (1) there is no government presence on its board of directors; (2) the government does not control DP's activities, which are instead under the control of the court receiver and the court; and (3) the company's creation by the government was long ago superseded by its privatization in 1987. With respect to the fourth factor, whether it pursues governmental policies or interests, respondents maintain that DP is a domestic producer of chemical pulp that competes with imported chemical pulp at prices that are based on import prices. According to respondents, the facts of the investigation leave only the fifth factor, the government's ownership in DP, which they claim did not result from any governmental policy but is simply the result of a common practice for companies undergoing reorganization under court receivership where creditors convert debt into equity.

Finally, respondents discuss that in Stainless Steel Sheet and Strip 2003 and the accompanying Issues and Decision Memorandum in which the Department determined that Incheon Iron & Steel Co., Ltd., although a majority shareholder, was not able to control the assets of Sammi Steel Co., Ltd. because Sammi was in court receivership. Respondents argue that the same standard applies to DP.

Department's Position: In the Preliminary Determination, the Department used the following criteria to determine whether DP should be regarded as a government entity for the purpose of a CVD proceeding: 1) the government's 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 Stainless Steel Sheet and Strip 2003. Not all of these criteria must be satisfied for an entity to be considered a government entity, but, taken together, these five criteria inform our decision.

The Department stated that DP is a government authority under section 771(5)(B) of the Act. DP was established by the GOK in 1974 to address the government's interest in establishing a domestic manufacturer and supplier of chemical pulp to the paper industry. See page 69 of the GOK's January 26, 2007, submission. We recognize that DP was "privatized," but it is still majority-owned by the KDB, a government authority that also has several members on DP's board of directors. Accordingly, several of the factors we examine – namely, government ownership, government control, government presence on the board of directors, and government creation of the entity – are present in this case. Additionally, as stated in the Preliminary Determination, contrary to respondents' argument concerning Stainless Steel Sheet

and Strip 2003, the facts in the instant investigation with regard to DP are distinct from the facts that we examined with regard to Sammi's court receivership. Specifically, in Stainless Steel Sheet and Strip 2003, we examined Sammi's court receivership in the context of cross-ownership and the attribution of benefits, whereas, in the instant investigation, we are examining whether DP should be considered a GOK entity for purposes of examining whether a countervailable benefit is being provided.

At verification, the Department examined the GOK's relationship with DP, specifically the role of the court-appointed receiver. See GOK Verification Report at 23-25. Department officials confirmed that the KDB, an entity of the GOK, was the owner of DP and that the court-appointed receiver is the former managing director of the KDB. We reviewed the receiver's impact on the day-to-day running of the operations, specifically the receiver's relationship with the DP board and his role in the pricing of the chemical pulp. The receiver did not meet with the directors during the POI, but the directors did execute directions issued by the receiver. We also noted that the receiver appeared to have little direct impact on pricing of the pulp, according to company officials. See GOK Verification Report at 24. In essence, we could find no discernable impact of the role of the receiver on the daily operations of DP, through either pricing or interactions the board of directors. Therefore, we find no reason to change our finding in the Preliminary Determination that DP is a government entity because of its ownership by the KDB.

Comment 12: Commerce Correctly Calculated the Benefits from Donghae Pulp Based On Monthly Weighted-Average Prices

Petitioner notes that in the Preliminary Determination the Department calculated the benefit under this program by comparing the monthly delivered weighted-average price paid to DP for pulp to the calculated monthly weighted-average price paid to foreign suppliers of chemical pulp. Petitioner states that all respondents argue is that the Department should have compared yearly weighted-average prices paid to DP to yearly weighted-average import prices. Petitioner asserts that the Department's methodology followed the practice by which the companies were billed by DP and cite to the Department's verification of the GOK to substantiate this claim. See GOK Verification Report at Exhibit DP-5. Thus, petitioner asserts that the Department's methodology is reasonable.

Respondents argue that each of the companies under review sign a yearly contract with DP that establishes the terms of sale for the chemical pulp supplied to them. Under these contracts, the purchaser agrees to fixed monthly purchase volumes as well as a total annual purchase volume. The contract obligates the purchaser to accept the agreed-upon monthly volumes and the parties accept the possibility that there might be some price discrepancies between import prices and DP's prices during a particular month. Respondents further assert that they must make most of their purchases from DP each month without actually knowing the final price.

In addition to setting purchase volumes for each month regardless of any price differentials on a monthly basis, an additional discount is granted at year-end. Respondents contend that the Department should not analyze the prices on a monthly basis but compare them on a yearly contract period because it would more accurately reflect the terms of the contracts.

Respondents contend that this would reduce the minor irregularities that would occur in making monthly average comparisons.

Department's Position: The Department verified that although all of the respondents did sign yearly contracts with DP for the purchase of chemical pulp during the POI, the amounts and prices that were paid varied by the month. Additionally, all of the respondents purchased imported chemical pulp from foreign suppliers, of which the amounts and prices also varied. According to 19 CFR 351.511(2)(i), the Department will compare "the government price to the market-determined price for the good or service resulting from actual transactions in the country in question." Because the price is determined on a monthly basis by market-driven forces for each company, the Department believes the most accurate calculation is on a monthly, not annual, basis.

Comment 13: If the Department Continues to Calculate Monthly Weighted-Average Prices for Donghae Pulp, Certain Methodological Corrections Are Required

Respondents note that in the Preliminary Determination, the Department compared monthly weighted-average prices that the respondents paid to DP and foreign suppliers of chemical pulp. Where the Department found price differences in which the monthly weighted-average import price was higher than the monthly weighted-average price it calculated for DP, the Department treated the monthly differences as a countervailable subsidy and calculated the benefit to each of the respondents.

Respondents each reported the amount of monthly purchases of chemical pulp from DP based on the amounts invoiced each month. The amounts of the freight and year-end discounts were reported in the months that they appeared on DP's invoices. Respondents claim they reported their purchases from DP in this manner for ease of verification to the tax invoices. Respondents contend that the Department did not properly allocate these discounts on a monthly basis.

According to respondents, at verification the Department noted that because DP does not settle the final monthly price until sometime during the month, there were some differences between the monthly purchase amounts based on the final settlement price. Respondents explain the differences stems from the fact that the interim prices up until the date of settlement were included on the tax invoices, and in the months where prices changed there were adjustments based on the final settlement price that occurred in the following month. Thus, according to respondents, the Department requested that the companies revise their reported monthly purchase amounts from DP to reflect the final price paid for each month's purchases.

In light of these facts, respondents advocate that the Department make certain corrections to the Preliminary Determination, as follows: using the revised DP purchase date, (1) calculate the weighted-average unit price for each company for each month; (2) allocate and deduct the company's quarterly freight discounts on a per-unit basis from each monthly weighted-average unit price of the relevant quarter, and (3) allocate and deduct the company's year-end discount on a per-unit basis from each monthly weighted-average unit price. Respondents argue that the new methodology will demonstrate that DP's overall pricing policy to the respondents will result in higher delivered prices than the delivered prices of foreign suppliers.

Finally, respondents argue that once the Department has completed its analysis it should revisit the question of DP's pursuit of government policies or interests. The Department engaged in a mathematical analysis of pricing because it had determined, based on its five-factors analysis, that DP was a government authority. However, when the price comparisons show that any instances of monthly-average import prices being higher than DP's monthly average prices are aberrant, the Department should then use this analysis to re-examine the claim that DP is pursuing government policies or interests. Thus, the Department should conclude that DP does not provide chemical pulp to respondents for less than adequate remuneration.

Petitioner did not comment on this issue.

Department's Position: We have made the changes proposed by respondents to our calculations. In the Preliminary Determination, the Department compared the price listed on the tax invoices, not the final prices paid to DP, to the price respondents paid for imported chemical pulp. As stated in the comment above, the Department will compare "the government price to the market-determined price for the good or service resulting from actual transactions in the country in question." See 19 CFR 351.511(a)(2)(i). Because the price is determined on a monthly basis by market-driven forces for each company, the Department believes the most accurate calculation is to compare the actual price paid by the respondents. For further information, see respondents respective calculation memoranda.

Further, as explained above, we continue to find that DP is a GOK authority.

Comment 14: Hansol's Arguments that Donghae Pulp is Owned or Controlled by the GOK

Hansol argues that the GOK did not provide pulp to Hansol for less than adequate remuneration. Hansol claims that the Department erred when we found that DP was controlled by the GOK. Hansol claims that this determination contradicts the Department's normal practice to find that major shareholders cannot control companies that are in receivership under Korean law.

Hansol asserts that application of the five-part test cited in the Department's Preliminary Determination confirms that DP is not a government entity. Specifically, Hansol points out that under the second part of the test, where the Department looks at the government's presence on a board of directors of a company in receivership, there was no government presence on DP's board. Hansol also comments that there is evidence on the record, which shows that DP's directors received no direction from the KDB or other government entities, only the receiver. Hansol further argues that there was no application of the third and fourth factors of the five-part test, cited in the Preliminary Determination to this case. According to Hansol, control of DP was vested in the receiver, not the KDB. Similarly, Hansol claims that there was no evidence that the KDB attempted to use DP to pursue government interests and goals. Hansol argues that the cases cited by the Department in its Preliminary Determination are not on point. Rather, the Department should rely on its results in Stainless Steel Sheet and Strip 2003, where the Department specifically addressed the impact of receivership under Korean law.

In the alternative, Hansol asserts that if the Department continues to treat DP as a government entity, then it should properly account for substantial differences in delivery terms and costs between the pulp supplied by DP and the imported pulp, in order to conduct an

“apples-to-apples” comparison. Hansol states that any comparison based on DP’s ex-factory prices is distorted due to the differences in transportation costs that Hansol incurs for DP purchases versus import purchases. Therefore, Hansol argues that in order to ensure an “apples-to-apples” comparison, the Department should compare delivered prices.

Petitioner rebuts Hansol’s argument that DP is not a government entity because DP was in receivership. Petitioner asserts that the five factors the Department considers relevant to determine whether an entity is a government entity are satisfied in this investigation. Petitioner challenges respondent’s argument that DP’s status in court receivership precluded the KDB, DP’s largest shareholder, from controlling the company. According to petitioner, the CRA enables a shareholder to continue to influence a company’s operations. Petitioner also takes issue with respondent’s allegation that there were no government officials on DP’s board of directors. According to petitioner, the receiver appointed by the KDB had served as an executive of the KDB prior to his appointment to Donghae’s board. Petitioner alleges this appointment is evidence that KDB had control over DP’s day-to-day operations through its agent, a former KDB executive. Thirdly, petitioner counters respondent’s argument that the receivership status eliminated any control over DP by the KDB. Petitioner claims that during the POI, the CRA granted rights to the KDB to control the restructuring plan for DP and reduced the rights of the bankruptcy court to passive monitoring. Petitioner cites this fact as refuting respondent’s argument that the receivership process limited the KDB’s control over DP. Fourthly, petitioner asserts that the record contains a volume of evidence demonstrating that DP was furthering government policies. Finally, petitioner argues that respondent’s reliance on Stainless Steel Sheet and Strip 2003 is misplaced because the facts of that case can be distinguished from the facts of this investigation. Specifically, according to petitioner, in Stainless Steel Sheet and Strip 2003, the Department examined the issue of court receivership in the context of attribution of benefits and cross-ownership, whereas in this investigation, the Department is reviewing the court receivership in the context of government ownership. Petitioner claims these reasons adequately support its rebuttal of respondent’s claim that DP is not a government entity.

Petitioner also challenges Hansol’s claim that the Department should calculate the subsidy from purchases of pulp from DP by comparing “delivered” prices from DP and imports. Specifically, petitioner asserts that the Department should only include inland freight costs in the calculation if the Department can adequately calculate the inland freight costs for the appropriate imported pulp.

Department’s Position: Regarding Hansol’s arguments that DP is not a GOK authority, we disagree. See Comment 11, in which we find that DP is a GOK authority.

Regarding Hansol’s argument that, in calculating the benefit the Department should properly account for substantial differences in delivery terms and costs between the pulp supplied by DP and the imported pulp, in order to conduct an “apples-to-apples” comparison. We did conduct an “apples-to-apples” comparison in that we did not include the price of the inland freight for imported chemical pulp or for domestic chemical pulp purchased from DP. Thus, the Department did make an “apples-to-apples” comparison between the price of imported chemical pulp at the port and chemical pulp purchased domestically from DP, whose prices are on an f.o.b. basis. See Hansol Verification Report at 8-10 and Hansol Calculation

Memorandum.

Comment 15: The Benefit Calculation for Donghae Pulp's Sale of Pulp Must Account for Prevailing Market Conditions

According to Hansol, the Department is required by law to account for the prevailing market conditions. Hansol claims that the prices for its pulp purchases are determined by an annual contract, with adjustments to prices for specific orders occurring after shipment. Hansol asserts that the Department should account for the prevailing market conditions affecting the purchase of pulp by comparing the annual weighted-average prices for pulp purchased from DP to the weighted-average annual prices for imported pulp purchases. Hansol contends this approach more properly reflects prevailing market conditions than the month-to-month comparison used by the Department in the Preliminary Determination.

In the alternative, Hansol argues that the Department could maintain the month-to-month calculation approach but eliminate the “zeroing” of negative benefits. According to Hansol, this approach is not a request for an offset. Hansol claims it is simply asking for the Department to properly account for prevailing market conditions.

Petitioner rebuts the respondents' argument that the Department should compare yearly weighted-average prices paid to DP to yearly weighted-average prices paid for pulp from foreign suppliers by characterizing their rationale as an insufficient basis for a methodology. Petitioner argues that respondents have not provided a compelling reason for the Department to change the methodology adopted in the Preliminary Determination.

Petitioner also rebuts respondents' argument that if the Department compares prices on a monthly basis, the discounts should be allocated over the months previous to the month in which they were given, contrary to the approach taken by the Department. Petitioner argues that the methodology used in the Preliminary Determination is reasonable because it calculates the benefit by using respondents' information as it appears in respondents' books in the normal course of business. Petitioner also challenges Hansol's argument that the Department should offset negative benefits calculated for certain months against the benefits calculated for other months. To support its rebuttal argument, petitioner cites to Comment 6 of the Issues and Decision Memorandum that accompanied the Final Results Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada, 70 FR 56640 (September 28, 2005) (Lumber NSR), where the Department concluded that offsetting a benefit with a “negative” benefit is an impermissible offset under section 771(6) of the Act.

Department's Position: As explained above, we are basing our benefit calculations for this program on monthly averages. For further discussion, see Comment 13.

We also disagree with Hansol's argument that the Department should eliminate what it refers to as the “zeroing” of negative benefits. The Department has addressed this argument in past cases. See e.g., Comment 6 of the Issues and Decision Memorandum that accompanied the Lumber NSR, in which the Department stated:

In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions.

As such, the GOC and GOBC are seeking an impermissible offset – a credit for transactions that did not provide a subsidy benefit. Such an adjustment is not permitted under the statute and is inconsistent with the Department’s practice. A list of permissible offsets is provided under 19 U.S.C. § 1677(6)); however, offsetting the benefit calculated with a “negative” benefit is not one of them.²²

Comment 16: Whether Usance and Document Acceptance Loans Provided Outside of the ACCL Program Are Countervailable

Petitioner notes that the Department found in its Preliminary Decision Memorandum that usance and D/A loans do not constitute trade financing under the ACCL program. Petitioner argues that the Department based its decision on the fact that Article 2 of the detailed regulations for trade financing under the ACCL program stipulate that trade financing shall be denominated in won, while usance and D/A loans are denominated exclusively in foreign currency. Petitioner asserts that the Department reached its conclusion without considering that the BOK has guidelines for trade financing that is not covered by the ACCL program. Petitioner explains that it included a copy of these guidelines, which it refers to in its briefs as the Non-ACCL Guidelines, in Exhibit 1 of its July 10, 2007, submission. Petitioner explains that the GOK included these guidelines in Exhibit N-19 of its June 11, 2007, submission, but that the GOK erroneously implied that the guidelines applied to trade financing under the ACCL.

Referencing Article 3(2) of the Non-ACCL Guidelines, petitioner claims that the guidelines govern all trade financing that is not eligible under the ACCL program. Based on this regulation, petitioner argues that any and all usance loans that were provided, whether by the KDB or any other commercial bank, to respondents are subject to these guidelines. On this point, petitioner notes that the GOK Verification Report indicates that the KDB and commercial banks issued trade financing loans outside of the ACCL program. Petitioner argues that pursuant to Article 9 of the Non-ACCL Guidelines, the amount of trade financing exporters may receive is based on overall export performance. Petitioner argues that the Department should therefore countervail all loans provided under the Non-ACCL Guidelines, including usance loans for the importation of raw materials, as an export subsidy.

Petitioner argues that the GOK was directly involved in the issuance of trade financing under the Non-ACCL Guidelines. First, petitioner argues that the Department verified that banks report their lending of trade financing under the ACCL program to the BOK. Citing to Form Number 6 of the Trade Financing Procedure Related to the BOK’s ACCL program (Trade Financing Procedure), which it contends commercial banks must submit to the BOK under the

²² The three offsets permitted by section 771(6) of the Act:

For the purposes of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of –

- A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive the benefit of the countervailable subsidy,
- B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
- C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

ACCL program, petitioner asserts that commercial banks must disclose the amount of won and foreign currency L/Cs they have issued.²³ Petitioner asserts that the GOK's explanations concerning the type of information commercial banks must submit to the BOK have been misleading. Petitioner argues that under the ACCL program the information commercial banks must submit to the BOK in Form Number 6 of the Trade Financing Procedure include information regarding the amount of usance L/Cs for importation of raw materials and the interest rates applied to such loans. According to petitioner, the evidence clearly shows that under the ACCL program the BOK requires information from commercial banks concerning foreign currency usance loans, even though such loans are not provided under the ACCL program, thereby indicating the BOK's level of concern in connection with usance L/Cs denominated in foreign currencies.

Petitioner argues that, in addition to considering the amount of ACCL funds lent by each bank, the BOK's Monetary Policy Report reveals that the BOK considers each commercial banks' "status of interest rate operation" and "level of cooperation. . .with the BOK's policy" when allocating credit ceiling under the ACCL program.²⁴ Petitioner therefore argues that the Department should find that, even if usance loans are not within the ACCL program, the usance L/C financing provided by commercial banks to respondents for the importation of raw materials was a key factor considered by the BOK in its monthly distribution of credit ceiling to commercial banks under the ACCL program. At a minimum, asserts petitioner, the BOK used the ACCL program as a leverage to force commercial banks to provide low cost import financing to Korean exporters in the form of usance loans.

Hansol disagrees with the Department's decision to countervail usance and D/A loans issued by the KDB and certain other financial institutions that the Department designated as GOK authorities. Hansol argues that none of the Korean banks are providing a financial contribution through the provision of usance or D/A loans. Rather, according to Hansol, the commercial banks are participating in the short-term credit markets as commercial actors. Hansol further contends that there is no record evidence indicating that the GOK had any program in place during the POI to provide preferential usance or D/A loans to producers of subject merchandise. Hansol argues that usance and D/A loans are common forms of trade financing that are used globally and that all Korean banks, including the KDB, compete aggressively to issue such loans. Hansol argues that the fact that it uses many different banks and frequently switches banks based on minor differences in financing costs reflects the competitive nature of the market for such loans.

Echoing the statements of Hansol, the other respondents take issue with the Department's decision to countervail the usance and D/A loans issued by the KDB and other banks that the Department determined were GOK authorities. Respondents maintain that usance and D/A loans are common forms of trade financing that are used around the world, including Korea and the United States. Respondents argue that no government program for providing usance and D/A loans exists. Respondents further argue that the KDB and other institutions found to be GOK authorities provided such loans on the same terms as commercial banks as evidenced by the fact

²³ See Exhibit 14 of petitioner's May 30, 2007 submission.

²⁴ See Exhibit 23 of petitioner's May 30, 2007 submission.

that in the Preliminary Decision Memorandum the Department found usance and D/A loans from commercial banks to be comparable benchmarks when measuring the benefit from usance and D/A loans issued by banks the Department determined were GOK authorities.

In its rebuttal briefs Hansol asserts that petitioner's argument involving the so-called Non-ACCL Guidelines is essentially a new subsidy allegation filed long past the deadline set forth in 19 CFR 351.301(d)(4)(i)(A) and, thus, should be rejected by the Department on that basis. Hansol further contends that petitioner's argument fails on its merits. Hansol notes that in its submissions to the Department petitioner never included allegations concerning usance and D/A loans provided outside of the ACCL program. Instead, according to Hansol, petitioner consistently limited its allegations to short-term loans purportedly issued under the ACCL program. As such, Hansol argues it was entirely appropriate for the Department to focus its analysis in the Preliminary Decision Memorandum on loans issued under the ACCL program.

Hansol further argues that petitioner's allegations concerning loans outside of the ACCL program fail to describe any evidence of a countervailable export subsidy program. Hansol asserts that, at best, petitioner establishes that the BOK, like any other central bank, monitors commercial banking services in Korea. Hansol contends that none of the regulations cited by petitioner in its case briefs demonstrate that the BOK had in place a program directing or inducing banks to provide trade financing on preferential terms inside or outside of the ACCL program. Hansol further argues that the Department did not uncover any additional short-term loan program during verification.

Hansol also disputes petitioner's argument that the Department should countervail usance loans issued by such GOK authorities as the KDB as export subsidies. Hansol argues that the Department verified that usance loans are tied to particular imports and are not contingent upon export sales. Hansol also points out that its sourcing patterns and sales patterns indicate that it did not export a significant percentage of its output made from imported pulp, thus disproving petitioner's claim that the usance loans were contingent upon exports.

In their rebuttal briefs, the other respondents state that over the course of several submissions, petitioner has alleged that respondents received countervailable trade financing in the form of usance and D/A loans under the ACCL program. Respondents maintain that the Department fully verified that there was no evidence to support petitioner's allegation. Respondents argue that the Department verified that banks that participate in the program, like the KDB, separately report trade financing from usance and D/A financing, thus confirming that these loans are separate forms of financing. See GOK Verification Report at 17. They also argue that the Department's verification made clear that the usance and D/A loans received by the respondents were denominated in foreign currency and not treated as trade financing under the ACCL program. See GOK Verification Report at VE KDB-15 and at pages 4 and 5.

Respondents explain that petitioner now argues that respondents received countervailable trade financing under other BOK regulations, the so-called Non-ACCL Guidelines. Respondents argue that information collected at verification demonstrates that respondents did not and could not have received subsidies under the Non-ACCL Guidelines because those guidelines specifically exclude import usance and D/A loans, which are themselves subject to separate and superceding regulations. Specifically, respondents note that Article 3(2) of the so-called Non-ACCL Guidelines, to which petitioner fails to cite, indicates that all regulations that govern foreign currency transactions shall be applied with priority over the Non-ACCL Guidelines. In

addition, respondents state that the KDB's usance and D/A financing are regulated by the Enforcement Decree on Foreign Exchange Transactions, which is under the Foreign Exchange Transactions Act. See GOK Verification Report at 17. Respondents further argue that the Department confirmed at verification that while D/A loans tie to specific export sales, none of the usance loans respondents had outstanding during the POI were tied to export activities. See GOK Verification Report at 21.

Respondents argue that petitioner is off point in claiming that certain data collection methods (*i.e.*, Form Number 6 under the Trade Financing Procedure) by the BOK demonstrates that the BOK was also directly involved in trade financing that was not provided under the ACCL program. Respondents note that at verification, the Department found that such documentation was not associated with the ACCL program and that no information from the forms was reflected in the monthly reports compiled by the BOK for allocating ACCL funds. Respondents argue that rather than confront these facts, petitioner simply attempts to dismiss them.

Respondents further argue that the fact that the BOK used the reporting process to gather additional statistical information on trade financing covered by the ACCL program and other types of trade financing indicates nothing more than the fact that the BOK is performing the normal role of a central bank in obtaining comprehensive data regarding various types of financing provided by commercial banks.

In its rebuttal briefs petitioner urges the Department to reject respondents' arguments concerning the countervailable status of usance and D/A loans issued by GOK authorities like the KDB. Petitioner maintains that the Department has a longstanding policy of treating the KDB as a GOK authority and, therefore, the usance and D/A loans from such institutions constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Petitioner further argues the Department based its countervailable finding regarding usance and D/A loans issued by GOK authorities like the KDB after considering all record evidence and, thus, should continue to find such loans countervailable.

Department's Position: As explained above, the Department continues to find that usance and D/A loans do not constitute trade financing under the ACCL loan program. As explained in the Preliminary Decision Memorandum, Article 2 of the detailed regulations for trade financing under the ACCL loan program stipulates that banks issue trade financing in Korean won. Further, at verification, we confirmed that all of respondents' outstanding usance and D/A loans were denominated exclusively in foreign currencies. See page 5 of the Preliminary Decision Memorandum. Furthermore, during verification we confirmed that usance and D/A loans are not treated as trade financing under the ACCL loan program, as evidenced by the fact that the KDB, as a participating bank, did not report such loans to the BOK when applying for credit ceiling under the program. Id. Nothing in interested parties' case briefs warrants a reconsideration of that finding.

Petitioner now argues, for the first time, that pursuant to certain Non-ACCL regulations, usance and D/A loans are countervailable, a contention that contradicts its previous assertions that usance and D/A loans are countervailable precisely because they are provided as part of the ACCL loan program. We note that in its case briefs, petitioner fails to adequately address or

substantiate how such loans constitute a financial contribution from the GOK within the meaning of section 771(5)(D)(i) of the Act.

Information collected at verification contradicts petitioner's contention that the BOK used the ACCL program as a leverage to force commercial banks to provide low cost import financing to Korean exporters in the form of usance loans that were outside of the ACCL program. As explained in the Preliminary Decision Memorandum, at verification we examined a BOK summary report that listed, by bank, the amount of funds issued under each of the five lending categories. We linked the BOK summary report to the report the BOK received from the KDB. In turn, we traced the totals for each of the five lending categories in the KDB report to the KDB's trial balance for the same period and noted that the KDB tabulates D/A and usance under headings that are separate from the five forms of financing provided under the ACCL program. Thus, during the tracing exercises conducted at the BOK and the KDB, we confirmed that information concerning D/A and usance loans are not included in the reports the KDB sends to the BOK and that the BOK does not allocate funds under the ACCL program based on banks' issuance of usance and D/A loans. See Preliminary Decision Memorandum at 5 and 6 and GOK Verification Report at 15 as well as pages 4 and 5 of VE-KDB-15. In light of this evidence, we find petitioner's claim that the ACCL program acted as a form of leverage to force commercial banks to issue loans to exporters outside of the program to be without merit.

Petitioner further argues that the BOK's tracking of foreign currency lending by commercial banks indicates a level of concern in connection with usance and D/A loans and, thus, is indicative of GOK involvement that should result in a countervailable finding. However, we find that the mere collection of statistical information by a government authority does not constitute sufficient evidence of a financial contribution or entrustment or direction of commercial banks in the short-term credit market on the part of the GOK. For these reasons, we continue to find that usance and D/A loans do not constitute countervailable trade financing as alleged by petitioner.²⁵

Regarding petitioner's arguments that usance loans issued by GOK authorities (e.g., the KDB) are linked to exports and, therefore, should be treated as export subsidies when calculating the net subsidy rate, we disagree. At verification we learned that there are two types of usance loans, export usance and import usance loans. See GOK Verification Report at 17. We further learned at verification that import usance loans tie to particular imports but are not contingent upon exports. Id. Furthermore, at verification, we confirmed that EN Paper, Hansol, and Moorim did not have export usance loans outstanding during the POI (e.g., all of their outstanding usance loans were import usance loans). See EN Paper Verification Report at 20, Moorim Verification Report at 6, and Hansol Verification Report at 5. Regarding Kyesung, we confirmed that none of its export usance loans were for sales to the United States. See Kyesung/Namhan Verification Report at 14.

We further disagree with respondents' argument that institutions like the KDB and NACF do not constitute GOK authorities and, thus, loans from such banks do not constitute a financial contribution. As found in previous Korean CVD proceedings, the Department has

²⁵ While we continue to find that D/A loans are not countervailable as trade financing, as discussed

elsewhere in this decision memorandum, we are countervailing D/A loans rediscounted under the KEXIM rediscount program.

determined that the KDB and certain other government-owned institutions constitute GOK entities for purposes of the Department's subsidy analysis. See the "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002" section of the DRAMs Investigation Memorandum, in which the Department considered the following five factors when determining whether institutions like the KDB constituted GOK authorities: 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. Nothing in respondents' briefs warrants a reconsideration of the Department's previous findings. Thus, while loans issued by such institutions are not necessarily countervailable, such loans do constitute a direct transfer of funds from a government source and, therefore, a financial contribution within the meaning of section 771(5)(D)(i) of the Act. As a result, the Department properly subjected usance and D/A loans issued by GOK authorities to the other two prongs of its subsidy analysis, the benefit and specificity tests and, on this basis, found such loans countervailable in the Preliminary Decision Memorandum. However, as explained above, in the case of usance loans issued by such GOK authorities as the KDB, we have determined that they are not specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii) of the Act.

Also, regarding respondents' claims that D/A loans are provided on commercial terms and, therefore, are not countervailable, we note that whether a benefit is conferred under a loan program depends on the comparison of the actual interest rate of the government-provided loan to that of the benchmark loan. See section 771(5)(E)(ii) of the Act and 19 CFR 351.505. Thus, the fact that D/A financing may be a common type of trade financing that is provided globally is not the issue. Nor must there be a "program" for there to be a countervailable subsidy; the Act only requires a financial contribution, benefit and specificity. Rather, where the Department determines the existence of a financial contribution that confers a benefit, which is specific, all the elements of a countervailable subsidy under the Act have been met. Further, the mere fact that a portion of the countervailable loans outstanding during the POI carry interest rates that are below the benchmark interest rate does not, in and of itself, render the program not countervailable. See e.g., Comment 43 of the Issues and Decision Memorandum that accompanied the Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005), in which the Department explained:

. . .when the Department compares the interest rate paid on government loans to a commercial benchmark interest rate, it does not offset the benefit calculated on the government loans that are below the market rate with any interest paid on government loans that are above the market rate, or for penalties paid on the subsidized government loans. Rather, the government loans that do not confer a benefit are simply not countervailed. See e.g., Final Results of Countervailing Duty Administrative Reviews: Oil Country Tubular Goods from Argentina, 56 FR 38116, 38117 (August 12, 1991) ("It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan").

Comment 17: Whether the Department Should Pro-Rate Benefits on D/A Loans Under the

Korea Export Import Bank (KEXIM) Program

Petitioner argues that the Department erroneously pro-rated benefits conferred to recipients by the percentage of loans each bank rediscounted with KEXIM under the program. Petitioner argues that the Department's practice is to calculate the subsidy as the benefit to the recipient and not the cost to the government. Petitioner argues that in the current investigation, the benefit to respondents is simply the difference between the financing cost they paid on the government-provided D/A financing and the cost they would have paid on a comparable loan on the market. Petitioner further argues that even if the KEXIM rediscounting applied only to a small part of such financing, it can easily affect rates for all such export bill discounting because the program provides incentives for the commercial banks to increase their overall lending in this area. According to petitioner, in order to increase their credit ceilings under the KEXIM program, commercial banks have an incentive to increase their discounting of trade bills, and thereby lower interest rates on such financing.

Petitioner also argues that the relevant fact is not how much the commercial banks rediscounted with KEXIM, but rather how much less the recipients paid than they would have on the market, owing to the KEXIM rediscount program. Petitioner contends the discount rates the commercial banks applied in their initial discounting of the exporters' export bills already reflects the level of support they received (or expected to receive) from KEXIM's rediscount program. Thus, argues petitioner, if the commercial banks' rediscount ceiling (or amount) with KEXIM had been smaller, the initial discount rates they applied to the exporters would have been higher than the discount rates they actually applied to exporters during the POI. According to petitioner, in this regard, the Department should calculate the benefit for the D/A loans issued by all commercial banks, regardless of whether commercial banks rediscounted loans under the program during the POI.

Hansol disagrees with petitioner's claim that in the calculations that accompanied the Preliminary Decision Memorandum the Department calculated the benefit under the KEXIM loan program using a cost-to-government standard. Hansol argues that contrary to petitioner's claims, the Department employed a methodology that utilized the benefit to the recipient standard, which is the Department's established methodology. Hansol argues that the Department's benefit to the recipient approach is evident in the calculations. Referencing the calculations for Hansol that accompanied the Preliminary Decision Memorandum, Hansol explains that for each D/A loan the Department compared actual rates on D/A discounts outstanding during the POI with benchmark interest rates derived from Hansol's company-specific usance loans. See Hansol's September 6, 2007, calculation memorandum at pages 25 through 30. Hansol contends such an approach is consistent with the Department's standard benefit calculation for loan programs.

Hansol also takes issue with petitioner's claim that because the KEXIM loan program "provides incentives for the commercial banks to increase their overall lending" with respect to D/A loans, the program affects rates for all D/A loans issued, regardless of whether they are subsequently rediscounted under the KEXIM program. Hansol asserts petitioner's statement is pure conjecture and totally unfounded. Hansol notes that petitioner concedes that KEXIM rediscounts only a small portion of the D/A loans issued by commercial banks. Hansol further notes that this fact was verified by the Department. See GOK Verification Report at 7 through

10. Hansol also explains that the Department verified that individual companies receiving trade financing do not even know whether their short-term loans are rediscounted because there is no link between such loans and the rediscounting program. Hansol argues that against this factual backdrop, petitioner's claims that the KEXIM rediscounting program had any discernible impact on D/A discount rates issued outside of the program lacks credibility.

Hansol further notes that petitioner's claims rest on the flawed assumption that the commercial banks participating in the KEXIM loan program would have a reason to pass on any benefits under the program to individual banks providing trade financing. Hansol also argues that the Department verified that KEXIM bases its rediscount rates on market rates and that KEXIM must compete with alternative forms of financing. Hansol contends these facts further undermine petitioner's claims concerning the KEXIM loan program.

The other respondents explain that in the Preliminary Decision Memorandum, the Department measured the benefit on D/A loans rediscounted under the KEXIM loan program using a company-specific benchmark consisting of loans that were not eligible for the program. Thus, argue respondents, contrary to petitioner's claims the Department's approach did not employ a cost-to-government standard for measuring the benefit.

Respondents also rebut petitioner's argument that the KEXIM loan program provides an incentive to commercial banks to increase their discounting of trade bills, and lower interest rates on all such financing, even though the KEXIM rediscounting applied only to a minuscule part of such financing. Respondent points out that, as verified by the Department, KEXIM rediscounts are not linked to individual loans or exporters, the allocations to individual banks are based on credit ceilings, and the respondents do not know whether banks subsequently rediscount their D/As with KEXIM. Citing to the GOK Verification Report, respondents claim that KEXIM bases its rediscount rates on market rates and also sets the rediscount rate in order to realize profit. See page VE-KEXIM-2 of the GOK Verification Report.

Respondents also point out that the total funds available to commercial banks under the program is very small. See e.g., VE-KEXIM-3 of the GOK Verification Report. Given the small amount of funds available under the program, respondents contend that such discounting could, at best, have only a minimal impact on overall bank lending rates. They further argue that information obtained during verification demonstrates that the GOK is encountering a considerable lack of interest in the program, which it is attempting to address by offering rediscount rates that are more attractive to commercial banks. See VE-KEXIM-2 of the GOK Verification Report. Respondents assert the lack of interest indicates that the KEXIM rediscount program is a vestige from a time when Korea was in the midst of the Asian financial crisis. Respondents further argue that commercial banks' lack of interest in the KEXIM rediscount program belies petitioner's claim that the program somehow induces commercial banks to increase their overall lending of D/A loans to exporters in order to increase the credit ceiling they receive under the program.

Department's Position: We disagree with petitioner's claim that the Department's decision in the Preliminary Decision Memorandum to pro-rate benefits under the KEXIM rediscount program constitutes the utilization of a cost-to-government approach. Under 19 CFR 351.505(a), in the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable

commercial loan that the firm could actually obtain on the market. The Department followed this approach in the Preliminary Decision Memorandum when it first compared the amount respondents paid on all of their D/A loans outstanding during the POI to their respective weighted-average interest rate on their commercial short-term loans outstanding during the POI. However, because record evidence indicates that KEXIM does not link rediscounts to individual loans or exporters, companies do not know whether commercial banks subsequently rediscount their D/A loans with KEXIM, and KEXIM's rediscount ceiling represents only a portion of participating banks' total discounts on export loans during the POI, the Department pro-rated benefits under the program by the percentage of loans each bank rediscounted with KEXIM. The fact that the Department pro-rated the benefits in no way constitutes the utilization of a cost-to-government approach. In fact, nowhere in the calculations that accompanied the Preliminary Decision Memorandum does the Department calculate the costs KEXIM or the GOK incurred under the program, which is an essential component to any cost-to-government analysis.

In the Preliminary Decision Memorandum, we explained that KEXIM's trade bill rediscounting program constitutes a payment to a funding mechanism under section 771(5)(B)(iii) of the Act because the rediscount ceiling KEXIM provides to banks participating under the program is contingent on banks subsequently lending the funds to exporters. Therefore, we determined that loans under the KEXIM program constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. As explained above, we confirmed at verification that, in fact, only a small portion of participating commercial banks' outstanding D/A loans were issued under the KEXIM rediscount program. In other words, our findings at verification indicate that only a small portion of the commercial banks' outstanding D/A loans constitute financial contributions under 771(5)(D)(i) of the Act. Furthermore, there is no record evidence that would cause the Department to conclude that the commercial banks issued D/A loans to respondents in a manner that resulted in respondents receiving a disproportionate amount of loans that were subsequently rediscounted under the KEXIM program. As a result, we do not find it appropriate to assume, as petitioner suggests, that all of the respondents outstanding D/A loans were rediscounted under the KEXIM program.

In addition, we find there is not sufficient evidence to support petitioner's assertions that the D/A loans the commercial banks rediscounted with KEXIM have any measurable impact on the interest rates or on the amount of D/A loans those commercial banks issued to exporters outside of the program. On this point, we reiterate the fact that verified information establishes that the amount of trade bills commercial banks rediscount with KEXIM is extremely small compared to the total amount of trade bills issued by the banks. See GOK Verification Report at VE KEXIM-3. Thus, based on verified evidence and petitioner's lack of evidence to the contrary, we do not find that the limited amount of D/A loans rediscounted under the KEXIM program impacted the terms of such financing issued outside of the program.

Comment 18: Source Data of the Benchmark To Be Applied to D/A Loans Under the KEXIM Rediscount Program and Usance Loans Issued by GOK Authorities

Petitioner argues that the Department incorrectly used the weighted-average interest rates for respondents' usance financing from commercial banks as a benchmark for purposes of calculating the benefit on D/A loans under the KEXIM program and usance loans issued by

lending institutions the Department found to be GOK authorities. Petitioner contends, as indicated above, that the Department should countervail all of respondents' outstanding usance loans, regardless of whether they were issued under the ACCL program. As such, they argue that the Department cannot use usance loans as a benchmark source. Therefore, petitioner argues that when calculating the benefit on respondents' outstanding D/A and usance loans denominated in U.S. dollars, the Department should use as the benchmark interest rate the short-term lending rate, as published in the IMF's International Financial Statistics. Regarding countervailable D/A and usance loans denominated in yen and euros, petitioner argues that the Department should measure the benefit using the lending rate for loans in yen and the corporations-stock interest rate for loans in euros, as published by the IMF's International Financial Statistics. Petitioner argues its suggested approach concerning the yen- and euro-denominated loans is consistent with the Department's approach in selecting a benchmark for short-term loans issued directly by KEXIM. See e.g., DRAMs Investigation; see also Preliminary Determination, 72 FR at 17513 and pages 16 through 19 of the Hansol Preliminary Determination Calculation Memorandum.

Hansol urges the Department to reject petitioner's suggested benchmark for Hansol's import usance loans denominated in yen (e.g., the interest rate data from the IMF's International Financial Statistics). Hansol argues that the IMF's money market rate used as the benchmark in the Preliminary Decision Memorandum reflects the Department's standard policy as applied repeatedly in the DRAMs proceeding. See e.g., the decision memorandum that accompanied the Final Results of 1st DRAMs Review; see also Dynamic Random Access Memory from Korea: Preliminary Results of Countervailing Duty Administrative Review, 71 FR 51609, 51610 (September 10, 2007). Hansol explains that in support of its claim, petitioner cites to administrative reviews in the DRAMs proceeding. However, Hansol notes that petitioner's citations pre-date the DRAMs determination Hansol references above. On this basis, Hansol argues that petitioner has not presented a valid basis for the Department to alter its preliminary benchmark for Hansol's usance financing denominated in yen.

Respondents contend that petitioner's objection to the Department's decision in the Preliminary Decision Memorandum to use usance loans from commercial banks to measure the benefit from D/A loans under the KEXIM program and usance loans issued by such GOK authorities as the KDB is simply wrong. Respondents maintain that usance loans do not constitute trade financing under the ACCL loan program and do not constitute countervailable trade financing under any other program. Respondents note that, as explained above, usance loans are not subject to the so-called Non-ACCL Guidelines referenced by petitioner. According to respondents, nothing petitioner has argued in its case briefs undermines the Department's use of company-specific benchmarks in accordance with 19 CFR 351.505(a)(2) based on respondents' import usance loans from commercial banks.

Department's Position: Pursuant to 19 CFR 351.505(a)(2)(ii), the Department will use as the benchmark loans taken out by the firm from commercial lending institutions provided that the structure and terms of the commercial loans are comparable. Accordingly, in the Preliminary Decision Memorandum, where available, the Department used respondents' weighted-average interest rate on their commercial short-term usance loans outstanding during the POI as the benchmark for measuring the benefit on respondents' countervailable D/A loans as well as for

countervailable usance loans issued directly by GOK authorities. Petitioner asserts that the use of such data for the benchmark are inappropriate because the Department should countervail usance loans from commercial banks as export subsidies. As explained elsewhere in this decision memorandum, we find that usance loans from commercial banks do not constitute countervailable trade financing. As such, arguments that usance loans from commercial banks cannot serve as benchmarks are moot.

In instances in which company-specific data were not available, we utilized the following benchmarks in the Preliminary Decision Memorandum:

- For countervailable D/A loans from GOK authorities and D/A loans issued by commercial banks under the KEXIM program denominated in U.S. dollars, we used the lending rate, as published in the IMF's International Financial Statistics.
- For countervailable D/A loans from GOK authorities and D/A loans issued by commercial banks under the KEXIM program denominated in Yen, we used the money market rate, as published in the IMF's International Financial Statistics.
- For countervailable D/A loans from GOK authorities and D/A loans issued by commercial banks under the KEXIM program denominated in euros, we used the corporations-stock interest rate for loans in euros as published in the IMF's International Financial Statistics.

Regarding petitioner's arguments that the Department should base its yen-denominated benchmark on the lending rate instead of the money market rate from the IMF's International Financial Statistics, we note that recent Korean CVD proceedings that post-date the case cited by petitioner utilize the yen-denominated money market rate for benchmark purposes. See e.g., the "Short-Term Rates" section of the decision memorandum that accompanied the Final Results of 1st DRAMs Review. Therefore, in keeping with the Department's most recent practice concerning the use of IMF data for yen-denominated benchmarks, we have continued to use the money-market rate.

Regarding petitioner's argument that the Department should use the corporations-stock interest rate for loans in euros, as published by the IMF's International Financial Statistics, as the benchmark for countervailable loans denominated in euros, we agree. We find that, among the benchmark interest information available, the corporations-stock interest rate constitutes the most comparable benchmark rate available for countervailable loans denominated in euros. Further, we received no comments from interested parties opposing the Department's use of this interest rate as the benchmark.

Regarding interested parties' comments on the benchmark that should be used to measure the benefit on usance loans issued by GOK authorities, as explained elsewhere in this decision memorandum, we have determined that such loans are not de facto specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii) of the Act. As such, interested parties' comments on this issue are moot.

Comment 19: Calculation of Benchmark To Be Applied to D/A Loans Under the KEXIM
Rediscount Program

Respondents explain that in the Preliminary Decision Memorandum, the Department countervailed D/A loans as well as usance loans issued by banks that the Department found were GOK authorities. They further explain that the Department measured the benefit on such loans using company-specific benchmark rates that were calculated using all usance loans received by respondents from commercial banks that were outstanding during the POI, based on the year the loans were received, regardless of when the interest payments were due. For example, respondents explain that in the calculations that accompanied the Preliminary Decision Memorandum, the Department properly excluded from the benefit calculations countervailable loans on which interest was paid after the POI. However, according to respondents, the Department failed to apply the same approach to the benchmark. Instead, respondents argue that the Department included in its benchmark calculations loans the terms of which were established during the POI but whose interest payments were made outside of the POI. According to respondents, the benchmark methodology applied in the Preliminary Decision Memorandum, results in a mismatch of the loans used to calculate the benchmarks and the loans against which the benchmarks were applied. To correct the error in the calculations, respondents argue that the Department's benchmark should be based only on loans from commercial banks where interest payments were made during 2005.

Respondents also argue that the Department's use of an annual, weighted-average benchmark interest rate in the Preliminary Decision Memorandum further skews the results of its benefit calculations. Respondents contend that interest rates in Korea increased from 2004 through the 2005 period. Thus, they argue that the use of annual average benchmark interest rates could still result in a subsidy on loans issued by GOK authorities at the beginning of the POI and no subsidy on such loans at the end of the POI. Respondents argue the Department can avoid such skewed results by calculating monthly benchmarks. According to respondents, the use of monthly benchmarks demonstrates that the interest rates on loans found countervailable by the Department are equal to the benchmark interest rates.

Hansol further argues that the data it supplied and which the Department verified demonstrate that the usance and D/A loans issued by the KDB and other institutions found to be GOK authorities do not confer a benefit. Hansol contends that, when compared on a contemporaneous, day-by-day basis, the interest rates for usance loans obtained from the KDB are virtually identical to the interest rates for usance loans obtained from the commercial banks used in the Department's benchmark calculations. Thus, argues Hansol, on any given day, the interest rates for usance and D/A loans from the KDB may be slightly higher or lower than the interest rates for such loans from commercial banks. Therefore, in light of the patterns that exist in its loan data, Hansol argues that the inescapable conclusion is that the KDB and other so-called GOK-controlled banks do not provide usance and D/A loans on preferential terms. According to Hansol, the only way the Department could calculate any benefit at all was to apply annual average benchmark rates and to ignore all transactions in which Hansol actually paid more for loans from the GOK-controlled banks than for loans from commercial banks.

Petitioner did not comment on this issue.

Department’s Position: We disagree with respondents’ argument that the benchmark used to measure the benefit on countervailable D/A loans should be based only on loans from commercial banks where interest payments were made during the POI and not on such loans for which interest payments were made after the POI.²⁶ Under 19 CFR 351.505(a)(2)(iv), when calculating a company-specific short-term benchmark interest rate, the Department will normally “use an annual average of the interest rates on comparable commercial loans during the year in which the loan was taken out, weighted by the principal amount of each loan.” This is precisely the methodology the Department employed in the Preliminary Decision Memorandum. For example, in instances in which there were countervailable short-term loans outstanding during 2005 (the POI), the terms of which were established in 2004, we based our short-term benchmark on loans that were also issued in 2004 and outstanding during 2005. Similarly, for countervailable short-term loans that were issued and outstanding during 2005, we based our short-term benchmark on loans that were issued in 2005, regardless of whether interest on the benchmark loans was paid during the POI. Respondents take issue with the latter approach. However, we note that our calculation of the benchmark in this regard is entirely consistent with the Department’s finding on the issue in a prior proceeding. See e.g., Comment 8 of the Issues and decision memorandum that accompanied the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico, 66 FR 14549 (March 13, 2001), in which respondent argued that the Department should have calculated a weighted-average benchmark interest rate based only on its commercial loans that actually had interest payments due during the POR. In response to this argument, the Department stated that while respondent:

. . . may not have made interest payments on certain commercial loans during the POR, the cost of those loans to AHMSA (the respondent) did not decrease. Interest continued to accrue on those loans during the POR. It is not the Department’s practice to simply use commercial loans on which interest payments were made during a review or investigation period to determine a benchmark interest rate.

Thus, we continue to calculate the company-specific benchmark interest rates in the manner described in the Preliminary Decision Memorandum.

We further disagree with respondents’ argument that the Department improperly based its benchmark interest rate on annual averages when it should have relied on monthly averages. As noted above, 19 CFR 351.505(a)(2)(iv) states that the Department will normally use an “annual average of interest rates on comparable commercial loans” when calculating the benchmark. The regulation further states that if the Department finds that interest fluctuated significantly during the POI, the Department will use the most appropriate interest rate based on the circumstances presented. However, we note that on this point, the Preamble to the Department’s regulations clarifies that the deviation from an annual average is intended for use in instances in which interest rates fluctuate significantly over time, such as in economies with

²⁶ As explained above, we have found usance loans from GOK authorities to be not countervailable in this final determination. Therefore, interested parties’ comments concerning the benchmark to be applied to usance loans are moot.

high inflation rates. See 63 FR at 65364. No interested party has argued that Korea experienced high or hyperinflation in 2004 or 2005 nor is there any information indicating that Korea experienced significant inflation during those periods. Further, respondents have not claimed that significant price swings in Korea necessitate deviations from the Department's normal subsidy calculation procedures regarding other programs at issue in the investigation (*i.e.*, alteration of the Department's normal grant allocation methodology or the use of company-specific AULs instead of the AULs listed in the IRS tables). As a result, we find there is no basis for the Department to deviate from its standard practice of calculating short-term benchmark interest rates based on annual averages.

Comment 20: Whether Commercial Paper and Corporate Procurement Loans are Countervailable

Respondents argue that, although the Department's calculations accurately indicate that there was no benefit from their use of commercial paper and corporate procurement loans under the ACCL program, there is more than sufficient information on the record to determine that such loans are not, in fact, specific. Respondents explain that commercial paper loans are only available to SMEs, which according to evidence supplied by petitioner, represent 99.8 percent of all enterprises in Korea. Respondents argue that on this fact alone, there is no basis for finding that this program is specific to an enterprise or industry in Korea. Respondents argue that corporate procurement loans are available to an even larger group, SMEs as well as large companies that are not members of the top 29 debtor groups, and thus, such loans are also not specific to an enterprise or industry. In addition, respondents argue that the relevance to the Department's citation to Steel Bar from Italy is not apparent given that the specific page cited by the Department does not contain discussion of a comparable analysis and determination, nor did it appear any such discussion appeared in the notice.

Respondents point out that they, as well as the Department, invested considerable resources on these loans. Thus, they argue that in instances in which sufficient evidence exists to make a definitive determination that programs are not specific, the Department should do so.

Petitioner argues that a proper benefit calculation in connection with both programs would, in fact, result in a measurable net subsidy rate. Thus, according to petitioner, the Department's citation to Steel Bar from Italy was inappropriate. Petitioner argues that the Department incorrectly relied on benchmark data from the IMF when, in fact, there were company-specific benchmark data available for Kyesung relating to the company's general short-term loans and more appropriate third-party data available for Moorim, namely the overdraft rate published by the BOK. Petitioner further contends the use of either the company-specific data or the BOK overdraft rate will result in a measurable subsidy for Kyesung and Moorim.

Petitioner contends that having calculated the benefit using the appropriate benchmark, the Department should not pro-rate benefit for the same reasons that petitioner provides in connection with the KEXIM rediscount program discussed elsewhere in this decision memorandum. Regarding the corporate procurement loans, petitioner further argues that pro-rating the benefit is inappropriate because the BOK performs no such reduction when evaluating the amount of corporate procurement credit ceiling to be allocated to commercial banks

participating in the ACCL program.

Petitioner asserts that commercial paper and corporate procurement loans under the ACCL program confer a benefit within the meaning of section 771(5)(E)(ii) of the Act. Petitioner further argues that the Department should find that the BOK's ACCL program, as a whole, including commercial paper and corporate procurement loans, constitutes a payment to a funding mechanism within the meaning of section 771(5)(B)(iii) of the Act. As such, petitioner argues that the credit ceiling provided to commercial banks is contingent on the banks' subsequent lending to eligible companies. Petitioner adds that under the ACCL program, the commercial banks perform a government subsidy function. Thus, petitioner argues that commercial paper and corporate procurement loans under the ACCL program constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

Regarding specificity, petitioner argues that the Department should impose adverse facts available. Petitioner charges that respondents failed to fully cooperate with the Department's requests for information pertaining to the loan programs. Petitioner claims that respondents failed to adequately respond to the Department's questionnaires in spite of the fact that the BOK possessed all of the information needed to respond to the Department's questions.

Department's Position: In the Preliminary Decision Memorandum, for purposes of measuring the benefit, we assumed that the percentage of corporate procurement and commercial paper loans respondents received under the program was consistent with the ratio the GOK used to determine the amount of funds allocated to each loan category under the program. Although we take note of petitioner's objections, we continue to take this approach in the final determination. This is necessitated by the fact that, consistent with information obtained during verification, while companies are aware that certain categories of loans are eligible for the ACCL program, they do not know whether or to what extent particular loans from commercial banks are actually funded under the program.²⁷ Further, the monthly reports that participating banks submit to the BOK under the ACCL program do not provide information on individual loans, companies, or industries.²⁸ In addition, only a portion of banks' total commercial paper and corporate procurement loans are comprised of funds under the ACCL program.²⁹ As a result, we do not find it appropriate to assume, as petitioner suggests, that all the respondents' outstanding commercial paper and corporate procurement loans are potentially countervailable.

We also disagree with petitioner's argument that the Department should use different benchmarks when applying the measurability standard from Steel Bar from Italy. The Department has a long-standing practice of using data from the IMF's International Financial Statistics for benchmark purposes when suitable company-specific data are not available. See e.g., the "Octroi Refund Scheme" section of the PET Film Decision Memorandum, see also Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative

²⁷ See e.g., pages 12 and 13 of the Kyesung/Namhan Verification Report.

²⁸ See page 13 of the GOK Verification Report which states that commercial banks do submit information to the BOK regarding individual loans, companies, or industries.

²⁹ See VE BOK-2 of the GOK Verification Report.

Review, 66 FR 64019, 64021 (December 11, 2001). In the case of Moorim, it lacked company-specific loans that could serve as a benchmark for the commercial paper and corporate procurement loans under the ACCL program that it had outstanding during the POI. Therefore, the Department correctly resorted to the short-term, won-denominated interested rates listed in the IMF's International Financial Statistics.

With regard to Kyesung's outstanding corporate procurement loans under the ACCL program, we disagree with petitioner that the company's general short-term loans should serve as benchmarks. Under 19 CFR 351.505(a)(1), in the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market. Under 19 CFR 351.505(a)(2)(i), in selecting a loan that is comparable to the government-provided loan, primary emphasis will be placed on similarities in the structure of the loans (e.g., fixed interest vs. variable interest), the maturity of the loans (e.g., short-term vs. long-term) and the currency in which the loans are denominated. However, the Preamble states that:

This does not mean . . . that a loan in the same currency, with similar structure and maturity will always be found comparable to the government-provided loan. Nor should our decision to place primary emphasis on these three characteristics be seen as a rebuttable presumption.

Instead, we recognize that many characteristics could factor into a decision of whether a loan should be considered comparable to the government-provided loan. Certainly. . . the levels of security or collateral on the two loans could be relevant in determining comparability. Similarly, the amounts of principal might differ so greatly that the two loans should not be compared.

See 63 FR at 65363.

We note that Kyesung's and Namhan's general short-term loans consist of revolving lines of credit, some of which were initially granted several years prior to the POI, which Kyesung can access at any time, for any purpose, and at whatever rate of interest prevails at the time of the drawdown. These lines of credit offer great flexibility and convenience for Kyesung and, accordingly, entail greater risks and costs for the bank that would be reflected in the interest rates charged by the bank. In contrast, Kyesung's procurement loans are issued individually, for a set principal amount, for a given purpose, and at a fixed interest rate and, thus, do not carry the flexibility and risk of the revolving lines of credit. Further, several of Kyesung's general purpose loans carry variable interest rates while the interest rates for the corporate procurement loans are fixed. As such, we find that in this particular situation, Kyesung's general purpose loans are not comparable within the meaning of 19 CFR 351.505(a)(2)(i) to serve as benchmarks for the corporate procurement loans under the ACCL program. In addition, we note that the average principal amount of the fixed-rate, short-term, general purpose loans is significantly larger (e.g., orders of magnitude larger) than the average principal amount of the corporate procurement loans. For further information, see the Memorandum to the File from Eric B. Greynolds regarding, "Comparison of Kyesung Loan Data," (October 17, 2007).

Therefore, for purposes of this final determination, and consistent with the Preliminary

Decision Memorandum, we have evaluated the corporate procurement loans under the ACCL program using the short-term lending rate for won-denominated loans as published in the IMF's International Financial Statistics. Using this approach, even if the Department were to assume that the corporate procurement loans constituted a financial contribution and were specific pursuant to sections 771(5)(D) and 771(5A) of the Act, the resulting net subsidy rate for Kyesung would be less than 0.005 percent ad valorem and, thus, would not result in a measurable subsidy.

Regarding respondents' statements that our citation to Steel Bar from Italy is not relevant, we note that we inadvertently referenced the wrong page number in the Preliminary Decision Memorandum.³⁰ Furthermore, concerning respondents' arguments that the Department is obligated to make a finding regarding the countervailable status of commercial paper and corporate procurement loans issued under the ACCL program, the Department has in the past exercised its discretion to refrain from making a determination with respect to financial contribution and specificity when it is apparent that the resulting net subsidy rate would not result in an affirmative finding. See, e.g., Steel Bar from Italy. Similarly, given that our benefit calculation results in a net subsidy rate that is less than 0.005 percent and is, therefore, not measurable, it is unnecessary for the Department in this final determination to make a finding regarding financial contribution or specificity with regard to the ACCL program. See Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 66 FR 64019, 64021 (December 11, 2001).

Comment 21: Use of Company-Specific Benchmark to Measure the Benefit to Hansol Under KEXIM's Export and Import Credit Financing Program

Hansol claims that the Department erred when it used a benchmark from the IMF's International Financial Statistics to measure the benefit received by Hansol from KEXIM's short-term loans. According to Hansol, the Department did not follow its policy when it rejected an interest rate from Hansol's company-specific, short-term corporate bond as a benchmark. Hansol requests that the Department correct this error by selecting a company-specific benchmark as required under 19 CFR 351.505(a)(3)(I).

Petitioner argues that the Department should reject Hansol's claim because the short-term corporate bond suggested by Hansol as a benchmark is not a comparable loan to KEXIM's export-import credit financing. Petitioner states that the Department's regulations require that a suitable benchmark for a government-provided loan must be a comparable commercial loan, which is not the case here. Specifically, petitioner argues that the government loans provided under the KEXIM program are revolving credit lines whereas the short-term corporate bond Hansol issued does not constitute a revolving credit line. Petitioner further argues that the commercial bank that issued the corporate bond is controlled and directed by the GOK and that this fact should eliminate the corporate bond from consideration for use as a benchmark.

Department's Position: As explained above in Comment 20, for purposes of this investigation,

³⁰ We should have referenced 66 FR at 30416 instead of 30417.

we find that revolving credit lines are not comparable, within the meaning of 19 CFR 351.505(a)(2)(i), to loans that are not comprised of revolving credit lines. Therefore, we have continued to use the short-term lending rate from the IMF's International Financial Statistics.

Comment 22: Use of Non-Company-Specific Benchmarks for KEXIM's Import and Export Credit Financing Program

Petitioner argues that, with regard to the Usance Loan Program and KEXIM's Export and Import Credit Financing program, Korean short-term overdraft financing is the only commercial financing actually taken out by respondents during the POI that can be used for benchmark purposes. It argues that the BOK overdraft rate represents the average short-term rates charged to companies to borrow money as they make payments on checks and other short-term promissory notes. Petitioner argues that the use of the overdraft rate rather than IMF rates as benchmarks because the overdraft rate is short-term, provided in the form of a line of credit, used to honor checks and commercial bills issued by the borrower, is subject to change based on market conditions, can be used by any types of borrowers, and is not subject to the GOK's direction of credit of other policy considerations. In addition, it argues that one or more Korean respondents actually used overdraft financing.

Respondents take issue with petitioner's argument that the Department should use Korean won benchmark rate for usance loans, arguing that Department has verified that usance loans are provided in foreign currency. They also note that petitioner's proposed use of the national average overdraft rate as the basis for a short-term Korean won benchmark is not applicable to the KEXIM financing program because Hansol has reported company-specific data.

Department's Position: Regarding interested parties' comments concerning the benchmark that should be used to calculate the benefit on usance loans issued by such GOK authorities as the KDB, as explained above, we have determined that usance loans issued by GOK authorities are not specific to the pulp and paper industry within the meaning of section 771(5A)(D)(iii)(III) of the Act. As such, comments on this issue are moot.

Further, we disagree with petitioner's arguments that, in the absence of comparable company-specific data, the Department should use the BOK's overdraft rate instead of the lending rate from the IMF's International Financial Statistics when calculating the benefit received by Hansol on short-term, won-denominated loans under KEXIM's Import and Export Credit Financing Program. As explained above, the Department's practice is to use interest rates from the IMF's International Financial Statistics when company-specific data are not available. Furthermore, with respect to KEXIM's Import and Export Credit Financing program, the Department's practice is to use short-term lending rates from the International Financial Statistics as the benchmark when comparable company-specific data are not available. Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 53413, 53419 (September 11, 2006) (unchanged at the final results, see Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 119 (January 3, 2007)).

Comment 23: Whether Hansol Received Countervailable Benefits Through the KDB's Placement of its Corporate Bonds

Hansol argues that the Department erroneously treated the placement of Hansol's public bonds by the KDB as countervailable long-term loans in the Preliminary Determination. First, Hansol argues, absent an allegation or discussion in the Department's Initiation Checklist that the KDB's involvement in Hansol's issuance of public bonds conferred a benefit, its public corporate bonds are outside the scope of this investigation. Hansol further argues that these bonds should be excluded from any calculation of any alleged benefits attributable to the KDB's long-term financing because the Department's verification report provides evidence that the KDB only provided bond issuance services not long-term financing through corporate financing. Furthermore, Hansol argues that the bond placement services it procured from the KDB were on market terms. As evidence to support this claim, Hansol states that the KDB co-placed bonds with private financial institutions and had similar fee structures to the private financial institutions. Moreover, Hansol also claims that the Department's Preliminary Determination to treat the company's corporate bonds as long-term loans contradicts the Department's longstanding position that the GOK does not control the domestic bond market in Korea. In further support that the KDB's co-placement of bonds with private financial institutions was on commercial terms, Hansol points to the lack of indication of collaboration between the KDB and private financial institutions, or coercion of private institutions by the KDB in the Preliminary Determination.

Petitioner asserts that the Department should reject Hansol's claim to exclude the KDB-financed bonds from the scope of this investigation. Petitioner states that the evidence on the record indicates that the KDB did hold Hansol's bonds during the POI. Furthermore, Petitioner argues that the Department has found that the receipt of KDB financing provides an implicit guarantee to other domestic banks. Therefore, petitioner argues that the Department should continue to countervail all of Hansol's corporate bonds underwritten by the KDB.

Hansol argues that if the Department continues to treat Hansol's public corporate bonds as government-provided loans, it should correct the calculations for certain public bonds in the final determination. First, Hansol asserts that the Department should not calculate the discount on the face value of the bond as a benefit because the discount is actually a cost to Hansol. Hansol supports its contention that the discount is a cost related to issuing a bond by citing to an accounting treatise, Intermediate Accounting, by D.E. Kieso and J.J. Weygant, which states that a basic principle under Korean and U.S. GAAP requires that companies amortize bond issuance costs, including discounts, specifically. According to Hansol, this same principle effectively results in the discount increasing the coupon rate of the bond. Consequently, Hansol argues that the Department should properly account for the impact of the discount rate by dividing the discount percentage by the life of the loan, and then add that percentage to the coupon rate to be consistent with 19 CFR 351.505(a)(1).

Petitioner rebuts Hansol's claim that the Department incorrectly calculated the benefit of the corporate bonds. Petitioner argues that discounts to the face value of a bond are not included in the list of permissible offsets under section 771(6) of the Act. Therefore, the Department should continue to compare the interest rate on the bond to the applicable benchmark rate.

For another corporate bond, Hansol argues that the Department needs to account for the substantial guarantee fee when calculating any benefit resulting from this bond, as consistent with the Department's regulations. Hansol further argues that the large number of private financial institutions that participated in the issuance of this bond demonstrates the bond was issued under commercial terms.

Petitioner also asserts that pursuant to 19 CFR 351.505, the Department should not include the cost of guarantee fees when calculating the benefit of Hansol's loans. Petitioner states that if the Department accounts for Hansol's guarantee fees, then the Department should adjust the benchmark rate to also reflect the market guarantee fee rate.

Hansol also claims that the Department should correct the calculation of the benchmark used for the corporate bonds. First, Hansol argues that under 19 CFR 351.505, the Department is required to use a benchmark that accurately reflects the cost of borrowing. According to Hansol, the inclusion of certain bonds does not reflect Hansol's borrowing costs because Hansol did not originate the bonds in question. Rather, these bonds were taken over by Hansol when certain subsidiaries of Hansol merged. Hansol argues that, because Hansol did not originate the bonds, they do not reflect Hansol's creditworthiness. Second, Hansol argues that the Department should correct its benchmark for long-term corporate bonds by excluding a short-term bond in the calculation for the 2005 benchmark.

Petitioner rebuts Hansol's claim that the Department should exclude certain bonds from the calculation of the bonds benchmark rate. Petitioner argues that the inclusion of these bonds in the benchmark rate is appropriate as they are similar in terms of structure, maturity, and the currency in which they are denominated to the loans at issue, as required by the Department's regulations.

Department's Position: Under 19 CFR 351.506, government-provided loan guarantees constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and, thus, are countervailable provided that they also confer a benefit and are specific. Information collected at verification indicates that the KDB guaranteed some of Hansol's corporate bonds. Based on this information, we find that the KDB's guarantee of Hansol's bonds constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

Regarding specificity, in the Preliminary Determination, we analyzed the bonds on which Hansol received the government guarantee in the context of the KDB's preferential long-term loan program. See 72 FR at 17512. We have continued to do so in the final determination. As explained elsewhere in this decision memorandum, we have determined that the KDB's long-term loans to the pulp and paper sector are not de facto specific within the meaning of section 771(5A)(D)(iii)(III) of the Act. As such, interested parties' comments concerning the manner in which the Department should calculate the benefit under this program are moot.

Comment 24: Whether Loans from the Industrial Base Fund (IBF) Constitute Countervailable Export Subsidies

Respondents argue that the Department found that loans provided to Namhan under the Funding for Parts and Material Industry section of the IBF constituted an export subsidy because Namhan's application for the loans provided information regarding the loans' effects on export

activities and import substitution and that such information, “constitutes evidence that the IBF is contingent upon export performance.” See page 15 of the Preliminary Decision Memorandum. Respondents argue that the Department ignored the GOK’s statement in its questionnaire response and its own findings at verification that such information was a minor factor among various factors used to evaluate the proposed investment, was not mandatory, and that the 2002 IBF application did not require or suggest a need for such information. See GOK’s May 24, 2007, submission at 17 and 18, and GOK Verification Report at 21 and 22.

Respondents argue that Namhan’s approval for the IBF loan in 2002 was based on an application filed using the 2001 application form. They further argue that application forms in subsequent years, including 2002, do not contain any reference to export performance or import substitution. They further note that during verification the Department’s verifiers requested and received two examples of IBF loans provided under the sub-program at issue where the GOK approved projects for non-exporting companies. Respondents claim the Department acknowledges as much in its Preliminary Decision Memorandum, but then, contradictory to this finding, concludes that the IBF program is a de jure export subsidy. Respondents assert a program cannot be de jure specific to exporters when benefits are provided to non-exporters.

Petitioner maintains that the fact that the GOK considered the effects on export promotion and import substitution as one of several factors in its approval of the IBF loan application does not undermine the IBF’s status as an export subsidy. Petitioner argues that the Department correctly pointed out that section 771(5A)(B) of the Act states that “an export subsidy is a subsidy that is in law or fact, contingent upon export performance, alone or as 1 of 2 or more conditions.”

Petitioner also asserts that respondents’ claim that the IBF application no longer solicits information concerning export and import substitution effects is misleading. Petitioner claims that proprietary information it included in its May 30, 2007, submission demonstrates that respondents’ statements on this point are inaccurate. Petitioner further argues that information at verification indicates that export and import substitution effects were a significant component of the scoring method used to rank applications and that Namhan received the highest possible score under the effects criteria from the reviewers. Petitioner also argues that Article 9 of the Guideline for IBF Operations requires the agencies that administer the IBF program to provide priority to certain targeted companies, such as manufacturers of import substitution products and directs the agencies to collect necessary information from IBF loan applicants. See Exhibit 126 of petitioner’s March 8, 2007, submission.

In addition, petitioner disputes respondents’ claim that the fact that IBF loans were issued to firms that did not export demonstrates that the program is not export contingent. Petitioner states that respondents did not supply the Department with a complete set of the documents the GOK must have reviewed when making its recommendation to issue the loans. Petitioner also maintains that the two firms approved by the GOK produced a good that is one of Korea’s major export items and, thus, it is highly likely that the GOK looked favorably on them.

Department’s Position: We disagree with respondents and continue to find that the loan Namhan received under the IBF program constitutes an export subsidy. As discussed in the Preliminary Decision Memorandum, the loan application Namhan filed with MOCIE includes a section on the anticipated “investment effects” of the project, including the degree to which the

project will promote exports. See page 21 of the GOK Verification Report. Further, section 771(5A)(B) of the Act states, “an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.” The Department’s regulations explain that we will consider a subsidy to be contingent upon export performance “if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.” See 19 CFR 351.514(a).

We find that the information regarding anticipated export effects included in the application Namhan filed with MOCIE is one of the conditions considered when issuing loans under the program and, thus, meets the specificity criteria under section 771(5A)(B) of the Act and 19 CFR 351.514. Indeed, the Preamble further clarifies that if exportation or anticipated exportation is the sole condition or one of several conditions, the subsidy is an export subsidy “unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria.” Preamble, 63 FR at 65381. Namhan has not met this burden.

Regarding respondents’ arguments that applications in subsequent years lack any reference to export effects, we note that the GOK based its decision to issue the loan under the program on Namhan’s 2001 application, which included information regarding export effects. Further, proprietary information submitted by petitioner contradicts respondents’ claims that information concerning export effects were no longer submitted to the GOK after 2001. See Exhibit 26 of petitioner’s May 30, 2007, submission.

In addition, we disagree with respondents’ claim that the fact that two firms without export sales secured loans under the program demonstrates that the program was not export contingent. As explained above, section 771(5A)(B) of the Act states that an export subsidy is one that is contingent upon export activities as one of two or more conditions. Thus, the fact that export effects is one of the conditions considered by the GOK when issuing loans under the program renders the program an export subsidy under section 771(5A)(B) of the Act.

Comment 25: Benchmark Rates for Long-Term Korean Won-Denominated Loans

Petitioner takes issue with the corporate bond rates that the Department used as benchmarks in the calculations for the Preliminary Determination. It argues that, based on the credit ratings of the companies under investigation, the Department should use the data series entitled “Yields of Corporate Bonds: O.T.C. (3-year, BBB-)” from the BOK as the benchmark on countervailable won-denominated long-term loans. It argues that the credit rating on corporate bonds issued by Hansol during 2005 was BBB+ and the credit rating in 2002 for bonds issued by Moorim SP was BBB-. It further argues that EN Paper was uncreditworthy and Poongman’s and Namhan’s credit ratings also warrant using this source instead of the corporate bonds rates used by the Department. Petitioner contends that, because this source contains average long-term interest rates on 3-year corporate bonds to corporations in Korea with a BBB-rating, it more closely matches the credit ratings of the companies under investigation.

Respondents argue that petitioner’s proposed long-term Korean benchmark is inapplicable and there is no basis for modifying the benchmarks used in the Preliminary Determination, *i.e.*, the yield on 3-year corporate bonds reported by the BOK. They argue that the Department has consistently used these rates as benchmarks in numerous investigations and

reviews since 1999 without regard to the credit ratings of the companies under investigation.

With regard to Kyesung's one long-term Korean won loan outstanding during the POI, respondents argue that petitioner provided no substitute data for the Department's 1994 benchmark and instead created a benchmark using data from 2000-2005 data. In addition, they note that, for comparison with loans from the KDB held by Namham and Poongman, the Department used company-specific benchmarks based on loans from commercial lenders and the Department should continue this approach for all respondents where such data are available.

With regard to loans from the KDB held by Moorim Paper, respondents note that the Department should have used as benchmark rates the company-specific corporate bond data provided by the company, even though there would be no material impact in the benefit calculation.

With regard to EN Paper, respondents note that with respect to Shinho's restructured capital leases and the syndicated loan that were outstanding during the POI, both the government and commercial creditors received the same interest rates.

Regarding Hansol, it argues that there are long-term company-specific benchmark data on the record that the Department should rely on for benchmark purposes.

Department's Position: We disagree with petitioner's argument that the Department should modify the benchmark used when company-specific data are not available by using a data series from the BOK that reflects companies that pose greater risks to lenders. The Department has a long-standing practice of using the yield on 3-year corporate bonds reported by the BOK for benchmark purposes when comparable, long-term company-specific loans are not available. See e.g., the "Discounts Rates and Benchmark Loans" section of the DRAMs Investigation Memorandum.

We also disagree with petitioner's arguments that its recommended national average benchmark should be incorporated into the Department's calculation of benchmarks for uncreditworthy companies. We note that 19 CFR 351.505(a)(3)(iii) states that the uncreditworthy benchmark is a partial function of the long-term interest rate that would be paid by a creditworthy company.

Regarding respondents' arguments concerning long-term loans issued by the KDB, as explained elsewhere in this decision memorandum, we have determined that long-term lending from such GOK authorities as the KDB are not de jure or de facto specific to the pulp and paper industry under section 771(5A) of the Act. As such, comments on this issue are moot.

We agree with respondents' arguments concerning EN Paper's syndicated loan. As discussed elsewhere in this decision memorandum, we find that government and commercial creditors issued the syndicated loan on equal terms and at the same interest rate, and as a result, we have determined that the loan did not confer a benefit.

XIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of the investigation in the Federal Register.

_____ Agree

_____ Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date