

administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year sunset reviews and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: September 9, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-851]

#### Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea for the period April 7, 2003, through December 31, 2003. We preliminarily find that certain producers/exporters under review received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice.

Interested parties are invited to comment on these preliminary results (see the "Public Comment" section of this notice, below).

**EFFECTIVE DATE:** September 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Alexy, Cole Kyle, Natalie Kempkey or Marc Rivitz, Office of Antidumping/Countervailing Duty Operations, Office 1, Import Administration, U.S. Department of Commerce, Room 3069, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1540, (202) 482-1503, (202) 482-1698 or (202) 482-1382, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Case History

On August 11, 2003, the Department of Commerce ("the Department") published a countervailing duty order on dynamic random access memory semiconductors ("DRAMs") from the Republic of Korea ("ROK"). See *Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 47546 (August 11, 2003) ("CVD Order"). On August 3, 2004, the Department published a notice of "Opportunity to Request Administrative Review" for this countervailing duty order. On August 31, 2004, we received requests for review from Hynix Semiconductor, Inc. ("Hynix"), Infineon Technologies North America Corp., and Micron Technology, Inc. ("Micron"). In accordance with 19 CFR 351.221(c)(1)(i) (2004), we published a notice of initiation of the review on September 22, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004) ("Initiation Notice").

On October 19, 2004, we issued countervailing duty questionnaires to the Government of the Republic of Korea ("GOK") and Hynix (formerly, Hyundai Electronics Industries Co., Ltd. ("HEI")). We received responses to these questionnaires in December 2004.

On November 30, 2004, we initiated an investigation of new subsidy allegations within the context of the first administrative review of the countervailing duty order on DRAMs from Korea. See *New Subsidy Allegations Memorandum from Ryan Langan to Susan Kuhbach*, dated November 30, 2004, available at the Central Records Unit ("CRU"), Room B-099 of the main Department building.

On March 25, 2005, we published a postponement of the preliminary results in this review until August 31, 2005. See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Review*, 70 FR 15293 (March 25, 2005).

We issued supplemental questionnaires to the GOK and Hynix in May and June 2005, and received responses to these supplemental questionnaires in June and July 2005. Hynix and Micron submitted pre-preliminary results comments and rebuttal comments in July and August 2005.

#### Scope of the Order

The products covered by this order are DRAMs from the Republic of Korea,

whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

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

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

The DRAMs subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8020 through 8542.21.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMs from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules

placed on motherboards are classifiable under subheadings 8471.50.0085, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, and 8543.89.9600 of the HTSUS.

### Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. ("Cisco"), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the *CVD Order*. The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On June 16, 2005, the Department issued a preliminary scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the *CVD Order*. See *Preliminary Scope Ruling Memorandum from Julie H. Santoboni to Barbara E. Tillman*, dated June 16, 2005. On July 5, 2005, and July 22, 2005, comments on the preliminary scope ruling were received from Cisco. On July 6, 2005, and July 15, 2005, comments were received from Micron. The final ruling is currently pending.

### Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review ("POR"), is April 7, 2003, through December 31, 2003.

### Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) ("*Modification Notice*"). The Department's new methodology is based on a rebuttable "baseline" presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life ("AUL") of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value.

The *Modification Notice* explicitly addresses full privatizations, noting that the Department would not make a decision at that time as to whether the new methodology would also be applied to other types of ownership changes and factual scenarios, such as partial privatizations or private-to-private sales. 68 FR at 37136. However, starting with *Certain Pasta from Italy, Final Results of the Fifth Countervailing Duty Administrative Review*, 67 FR 52452 (August 6, 2002), we applied this methodology to a private-to-private sale of a company (or its assets) as well.

According to Hynix, in 2002, six different Hynix creditors that converted Hynix debt to equity as part of the October 2001 restructuring of the company, as well as Pusan Bank, sold all of that equity on the open market. Hynix reports that these shares accounted for 13.8 percent of Hynix outstanding shares as of the end of 2002, and 17.1 percent of the equity created as a result of Hynix's October 2001 restructuring plan. Hynix argues that the sale of this equity constitutes a change in ownership that rebuts the Department's baseline presumption that alleged non-recurring subsidies continue to benefit the recipient over the allocation period.

We preliminarily find that the percentage of ownership transferred as a result of the sale of these shares does not constitute a sale of all or "substantially all" of the company or its assets. Therefore, we find that Hynix has not rebutted the baseline presumption that the non-recurring, allocable subsidies received prior to the sale of the equity continue to benefit the company throughout the allocation period.

### Subsidies Valuation Information

#### Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For DRAMS, the IRS Tables prescribe an AUL of five years. During this review, none of the interested parties disputed this allocation period. Therefore, we continue to allocate non-recurring benefits over the five-year AUL.

### Discount Rates and Benchmarks for Loans

#### Long-Term Rates

For loans that were found countervailable in the investigation and which continued to be outstanding during the POR, we have used the same benchmarks that we used in the investigation.

For outstanding long-term loans that originated after the period of investigation, *i.e.*, since June 30, 2002, we have used an uncreditworthy benchmark calculated in accordance with 19 CFR 351.505(a)(3)(iii). See "Creditworthiness" *infra*. For the commercial interest rate charged to creditworthy borrowers required for the formula, we used the rate for AA-three-year won-denominated corporate bonds as reported by the Bank of Korea ("BOK"). For Hynix's foreign currency-dominated loans, we used lending rates as reported by the International Monetary Fund's ("IMF") *International Financial Statistics Yearbook*. For the term of the debt, we used 5 years because all of the non-recurring subsidies examined were allocated over a 5-year period.

#### Short-Term Loans

For short-term loans, we utilized the money market rates reported in the IMF's *International Financial Statistics Yearbook*. However, for countries (or currencies) for which a money market rate was not reported, we utilized the lending rate.

#### Equityworthiness

As discussed below, some of Hynix's debt was converted to equity as part of the December 2002 restructuring. The petitioner alleged that Hynix was unequityworthy at the time of these debt/equity conversions and that the entire infusion should be treated as a countervailable grant.

Section 771(5)(E)(I) of the Tariff Act of 1930, as amended, effective January 1, 1995, by the Uruguay Round Agreements Act ("the Act"), and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if the 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.

Where actual private investor prices are not available, 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:

(A) objective analyses of the future financial prospects of the recipient firm, (B) current and past indicators of the firm's financial health, (C) rates of return on equity in the three years prior to the government equity infusion, and (D) equity investment in the firm by private investors.

The Department's regulations further stipulate 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." 19 CFR 351.507(a)(4)(ii). 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.

The Department examined the circumstances leading up to Hynix's December 2002 restructuring. This restructuring resulted in the refinancing of some debt and the conversion of other debt to equity.

Shortly after Hynix's October 2001 restructuring package was adopted, Hynix's Corporate Restructuring Promotion Act Creditors' Council established a Special Committee for Corporate Restructuring ("Restructuring Committee") that would more closely monitor Hynix' situation and fashion recommendations for enhancing the Council members' recovery of their

investment. The Restructuring Committee was a sub-group of Hynix' principal creditors and outside consultants. The Restructuring Committee had explored the possibility of either securing a strategic alliance with other manufacturers in the DRAMS industry or selling Hynix.

On December 3, 2001, the Restructuring Committee initiated negotiations with Micron Technologies to sell Hynix's memory division and a stake in Hynix's non-memory operations. Although the Creditors' Council approved a Memorandum of Understanding ("MOU") between the two companies, Hynix's Board of Directors ultimately rejected the MOU, largely due to concerns over the fate of Hynix's non-memory division. See Hynix's December 17, 2004, Questionnaire Response at III-14-15.

Following this decision by Hynix's Board, the Restructuring Committee continued its evaluation of Hynix's operations and the measures necessary to preserve the creditors' existing investment in the company and to position the company and/or its assets for future sale. *Id.* at III-15. Pursuant to this endeavor, the Korea Exchange Bank, Hynix's lead bank, retained Deutsche Bank ("DB") and Morgan Stanley Dean Witter ("MSDW") in May 2002 on behalf of the Creditors' Council.

Additionally, Arthur D. Little ("ADL") was retained in May 2002 to assist DB in reviewing the outlook for the semiconductor market, Hynix's business portfolio, technical and marketing competitiveness, and Hynix's restructuring plan. Also, Deloitte and Touche ("DT") was brought in as an independent accountant to perform a new appraisal of Hynix's liquidation value. In addition, De Dios & Associates provided DB with semiconductor market and price projections, and benchmarking. The final product of DB's analysis was the November 2002 report ("DB Report") and recommendations. *Id.* at III-15-16.

The DB Report outlined three basic courses of: (1) liquidation, (2) sale of Hynix's memory operations, or (3) continued commitment to a turnaround of the company. Regardless of the option chosen, DB concluded that a financial restructuring in the immediate term was necessary to allow time for the exploration and pursuit of these three options because otherwise, Hynix would run out of cash in the first quarter of 2003 given its balance sheet and operating plan at that time. Ultimately, because of the uncertainty surrounding the timing and duration of a liquidation process or a sale of memory assets, which could affect

actual recovery for the creditors, the DB Report recommended sequential action, focusing first on a new financial restructuring of the company, followed by parallel pursuits of a turnaround of the company and a sale of its memory operations. Liquidation was proposed only as a fall-back option. In addition to this basic recommendation, the DB Report provided a more detailed financial restructuring plan. *Id.* at III-16-17.

Based on the DB analysis and proposed restructuring plan, the Restructuring Committee requested the approval of the full Creditors' Council to move ahead with the DB Plan. *Id.* at III-17. According to Hynix, the plan was adopted by the Creditors' Council on December 30, 2002, as the best means of maximizing loan recovery and increasing shareholders' value. Under the terms of the restructuring, the Restructuring Committee would continue to search for prospective buyers of Hynix's noncompetitive and memory business units. Hynix would continue a self-rescue plan as outlined by DB, with regular reports provided to the creditors on the performance of that plan. Finally, the creditors would engage in a new round of debt restructuring, focusing on a new debt-to-equity conversion and the restructuring and rescheduling of interest payments on remaining debt. *Id.*

The debt/equity swap was effected as part of a restructuring plan by DB, and reflected in a November 2002 report by DB ("DB Report"), prepared at the behest of KEB and pursuant to the Restructuring Committee's goal of preserving existing investment in Hynix, and repositioning the company for possible future sale. Under the terms of the restructuring, half of the value of unsecured debt held by the creditors was converted to equity or to bonds convertible to equity. Specifically, 1,849,156 million won of the debt was converted to common stock and 12,393 million won was converted to convertible bonds. One creditor, C&H Capital, exercised its appraisal rights under the CRPA rather than sign on to the new restructuring. *Id.* at III-17-18.

On April 15, 2003, Hynix issued 193,904,000 common shares to those creditors who elected in the December 2002 restructuring to convert the debt owed to equity.

On August 8, 2003, certain of the bonds received with the December 2002 restructuring were converted to equity. For the remaining convertible bonds, the bondholders are required to exercise the conversion rights between July 15, 2003 and December 24, 2006. *Id.* at III-18.

The remaining debt was refinanced on December 30, 2002, extending its maturity until December 31, 2006. In addition, some prospective interest was scheduled to be converted into principal. Specifically, it was determined that interest would be paid at a rate of 3.5 percent, according to the existing (pre-restructuring) payment schedule of the debt instrument in question. Any interest owed in excess of 3.5 percent would convert into principal at the end of each semi-annual period. A maturity date of December 31, 2006, was set for this interest to be converted to principal, in line with the extended maturity on the refinanced debt. Interest on this new principal was set at 6 percent per annum, to be paid on a quarterly basis. *Id.*

The DB Report projected a favorable turnaround for Hynix following the proposed restructuring. However, that turnaround was predicated on optimistic assumptions about the market and the company, which were not shared by other independent analyses in the record. In addition, prior to and during the restructuring, independent analyses raised strong concerns about Hynix's viability and future survival. While the DB Report forecast Hynix to be nearly debt-free by 2006, it was predicated upon certain predictions regarding DRAM prices and capital expenditures, and it was not certain that these scenarios would come to pass.

The Petitioner provided additional analyst reports to bolster its claim that Hynix's stability and future were precarious.

- "We do not foresee the company returning to profit within our forecast period (to 2004). Also, large net losses should continue to eat away at retained earnings, diminishing book value. Hynix is technically bankrupt, kept alive only through debt restructuring programs." Also, "If Hynix obtains a significant bailout package and increases production, we believe that the market is likely to be oversupplied in 2003." Morgan Stanley Hynix Semiconductor Equity Research (September 25, 2002), at Petitioner's September 27, 2004, submission, at Exhibit 15.

- "We are increasingly concerned about Hynix's dismal earnings prospects. We are cutting 02-03 estimates into deficit territory as cost improvements and supply growth is constrained by lack of investment in the process technology upgrade. Moreover, the sharp decline prices coupled with weakening demand for sync DRAM pose risk of amounting losses. We reiterate our sell rating on the stock." Merrill

Lynch: Hynix Semiconductor, Inc: Comment (September 27, 2002), at Petitioner's April 25, 2005, Factual Information Submission ("FIS"), at Volume 44, Exhibit A-12.

- "Unfortunately, the bad news is that the company is over a generation behind in shrink technology compared to market leaders due to lack of capex in the past two years" and "...the risks of dilution from a debt-to-equity swap and write-down plans present a negative investment case. We maintain our sell recommendation." Merrill Lynch: Hynix Semiconductor, Inc: Comment (November 27, 2002), at Petitioner's April 25, 2005, FIS, at Volume 44, Exhibit A-13.

- "Creditors cannot afford to nurse the company back to health. Hynix is technically bankrupt, kept alive only through debt restructuring programs. Whatever the outcome, the message is clear to investors: *Hynix is not an investment grade company.*" Morgan Stanley Hynix Semiconductor Equity Research (February 13, 2003), at Petitioner's September 27, 2004, submission, at Exhibit 10.

As these statements indicate, the DB report ran counter to the prevailing wisdom at the time of the debt to equity conversions, namely that Hynix was not an investment grade company.

In addition, it is noteworthy that DB was retained by KEB, in its capacity as Hynix's lead bank. The Department has previously found that the KEB acted in accordance with the GOK's policy objectives and that the GOK has significant influence over the bank's lending decisions. *See Investigation Decision Memorandum* at 56. Our prior finding and the GOK's continued high level of ownership in the KEB call into question the independence of the bank from the GOK's policy regarding Hynix. During the POR, the GOK remained the bank's single largest shareholder. The Petitioner also claims that the GOK influenced the final conclusions that were presented to the Creditor's Council. According to Petitioner, "the original restructuring plan endorsed by DB called for dividing and selling the company. Apparently, however, that was not the answer that the GOK was looking for...Another source reported that 'the government and the creditors group altered the original plan.'" *See* Petitioner's Pre-Preliminary Comments on the Hynix Bailout, July 21, 2004, at 41. For these reasons, we do not find that the conclusions of the DB Report are completely independent, market-based assessments and, at the very least, should be scrutinized given the lack of outside investors or other corroborating

projections from additional third-party financial analyst reports.

The Department has preliminarily determined that all but one of the creditors participating in the debt to equity conversions resulting from the December 2002 restructuring package were either government authorities or were entrusted or directed by the government to provide financial contributions to Hynix.

For the one creditor that we have preliminarily found was not directed by the GOK in connection with the Hynix restructuring during the POR, we must consider whether the price paid by this creditor for the equity constitutes a private investor price for the purposes of assessing whether the other creditors' decision to swap their debt for equity was consistent with the private investor standards in 19 CFR 351.507 and section 771(5)(E)(i) of the Act.

In the investigation, the Department looked at a similarly-situated creditor, Citibank. We found that the value of the equity acquired by Citibank in the October 2001 restructuring was insignificant within the meaning of 19 CFR 351.507(a)(2)(iii). *See Investigation Decision Memorandum* at 90. *See, also, Preamble* at 65373 (citing to *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy*, 60 FR 31992, 31994 (June 19, 1995)). Moreover, the Department also found that Citibank's participation was small relative to the total value of debt converted to equity by GOK-owned, controlled, or directed banks. *See Investigative Decision Memorandum* at 90.

In this review, we find that the value of the equity acquired by the creditor in question in connection with the December 2002 restructuring was similarly insignificant and small in comparison with that of the GOK-owned, controlled or directed banks combined. Consequently, the Department has preliminarily determined that the price paid by this creditor cannot serve as a benchmark for the purposes set forth under 19 CFR 351.507. Therefore, since there were no other private investor prices relevant to the December 2002 debt-for-equity swap, we next examined other indicators of Hynix's equityworthiness, pursuant to 19 CFR 351.507(a)(4).

As articulated further in the creditworthiness section below, current and past indicators showed the company to be in poor financial health. Hynix's profitability, solvency, liquidity and repayment capabilities were dire for the three years leading up to the December 2002 restructuring and continuing through the POR. Its net

profit margin, return on equity, and return on assets were all negative during this period. The debt-to-equity, current and quick ratios all demonstrate that Hynix was in danger of not being able to make all of its payments. This situation necessitated multiple debt restructurings. Given the overall economic situation of the firm and the DRAM industry, Hynix was hard pressed to find independent private investors. Moreover, the multiple debt restructurings resulted in Hynix being owned primarily by its creditor banks.

Based upon these factors, we preliminarily find that Hynix was unequityworthy at the time of the initiation and implementation of the December 2002 restructuring process through 2003.

#### *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.

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. See 19 CFR 351.505(a)(4)(ii). However, according to the *Preamble* to the Department's regulations, in situations where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness. See *Countervailing Duties: Final Rule*, 63 FR 65348, 65367 (November 28, 1998) ("*Preamble*").

The Department examined Hynix's performance from January 1, 2000, to June 30, 2002, in the investigation and found the company to be uncreditworthy. According to record evidence, Hynix did not obtain any new medium-term or long-term credit during the period July 1, 2002, through December 31, 2003. See Hynix's June 1, 2005, Supplemental Questionnaire Response at 20, 51. The only "fresh" loans resulted from the conversion of excess interest amounts, above 3.5 percent, from prior loans. Thus, these loans would not be dispositive of Hynix's creditworthiness. See Hynix's December 17, 2004, Questionnaire Response at 18-20.

We note that a creditor found not to be entrusted or directed by the GOK participated in the December 2002 debt restructuring. Our preliminary finding that credit extended by this lender does not constitute a comparable commercial long-term loan within the meaning of 19 CFR 351.505(a)(4)(i)(A) is addressed in a separate memorandum because of the proprietary nature of the analysis.

Pursuant to 19 CFR 351.505(a)(4)(i), we next examined present and past indicators of Hynix's financial health, its ability to meet its costs and fixed financial obligations with its cash flow, and various projections of Hynix's future financial position. In accordance with the Department's usual practice, we conducted the examination on a year-by-year basis, for the years 2002 and 2003. See *Preamble*, 63 FR at 65367; see also *Calculation Memorandum*. We also reviewed, from information on the record, projections by market watchers of Hynix's future performance, contemporaneous with the December 2002 debt restructuring.

Hynix's financial record generally indicated poor financial performance and inadequate current assets to cover the company's current liabilities. Specifically, Hynix's current and quick ratios were both below 1.0 for each year under consideration for the review, indicating poor ability by the company to cover current liabilities with current assets. Hynix's times-interest-earned ratios—which show the extent to which pre-tax income covers interest expense, and which creditors closely monitor to gauge exposure to the risk of default—were negative in 2001, 2002 and 2003, due to pre-tax losses. Hynix's net profit margins, as well as its return on assets and return on equity ratios, showed progressive deterioration: barely positive in 1999 and turning negative from 2000 through 2003. Finally, Hynix's cash flow to current debt and cash flow to total liabilities ratios, which indicate a company's bankruptcy

risk, were extremely weak during the same period. These ratios were actually negative in 2001, in the single digits in 2002, and only modestly improved in 2003. Hynix's prolonged inability to generate sufficient cash flow was problematic and not indicative of a creditworthy company. See *Calculation Memorandum*.

Next, we examined the record for independent expert analyses regarding Hynix's future financial prospects. MSDW analyst reports in 2002 and 2003 expressed doubt as to Hynix's prospects for independent survival without additional help from its creditors. In March 2002, MSDW cautioned that the then current rebound in DRAMS prices was not enough for Hynix to compete globally on a stand-alone basis without the support of creditors. See Morgan Stanley Hynix Semiconductor Equity Research (March 7, 2002), at Petitioner's April 25, 2005, FIS, at Volume 46, Exhibit 274.

In September 2002, MSDW stated that, "Hynix's chances of independent survival appear limited without more help from creditors" and "whatever the outcome, the message is clear to investors: Hynix is not an investment grade company." Morgan Stanley Hynix Semiconductor Equity Research (September 25, 2002), at Petitioner's September 27, 2004, submission, at Exhibit 9. MSDW postulated three possible outcomes for Hynix: (1) liquidation at a rock-bottom price, (2) continued operation with a deterioration of Hynix's market position, and (3) another bailout with partial debt forgiveness, debt restructuring, and a debt-to-equity swap. Another concern was Hynix's lack of investment in technology and other capital expenditures during the POR, which MSDW projected could erode its future competitiveness. See Morgan Stanley Hynix Semiconductor Equity Research (February 13, 2003), at Petitioner's September 27, 2004, submission, at Exhibit 10.

We note that DB's November 2002 Report, as discussed more fully in the equityworthiness section above, presented a more positive outlook for Hynix's future financial performance. According to the DB Report, Hynix would be debt-free by 2006, assuming that the company successfully implemented its technology roadmap, capital expenditure plan, and that DRAMS prices recovered by 2005/2006. See Hynix's July 11, 2005, Questionnaire Response, Exhibit 23; see also Hynix's December 17, 2004 Questionnaire Response, Exhibit 14, 18. However, as also noted in the equityworthiness section above, these

assumptions were not shared by other independent analyses on the record and not consistent with the indications from Hynix's past performance.

On the basis of these considerations, we preliminarily find that Hynix was uncreditworthy in 2002 and 2003. Consequently, we have used an uncreditworthy benchmark rate in calculating the benefit from loans received during this time period, and we have used an uncreditworthy discount rate in calculating any non-recurring benefits received by Hynix that were allocable to the POR.

### Analysis of Programs

#### *I. Programs Preliminarily Determined to Confer Subsidies During the POR*

##### *Entrustment or Direction and Other Financial Assistance*

In the investigation, the Department determined that Hynix received financial contributions from Korean banks that had been entrusted or directed by the GOK. We reached this determination on the basis of a two-part test: First, we determined that the GOK had in place a governmental policy to support Hynix's financial restructuring to prevent to the company's failure. Second, we found that the GOK acted upon that policy through a pattern of practices to entrust or direct Hynix's creditors to provide financial contributions to Hynix. See *Investigation Decision Memorandum* at 47-61. We also found that "this policy and pattern of practices continued throughout the entire restructuring process through its logical conclusion." *Id.*

The petitioner has alleged that an additional financial restructuring in December 2002 reflects a continuation of the government's policy to prevent Hynix's failure and that the GOK again entrusted or directed Hynix's creditors. For that restructuring, Hynix's creditors converted 1,856,771 million won of outstanding debt into equity, extended the maturities on 3,293.2 billion won of debt, and converted interest due into new long-term loans. See "Hynix Semiconductors Inc.: Notes To Non-Consolidated Financial Statements," at numbered paragraph 14, available at Micron's "Submission Of Rebuttal Factual Information," June 20, 2005, Volume 1, Tab 13, at 39-40.

As in the investigation, the question in this proceeding is whether the GOK entrusted or directed Hynix's creditors to provide financial contributions to Hynix, within the meaning of section

771(5)(B)(iii) of the Act.<sup>1</sup> Government entrustment or direction to provide a financial contribution constitutes a subsidy when providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments. See section 771(5)(B)(iii) of the Act.

The contributions in this case are loans and equity infusions. The provision of such contributions falls within section 771(5)(D) of the Act and therefore would normally be vested in the government, and the practice does not differ in substance from practices normally followed by governments. Entrustment or direction occurs when a government gives responsibility to, commits the execution of a task to, or exercises authority over, a private entity. Government actions which entail pressuring, exerting influence, guiding, ordering, regulating, or delegating *vis-à-vis* a private entity are indicative of entrustment or direction. Moreover, these actions need not be explicit. Rather, the government entrustment or direction can also be implicit or informal. Additionally, when a government executes its policy by operating through a private entity, or when a government causes a private entity to act consistently with that policy, there is entrustment or direction by the government. Evidence of entrustment or direction need not be explicit but, rather, entrustment or direction can be inferred from circumstantial evidence.

In examining the evidence on the record, we are mindful that we must evaluate carefully all possible explanations for the actions taken by Hynix's creditors, and that our conclusions must be made on the basis of the totality of the record facts. As we have noted, above, it is appropriate in cases involving government entrustment or direction to reach conclusions based on inferences from circumstantial evidence. Indeed, as in the

<sup>1</sup> In evaluating the petitioner's allegation regarding the December 2002 restructuring, we continued to distinguish between those banks found to be "government authorities" within the meaning of section 771(5)(B) the Act, and banks found to be "entrusted or directed" by the GOK, within the meaning of section 771(5)(B)(iii) of the Act. See *Investigation Decision Memorandum* at 13-17. No new evidence or changed circumstances exist that would lead us to revisit our prior determination that the Korean Development Bank ("KDB") and other "specialized" banks are government authorities and that the financial contributions made by these entities fall within section 771(5)(B)(i) of the Act. For all other financial institutions, we continued to evaluate whether the financial contributions they made to Hynix as part of the December 2002 restructuring were entrusted or directed by the GOK in accordance with section 771(5)(B)(iii) of the Act.

investigation, much of the information regarding the GOK's involvement in the December 2002 Hynix restructuring is circumstantial in nature. Moreover, the probative value of such circumstantial evidence can be enhanced where the parties are found to be secretive or evasive with respect to information that is relevant and responsive to the investigating authority's analysis. This has been the case in this administrative review. Specifically, record evidence indicates that the GOK and Hynix's creditors were overly careful not to discuss publicly their communications regarding Hynix because they feared potential trade remedy cases. Additionally, as discussed more fully, below, we are troubled by numerous instances during the course of this review, in which the GOK did not provide all of the information requested by the Department, including information that was later revealed in submissions by the petitioner. Such instances hinder our ability to fairly conduct a complete and accurate analysis of all of the evidence relevant for reaching a decision. Nonetheless, we preliminarily find on the basis of substantial record evidence that the GOK entrusted or directed Hynix's creditors to provide financial contributions to Hynix. We also find that it is appropriate to treat the circumstantial evidence in support of this conclusion as highly probative in light of the GOK's inadequate responses and the secretiveness under which the GOK and Hynix's creditors were operating at the time of the restructuring.

Hynix and the GOK claim that Hynix's creditors acted independently of the government and on a commercial basis when they provided new financial contributions to Hynix in connection with the December 2002 restructuring. We disagree. As we explain in detail, below, record evidence demonstrates that the GOK's policy to prevent Hynix's failure continued after the period of investigation. Record evidence also shows incontrovertibly that at the time of the December 2002 restructuring, Hynix was once again in dire financial straits and that the company desperately needed new financial assistance from its creditors in order to survive as a viable entity. Direct and indirect record evidence further demonstrates that the GOK entrusted or directed Hynix's creditors to provide that assistance.<sup>2</sup> At

<sup>2</sup> This finding does not apply to Creditor X, a foreign-owned creditor holding a small amount of Hynix's debt. For further discussion on the role of this bank in the restructuring, see the "Equityworthiness" and "Creditworthiness" sections of this notice.

the time of the December 2002 restructuring, GOK-owned or controlled banks dominated the Creditor's Council, giving the GOK the means to effectuate its policy toward Hynix and allowing it to set the terms of the restructuring. Although Hynix and the GOK argue that the creditors were merely acting upon the plan devised by its financial advisors, record evidence shows that independent financial analysts not associated with Hynix or its creditors reached very different conclusions and issued consistent warnings about the company's viability. This evidence demonstrates that Hynix's condition was so dire that no commercially motivated actor would have invested in or made loans to Hynix at the time of the December 2002 restructuring. The absence of a compelling commercial rationale to provide more financial assistance to Hynix provides further evidence that the role of the GOK was critical in bringing about the December 2002 bailout.

The evidence on the record demonstrates that the GOK continued to worry that Hynix's collapse could have a damaging effect on the Korean economy, even after the last major bailout was completed in October 2001, and that the GOK was taking steps to deal with the company. In early 2002, after the company's merger negotiations with Micron, the U.S. DRAMS producer and petitioner in this case, ended in failure, the government again expressed its concern about the fate of Hynix. For example, after the merger talks with Micron ended, the Deputy Prime Minister stated that the government would soon reveal its position on how to handle Hynix. See "Government Started to Establish a Counter Plan for the Handling of Hynix," *Maeil Business Newspaper* (May 1, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-189. Shortly thereafter, the Deputy Prime Minister stated in a radio program interview that "the government is encouraging creditors group to swiftly handle Hynix." "Encouraging Swift Handling Of Hynix" Deputy Prime Minister Yoonchol Chon," *HANKOOK Economy* (May 5, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-182. On the same day, the Deputy Prime Minister was quoted as saying that "{w}riting off Hynix's debt would also be considered as fresh financial assistance" and that Hynix's creditors and the FSC should come up with a speedy resolution to the breakdown of the Hynix-Micron deal to minimize any negative impact on the economy. See "Creditors won't offer new loans to Hynix: Jeon," *Korea*

*Herald* (May 5, 2002), Petitioner's April 25, 2005, FIS at 45-187. The article added that the government was planning a "Financial Policy Coordination Meeting" to discuss Hynix's fate, which would be attended by Finance and Economy Vice Minister Yoon Jin-shik, FSC Vice-Chairman Yoo Ji chang and Bank of Korea Deputy Governor Park chul. *Id.*

The government's ability to control the fate of Hynix became apparent in additional press reports from that time which noted that the head of the United Liberal Democratic Party, Kim Jong-pil, while visiting a Hynix plant in Cheongju, told Hynix labor union leaders they had ". . . earned the promise from Vice Prime Minister and Minister of Finance and Economy that the government will not sell Hynix within the next six months." "Hynix, cannot sell within the year after all," *Financial News* (June 12, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-163; see also "Hynix Not To Be Sold Within 6 Months," *Maeil Business Newspaper* (May 29, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-172 (" . . . secured a promise that Hynix will not be sold in the next six months.").

In its July 25, 2002, report to the National Assembly, the Ministry of Finance and Economy stated that it would prepare a structural adjustment plan for Hynix around the end of July based on due diligence underway at the time. See Report Materials for the Committee of Finance and Economy: Current Economic Situations and Pending Issues, (July 25, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 44-B-9. In September 2002, Vice Finance Minister Yoon Jin-Shik "called on creditor banks of the cash-strapped Hynix Semiconductor to swiftly decide on the fate of the world's third largest chipmaker." The Vice Finance Minister was quoted as saying that "{c}reditors will have to find a solution to Hynix as soon as possible to minimize an adverse impact {of the collapse of a proposed [sic] deal with Mircon Technology} on the economy." "Creditors Urged to Swiftly Decide on Hynix's Future," *Korea Times* (September 19, 2002), Petitioner's April 25, 2005, FIS at 45-134.

In November 2002, on the eve of the presidential election and just before the December 2002 restructuring, the GOK was severely criticized by Korea's Grand National Party ("GNP") which had completed a report in the National Assembly regarding the GOK's mismanagement of public funds in recent years. See Special Committee on Parliamentary Inspection of Public Fund

Administration: Public Fund Mismanagement Investigation Report (November 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 54-100. A section of this report, entitled "Why is the Dae-Jung Kim Administration so Preoccupied With the Bailout of Hyundai?," addressed the restructuring of Hynix, stating that the Dae-jung Kim Administration:

{F}orced financial institutions to extend 24.4 trillion {won} in loans to the Hyundai Group, and mobilized government-invested banks and other government-funded or invested institutions which are run with taxpayers' money, to extend 11.5 trillion won to the Hyundai Group. This resulted in the injection of the astronomical amount of 33.6 trillion won in total thus far, since the Hyundai Group's liquidity crisis in May 2000 (excluding the matching portion from the Korea Development Bank).

*Id.* at 100. This report further notes that, by saving the failing company, the GOK was "injecting money into bottomless pits" and should account for the total amount of public funds being provided to the Hyundai Group. Indeed, the GNP concluded that the government was wasting astronomical sums of money on failed companies, including Hynix, and that the Korean taxpayers had suffered the consequences. *Id.* at 104.

Immediately following the GNP report, the Financial Times reported in December 2002, that "{w}ith 13,000 people directly employed by Hynix and a further 600,000 suppliers and family members dependent on the company, bankruptcy would have been politically damaging to the government ahead of this month's presidential election." See "Pressure builds on Seoul over Hynix: Creditors are contemplating a third multi-billion dollar bail-out of the troubled chip maker amid mounting protest, says Andrew Ward," *Financial Times* (December 9, 2002), Petitioner's April 25, 2005, FIS at 45-93. Only one week after the December 2002 restructuring had been finalized, another report noted that an economic ministers' meeting, attended by President Dae-Jung Kim and Deputy Prime Minister Yoon Cheol Jeon, was held at the Blue House to set out "plans for the year 2003 economy." At this meeting, GOK officials stated that they would "try to conclude dealing with insolvent companies including Hanbo Steel and Hynix Semiconductor as soon as possible." "2 or 3 New Urban Areas to be Developed in the Capital City Area ... Potential Locations to be Selected in the 1st Half of the Year," *Donga Daily* (January 9, 2003), available at Micron's

“Submission of Rebuttal Factual Information, July 21, 2005, at Tab 31.

These reports evidence undiminished support by the GOK for Hynix, motivated by its concern about the effect that the company’s failure would have on the Korean economy. These reports also attest to the high-level involvement of GOK officials in the process leading up to the December 2002 restructuring. We also note that there is no evidence on the record that suggests the GOK’s policies with respect to Hynix came to an abrupt end after the October 2001 restructuring. Rather, as we noted during the investigation, the government’s goal was to ensure Hynix’s viability as an ongoing concern. The October 2001 restructuring did not bring about this goal. Rather, as became apparent during 2002, especially after the merger negotiations with Micron ended, Hynix again found itself in dire need of additional financial assistance from its creditors, without which the company would have failed.<sup>3</sup>

By December 2002, Hynix once again faced the prospect of financial collapse. The GOK, however, had little difficulty effectuating its goal of preventing the company’s failure, in part because the GOK-owned or controlled banks dominated the company’s Creditors’ Council. At the time of the December 2002 restructuring, the creditors which were either government entities or in which the GOK held the largest or a majority share accounted for over 80 percent of the voting rights in the Creditors’ Council, measured by a banks’ exposure to Hynix. Although government ownership by itself is not sufficient to result in a finding that a financial institution is a government entity, the high level of ownership by the government in Hynix’s creditors gave it the ability to exercise substantial influence over the activities of these entities, including their lending decisions with regard to Hynix.

The GOK claims in its questionnaire responses that it does not intervene in the internal management and decision-making processes of financial institutions. See GOK’s June 1, 2005, Questionnaire Response at 5. The GOK also reported, however, that, in “important instances,” it exercised its shareholder voting rights through its government entity banks (e.g., KDIC). *Id.* at 31–33. Such “important instances” included, appointment and dismissal of directors or auditors, alteration of the ceiling of directors’ remuneration,

<sup>3</sup> For further discussion of Hynix’s financial condition during the period leading up to the December 2002 restructuring, see the “Equityworthiness” and “Creditworthiness” sections of this notice, above.

appointment of senior officers, exemption of directors’ and auditors’ indemnity responsibility to the shareholders, disposal of all assets of the bank, application for bankruptcy and liquidation by the bank, capital reductions, issuance of new shares, and mergers with related companies. See GOK’s July 11, 2005, Questionnaire Response at 12–15. Given the significance of these “instances,” the Department finds that the GOK exercised substantial influence over those banks in which it retained ownership during the POR.

Furthermore, the record evidence from secondary sources contradicts the GOK’s claim that it did not interfere in internal bank affairs. For instance, one report noted that if “some argue that there are government-directed banking practice and parachute appointments, a counter argument that {sic} ‘Why are you against the exercise of stockholder’s right?’ is presented.” However, the report continues, the problem is that “the government’s exercise of shareholder’s rights is politically motivated rather than by business considerations.” “[Government-Directed Banking Practices] Do Bank Officers {Belong to} the Government?,” *Maeil Business Newspaper* (May 21, 2002) {English Translation}, Petitioner’s April 25, 2005, FIS at 45–175. The article also reports that “7 out of 10 commercial banks are essentially under government management” and that it became “reasonable for the government, as the majority shareholder, to sway the appointment of the Chairman of the bank.” *Id.* Further, the article explained that “strong influence of former officials appointed {as bank officials} after serving in the Ministry of Finance and Economy, and the Financial Supervisory Committee, {is} enabling the connection for the government-directed banking practices. . . .” *Id.*

Another report cited the observations of Lee Phil-sang, the Dean of the Korea University’s Business School, who noted that by “. . . injecting large sums of public funds, the government nationalized banks and kept a firm grip on financial institutions via the Financial Supervisor Commission,” and that “[o]ut of ten existing commercial banks, the government is the major shareholder of seven banks. . . .” “Soundness of Financial Sector Still Remains Remote,” *The Korea Times* (September 2, 2002), Petitioner’s April 25, 2005, FIS at 54–117. The article goes on to say that the “government has publicly declared it will not intervene in bank management, even when it is the major shareholder, but whenever there is a major shakeup, such as the

election of a CEO, the government has been known to exert pressure.” *Id.* This observation is corroborated by reports from various other sources that the EXIM Bank and the BOK, which are shareholders in Korean Exchange Bank (“KEB”),<sup>4</sup> influenced the Presidential Candidate Recommendation Committee’s recommendation of Kang Won Lee as KEB president, that the FSC’s decision to remove the president of Kookmin was likely due to his opposition to Hynix’s restructurings, and that officials at the KEB and Chohung Bank (“CHB”) resigned following a dispute with the GOK over the appointment of bank officers.<sup>5</sup>

Further corroboration of similar significant interference by the GOK is provided in another news article, which reported that any GOK denials regarding its involvement in Hynix’s restructurings “is merely a rhetorical remark for public consumption,” and that whenever banks “. . . shy away from providing support, the government has talked to them, or even twisted their arms, to bring support for Hynix.” “Hynix, will it really survive?,” *www.kyunghyang.com* (February 18, 2003) {English Translation}, Petitioner’s April 25, 2005, FIS at 21–B–51.

In a separate article, *Maeil Business Newspaper* quoted a current officer of a city bank as saying that “the government always made a telephone call when the bank tried to process an insolvent corporation through bankruptcy, asking {the} bank’s cooperation in consideration of employment issues and bankruptcy of subcontractors,” and that “the most typical of such a case would be the new financial support extended to Hynix Semiconductors.” “Revival of the new government-controlled finance? Giving oral instruction without written document to dodge responsibilities,” *Maeil Business Newspaper* (March 31, 2003) {English Translation}, Petitioner’s April 25, 2005, FIS at 47–B–23. The article further reported that, according to bank officers, such telephone calls were not mere suggestions, explaining that once “they receive oral instructions

<sup>4</sup> As discussed in more detail below, the KEB was the lead creditor in the Hynix Creditors’ Council.

<sup>5</sup> See “About the Case of Korea Exchange Bank,” *Money Today* (May 13, 2002) “English Translation”, Petitioner’s April 25, 2005, FIS at 48–50; “Revival of Government-Directed Banking” *Munwha Ilbo* (September 13, 2004) {English Translation}, Petitioner’s April 25, 2005, FIS at 44–B–15; “Analysis: S. Korea’s battle with bank,” *United Press International* (January 3, 2005), Petitioner’s April 25, 2005, FIS at 54–111; “[Government-Directed Banking Practices] Do Bank Officers {Belong to} the Government?,” *Maeil Business Newspaper* (May 21, 2002) {English Translation}, Petitioner’s April 25, 2005, FIS at 45–175.

from the government agencies, banks have no choice but to comply.” *Id.* One bank officer reportedly stated that “banks cannot decline the government’s instructions because not complying with the government’s orders can lead to many disadvantages under the situation.” *Id.*

As may be expected, evidence of the government’s influence in the lending decisions of banks tends to come from indirect sources. This is especially the case where, as here, the government is concerned about potential trade actions taken against the subsidized company. However, in this case, the record also contains direct evidence of government involvement in the lending decisions of Hynix’s creditors. For instance, in order to gain listing in the U.S. stock market, Woori Bank (“Woori”),<sup>6</sup> a GOK-owned or controlled bank, filed a disclosure with the U.S. Securities and Exchange Commission (“SEC”) that very frankly describes the GOK’s practices with respect to the banking sector. See Form 20-F: Registration Statement: Woori Finance Holdings Co., Ltd. (September 25, 2003), available at Micron’s “Submission of Rebuttal Factual Information, July 21, 2005, at Tab 46 at 26–27. Such filings are subject to stringent transparency rules designed to protect investors, and the veracity of the accompanying statements entails serious litigation and liability risk for the company. Therefore, we consider these SEC filings to be highly probative evidence.

Woori’s Form 20-F explains the risks related to GOK ownership and control of the bank, particularly the risks involved in governmental pressure to lend to certain industries. The filing states: **RISKS RELATING TO GOVERNMENT CONTROL.** The KDIC,<sup>7</sup> which is our controlling shareholder, is controlled by the Korean government and could cause us to take actions or pursue policy objectives that may be against your interests. The Korean government, through the KDIC, currently owns 86.8% of our outstanding common stock. So long as the Korean government remains our controlling stockholder, it will have the ability to cause us to take actions or pursue policy objectives that may conflict with the interests of our other stockholders. For example, in

order to further its public policy goals, the Korean government could request that we participate with respect to a takeover of a troubled financial institution or encourage us to provide financial support to particular entities or sectors. Such actions or others that are not consistent with maximizing our profits or the value of our common stock may have an adverse impact on our results of operations and financial condition and may cause the price of our common stock and ADSs to decline. . . .

**RISKS RELATING TO GOVERNMENT REGULATION.** The Korean government promotes lending and financial support by the Korean financial industry to certain types of borrowers as a matter of policy, which financial institutions, including us, may decide to follow. Through its policy guidelines and recommendations, the Korean government has promoted and, as a matter of policy, may continue to attempt to promote lending by the Korean financial industry to particular types of borrowers. For example, the Korean government has in the past announced policy guidelines requesting financial institutions to participate in remedial programs for troubled corporate borrowers, as well as policies identifying sectors of the economy it wishes to promote and making low interest funding available to financial institutions that lend to these sectors. The government has in this manner encouraged low-income mortgage lending and lending to small- and medium-sized enterprises and technology companies. We expect that all loans or credits made pursuant to these government policies will be reviewed in accordance with our credit approval procedures. However, these or any future government policies may influence us to lend to certain sectors or in a manner in which we otherwise would not in the absence of that policy. *Id.*

Given the timing of these statements (shortly after the December 2002 restructuring and during its implementation), we find that the references to “troubled corporate borrowers” and “technology companies” strongly indicate that the risks discussed pertained at least in large part to the December 2002 restructuring of Hynix. As of December 31, 2002, Hynix represented Woori’s largest exposure; the bulk of this exposure was “classified as substandard or below;” and Hynix was Woori’s only substandard exposure that was also a technology company. See *id.* at 26–27, 75, 85. The Department finds the nexus of these facts to be highly probative.

Thus, Woori’s SEC disclosure provides crucial direct evidence of GOK interference in the lending decisions of GOK-owned or controlled banks with respect to Hynix.

The evidence on the record also demonstrates that Hynix’s Creditors’ Council was dominated by GOK-owned or controlled banks, which, as we already explained, were subject to significant government influence. This dominant position allowed the GOK to maintain a veto-proof margin in the Creditors’ Council, which was governed by the Corporate Restructuring Promotion Act (“CRPA”). Under the CRPA, the decisions made by creditors holding 75 percent of a company’s debt, and a corresponding 75 percent of the voting rights, are binding upon all the members. See *Investigation Decision Memorandum* at 54. In the investigation, the GOK-owned or controlled banks held a “blocking majority” in the Creditors’ Council. At that time, the Department found that these banks “had significant control over the plans that were approved by the councils, and could derail any plans with which they did not approve” and that “these banks were thus in a position to set the terms of the financial restructuring via their control of votes in the Hynix Creditors’ Council.” *Id.* at 51, 53. By comparison, at the time of the December 2002 restructuring, the GOK-owned or controlled banks and GOK entities accounted for greater than 75 percent voting rights in the Creditors’ Council. See Hynix’s June 1, 2005, Questionnaire Response at Exhibit S–38. As we explained in the investigation, the government’s ability to dominate the Creditors’ Council allowed it to determine the outcome of the Council meetings and entrust the continuation of its policy regarding Hynix to the Council. See *Investigation Decision Memorandum* at 54. The evidence on the record of this administrative review demonstrates that the government’s ability to effectuate its policies through the Council was substantially enhanced by the dominant position held by GOK-owned or controlled banks, as described above.

As in the investigation, KEB continued to be the lead creditor bank in the Creditors’ Council. In the investigation, the Department had found that the “record evidence illustrates that the KEB acted in accordance with the GOK’s policy objectives.” See *Investigation Decision Memorandum* at 18. Specifically, the Department found that the KEB justified its participation in the various Hynix restructurings not on the basis of commercial considerations but for reasons that were aligned with

<sup>6</sup> As of December 2002, Woori Bank was a wholly-owned subsidiary of Woori Financial Group. See GOK’s June 1, 2005 Supplemental Questionnaire Response at 29. Woori Financial Group is registered with the U.S. SEC as “Woori Finance Holdings Co., Ltd.” Woori Bank’s financial disclosures are consolidated within the filing by Woori Finance Holdings Co., Ltd. Hereafter, the entities may be referred to interchangeably as “Woori.”

<sup>7</sup> Korea Deposit Insurance Corporation.

the government's social and economic concern regarding the impact of Hynix's potential collapse. We find no evidence in this review that the KEB's motivations have changed since the investigation, especially given that the GOK remained the KEB's largest shareholder. As in the investigation, the GOK-owned or controlled KEB was the lead creditor at the time of the December 2002 restructuring and, thus, continued to play a pivotal role.

The KDB also played a very prominent role in the December 2002 restructuring and further consolidated the GOK's control over the Creditors' Council. As stated above, the Department considers the KDB to be a government authority. The KDB held a significant share of the voting rights on the Creditors' Council. See Hynix's June 1, 2005, Questionnaire Response at Exhibit S-38. In the investigation, the Department found that participation of the policy lending banks, such as the KDB, sent a clear signal of GOK support for the restructurings. See *Investigation Decision Memorandum* at 57-58. Based on the record in this review, the Department finds no evidence that this legitimizing role of the KDB did not continue with regard to the December 2002 restructuring. In this role, the record shows, the KDB pushed for decisions that became elemental to the restructuring plan. For instance, the *Hankook Economy* reported that the KDB discouraged the notion of selling Hynix and, instead, recommended its further restructuring. See "'HYNIX's sale is impossible at this point' Development Bank's Response to the National Assembly's Inspection," *Hankook Economy* (October 3, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-131. Further, another new article stated that the KDB and Hynix requested that bond maturities be extended on the grounds that Hynix was in financial distress and "additional funding for facility investment is needed." "'Matured corporate bonds of 82.4 billion won must be redeemed' Korea Development Bank's request To Hynix," www.hankyung.com, (June 20, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-162. The KDB agreed to extend the maturities of 56 billion won of bonds. *Hankooki.com* quoted a source at the KDB as saying that "{i}n principle, the 56 billion won maturing on {July 27, 2002} should be redeemed, but if that's difficult, we could first extend the deadline and handle that portion by including it in the restructuring plan slated to be established in the beginning of August."

"Korea Development Bank extends maturity on Hynix corporate bonds of 56 billion won," *Hankooki.com* (July 25, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 45-156. Hynix immediately announced that the KDB decided to extend maturities of Hynix's corporate bonds worth 56 billion won. *Id.* Thus, we find that KDB played a prominent role in the December 2002 restructuring and provided a clear signal to other creditors of GOK support for saving Hynix.

In addition, the evidence on the record demonstrates that other GOK-owned or controlled banks with substantial control over the Creditors' Council were significantly influenced by the GOK. As discussed above, Woori's SEC disclosure acknowledges government influence over its activities. During the POR, Woori was a wholly-owned subsidiary of Woori Financial Group, which in turn was 88.21 percent owned by the KDIC (a government entity), and had a significant share of voting rights on the Creditors' Council. See GOK's June 1, 2005, Questionnaire Response at 29; see also Hynix's June 1, 2005, Questionnaire Response at Exhibit S-38. Similarly, CHB was 80.05 percent directly owned by the KDIC, and also had a significant share of voting rights on the Creditors' Council. *Id.* By June 2003, the KDIC had injected 2.7 trillion won of public funds into CHB, a stake further solidified with an MOU between the two entities. See Board of Audit and Inspection: Current Government Funding & Management Conditions: Audit Report: May 2004 {English Translation}, Petitioner's April 25, 2005, FIS at 47-A-1 at 93; see also Ministry of Finance and Economy: Public Fund Oversight Commission: Public Fund Oversight White Paper: August 2003 {English Translation}, Petitioner's April 25, 2005, FIS at 47-A-2 at 293. Further, as indicated on CHB's website, CHB disburses GOK policy fund loans under various GOK industrial development programs. See "Strategic Fund Loan: What is Strategic Fund Loan?," *Website of Chohung Bank* (January 24, 2002) {English Translation}, Petitioner's April 25, 2005, FIS at 48-C-7.

Additional record evidence demonstrates that the GOK exerted its control over other Hynix creditors and that it was able to enlist the cooperation of these commercial banks in pursuit of its policy to save Hynix.

For instance, Kookmin Bank ("Kookmin") is a commercial bank with relatively small GOK ownership. In the investigation, the Department found that Kookmin's September 2001 SEC disclosure "is direct evidence that such

direction occurred and provides crucial evidence of the government's role in directing lending decisions." *Investigation Decision Memorandum* at 59. In June 2002, Kookmin filed another disclosure with the SEC which contained language that is identical to that found in its September 2001 filing. See Kookmin Bank Prospectus (June 18, 2002) at 22, Petitioner's April 25, 2005, FIS at 33-11 ("The Korean government promotes lending to certain types of borrowers as a matter of policy, which we may feel compelled to follow."). Even though Kookmin itself was not a member of Hynix's Creditors' Council in December 2002, it controlled several affiliates who were on the Council. See e.g., Hynix's December 17, 2004, Questionnaire Response at Exhibit 20. Because this new SEC disclosure occurred during the planning stages of the December 2002 restructuring, our previous findings concerning GOK interference in Kookmin's lending practices with respect to the October 2001 restructuring remain equally applicable to the bank's practices and, by extension, to those of its affiliates on the Creditors' Council, in the context of the December 2002 restructuring.

Moreover, both the Kookmin and Woori disclosures, as discussed above, provide crucial direct evidence of GOK interference in the lending decisions of Hynix's other creditors. The disclosures state that the "Korean government promotes lending and financial support by the Korean financial industry to certain types of borrowers as a matter of policy, which *financial institutions, including us, may decide to follow*" {emphasis added}. Additionally, these disclosures contain a highly telling caveat, stating that, although "...credits made pursuant to these government policies will be reviewed in accordance with our credit approval procedures," nevertheless, "these or any future government policies may influence us to lend to certain sectors or in a manner in which we otherwise would not in the absence of that policy" {emphasis added}. See Form 20-F: Registration Statement: Woori Finance Holdings Co., Ltd. (September 25, 2003), available at Micron's "Submission of Rebuttal Factual Information, July 21, 2005, at Tab 46 at 26-27; *Investigation Decision Memorandum* at 59 (quoting the September 2001 Kookmin disclosure). Both Woori and Kookmin had to disclose these potential risks because, in order to be listed on a U.S. stock exchange, companies must comply with stringent transparency rules. These rules are designed to protect investors, and companies cannot afford to hide certain

risks from their investors. To do so would create a serious litigation and liability risk for the company. See *Investigation Decision Memorandum* at 55. In this instance, Woori and Kookmin were signaling to investors that they must assume risks in making lending decisions not based on commercial considerations but, rather, on direction by the GOK and reflective of the GOK's economic and social policy objectives.

Given that Woori is a GOK-owned or controlled bank and Kookmin is mostly a private bank, the Department finds these two disclosures highly indicative of the general exposure by both GOK-owned or controlled banks and private banks to GOK influence. Indeed, the Hynix creditors that did not seek listing on a U.S. stock exchange were not legally required to make similar disclosures as Woori and Kookmin. Nevertheless, both disclosures state that the government promotes lending to certain types of borrowers which "financial institutions" may follow. *Id.* Thus, these statements strongly suggest that other financial institutions were subject to similar governmental pressures as Woori and Kookmin.

As discussed above, the GOK wielded substantial influence over Korean banks and had the means to pressure those financial institutions through its veto-proof control of the Creditors' Council. The GOK reported that, under the CRPA, a Mediation Committee may be formed to resolve disputes among the various creditors. See GOK's June 1, 2005, Questionnaire Response at 84. Hynix filed comments before the Department in which it claimed that new factual information regarding the Mediation Committee casts doubt on a previously considered financial contribution (*i.e.*, October 2001 restructuring). Hynix argues that the record evidence demonstrates that those institutions that opted for mediation received a better outcome than they did under the options provided by the Council. Hence, Hynix argues that these lenders could not possibly have been entrusted or directed. We are not persuaded.<sup>8</sup> The presence of the mediation committee does not negate the fact that the GOK controlled a large majority of the voting rights on the Creditor's Council, as discussed earlier. Additionally, the record shows that only one Hynix creditor, CNH Capital, requested mediation in connection with the December 2002 restructuring. See GOK's July 11, 2005, Questionnaire Response at 50. CNH Capital, however,

held only a negligible percentage of Hynix's debt throughout the entire restructuring program, including the December 2002 restructuring. See Hynix's June 1, 2005, Questionnaire Response at Exhibit S-4. In our view, this one instance where a relatively insignificant member opted for mediation is insufficient to support Hynix's contention. Thus, although mediation may have been officially provided for under the CRPA, we do not believe it was a realistic option for the overwhelming majority of creditors. As explained above, "not complying with the government's orders can lead to many disadvantages under the situation." "Revival of the new government-controlled finance? Giving oral instruction without written document to dodge responsibilities," *Maeil Business Newspaper* (March 31, 2003) {English Translation}, Petitioner's April 25, 2005, FIS at 47-B-23. Consequently, we find that the option of mediation under the CRPA does not contradict our finding that the GOK exercised its influence and control over the Creditors' Council in pursuit of its goal to save Hynix.

Our finding that Hynix's creditors were entrusted or directed by the GOK to provide financial contributions to Hynix is further supported by record evidence demonstrating that at the time of the December 2002 restructuring, no commercially motivated lender would have invested in or provided loans to Hynix.

As discussed in greater detail under the "Equityworthiness" and "Creditworthiness" sections of this notice, we find that Hynix was both unequityworthy and uncreditworthy during the POR and preceding three years. By all indications, both the financial condition of the company and its future prospects were extremely poor and getting worse throughout that period, and would clearly have dissuaded commercial lenders from lending to, or otherwise investing in, the company. For instance, in September 2002, Morgan Stanley Dean Witter reported that "Hynix is technically bankrupt" and concluded that "{w}hatever the outcome {of the potential restructuring} the message is clear to investors: Hynix is not an investment grade company" {emphasis in original}. Morgan Stanley Hynix Semiconductor Equity Research: The Gridlock (September 25, 2002), Petitioner's April 25, 2005, FIS at 44-A-15. In November 2002, Merrill Lynch echoed these assessments, explaining that "the risks of dilution from a debt-to-equity swap and equity write-down plans present a negative investment

case", and concluding that "{w}e maintain our sell recommendation." Merrill Lynch: Hynix Semiconductor, Inc: Comment: Round 3 of Refinancing (November 27, 2002, at Petitioner's April 25, 2005, FIS at 44-A-13. In February 2003, Morgan Stanley Dean Witter issued another analyst report, saying, "we see no real chance of independent survival without generous levels of debt forgiveness and large injections of capital." See Morgan Stanley Hynix Semiconductor Equity Research (February 13, 2003), at Petitioner's September 27, 2004, submission, at Exhibit 10. Morgan Stanley also noted at the time that the DB proposal to restructure the company would "be seen as another Korean government bailout given that most of the creditor banks are still government controlled." Morgan Stanley Hynix Semiconductor Equity Research (September 25, 2002), at Petitioner's September 27, 2004, submission, at Exhibit 15. Hence, it is our view that any lender who did provide credit or equity capital to Hynix during that time could not have been acting in accordance with normal commercial considerations. Consequently, such a lender, in the context of the totality of the record evidence, was instead entrusted or directed by the government in pursuit of its policy to save Hynix.

The Department finds this evidence persuasive, considering that these analyst reports are independent projections of the future prospects of Hynix. The objective assessments on the record are clear: No commercially motivated investor would invest in this company; no commercially motivated lender would provide credit to this company. Thus, as noted above, the Department finds that this evidence further supports the conclusion stated above that the GOK pressured Hynix creditors to lend to the failing company because the creditors would not have engaged in the December 2002 restructuring had they not been pressured to do so by the GOK.

Given the totality of the evidence discussed above, the Department finds that the GOK entrusted or directed ROK lenders to provide a financial contribution to Hynix. The record shows that many leading GOK officials made statements which reveal the GOK's policy goals. These statements were reported at length by independent media reports, as discussed above.

As we noted above, it is also important to note that Hynix's creditors adopted a policy of secretiveness regarding Hynix and the GOK has been less than completely forthcoming with

<sup>8</sup> The Department has addressed Hynix's claim with regard to the October 2001 restructuring below.

regard to our requests for information and documentation related to Hynix.

On June 5, 2002, Infineon filed a countervailing duty petition against DRAMS from Korea with the European Communities. See Commission Regulation (EC) No 708/2003, Official Journal of the European Union, April 23, 2003, Petitioner's April 25, 2005, FIS at 50–16. A petition was filed in the United States on November 1, 2002. In addition, throughout many of the articles on the record, including those cited above, these impending trade disputes were mentioned, and it was becoming clear that the Hynix restructurings would be subject to trade remedy actions. As such, it is not surprising that reports at the time indicated that the creditors and the government would not discuss the issue publicly, but would only do so informally. Therefore, as would be expected, a “silence” policy was adopted. For instance, according to the *Maeil Business Newspaper*, KEB Chairman Kangwon Lee stated that “{f}rom now on, regarding items related to the process of Hynix’s normalization, all will keep silence consistently . . . . When having discussions with the government in the future, it will be conducted orally, instead of in writing, whenever possible. See “Kangwon Lee Bank CEO ‘{I} Will Not Tell,’” *Maeil Business Newspaper* (August 23, 2002) {English Translation}, Petitioner’s April 25, 2005, FIS at 45–148. In another *Maeil Business Newspaper* article, a bank official is quoted as saying that “the government tends to make all communications via telephone when it needs something done in order to avoid leaving any evidence.” “Revival of the new government–controlled finance? Giving oral instruction without written document to dodge responsibilities,” *Maeil Business Newspaper* (March 31, 2003) {English Translation}, Petitioner’s April 25, 2005, FIS at 47–B–23.

The Department finds that the GOK’s reluctance to reveal information is also reflected in the GOK’s questionnaire responses. For example, the Department asked the GOK to identify each meeting held during the period January 1, 2000, through the end of the POR by any GOK agency or official, at which the subject of Hynix’s financial restructuring or financial condition was discussed. See e.g., GOK’s June, 22, 2005, Questionnaire Response at 8. The GOK responded that “{g}iven the lack of official records detailing ‘all’ kinds of meetings taking place inside the GOK apparatus and the ‘broad and general’ nature of the question, it is impossible to provide a meaningful response to this question.” See GOK’s July 11, 2005,

Questionnaire Response at 41. The GOK promised to collect relevant information only if the Department provided “the specific title of the meeting and hosting agency, preferably with the exact date of such alleged meetings.” *Id.* We note that prior to a preliminary finding in these proceedings, the Department’s primary role is that of fact–finder. To this end, the Department often asks numerous and detailed questions in order to reach informed decisions based on the facts of a case. However, the parties involved in these proceedings control the facts. Hence, the Department could not possibly know “the specific title of the meeting and hosting agency” or the “exact date” of such meetings unless the GOK first provided a sufficient survey of those meetings.<sup>9</sup> *Id.* The GOK states that “it is impossible to provide a meaningful response to this question.” *Id.* If a request from the Department is unclear, needs to be clarified, or the respondent would like to consult with the Department about, for instance, limiting its response to information reasonably available, it is incumbent upon the party, not the Department, to assist the administrative process and clarify the precise information sought. See *Carpenter Technology Corp. v. United States*, Consol. Court No. 00–09–00447, Slip Op. 02–77 (CIT July 30, 2002) at 10, citing *Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556, 1560; *Persico Pizzamiglio, S.A. v. United States*, 18 CIT 299, 304 (1994).<sup>10</sup> The GOK requested no consultation with the Department to clarify any questionnaire it may have found unclear.

Another example relates to the Creditors’ Council meetings. In the investigation, Hynix and the GOK stated that “summaries” are the only documentation of the Creditors’ Council meetings, which the Department verified. See e.g., GOK Investigation Verification Report at 15, Petitioner’s April 25, 2005, FIS at 41–59 (“We asked KDB officials to provide meeting transcripts instead of just summaries”, but that “KDB officials indicated that no such minutes were kept. . .”). However, in its first supplemental questionnaire response in this administrative review, Hynix reported that there were full Korean texts of documents relating to

<sup>9</sup> Indeed, the GOK did not offer to continue to make every effort to uncover the information requested by the Department. Rather, the GOK qualified its response by placing the burden on the Department to point to the “hosting agency,” “specific title,” and the “exact date” of the meeting before it would provide an answer to the question.

<sup>10</sup> The Department acknowledges that these cases specifically dealt with antidumping duty proceedings. However, the Department believes that this does not vitiate the essential administrative principle at issue.

the meetings of the Hynix CRA and CRPA Creditors’ Councils, stating, that “. . . consistent with practice in the original investigation, we provide only these summaries, though we are informed that the *full Korean texts to which these summaries relate* will be available for review during verification” {emphasis added}. See Hynix’s June 1, 2005, Questionnaire Response at 34.

Further, Hynix stated that the KEB would only allow “on site disclosure” of the creditor meeting documents at verification, because KEB considered these documents highly sensitive. See Hynix’s July 11, 2005, Questionnaire Response at 1–2. However, a review of the information at verification, as the respondents have offered, is both insufficient and inappropriate. The Department collects relevant information in making its findings. Hence, verification is designed to confirm the accuracy of the factual information already submitted on the record. It is not an opportunity for parties to submit new information, especially information the parties knowingly possess and which would otherwise be responsive to the Department’s questionnaire. Otherwise, the Department and other interested parties to not have adequate opportunity to review the factual information, and, if necessary, ask additional questions. Thus, by continuing to withhold information, the respondents have impeded the administrative process of this administrative review. Moreover, given that the KEB is the GOK–designated lead bank in the Hynix restructurings, with considerable ownership equity in Hynix and that the GOK is KEB’s largest shareholder, the Department is highly doubtful of the claim that the KEB could not be persuaded to provide the information. *Id.* (“KEB will simply not release control of these documents”).

In indirect subsidy cases, the most direct evidence of entrustment or direction usually will be held by governments and foreign interested parties, who may wish to conceal their actions. Such evidence therefore is often very difficult for outside parties to obtain. A “silence” policy, such as the one adopted by the GOK, enhances the difficulty of obtaining direct evidence. Accordingly, a finding of entrustment or direction must be based in large part on circumstantial evidence. When the respondent government strives to keep its actions off the written record, and when the respondents evade their responsibility to provide all requested information, the inferential value of the circumstantial and other evidence on the record increases. Therefore, the

GOK's secretive practices and evasive questionnaire responses, when coupled with the substantial evidence on the record, are further indicia of entrustment or direction in this case.

In summary, given all the totality of the evidence discussed above, the Department finds that the GOK provided a financial contribution to Hynix through banks found to be "government authorities" within the meaning of section 771(5)(B)(i) the Act and through its entrustment or direction of Hynix's creditors, within the meaning of section 771(5)(B)(iii) of the Act, with respect to the December 2002 restructuring.

#### *Specificity*

In the investigation, the Department determined that the GOK entrusted or directed credit to the semiconductor industry through 1998. See *Investigation Decision Memorandum* at 12–21. For the period 1999 through June 30, 2002, the Department determined that the GOK directed or provided loans and other benefits specifically to the Hyundai Group within the meaning of section 771(5A)(D)(iii)(I) of the Act. *Id.*

In this review, we have found no information which would indicate that the GOK abandoned its commitment to preventing the collapse of the Hyundai Group, and Hynix in particular. Indeed, as evidenced by many of the articles placed on the record of this segment of the proceeding, the vast majority of statements relating to governmental pressure on banks specifically identify the Hyundai Group or Hynix.

In considering whether the December 2002 phase of restructuring was *de facto* specific, there are additional indicators of GOK activity specifically focused on aiding Hynix and the Hyundai Group. During the investigation, we considered information regarding the magnitude of monies involved with corporate debt restructurings under ROK corporate laws, and examined CRPA restructuring data through the end of March 2003. Specifically, our analysis of ROK companies undergoing debt restructurings under the CRPA indicated that the Hyundai Group accounted for a disproportionately large share of the debt restructured. See *Investigation BPI Memo*. Because the December 2002 phase of the Hynix restructuring occurred within this time frame, the data provide meaningful evidence of *de facto* specificity for this review.

On this basis, we preliminarily determine that the Hynix restructuring continued to be specific to Hynix through the POR.

#### *Contributions Made Pursuant to the GOK's Direction of Credit*

In the investigation, the Department determined that the GOK entrusted or directed creditor banks to participate in financial restructuring programs, and to provide credit and other funds to Hynix, in order to assist it through its financial difficulties. The financial assistance provided to Hynix by its creditors took various forms, including: loans, convertible bonds, extensions of maturities (which we treated as new loans), Documents Against Acceptance Line of Credit ("D/A") financing, usance financing, overdraft lines, debt forgiveness, and debt-for-equity swaps. The Department determined that these were financial contributions which conferred a countervailable subsidy during the POL.

In an administrative review, we do not revisit the validity of past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would case us to deviate from past practice. See *e.g.*, *Certain Pasta from Italy: Preliminary Results and Partial Rescission of Seventh Countervailing Duty Administrative Review*, 69 FR 45676 (July 30, 2004), *affirmed in Certain Pasta From Italy: Final Results of Seventh Countervailing Duty Administrative Review*, 68 FR 70657 (December 7, 2004). In comments filed before the Department, Hynix makes several claims regarding the Department's investigation findings with respect to the October 2001 restructuring.

Hynix has set forth new methodological arguments concerning the October 2001 restructuring. For instance, Hynix argues that "the Department never established that GOK-owned or allegedly controlled creditors held 75 percent of Hynix's debt as of the October 2001 restructuring plan sufficient to sustain a resolution of Hynix's CRPA Creditors' Council" {emphasis in original}. See Hynix's August 2, 2005, Pre-Preliminary Comments at 21. However, the Department based its finding in the investigation on the fact that these creditors held a "blocking majority" in the Creditors' Council not that they held more than 75 percent of Hynix's debt. See *Investigation Decision Memorandum* at 51.

Hynix also claims that "new information" on the record concerning the October 2001 debt-to-equity swaps calls into question the Department's investigation equity analysis. However, Hynix points to its 2001 audited

financial statements and makes a methodological argument. See Hynix's August 2, 2005, pre-preliminary comments at 23. Hynix's arguments regarding the determination made in the investigation were based on its 2001 audited statements, which were on the record in the investigation. Thus, the Department preliminarily finds that Hynix's arguments with regard to the October 2001 restructuring are beyond the scope of this administrative review as they are not based on new factual information.

Hynix also argues that new information is on the record regarding the Mediation Committee that was formed under the CRPA. See GOK's June 1, 2005, Supplemental Response at 84. Hynix contends that new information on the record demonstrates that creditors who chose appraisal rights but refused the terms settled on by the Creditors' Council secured better terms through mediation and could have disputed those terms even further within the Korean courts. See Hynix's July 11, 2005, Supplemental Response at Exhibit 3S–13. However, based on the information on the record, only a few creditors actually went through the mediation process. See GOK's July 11, 2005, Supplemental Response at 50. Further, the percentage of Hynix's debt held by these creditors was negligible. See Hynix's June 1, 2005, Supplemental Response at Exhibit S–4. Although mediation was a "legal" option under the CRPA, it was not a practical choice for the overwhelming majority of creditors, which, as the Department found in the investigation, were under continual pressure by the GOK to lend to Hynix. Therefore, the Department preliminarily finds that this new information is not persuasive enough to warrant a re-examination of its findings in the investigation with respect to the October 2001 restructuring.

Therefore, we are including in our benefit calculation the financial contributions countervailed in the investigation: bonds, debt-to-equity swaps, debt forgiveness, interest-free debentures, overdraft financing, usance financing, and D/A financing. In calculating the benefit, we have followed the same methodology used in the investigation. For the short-term debt instruments, we have used the benchmarks described above in the "Subsides Valuation Information" section.

In addition, as discussed above, the December 2002 restructuring involved a restructuring of Hynix's debt and a conversion of debt to equity. We preliminarily determine that these debt-equity swaps and loans confer a benefit

to within the meaning of section 771(5)(E)(i) and (ii) of the Act, respectively. Because we have preliminarily found Hynix to be unequityworthy at the time of the investment, we have treated the full amount swapped as a grant and allocated the benefit over the five-year AUL. See 19 CFR 351.507(a)(6) and (c). We have used a discount rate that reflects our preliminary finding that Hynix was uncreditworthy at the time of the debt-to-equity conversions. For the loans, we have followed the methodology described at 19 CFR 351.505(c) using the benchmarks described in the "Subsidies Valuation Information" section of this notice.

We have divided benefits from the various financial contributions by CY2003 or POR sales, as appropriate, to calculate a countervailable subsidy rate of 60.61 percent *ad valorem* for the POR.

## II. Programs Previously Found to Confer Subsidies

We examined the following programs determined to confer subsidies in the investigation and preliminarily find that Hynix continued to receive benefits under these programs during the POR.

A. Operation G-7/HAN Program-2 Implemented under the Framework on Science and Technology Act, the Operation G-7/HAN program ("G-7/HAN program") began in 1992 and ended in 2001. See "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Dynamic Random Access Memory Semiconductors from the Republic of Korea," dated June 16, 2003, at 25 ("Final Decision Memorandum"), GOK's Verification Report at 29; Hynix's Verification Report at 35; *see also* the GOK's December 17, 2004, Questionnaire Response at 9. The purpose of this program was to raise the GOK's technology standards to the level of the G-7 countries. There were 18 different project areas, including semiconductors, environment, and energy. Eight ministries participated in various projects, with the Ministry of Science and Technology ("MOST") acting as the funding authority.

For the project area entitled "Next Generation Semiconductors" ("NGS"), MOST assigned the administrative function to the Korean Semiconductor Research Association, an industry research and development ("R&D") association. This association was renamed in 1998 as the Consortium of Semiconductor Advanced Research ("COSAR"), and it acted as the intermediary between the MOST and

participating companies. Applications were submitted to COSAR, which passed them on to a committee at MOST for evaluation. Under the NGS project, the GOK, through MOST, made interest-free loans to participating companies. These loans were provided as matching funds; in general, participating companies contributed at least 50 percent of the total R&D funding, while the government contribution was capped at 50 percent.

Hynix notes that, although the G7/HAN program ended in 2001, the company had outstanding loans under this program during the POR. See Hynix' December 17, 2004, Questionnaire Response at 24, Exhibit 12.2; *see also*, Hynix's June 1, 2005, Supplemental Response at Exhibit 33.2.

The Operation G-7/Han Program was found to provide countervailable subsidies in the investigation. No new evidence has been provided that would lead us to reconsider our earlier finding.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Subsidy Valuation Information" section of this notice. We then divided the total benefit by Hynix's total sales in the POR to calculate the countervailable subsidy. On this basis, we preliminarily determine that countervailable benefits of 0.18 percent *ad valorem* existed for Hynix.

The petitioner alleged that there is a link between the G-7/HAN program and the System IC 2010 Project ("System IC project"). In response to our questions, the GOK and Hynix responded that there is no connection between the two programs. The System IC Project is discussed below.

### B. 21st Century Frontier R&D Program

The 21st Century Frontier R&D program ("21st Century program") was established in 1999 with a structure and governing regulatory framework similar to those of the G-7/HAN program, and for a similar purpose, *i.e.*, to promote greater competitiveness in science and technology. See *Investigation Decision Memorandum* at 26; GOK's Verification Report at 30. Altogether, the program is composed of 19 project areas, each typically having a 10-year time horizon. The 21st Century program provides long-term interest-free loans in the form of matching funds. Repayment of program funds is made in the form of "technology usance fees" upon completion of the project, pursuant to a schedule established under a technology execution, or implementation contract.

Hynix stated that it had loans outstanding under this program during the POR. See Hynix' December 17, 2004, Questionnaire Response at III-24.

In the investigation, we determined that this program conferred a countervailable benefit on Hynix. No new evidence has been provided that would lead us to reconsider our earlier finding.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Subsidy Valuation Information" section of this notice. We then divided the total benefit by Hynix's total sales in the POR to calculate the countervailable subsidy. On this basis, we preliminarily determine that POR countervailable benefits of 0.00 percent *ad valorem* exist for Hynix.

## III. Programs Previously Found Not to Have Been Used or Provided Benefits

We preliminarily determine that the following programs continue to not be used during the POR: See Hynix's December 17, 2004, Questionnaire Response at III-25; GOK's December 17, 2004, Questionnaire Response at 11; Hynix's June 1, 2005, Supplemental Response at 56.

A. Tax Programs Under the TERCL and/or the RSTAP-2≤1. *Reserve for Overseas Market Development (formerly, Article 17 of TERCL)*-2≤2. *Reserve for Export Loss (formerly, Article 16 of TERCL)*-2≤3. *Tax Exemption for Foreign Technicians (Article 18 of RSTA)*-2≤4. *Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)*-2≤B. *Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/ FIPA (Formerly Foreign Capital Inducement Law)*-2≤C. *Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates*-2≤D. *Export Insurance*-2≤E. *Electricity Discounts Under the RLA Program*-2≤

## IV. Program Preliminarily Found to Not Confer Countervailable Subsidies

Based on the information provided in the responses, we preliminarily determine that the following program did not confer countervailable subsidies during the POR:

System IC 2010 Project-2≤  
The System IC 2010 Project was established by the Government of Korea's MOST and the Ministry of Industry and Resources in 1998 as a joint research and development project.

The goal of this project is to make Korea the 3rd largest producer of semiconductors by 2012. The project is structured in three stages to be implemented over the period 1998–2011. Phase One of the project targets development of core technology research. Phase Two concentrates on intellectual property integration, high speed performance, and leading chipsets. Phase Three will develop new core technology.

The System IC project is applicable only to semiconductor development. Participants must contribute 50 percent of the total budget, and matching funds are provided through COSAR. The amount contributed by COSAR is repaid by the applicant once the research is successfully completed. See GOK's June 8, 2005, Supplemental Response at 4–6, 8; see also Hynix's June 1, 2005 Supplemental Response at Exhibit 50.

Hynix submitted a research plan to COSAR in September 2003 regarding ferroelectric random access memory semiconductors ("FeRAMs"). This project is set to end in August 2007. Hynix has received funds under the System IC Project to support its research. These funds have not been repaid because Hynix's project is still ongoing. See Hynix's June 1, 2005, Supplemental Response at Exhibit 50.

Hynix states that FeRAM are non-subject merchandise. Hynix explains, moreover, that FeRAMs are produced in its "System IC" segment, whereas DRAMS are produced in the company's "memory" segment. The former segment produces applied products that are unrelated to memory semiconductors such as DRAMS and SRAMS. According to the response, the production processes for the memory products and the applied (non-memory) products are completely different. Hynix further argues that the nature and goals of the project, as evidenced by Hynix's research/business plan submitted to COSAR, are solely for the development of FeRAMs, *i.e.*, non-subject merchandise. See Hynix's July 12, 2005, Supplemental Response at Exhibit 16.1. In addition, the contract between Hynix and COSAR clearly limits governmental support to development of FeRAMs.

Based on the information provided, we preliminarily determine that any benefits provided to Hynix under the System IC 2010 Project are tied to non-subject merchandise in accordance with 19 CFR 351.525(b)(5). Therefore, we preliminarily determine that Hynix did not receive any countervailing benefits under this program during the POR.

### Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Hynix Semiconductor, Inc., the producer/exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for Hynix Semiconductors for calendar year 2003 is 60.74 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP, within 15 days of publication of the final results of this review, to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from April 7, 2003, through December 31, 2003, at 60.74 percent *ad valorem* of the F.O.B. invoice price. We will instruct CPB to take into account the "provisional measures cap" in accordance with 19 CFR 351.212(d). In addition, for April 7, 2003, through December 31, 2003, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

The Department also intends to instruct the CBP to collect cash deposits of estimated countervailing duties at 60.74 percent *ad valorem* of the F.O.B. invoice price on all shipments of the subject merchandise from Hynix, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies covered by this order at the most recent company-specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the investigation. See *Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 44290 (July 28, 2003). The "all others" rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. The Department has previously excluded Samsung Electronics Co., Ltd. from this order. *Id.*

### Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this Notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than

five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-4891 Filed 9-14-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 090205B]

### Large Coastal Shark 2005/2006 Stock Assessment Data Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of workshop.

**SUMMARY:** NMFS announces the time and location for the large coastal shark (LCS) stock assessment data workshop, the first of three workshops for the LCS stock assessment to be conducted in 2005/2006.

**DATES:** The data workshop will start at 1 p.m. on Monday, October 31, 2005, and will conclude at 1 p.m. on Friday, November 4, 2005.

**ADDRESSES:** The Data workshop will be held at the Bay Point Marriott Resort, 4200 Marriott Drive, Bay Point, FL 32408.

**FOR FURTHER INFORMATION CONTACT:** Julie Neer at (850) 234-6541; or Karyl Brewster-Geisz at (301) 713-2347, fax (301) 713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and