

issues raised in any case or rebuttal brief or at a hearing.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 31, 2007.

**David M. Spooner,**

*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 January 1, 2005, through December 31, 2005. We preliminarily find that Hynix Semiconductor, Inc. received countervailable subsidies during the period of review. If these preliminary results are adopted in our final results of this review, 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.

**EFFECTIVE DATE:** September 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** David Neubacher or Shane Subler, Office of Antidumping/Countervailing Duty Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3069, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5823 and (202) 482-0189, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

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 1, 2006, the Department published a notice of “Opportunity to Request Administrative Review” for this countervailing duty order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 43441 (August 1, 2006). On August 30, 2006, we received a request for review from the petitioner, Micron Technology, Inc. (“Micron”). On August 31, 2006, we received a request for review from Hynix Semiconductor, Inc. (“Hynix”). In accordance with 19 CFR 351.221(c)(1)(i) (2004), we published a notice of initiation of the review on September 29, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006) (“*Initiation Notice*”).

On October 18, 2006, we issued countervailing duty questionnaires to the Government of the Republic of Korea (“GOK”) and Hynix. We received responses to these questionnaires on November 21, 2006. On April 24, 2007, we issued supplemental questionnaires to the GOK and Hynix. We received responses to these supplemental questionnaires on May 15, 2007. We issued additional supplemental questionnaires to the GOK and Hynix on July 2, 2007, and received responses on July 16, 2007.

We received new subsidy allegations from Micron on December 11, 2006.<sup>1</sup> On March 28, 2007, we initiated an investigation of one of the two new subsidies that Micron alleged in this administrative review. In addition, we stated our intention to examine the timing of the benefit of a previously countervailed debt-to-equity swap (“DES”) for the preliminary results. See *Third Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors from Korea: New Subsidy Allegations Memorandum* (March 28, 2007) (“*New Subsidy Allegations—DOC Memorandum*”), available in the Central Records Unit (“CRU”), Room B-099 of the main Department building.

On April 19, 2007, we published a postponement of the preliminary results

in this review until August 31, 2007. See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Countervailing Duty Review*, 72 FR 19694 (April 19, 2007).

#### Scope of the Order

The products covered by this order are DRAMS from the ROK, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this 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.

<sup>1</sup> See submission from Micron to the Department, Re: Dynamic Random Access Memory Semiconductors From South Korea/Petitioner's New Subsidies Allegation And New Issues Presented (December 11, 2006) (“*New Subsidy Allegations*”).

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. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the scope of this order remains dispositive.

### 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 January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the CVD Order provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. See Final Scope Ruling Memorandum from Stephen J. Claeys to David M. Spooner, dated January 12, 2006.

### Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review (“POR”), is January 1, 2005, through December 31, 2005.

### 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.

Hynix’s ownership changed during the AUL period as a result of debt-to-equity conversions in October 2001 and December 2002, and various asset sales. However, during the current administrative review, Hynix has not rebutted the Department’s baseline presumption that the non-recurring, allocable subsidies received prior to the equity conversions and asset sales continue to benefit the company throughout the allocation period. See Hynix’s November 21, 2006, supplemental questionnaire response at page 10; see also *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 46192, 46193 (August 11, 2006) (“*AR2 Preliminary Results*”).

### 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

For loans that we found countervailable in the investigation or in the first two administrative reviews, and which continued to be outstanding during the POR, we have used the benchmarks from the first and second administrative reviews. These benchmarks are described below.

### Long-term Rates

For long-term, won-denominated loans originating in 1986 through 1995, we used the average interest rate for three-year corporate bonds as reported by the Bank of Korea (“BOK”) or the International Monetary Fund (“IMF”). For long-term won-denominated loans originating in 1996 through 1999, we used annual weighted-averages of the rates on Hynix’s corporate bonds, which were not specifically related to any countervailable financing. We did not use the rates on Hynix’s corporate bonds for 2000–2003 for any calculations because Hynix either did not obtain bonds or obtained bonds through countervailable debt restructurings during those years.

For U.S. dollar-denominated loans, we relied on the lending rates as reported in the IMF’s *International Financial Statistics Yearbook*.

For the years in which we previously determined Hynix to be uncreditworthy (2000 through 2003), we used the formula described in 19 CFR 351.505(a)(3)(iii) to determine the benchmark interest rate. For the probability of default by an uncreditworthy company, we used the average cumulative default rates reported for the Caa- to C- rated category of companies as published in Moody’s Investors Service, “Historical Default Rates of Corporate Bond Issuers, 1920–1997” (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody’s Investors Service: “Statistical Tables of Default Rates and Recovery Rates” (February 1998). For the commercial interest rates charged to creditworthy borrowers, we used the rates for won-denominated corporate bonds as reported by the BOK and the U.S. dollar lending rates published by the IMF for each year.

### Short-term Rates

Consistent with the methodology used in the first and second administrative reviews, we used the money market rates as reported in the IMF’s *International Financial Statistics Yearbook* for short-term interest rates. For countries (or currencies) for which a money market rate was not reported, we used the lending rate from the same source.

### Analysis of Programs

#### I. Programs Previously Determined to Confer Subsidies

We examined the following programs determined to confer subsidies in the investigation and first two

administrative reviews and preliminarily find that Hynix continued to receive benefits under these programs during the POR.

#### A. GOK Entrustment or Direction Prior to 2004

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 Hynix through its financial difficulties. The financial assistance provided to Hynix by its creditors took various forms, including new loans, convertible and other bonds, extensions of maturities and interest rate reductions on existing debt (which we treated as new loans), Documents Against Acceptance (“D/A”) financing, usance financing, overdraft lines of credit, debt forgiveness, and debt-for-equity swaps. The Department determined that these were financial contributions that constituted countervailable subsidies during the period of investigation.

In the first and second administrative reviews, the Department found that the GOK continued to entrust or direct Hynix’s creditors to provide financial assistance to Hynix throughout 2002 and 2003. The financial assistance provided to Hynix during this period included the December 2002 DES and the extensions of maturities and/or interest rate deductions on existing debt.

In an administrative review, we do not revisit past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would compel us to reconsider those findings. *See, e.g., Certain Pasta from Italy: Preliminary Results and Partial Rescission of Seventh Countervailing Duty Administrative Review*, 69 FR 45676 (July 30, 2004), unchanged in *Certain Pasta From Italy: Final Results of Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004). With the exception of the 2002 DES discussed below, no such new information regarding the financial contributions described above has been presented in this review. Thus, we preliminarily find that a re-examination of the Department’s findings in the investigation, first administrative review, and second administrative review with respect to the debt forgiveness, 2001 DES, loans, and extensions of maturities and/or interest rate deductions on existing debt is unwarranted.

With respect to the DES that Hynix recorded in 2002, however, we are

revisiting the findings of the previous administrative reviews based on new factual information placed on the record by the petitioner. *See* New Subsidy Allegations at page 8. In the first administrative review, the Department found that Hynix received a benefit from its December 2002 restructuring and associated DES in 2002. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006), and accompanying Issues and Decision Memorandum at Comment 13, pages 73–77 (“AR1 Decision Memorandum”). In the New Subsidy Allegations, in pre-preliminary comments dated August 7, 2007, and in follow-up comments dated August 24, 2007, Micron requested that the Department reallocate the benefit stream from the DES over the five-year period beginning in 2003.<sup>2</sup>

Citing new information on the record, Micron contends that Hynix’s creditors continued to treat their claims owed by Hynix as debt as of the end of 2002, which contrasted with Hynix’s treatment of the DES as a capital adjustment on its 2002 financial statements. Contesting Hynix’s assertion that the Department measures subsidies in terms of benefit to the recipient, Micron contends that the issue with Hynix’s DES concerns timing, not benefit. Furthermore, Micron argues that Korean accounting standards and the Korean tax authority required Hynix to account for the DES as a 2003 event. Also, citing new record evidence, Micron argues that shareholder approval of the capital reduction was not “pro forma.” As support for its contention that Hynix’s board could have rejected the recommendations of Hynix’s Creditors’ Council, Micron notes that Hynix’s board rejected a creditors’ recommendation in April 2002 to sell the company to Micron. Finally, Micron argues that the Department should reconsider the legal significance it granted to Hynix’s accounting treatment in light of its treatment of debt-to-equity swaps in previous cases such as *GOES from Italy*.<sup>3</sup>

<sup>2</sup> *See* New Subsidy Allegations at pages 1–25; *see also* submission from Micron to the Department, Re: Dynamic Random Access Memory Semiconductors from South Korea: Petitioner’s Pre-Preliminary Comments (August 7, 2007), at pages 1–9; *see also* submission from Micron to the Department, Re: Dynamic Random Access Memory Semiconductors from South Korea: Petitioner’s Reply In Support Of Its Pre-Preliminary Comments (August 24, 2007).

<sup>3</sup> *See Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357, 18360–66 (April 18, 1994) (“*GOES from Italy*”).

In submissions dated January 5, 2007, and August 14, 2007, Hynix contends that the Department’s treatment of the DES in the first administrative review was consistent with its treatment of another DES during the original investigation, with its regulations at 19 CFR 351.507(b), and with its benefit-to-recipient standard.<sup>4</sup> Hynix also rejects the significance of the new information on the record. First, Hynix argues that the Korean accounting standard cited by Micron did not exist at the time of the DES. Second, Hynix claims the tax standards cited by Micron related to a convertible bond transaction, not a DES. Third, Hynix argues that creditors’ treatment of the claims as debt at the end of 2002 is irrelevant because the Department measures subsidies in terms of benefits to the recipient. Finally, Hynix states that the Department already considered information about minority shareholder opposition to the capital reduction and Hynix’s accounting treatment in the first administrative review.

We preliminarily find, consistent with our decision in the first administrative review, that Hynix received the benefit from the December 2002 restructuring and the associated DES in 2002. On page 77 of the AR1 Decision Memorandum, the Department stated,

Although these events might be significant in other instances, we find that the facts of this case deem these events pro forma. Instead, the Creditors’ Council’s approval on December 30, 2002, is the singular factor in effectuating the restructuring. This is because the Creditors’ Council controlled Hynix and because those creditors were entrusted or directed by the GOK to carry out the December 2002 restructuring.

Furthermore, in the *Investigation Decision Memorandum*,<sup>5</sup> we stated the following with regard to a separately countervailed DES:

In accordance with 19 CFR 351.507(b), the receipt of benefit occurs on the date on which the

<sup>4</sup> *See* submission from Hynix to the Department, Re: Dynamic Random Access Memory Semiconductors from Korea: Response to Micron’s New Subsidies Allegation and New Issues Presented (January 5, 2007), at pages 1–7; *see also* submission from Hynix to the Department, Re: Dynamic Random Access Memory Semiconductors from Korea: Rebuttal of Hynix Semiconductor Inc. and the Government of Korea to Micron’s Pre-Preliminary Comments (August 14, 2007), at pages 1–3.

<sup>5</sup> *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 11, pages 95–96 (“*Investigation Decision Memorandum*”).

firm received the equity infusion. Because Hynix recognized the equity infusion in its 2001 audited financial statement and the convertible bonds that were agreed to and issued carried an obligation to convert as of June 1, 2002, we find that the date on which Hynix received the equity infusion occurred in 2001.

We preliminarily find that the new record information cited by Micron does not warrant reversal of our conclusion from the *AR1 Decision Memorandum* that the Creditors' Council controlled Hynix with respect to the restructuring and was entrusted or directed by the GOK to carry out the restructuring. Although Micron cited new factual information to demonstrate that Hynix's board of directors does not automatically approve all recommendations by creditors, we preliminarily find that the circumstances behind Hynix's 2002 restructuring and those behind the potential sale of the company are not comparable.

Furthermore, we preliminarily find that the new information cited by Micron does not warrant reversal of our conclusion from the *Investigation Decision Memorandum* that the receipt of benefit resulting from a DES occurs on the date on which a firm receives the equity infusion, as recognized on the firm's audited financial statements. The fact that certain Hynix creditors continued to treat the amounts as debt after December 2002 does not outweigh the evidence that Hynix received a benefit in 2002, when it recorded the transaction as a capital adjustment. Focusing on when the recipient formally recorded the capital infusion in its books is in accordance with our regulatory provision that we will consider the benefit to have been received "on the date on which the firm received the equity infusion." See 19 CFR 351.507(b). The Department's regulation does not direct us to examine the date on which the provider of the financial contribution considered the equity infusion to be complete. Further, with respect to Korean accounting standards, we note that the statement principally relied upon by Micron was not in effect at the time of the December 2002 restructuring. Additionally, even if Hynix *should* not have recognized the benefit until 2003, this does not mean that it did not, in fact, receive the benefit in 2002.

Therefore, we are including in our benefit calculation the financial contributions countervailed in the investigation, the first administrative review, and the second administrative

review: bonds, debt-to-equity swaps, debt forgiveness, and long-term debt outstanding during the POR. In calculating the benefit, we have followed the same methodology used in the first and second administrative reviews.

Because we found Hynix to be uncreditworthy at the time of the debt-for-equity swaps in 2001 and 2002, we have treated the full amount swapped as grants and allocated the benefit over the five-year AUL. See 19 CFR 351.507(a)(6) and (c). We used a discount rate that reflects our 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 divided the total benefits from the various financial contributions by Hynix's POR sales to calculate a countervailable subsidy rate of 23.73 percent *ad valorem* for the POR.

#### B. Operation G-7/HAN Program

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. The purpose of this program was to raise the GOK's technology standards to the level of the G-7 countries. The Department found that the G7/HAN Program ended in 2001. See *Investigation Decision Memorandum* at 25. However, during the POR, Hynix had outstanding interest-free loans that it had previously received under this program. See Hynix's November 21, 2006, questionnaire response at page 16 and Exhibit 12. We found that the Operation G-7/Han Program provided countervailable subsidies in the investigation. No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we have calculated a benefit for these loans.

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. Next, we divided the total benefit by Hynix's total sales of subject merchandise for the POR to calculate the countervailable subsidy. On this basis, we preliminarily determine that countervailable benefits of .05 percent *ad valorem* existed for Hynix.

#### C. 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. 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 reported that it had loans from the 21st Century Program outstanding during the POR. See Hynix's November 21, 2006, questionnaire response at page 17 and Exhibit 12.

In the investigation, we determined that this program conferred a countervailable benefit on Hynix. No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we have calculated a benefit for these loans.

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 rate. On this basis, we calculated a preliminarily subsidy rate of zero *ad valorem* for this program. Because the rate is *de minimis*, we did not include this program in our preliminary net countervailing duty rate, which is consistent with our past practice. See, *e.g.*, *Notice of Preliminary Results of Countervailing Duty Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088, 33091 (June 7, 2005).

#### II. New Subsidy Allegation—Import Duty Reduction Program for Certain Factory Automation Items

On page 63 of its New Subsidy Allegations, Micron stated that Article 95(1).4 of the Korean Customs Act provides for import duty reductions on imports of "machines, instruments and facilities (including the constituent machines and tools) and key parts designated by the Ordinance of the Ministry of Finance and Economy ("MOFE") for a factory automation applying machines, electronics or data processing techniques." Micron alleged that this program has been used by the GOK as a policy tool to support

investments in capital goods by Korea's major strategic industries, including the semiconductor industry. According to Micron, nearly 20% of the items designated by MOFE as eligible for reduced import duties were directly related to semiconductor production. To the extent these items were not already subject to duty reduction or elimination through operation of the Information Technology Agreement or other preferential tariff programs, Micron argued that Hynix benefitted significantly from this program, particularly in 2005.

We initiated a review of this program in the New Subsidy Allegations—DOC Memorandum.<sup>6</sup> On January 17, 2007, the GOK submitted a list of the companies that received duty reductions under the program between 2002 and 2005.<sup>7</sup> In supplemental questionnaires issued to the GOK on April 24, 2007, and July 2, 2007, we requested information on the general background of the program, the industries and imported products eligible for the program, the translated names of the recipients and industries using the program, and the amount of the duty savings. The GOK provided this information in responses dated May 15, 2007,<sup>8</sup> and July 16, 2007.<sup>9</sup>

Based on our analysis of the GOK's submissions, we preliminarily find that the Import Duty Reduction Program provided a countervailable subsidy to Hynix during the POR. Specifically, we determine that the import duty reductions provide a financial contribution in the form of revenue forgone by the GOK and a benefit in the amount of the duty savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a).

Regarding specificity, information submitted by the GOK shows that the import duty reductions under the program are available to any company importing factory automation equipment eligible for the duty reduction. Therefore, there is no basis to

find this program de jure specific under section 771(5A)(D)(i) of the Act. However, we have gone on to review usage data submitted by the GOK and preliminarily find that Hynix received a disproportionately large amount of the subsidy. See Third Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors from Korea: Analysis Memorandum for Business Proprietary Information on Korean Import Duty Reduction Program (August 31, 2007).

Therefore, we preliminarily find that the Import Duty Reduction Program is *de facto* specific under section 771(5A)(D)(iii)(III) of the Act.

To calculate the benefit, we divided the total duty savings Hynix received by Hynix's total sales during the POR. On this basis, we preliminarily determine the countervailable subsidy to be .04 percent during the POR.

### III. Programs Previously Found Not to Have Been Used or Provided No Benefits

We preliminarily determine that the following programs were not used during the POR:

- A. Short-Term Export Financing
- B. Reserve for Research and Human Resources Development (formerly Technological Development Reserve) (Article 9 of RSTA / formerly, Article 8 of TERCL)
- C. Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA / Article 25 of TERCL)
- D. Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)
- E. Reserve for Overseas Market Development (formerly, Article 17 of TERCL)
- F. Reserve for Export Loss (formerly, Article 16 of TERCL)
- G. Tax Exemption for Foreign Technicians (Article 18 of RSTA)
- H. Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)
- I. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/ FIPA (Formerly Foreign Capital Inducement Law)
- J. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates
- K. Export Insurance
- L. Electricity Discounts Under the RLA Program
- M. Import Duty Reduction for Cutting Edge Products

See Hynix's November 21, 2006, questionnaire response at pages 21–22

and the GOK's November 21, 2006, questionnaire response at pages 12–13.

In the first administrative review, the Department found that "any benefits provided to Hynix under the System IC 2010 Project are tied to non-subject merchandise" and, therefore, that "Hynix did not receive any countervailable benefits under this program during the POR," in accordance with 19 CFR 351.525(b)(5). See *AR1 Decision Memorandum* at page 15. No new information has been provided with respect to this program. Therefore, we preliminarily find that Hynix did not receive any countervailing benefits from the System IC 2010 Project 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 for calendar year 2005 is 23.82 percent *ad valorem*.

If these preliminary results are adopted in our final results of this review, fifteen days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2005, through December 31, 2005, at 23.82 percent *ad valorem* of the F.O.B. invoice price.

The Department will also instruct CBP to collect cash deposits of estimated countervailing duties at 23.82 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

<sup>6</sup> See New Subsidy Allegations—DOC Memorandum at pages 6–8.

<sup>7</sup> See submission from the GOK to the Department, Re: Dynamic Random Access Memory Semiconductors from Korea: Response to Micron's New Subsidies Allegation and New Issues Presented (January 17, 2007), at Exhibit 2.

<sup>8</sup> See submission from the GOK to the Department, Re: Dynamic Random Access Memory Semiconductors from Korea: Response of the Government of Korea to the Department of Commerce's First Supplemental Questionnaire (May 15, 2007).

<sup>9</sup> See submission from the GOK to the Department, Re: Dynamic Random Access Memory Semiconductors from Korea: Response of the Government of Korea to the Department of Commerce's Second Supplemental Questionnaire (July 16, 2007).

has previously excluded Samsung Electronics Co., Ltd. from this order. *Id.*

On August 13, 2007, Hynix requested that the Department adjust the deposit rate to more accurately reflect CVD liability. Hynix asserts that the record of this proceeding demonstrates a substantial change to and termination of known non-recurring subsidy benefit streams in 2005 and 2006, as well as termination of the program related to GOK entrustment or direction prior to 2004. Citing 19 CFR 351.526, Hynix claims that the Department has regulations involving program-wide changes that allow it to adjust the deposit rate, as well as the discretion to effect changes in the deposit rate where circumstances do not fit the more formal program-wide change criteria.<sup>10</sup> Hynix asserts that under 19 CFR 351.526, the Department may make an adjustment to the CVD deposit rate where: 1) the Department determines that a program-wide change has occurred, which encompasses any change effectuated by an official act not limited to an individual firm or firms; and 2) the Department is able to measure the change in the amount of the countervailable subsidies provided under the program in question. Hynix alleges that the facts of this case, even if they do not technically fit all aspects of 19 CFR 351.526, are sufficient to warrant a deposit rate adjustment because an unadjusted CVD deposit rate will not remotely reflect anticipated CVD liability.

Hynix notes that the Department, under 19 CFR 351.526, will only refrain from such adjustments in cases when residual benefits may continue under the terminated program or when a substitute program has been introduced. Hynix asserts, however, that the Department has departed from this narrow rule in certain instances. Citing the *Pure Magnesium Decision Memorandum*,<sup>11</sup> Hynix argues that the Department has departed from the narrower rule when the only event at issue was the termination of a known subsidy benefit stream during the POR. Hynix claims that there is no statutory

bar to further development of the exception, and that the Department has the discretion to draw distinctions on a case-specific basis and to adjust the deposit rate where necessary.

On August 21, 2007, petitioner submitted a letter objecting to Hynix's request. Petitioner objects for the following reasons: 1) the letter was too late for the Department to consider; 2) as Hynix admits, the facts do not fit all aspects of 19 CFR 351.526, and the Department has previously found that expiration of benefits from a non-recurring subsidy does not qualify as a program wide change;<sup>12</sup> 3) even in cases cited by Hynix where the Department reduced the cash deposit rate to reflect the expiration of non-recurring subsidies, the amortization period ended during the POR, and the Department has made clear that where the benefit is set to expire after the end of the POR, no adjustment to the cash deposit is necessary;<sup>13</sup> and 4) Hynix's argument is premised on the assumption that the Department will not revise the allocation period for the 2003 bailout.

We disagree with Hynix that the cash deposit rate should be revised for expiry of the program related to GOK entrustment or direction prior to 2004. It is the Department's general practice to adjust cash deposit rates to reflect the expected discontinuation of future subsidy benefits only where it has been demonstrated that a program-wide change has occurred, pursuant to 19 CFR 351.526. As we stated in the *Pure Magnesium Decision Memorandum* at Comment 2, the Department only provided a narrowly circumscribed exception to this general practice in light of certain, specific conditions; namely, the information needed to make the adjustment was derived entirely from the POR and the expiry of the subsidy meant the expected countervailing duty rate for entries subject to the deposit rate set in that review was *de minimis*. These circumstances do not apply in this review. Therefore, the rationale for the limited exception in prior cases is not met in this review. Accordingly, we are not revising the cash deposit rate for expiry of the program related to GOK entrustment or direction prior to 2004.

<sup>10</sup> See *Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review*, 68 FR 53963 (September 15, 2003), and accompanying *Issues and Decision Memorandum at Comment 3*; and *Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom: Final Results of Countervailing Duty Administrative Reviews*, 69 FR 40869 (July 7, 2004), and accompanying *Issues and Decision Memorandum at Comment 3*.

<sup>11</sup> See *Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Review*, 70 FR 54367 (September 14, 2005), and accompanying *Issues and Decision Memorandum at Comment 2* ("*Pure Magnesium Decision Memorandum*").

<sup>12</sup> See *Carbon and Alloy Steel Wire Rod from Canada: Final Affirmative Countervailing Duty Determination*, 67 FR 55813 (August 30, 2002), and accompanying *Issues and Decision Memorandum at Comment 11*.

<sup>13</sup> See *Pure Magnesium Decision Memorandum at Comment 2*.

## 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, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(C-570-917)

#### Laminated Woven Sacks from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

**EFFECTIVE DATE:** September 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3148 and (202) 482-1396, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 18, 2007, the Department of Commerce (Department) initiated the countervailing duty investigation of laminated woven sacks (LWS) from the