

determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Notification of Parties

In accordance with section 351.224(b) of the Department's regulations, we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with section 351.309(c)(i) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited pursuant to section 351.309(c)(2) of the Department's regulations. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case briefs are filed in accordance with section 351.309(d) of the Department's regulations.

In accordance with section 351.310 of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing of the Department's regulations must submit a written request pursuant to section 351.310(c) within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Pursuant to section 351.310(c) of the Department's regulations, parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone

number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

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

Dated: March 29, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7-6499 Filed 4-6-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-857]

#### **Coated Free Sheet Paper From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination**

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

**SUMMARY:** The Department of Commerce ("the Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of coated free sheet paper ("CFS paper") from the Republic of Korea ("Korea"). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** April 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Maura Jeffords or Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3146 and (202) 482-4793, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 31, 2006, the Department received the petition filed in proper form by NewPage Corporation ("petitioner"). This investigation was initiated on November 20, 2006. See *Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006) ("Initiation Notice"), and accompanying Initiation Checklist for CVD Petition on CFS paper from Korea (November 20, 2007) ("Initiation Checklist").<sup>1</sup> On December 19, 2006,

petitioner timely requested a 65-day postponement of the preliminary determination for this investigation. On December 22, 2006, the Department postponed the deadline for the preliminary determination by 65 days to no later than March 30, 2007, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). See *Coated Free Sheet Paper from Indonesia, the People's Republic of China and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006).

Due to the large number of producers and exporters of CFS paper in Korea, we determined that it is not possible to investigate each producer or exporter individually and selected four producers/exporters of CFS paper to be mandatory respondents: EN Paper Mfg. Co., Ltd. ("EN Paper") (formerly Shinho Paper Co., Ltd. ("Shinho Paper")), Kyesung Paper Co., Ltd. ("Kyesung"), Moorim Paper Co. Ltd. ("Moorim") (formerly Shinmoorim Paper Mfg. Co., Ltd.), and Hansol Paper Co., Ltd. ("Hansol") (collectively, "respondents"). See Memorandum from the Team, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claey: Regarding Respondent Selection (December 4, 2006) ("Respondent Selection Memo").<sup>2</sup>

On December 6 and 8, 2006, respondents submitted comments on our Respondent Selection Memo, in which they argued that the Department should select an additional mandatory respondent. On December 20, 2006, we responded to respondents' comments, stating that we would not deviate from our original decision to investigate four mandatory respondents in the instant investigation. See Memorandum from Program Manager Eric B. Greynolds, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claey: Regarding Response to Comments from Interested Parties Regarding Respondent Selection (December 20, 2006) ("Second Respondent Selection Memorandum").

On December 14, 2006, we issued our initial questionnaire to the Government of Korea ("the GOK") and requested that the GOK forward the relevant sections of the initial questionnaire to the mandatory respondents.

On December 14, 2006, petitioner submitted a new subsidy allegation. On January 3, 2007, we declined to initiate

<sup>1</sup> Records Unit ("CRU"), room B-099 in the main building of the Commerce Department.

<sup>2</sup> A public version of this memorandum is available in the CRU.

<sup>1</sup> A public version of this and all public Department memoranda is on file in the Central

on petitioner's new subsidy allegation. See Memorandum from the Team through Program Manager Eric B. Greynolds, to Office Director Melissa Skinner: Regarding New Subsidy Allegation (January 3, 2007).

On January 26, 2007, the GOK and respondents submitted their responses to our initial questionnaire. Also on January 26, 2007, Hankuk Paper Mfg. Co., Ltd. ("Hankuk") submitted a voluntary response to the Department's December 14, 2006, initial questionnaire. Because Hankuk was not selected as a mandatory respondent, we have not considered the company's questionnaire response in reaching this preliminary determination and have not calculated a company-specific CVD rate for Hankuk.

On February 2, 2007, EN Paper, Kyesung,<sup>3</sup> and the GOK submitted their responses to the company-specific allegations. Between February 23 and March 12, 2007, we issued supplemental questionnaires to the GOK and respondents. Between March 5 and 16, 2007, the GOK and respondents submitted responses to our supplemental questionnaires.

On March 8, 2007, petitioner submitted pre-preliminary comments on a number of issues, which we have considered in reaching this preliminary determination. In particular, petitioner argues that, despite instructions from the Department to report all loan data, respondents failed to report any of their short-term loans. Petitioner discusses that in the initial questionnaire, referring to petitioner's allegations that members of the pulp and paper industry received a disproportionate share of loans from the Korea Development Bank ("KDB") and other GOK-owned entities and that the GOK directed credit to the pulp and paper industry through its control of lending practices in Korea, the Department specifically requested the respondents to answer the items in the Standard Questions and Loan Benchmark and Loan Guarantee Appendices. Petitioner further claims that the unreported short-term loans were provided by the GOK for financing the importation of raw materials as well as the export of finished goods. Petitioner further claims that the Bank of Korea ("BOK") administers the trade financing under the Aggregate Credit Ceiling Loan program.

Respondents submitted rebuttal comments to petitioner's pre-preliminary comments on March 13 and

20, 2007. Respondents state that they did not report short-term loan data because petitioner did not make an allegation concerning short-term lending and the Department neither initiated on nor asked about short-term loans in the initial questionnaire. They claim that the Department's Initiation Checklist makes clear that the investigation on loans from the KDB and other GOK-owned entities and the GOK's direction of credit to the pulp and paper industry is limited to the allegation of subsidized long-term loans. See Initiation Checklist at 7-9, 16-18.

We agree with respondents that the Department's examination of KDB lending and the GOK's direction of credit, in Korea CVD proceedings, has focused on long-term lending. However, we find that additional information regarding the respondents' short-term lending is required to fully analyze the GOK's provision of these loans. For more discussion of the short-term loan program, see the section "Program For Which More Information Is Required," below.

On March 23, 2007, petitioner submitted additional pre-preliminary comments. Respondents submitted a response to petitioner's additional comments on March 27, 2007. On March 26, 2007, petitioner submitted a request, pursuant to section 705(a)(1) of the Act to align the final determination in this investigation with the companion antidumping investigations. We will address this request in a separate **Federal Register** notice.

### Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms "wood free" or "art" paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be

sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### Scope Comments

In accordance with the preamble to the Department's regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) ("Preamble")), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On December 18, 2006, respondents in the antidumping duty investigation of CFS from Indonesia submitted timely scope comments on the administrative record of that investigation. On January 12, 2007, the Department requested that the respondents file these comments on the administrative records of all the CFS investigations. See Memorandum from Alice Gibbons to the File (January 12, 2007). On January 12, 2007, respondents re-filed these comments on the administrative record of all the CFS investigations. On January 19, 2007, petitioner filed a response to these comments.

The respondents requested that the Department exclude from its investigations cast-coated free sheet paper. The Department analyzed this request, together with the comments from petitioner, and determined that it is not appropriate to exclude cast-coated free sheet paper from the scope of these investigations. See Memorandum to Stephen J. Claey, Deputy Assistant Secretary for Import Administration: Regarding Request to Exclude Cast-Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper (March 22, 2007).<sup>4</sup>

### Injury Test

Because Korea is a "Subsidies Agreement Country" within the

<sup>3</sup> Kyesung's affiliated company, Namhan Paper Co., Ltd., submitted the company's response on February 2, 2007. See "Cross-Ownership" section, below, for more information on Namhan Paper Co., Ltd.

<sup>4</sup> A copy of this memorandum is available in the CRU.

meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On December 29, 2006, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Indonesia, or Korea of subject merchandise. *See Coated Free Sheet Paper from China, Indonesia, and Korea*, Investigation Nos. 701-TA-444-446 (Preliminary) and 731-TA-1107-1109 (Preliminary), 71 FR 78464 (December 29, 2006).

### Period of Investigation

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

### Cross-Ownership

In the instant investigation, we are examining cross-owned companies within the meaning of section 771(33) of the Act, whose relationship may be sufficient to warrant treatment as a single company with a single, combined CVD rate. In the CVD questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns five percent or more of the other company, or where companies prepare consolidated financial statements. The Department has also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, where such companies produce the subject merchandise or where such companies have engaged in certain financial transactions with the company producing the subject merchandise, the affiliated parties are required to respond to the Department's questionnaire.

In its questionnaire response, Kyesung identified Namhan Paper Co., Ltd. ("Namhan") and Poongman Paper Co., Ltd. ("Poongman") as its affiliated companies that produce and sell subject merchandise. Namhan and Poongman merged during the POI. Therefore, Namhan submitted a questionnaire response covering the POI that contained data for Namhan and Poongman before and after the merger (as one company). Similarly, in its questionnaire response, Moorim

identified Moorim SP as its affiliate that produces and sells subject merchandise. Moorim SP submitted a questionnaire response to the Department.

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

### Subsidies Valuation Information

#### *Benchmarks for Loans and Discount Rate*

##### A. Benchmark for Long-Term Loans Issued Through 2005

Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company-specific cost of long-term, fixed rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate vs. variable interest rate), the maturity of the loan (e.g., short-term vs. long-term), and the currency in which the loan is denominated.

During the POI, EN Paper (formerly known as Shinho Paper), Hansol, Kyesung, and Moorim had outstanding long-term won-denominated and foreign-currency denominated loans from the KDB and other government-owned financial institutions. For this preliminary determination, we are using the following benchmarks to calculate the subsidies attributable to respondents' countervailable long-term loans obtained in the years 1993 through 2005:

(1) For countervailable, foreign-currency denominated loans for creditworthy companies, we used, where available, the company-specific

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

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

(3) For countervailable, won-denominated commercial debt issued by the KDB, we used, where available, the company-specific corporate bond rate on the companies' won-denominated public and private bonds. *See* 19 CFR 351.505(a)(3)(iii). Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the BOK.

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

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

In addition, because we preliminarily determined that Poongman was uncreditworthy in 2004, in accordance with 19 CFR 351.524(d)(3)(ii) (*see* "Creditworthiness" section, below), we have calculated for Poongman a long-term uncreditworthy benchmark and discount rate for 2004. According to 19 CFR 351.505(a)(3)(iii), in order to calculate these rates, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt. For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920-1997" (February 1998).

#### B. Benchmark Discount Rates

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

#### C. Benchmarks for Short-Term Financing

The benefit calculation for the Export and Import Credit Financing from the Export-Import Bank of Korea requires

the application of a won-denominated, short-term interest rate benchmark. Absent a company-specific interest rate, we used as our benchmark the lending rate for won-denominated loans for the POI, as reported in the *IMF Yearbook*. This approach is in accordance with 19 CFR 351.505(a)(3)(ii) and the Department's practice. *See, e.g., Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53419 (September 11, 2006) (unchanged at the final results, *see Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007)).

#### D. Allocation Period

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

In their questionnaire responses, each respondent company stated that it would not attempt to rebut the regulatory presumption by meeting the criteria set forth in 19 CFR 351.524(d)(2)(iii). Thus, for respondents, we will use the IRS AUL of 13 years to allocate any non-recurring subsidies for purposes of this preliminary determination.

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

#### E. Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: (1) The receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position.

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

In the *Initiation Notice*, we indicated that we would investigate Shinho Paper's creditworthiness for the period 1998 through 2005, and Poongman's creditworthiness for 2004. As discussed in the March 29, 2007, memorandum entitled "Shinho Paper's Equityworthiness and Creditworthiness," we preliminarily determined Shinho Paper to be creditworthy each year from 1998 through 2005 (a copy of this memorandum is available in the CRU). Regarding Poongman, we preliminarily determine Poongman to be uncreditworthy in 2004. *See* Memorandum to the File Regarding Poongman's Creditworthiness (March 29, 2007), which is available in the

CRU. Therefore, pursuant to 19 CFR 351.505(a)(3)(iii), we derived an “uncreditworthy” benchmark interest rate and used it to calculate the benefit that Poongman received from debt that was forgiven in 2004. For information on Poongman, *see* the “Poongman’s Restructuring” section below.

#### F. Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price for similar, newly issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same, or similar, newly issued shares. *See* 19 CFR 351.507(a)(2)(i).

If actual private investor prices are not available, then, pursuant to 19 CFR 351.507(a)(3)(i), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. In making the equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), the Department will normally determine that a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time. To do so, the Department normally examines the following factors: (1) Objective analyses of the future financial prospects of the recipient firm; (2) current and past indicators of the firm’s financial health; (3) rates of return on equity in the three years prior to the government equity infusion; and (4) equity investment in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department’s regulations further stipulates that the Department will “normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion.” Absent an analysis containing information

typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

In the *Initiation Notice*, we indicated that we would investigate Shinho Paper’s equityworthiness for the period 1998 through 2005, and Poongman’s equityworthiness for 2004. As discussed in the March 29, 2007, memorandum entitled “Shinho Paper’s Equityworthiness and Creditworthiness” (which is on file in the CRU), we preliminarily determine that Shinho Paper was equityworthy each year from 1998 through 2005. For information on Poongman, *see* the “Poongman’s Restructuring” section, below.

#### I. Programs Preliminarily Determined To Be Countervailable

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

Petitioner alleges that lending by the KDB to the Korean paper sector was a financial contribution, which provided a benefit and was specific to the paper sector. Petitioner also argues that in addition to the KDB, the Industrial Bank of Korea, National Agricultural Cooperative Federation, the National Federation of Fisheries, and the Export-Import Bank be treated as governmental authorities, consistent with our approach in *DRAMS Investigation*. *See* Petition for the Imposition of Countervailing Duties from Petitioners to the Department at 15 (October 31, 2006) (“Petition”). Petitioner alleges that GOK lending by these various government entities was specific to the paper industry. In its allegation, petitioner suggests that the Department adopt a methodology under which the amount of the paper sector’s share of KDB loans is compared to the paper sector’s contribution to the total manufacturing output in Korea. According to petitioner, where this analysis shows that the amount of the paper sector’s loans from the KDB exceeds that sector’s share of Korean manufacturing output, the Department should find that the paper sector received a disproportionate share of KDB loans, *i.e.*, which is therefore specific under section 771(5A)(D)(iii) of the Act. *See* Petition, at 17–18.

As explained above, the Department preliminarily agrees that KDB and other GOK lending institutions provide a financial contribution to the Korea paper sector under section 771(5)(D)(i) of the Act. We also preliminarily determine that KDB lending to the paper sector was specific in accordance with section 771(5A)(D)(iii)(III) of the Act because the paper sector received a disproportionate share of KDB loans between 1999 and 2005 when compared to that sector’s contribution to the overall Korean Gross Domestic Product (“GDP”).<sup>5</sup> *See* Memorandum to the File Regarding Analysis of Korea Paper Sector’s share of KDB Lending (March 29, 2007) (“KDB Memorandum”). While the record is not adequately developed regarding loans provided to the paper sector by other GOK lending institutions, there is no reason to believe that the lending patterns of these other government lending institutions would be different than the lending pattern of the KDB, the country’s leading supplier of long-term funds to domestic corporations over the period.

With regard to KDB’s lending to the paper sector in the years 1993 through 1998, we do not have on the record KDB-specific lending data for these years. The GOK reported that the KDB no longer maintains lending data for newly issued loans for this period either in electronic or paper form. *See* GOK’s questionnaire response at 26 (January 26, 2007) and at 16 (March 6, 2007). However, for the years 1993 through 1998, we have on the record data on the total lending to the paper sector, encompassing loans from the KDB, other GOK financial institutions, and commercial banks. *See* GOK’s questionnaire response at page 20 and Exhibits 6 and 7 (January 26, 2007). We, therefore, examined the paper sector’s share of total lending to the paper sector’s share of GDP in each of those years. We find that the record indicates that the paper sector received a disproportionate share of total lending in each year 1993 through 1998 when compared to the sector’s contribution to the overall Korean GDP, and that this can serve as a reasonable proxy for the KDB-specific lending data. Given the finding that the paper sector received a

<sup>5</sup> In reporting economic activity that contributes to the Korean GDP, the BOK does not report a category particular just to the paper sector. The paper sector’s contribution to GDP is contained within the category “wood, paper, publishing, and printing.” Therefore, to conduct our GDP analysis, we are using this broad category. To the extent that we could, we combined the lending data for “wood, paper, publishing, and printing” to achieve an “apples-to-apples” comparison between share of GDP and share of loans for this sector. *See* KDB Memorandum, for more discussion.

disproportionate share of KDB loans in each year 1999 through 2005, and the lending trend identified for the paper sector 1993 through 1998, we also preliminarily determine that the paper sector received a disproportionate share of KDB loans between 1993 and 1998, and that this lending was specific in accordance with section 771(5A)(D)(iii)(III) of the Act.

The comparison between KDB lending received by the paper sector and the paper sector's contribution to the GDP of Korea is consistent with the Department's approach in *Plate in Coils*. See *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530 (March 31, 1999) ("Plate in Coils"); see also Memorandum from David Mueller to Holly A. Kuga: Regarding Analysis Concerning Direction of Credit, Subject: Countervailing Duty Investigation (March 4, 1998).<sup>6</sup>

In accordance with 19 CFR 351.505(c)(2) and (4), for each respondent, we calculated the benefit for each fixed- and variable-rate loan received from the KDB and other GOK lending institutions, as well as commercial debt issued by KDB where relevant, to be the difference between the actual amount of interest paid on the government loan during the POI and the amount of interest that would have been paid during the POI at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the "Subsidies Valuation Information" section, above. For foreign currency-denominated loans, we converted the benefits into Korean won using the appropriate exchange rate. For each company, we then summed the benefits from the long-term fixed-rate and variable-rate won-denominated loans, and commercial debt issued by KDB where relevant, and divided that amount by each company's total sales values for the POI. We preliminarily determine the net countervailable subsidy rates to be, for: Hansol 1.01 percent *ad valorem*, Kyesung 0.01 percent *ad valorem*, and Moorim 0.02 percent *ad valorem*.

#### B. Poongman's Restructuring

Petitioner alleges that Poongman, a CFS-producing affiliate of Kyesung, received countervailable benefits from the GOK through extensions of debt maturities in 2002 and 2004, and a debt-for-equity swap in 2004. See Petition, at 67–69. Petitioner states that the KDB,

owned/controlled by the GOK, was the main participant in the debt-for-equity swap. Petitioner further alleges that Poongman was unequityworthy and uncreditworthy in 2004. They base their allegation of Poongman's unequityworthiness and uncreditworthiness on its financial statements and its creditors' assessments. Therefore, petitioner argues that the GOK conferred a benefit upon Poongman, within the meaning of sections 771(5)(E)(i) and (ii) of the Act, in the form of a government equity infusion and a loan. Petitioner further alleges that the debt-for-equity swap and the extensions of debt maturities constitute government financial contributions within the meaning of section 771(5)(D)(i) of the Act. In addition, petitioner alleges that this program is specific under section 771(5A)(D)(iii) of the Act, as this transaction was limited to Poongman. Pursuant to the Corporate Restructuring Promotion Act ("CRPA"), Korea's statutory framework for debt restructurings, Poongman's creditors performed a biannual credit assessment of the company in 2001.<sup>7</sup> As a result of this assessment, Poongman received a 'B' rating, which allowed it to go through self-restructuring, rather than through the formal CRPA process. See GOK's questionnaire response at pages 2 and 19 (February 2, 2007). Pursuant to the self-restructuring, in 2002, Poongman was granted an extension on the debt maturities for some of its KDB loans that were coming due. No other creditors besides the KDB granted the extensions during this period. As discussed further below, the interest owed as a result of this extension was forgiven and resulted in the provision of a countervailable subsidy.

Following another credit assessment in 2002, the KDB classified Poongman as a credit risk company and demanded it perform self-restructuring in accordance with Article 10.3 of the CRPA. See *id.* at Exhibit K–1; see also GOK's questionnaire response at page 16 (March 16, 2007). As a result, Poongman engaged the services of a management consulting company to provide a financial analysis. The record facts further indicate that the management consulting company

provided a report based on commercial considerations which served as the basis for the restructuring of Poongman and its merger with Namhan. See Namhan's questionnaire response at Exhibit L–20 (February 2, 2007) and Exhibit L–44 (March 13, 2007).

In June 2004, Poongman's restructuring package was agreed to by Poongman's creditors and Namhan. This package included an agreement that Poongman would merge with Namhan, Poongman's creditors would swap Poongman's debt in exchange for shares in Namhan, and Poongman's creditors would extend Poongman's remaining debt maturities. Subsequently, Poongman's board of directors approved the restructuring package on June 8, 2004, and the debt-for-equity swap was made. Due to volatile market conditions, and not due to any changes to the terms of the merger, the merger did not take effect until July 31, 2005, when Poongman's stocks were swapped for Namhan's stocks.

In a past review involving a Korean corporate restructuring, the Department found that in a debt-for-equity swap that was conditioned on a merger of a non-equityworthy company (Kangwon) with an equityworthy company (Inchon), the creditors of the non-equityworthy company were effectively exchanging their debt for equity in the equityworthy company. In that case, Kangwon merged into Inchon, with Inchon being the post-merger company. See *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) ("Stainless Steel"), and accompanying Issues and Decision Memorandum at Comment 3. In *Stainless Steel*, the Department found that the terms of the merger and the debt-for-equity swap were part of the same agreement and that the legal requirements for the agreement had been fulfilled before the debt-for-equity swap took place. *Id.* Moreover, there was no allegation that Inchon was not equityworthy, and the Department found that the record evidence regarding Inchon's financial status provided no reason to question its equityworthiness. *Id.* Consequently, the Department concluded that the equityworthiness of Kangwon, the non-equityworthy company, was not relevant to the determination of whether a benefit was conferred. *Id.*

In this case, we find that the debt-to-equity swap was agreed to by Poongman's creditors on the condition that the merger with Namhan would occur, and that the share issuance price would be the market price. Moreover, we find that the terms of the merger and

<sup>6</sup> A copy of this public document has been placed on the record of this review.

<sup>7</sup> The CRPA was enacted in September 2001, to help stabilize the financial and corporate sectors recovering from the 1997 financial crisis by allowing for corporate restructurings with more transparency and promptness. Its intent is to give greater responsibility to the creditors in resolving the fate of non-performing debt in the market by implementing a corporate risk rating system and conducting regular credit risk assessments on companies receiving 50 billion won or more in credit.

the swap were part of the same agreement that was approved by Poongman's board of directors. Based on record evidence, and consistent with *Stainless Steel*, we preliminarily find that, because the swap and the extension of debt maturities took place on the condition of Poongman's merger into Namhan, Poongman's creditors were effectively exchanging their debt for equity in Namhan, an equityworthy company.

In looking to the post-merger entity as the reference for analyzing equityworthiness and creditworthiness, the Department takes due consideration of the specific facts of the case. In the instant investigation, the record evidence shows Namhan to be a larger, financially more stable company relative to Poongman. In addition, petitioner has not alleged that Namhan was an unequityworthy or uncreditworthy company during the relevant time period. Thus, in accordance with section 771(5)(E)(i) of the Act, we find that the decision by Poongman's creditors to swap debt for equity in Namhan was not inconsistent with the usual practice of private investors and did not confer a benefit to Poongman. Therefore, we preliminarily find that the debt-for-equity swap and the debt maturity extensions that occurred in 2004, on condition of the merger with Namhan are not countervailable.

However, with regard to the forgiveness of interest owed as discussed earlier, we preliminarily find that this forgiveness of debt constitutes the provision of a financial contribution. In addition, we preliminarily find that it was specific to Poongman within the meaning of section 771(5A)(D)(iii) of the Act, in that it was limited to one company. As such, we preliminarily determine the net countervailable subsidy to be 0.49 percent *ad valorem*.

#### C. Export and Import Credit Financing From the Export-Import Bank of Korea ("KEXIM")

The Department has previously determined that the GOK's short-term export financing program is countervailable. See *e.g.*, *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53419 (September 11, 2006), (unchanged at the final results, see *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007)); see also *Final Affirmative Countervailing Duty*

*Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176, 73180 (December 29, 1999). No new information from interested parties has been presented in this investigation to warrant a reconsideration of the countervailability of this program. Therefore, we preliminarily find that this program is countervailable.

We preliminarily determine that the program is specific, pursuant to section 771(5A)(B) of the Act, because receipt of the financing is contingent upon exporting. In addition, we preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act. During the POI, Hansol was the only respondent that received export financing from the KEXIM.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section. To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of Hansol's total exports for 2005. On this basis, we preliminarily determine the net countervailable subsidy rate for Hansol to be 0.13 percent *ad valorem*.

#### D. Sale of Pulp for Less Than Adequate Remuneration

Donghae Pulp Company ("DP") is the sole domestic producer/supplier of chemical pulp to the Korean pulp and paper industry. DP sells one type of chemical pulp to CFS producers, specifically bleached woodcraft pulp from the broadleaf trees. The key input into the production of CFS paper is chemical pulp, which respondents either import or purchase domestically from DP. During the POI, all respondents purchased chemical pulp directly from DP.<sup>8</sup>

DP was originally Daehan Chemical Pulp ("DCP"), established in January 1974, under the laws of the Republic of Korea, as a government-funded enterprise to manufacture and sell chemical pulp. DCP changed its name to DP in June 1977, and in 1987, the GOK sold its interest in DP to several companies that were end users of chemical pulp. Since June 1989, the

shares of DP have been listed on the Korea Stock Exchange. In April 1998, DP declared bankruptcy and applied to the court for company reorganization. Soon thereafter, DP began operating under court receivership.<sup>9</sup> In September 1999, as part of the reorganization, the shares of some companies were retired without compensation.<sup>10</sup> In November 1999, the shares of the remaining shareholders were consolidated and the creditors swapped their debt for equity shares in DP. As a result of this debt-to-equity conversion, KDB became DP's largest shareholder. Officials from the KDB are directors on DP's board of directors.

Respondents argue that, since DP is in court receivership, the GOK does not control DP or direct it to sell chemical pulp to Korean CFS producers for less than adequate remuneration. In support of their argument, respondents discuss that in an earlier Korean CVD administrative review, the Department found that because Sammi Steel Co., Ltd. ("Sammi") was in court receivership, Incheon Iron & Steel Co., Ltd., although a major shareholder, was not able to control Sammi's assets. See *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 3 ("Sheet and Strip 2003").

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

In order to assess whether an entity such as DP should be regarded as the government for purposes of a CVD proceeding, the Department considers the following factors to be relevant: (1) The government's ownership; (2) the government's presence on the entity's board of directors; (3) the government's control over the entity's activities; (4)

<sup>9</sup> During the POI, DP remained in court receivership.

<sup>10</sup> Specifically, as part of DP's reorganization, the shares of Kyesung, Namhan, Poongman, Moorim, Moorim SP, and Hankuk Paper Co., Ltd. were retired without any compensation.

<sup>8</sup> DP sells chemical pulp directly to end-users. There are no distributors of chemical pulp in Korea.



the entity's pursuit of governmental policies or interests; and (5) whether the entity is created by statute. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992); *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301, 3302, 3310 (February 3, 1987); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30642–30643 (June 8, 1999) (“*Sheet and Strip 1999*”).

We preliminarily find DP to be a government authority under section 771(5)(B)(i) of the Act. DP was established by the GOK in 1974 to address the government's interest in establishing a domestic manufacturer and supplier of chemical pulp to the paper industry. DP is majority-owned by the KDB, a government-owned financial institution that also has presence on DP's board of directors. We do not believe that DP's court receivership status overrides the factors considered by the Department, which are outlined above.

Further, this finding that DP is a government authority is consistent with prior determinations by the Department. For example, the Department determined that the actions of Pohang Iron and Steel Company, Ltd. (“POSCO”) should be considered as actions of the GOK because POSCO was a government-owned company. At that time, the GOK was POSCO's largest shareholder. *See id.*, at 30642–30643.

Further, we preliminarily find that DP's provision of chemical pulp constitutes a financial contribution because it is the provision of a good as defined in section 771(5)(D)(iii) of the Act. We also preliminarily find that the provision of chemical pulp is specific in accordance with section 771(5A)(D)(iii)(I) of the Act because it is limited to the pulp and paper industry.

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

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

To calculate the benefit under this program, for each respondent, we compared the monthly delivered weighted-average price, after all discounts, paid to DP for chemical pulp to the calculated monthly delivered weighted-average import price paid to foreign suppliers of chemical pulp. We determined the monthly price difference and then multiplied the difference by the quantity of chemical pulp purchased from DP in each respective month of the POI. We next summed the price savings realized by each company and divided that amount by each company's total sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy from this program for the respondents to be: 0.08 percent *ad valorem* for EN Paper, 0.62 percent *ad valorem* for Hansol, 0.09 percent *ad valorem* for Kyesung, and 0.02 percent *ad valorem* for Moorim.

#### *E. Sales of Pulp From Raw Material Reserve for Less Than Adequate Remuneration*

The Korean Public Procurement Service (“PPS”),<sup>11</sup> established in January 1949, is a government procurement agency that stockpiles certain raw materials (e.g., aluminum, copper, and nickel), basic necessities (e.g., salt), and industrial use materials (e.g., chemical pulp and natural rubber) using government funds. PPS facilitates the short- and long-term supply of goods and seeks to stabilize consumer prices, pursuant to the Government Procurement Act.

Each year the PPS formulates a storage plan in accordance with the economic policies of the GOK. The release of stored items is carried out in accordance with the yearly plan. The GOK reported that prices for released items are determined based on the cost and market price at home and abroad

and that in certain circumstances could be released for a price lower than the purchase price. The PPS publically announces the stockpile release sales via its website and sells directly to end users. During the POI, PPS sold chemical pulp, some of which was purchased by Moorim SP.

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

To determine whether there is a benefit from the provision of a good, the Act specifies that the Department must examine whether the good was provided for less than adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good shall be determined in relation to prevailing market conditions for the good being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Section 351.511 of the Department's regulations sets forth, in order of preference, the benchmarks that we will examine in determining the adequacy of remuneration. As discussed under 19 CFR 351.511(a)(2)(i), the first preference is to compare the government price to a market-determined price resulting from actual transactions within the country, including imports. As discussed above under “Sale of Pulp for Less Than Adequate Remuneration,” DP, a government-owned entity, is the only domestic producer of pulp. As such, there are no market-determined domestic prices for chemical pulp available to serve as a benchmark. Moorim SP, however, did have imports of chemical pulp during the POI.

To calculate the benefit under this program, we compared the price that Moorim SP paid to PPS for chemical pulp and the import price that Moorim paid to a foreign supplier for comparable chemical pulp. We determined the price differential and then multiplied that differential by the quantity of pulp purchased from PPS. We next divided the price savings by the company's total sales value for the POI. On this basis, we preliminarily determine the net countervailable

<sup>11</sup> The PPS is a subsidiary agency of the Ministry of Finance and Economy.



subsidy for Moorim to be less than 0.005 percent *ad valorem*.

*F. Reduction in Taxes for Operating in Regional and National Industrial Complexes*

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

In prior Korea cases, the Department has determined that local tax exemptions provide countervailable subsidies. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at "Inchon's Local Tax Exemption;" and *Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Local Tax Exemption on Land Outside of Metropolitan Area." No new information from interested parties has been presented in this investigation to warrant a reconsideration of the countervailability of this program. Consistent with those prior determinations, in the instant investigation, the Department preliminarily determines that the property tax exemption that Namhan received is regionally specific under section 771(5A)(D)(iv) of the Act, as

being limited to an enterprise or industry located within a designated geographical region. We preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act, in the form of revenue foregone. A benefit is conferred in the form of a tax exemption.

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

**II. Programs Preliminarily Determined To Not Provide Countervailable Benefits During the POI**

*A. Duty Drawback on Non-Physically Incorporated Items and Excess Loss Rates*

The Korean duty drawback system is administered by the Customs Policy Division of the Ministry of Finance and Economy ("MOFE"). The Act on Special Cases Concerning the Refundment of Customs Duties, Etc., Levied on Raw Materials for Export ("Act on Customs Duties") governs the duty drawback program. Under the Korean duty drawback system, for a company to receive duty drawback the imported material must be physically incorporated into merchandise that is exported within two years from the time the input material is imported. There is no import duty on chemical pulp, the most important raw material used to produce CFS paper. Therefore, CFS producers are not eligible to claim duty drawback on imports of chemical pulp. CFS producers, however, can seek duty drawback for import duties paid on other materials used in the production of CFS paper, *e.g.*, clay, latex, starch, pigment, and talcum. Each material has its own single import duty rate.

The GOK states that under the duty drawback system only import duties can be refunded; no other import fees (*e.g.*, value added tax, customs brokerage, unloading charges, etc.) are eligible for drawback. To seek a drawback of import duties, the company must file with its local Customs office an application, import permits, export permits, and a statement of accounts for the required amount (see below for a discussion of this statement). A company can seek a refund of duties through either a company-specific method or fixed amount refund method (see below for a discussion of the two duty drawback methods). If the documentation is in order, the Customs office refunds the applicable duty amount.

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

The GOK submitted information on the system that Korean Customs has in place to monitor which inputs are consumed in the production of the exported products and in what amounts. As noted, there are two duty drawback methods used in Korea: (i) The company-specific method, and (ii) the fixed amount refund method. Under the company-specific method, a company's duty drawback is based upon its "statement of accounts for the required amount." This statement, which contains a formula specific to each company, demonstrates the amounts of import duty paid on imports and the amount of imports used to produce the exported product.<sup>12</sup>

The Customs Services' Examination Department, which is located in the five local Customs offices, examines the reasonableness and accuracy of the required quantity reported in the company's statement. The GOK reported that this process is an examination of the documents submitted because there is no issue regarding the usage rate for the imported raw materials. The GOK explained that all of the imported inputs for which the respondents claimed and received duty drawback are consumed in the production process (*i.e.*, clay, latex, starch, pigment, and talcum) and, therefore, there is no loss rate regarding the usage of these inputs in the claims

<sup>12</sup> Specifically, the duty drawback amount is calculated according to the following two-step formula:

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

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

for duty drawback. The GOK also reported that the company-specific formula is subject to verification by the local Customs authority if, for example, the ratio calculated by the company is higher than the ratio calculated by other companies in the same industry for the same product. During the POI, EN Paper, Hansol, Moorim Paper, Moorim SP, and Namhan used the company-specific method.

Under the fixed amount refund method, the Korea Customs Service sets a fixed amount refund rate by harmonized schedule ("HS") code number of items for export.<sup>13</sup> This fixed refund amount is calculated on the basis of the average refund amount of duties or the average paid tax amount on the raw materials for export, in accordance with Article 16 (simplified fixed amount refund) of the Act on Customs Duties. The GOK reported that Korean Customs reviews the fixed amount of refund annually based on the prior year's experience. Specifically, Korean Customs calculates and determines the fixed duty refund rates each year based on its company-specific duty drawback application database. To that end, Korean Customs collects all duty drawback applications for the prior 12 months and calculates the per-unit duty drawback amount by each HS code. Korean Customs then selects the duty drawback applications for which the per-unit duty drawback amount is less than the average calculated in order to prevent the fixed amount refund from exceeding the company-specific methods. Korean Customs recalculates an average duty drawback amount based on these below-average applications. Korean Customs then determines and announces the per-unit fixed amount refund after rounding upwards. The GOK provided the calculation performed to set the fixed amount of duty refund for the subject merchandise.<sup>14</sup> See GOK's questionnaire response at Exhibit E-7 (March 16, 2007). During the POI, Kyesung and Poongman used the fixed amount refund method.

Each respondent submitted to the Department documentation demonstrating a sample calculation of duty drawback, which was applied for

during the POI. Based on that information, there is no evidence, at this time, to suggest that the duty drawback program provided to the respondent companies a refund of import duties on materials that were not physically incorporated into exported products or excessive refund amounts. Therefore, we preliminarily determine that respondents did not receive, under the duty drawback program, countervailable benefits during the POI. However, at verification we will further examine each company's duty drawback applications and refunded amounts to ensure that a countervailable benefit was not conferred under the program. In addition, we will further examine the system at verification to determine whether it adequately meets the standards for non-countervailability set forth in 19 CFR 351.519(a)(4).

#### *B. Cleaner Production Development Project*<sup>15</sup>

The Cleaner Production Development Project ("CPDP") of the Korea National Cleaner Production Center ("KNCPC") is a research and development ("R&D") program. The GOK reported that the government and companies make cash and in-kind contributions to a research institution and then share the results of the project. The CPDP was established in 1995, under the Act on the Promotion of the Conversion into Environment-Friendly Industrial Structure and its Enforcement Decree. The KNCPC, with the support of the Ministry of Commerce, Industry and Energy ("MOCIE"), finances and manages the cleaner production technology development projects that seek to prevent or reduce the generation of waste during product designing, manufacture, delivery, use, and disposal. Specifically, MOCIE decides which projects will be approved and the level of the GOK's contribution to the project, according to criteria specified in the Guidelines for the CPDP Operation. The GOK's monetary contribution depends on the type of project (general or common), the entity in charge (company, research institution, or university), and whether the project is a

collaboration of companies and research institutions or a project being conducted by a single entity. The GOK states that the purpose of this collaboration is to allow for the sharing of the results of the R&D project.

The GOK reported that a diverse grouping of industries has participated in the CPDP and received R&D funds from the GOK, including paper companies. Specifically, Namhan participated with another company and a research institution in a project. Namhan reported that the GOK approved the R&D funding for the project prior to the POI.

We preliminarily determine that this funding is a non-recurring grant under 19 CFR 351.524(c)(2)(ii) because receipt of the assistance is not automatic, requiring the express approval of the GOK. Therefore, in accordance with 19 CFR 351.524(b)(2), we have applied the "0.5 percent expense test."<sup>16</sup> The calculation demonstrates that the total funding amount approved (*i.e.*, GOK's total contribution to the project) is less than 0.5 percent of Namham's 2003 total sales. As such, we have expensed the benefit in the year of receipt, 2003. Therefore, because the CPDP did not confer a benefit to Namhan during the POI, we preliminarily find that we need not conduct a specificity analysis of this program.

### **III. Programs Preliminarily Determined To Not Be Countervailable**

#### *A. Direction of Credit to the Pulp and Paper Sector*

Petitioner alleges that the GOK directed credit to the pulp and paper sector using various means. See *Initiation Notice*. Petitioner cites prior countervailing duty cases where the Department has found direction of credit to the steel<sup>17</sup> and

<sup>16</sup> For more information, see "Allocation Period," above.

<sup>17</sup> See *Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051, (July 3, 2000) ("S-Beams") (from 1985 through 1991); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530 (March 31, 1999) ("Steel Plate in Coils") (from 1992 through 1997); *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 1964, (January 15, 2002) ("Sheet and Strip") (for 1999); *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102, (October 3, 2002) ("Cold Rolled") (for 2000); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113, (January 14, 2004) ("Sheet and Strip 2001 Review") (for 2001).

<sup>13</sup> The Korean Customs Service calculates a fixed refund rate when it is necessary to simplify the refund procedure for customs duties on certain export items having an extraordinary production process (*e.g.*, when two or more products are produced simultaneously using one raw material or export or when the exported goods are produced by a small and medium enterprise).

<sup>14</sup> The fixed amount of duty refunded per 10,000 KRW of FOB export value is 70 (which is the per-unit duty refund) for subject merchandise. The HS code is 4810.19-1000.

<sup>15</sup> In its allegation concerning the "Funding for Technology Development and Recycling Program," petitioner alleged that the GOK provides support to the pulp and paper industry for clean technology development and enhancement of used-paper recycling systems. See *Initiation Checklist* at "Funding for Technology Development and Recycling Program." Also, in its allegation, petitioner alleged a connection between the IBF and the CPDP. The GOK reported, however, that the IBF is a loan program and the CPDP is an R&D support program. We preliminarily find no relationship between the IBF and CPDP and, therefore, are treating them as two separate programs.

semiconductor<sup>18</sup> industries as well as to an individual semiconductor producer<sup>19</sup> to support its allegation that the GOK similarly directed credit to the paper sector because, petitioner argues, the paper sector was a strategic sector like steel and semiconductors. See *Initiation Notice*, at 40.

In prior determinations, the Department found that the GOK continued to control, directly and indirectly, the long-term lending practices of most sources of credit in Korea through 1998. See *Plate in Coils* and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 (December 29, 1999) ("CTL Plate") for our findings. Although we determined that the GOK directed the provision of loans by Korean banks in *Plate in Coils* and *Sheet and Strip*, we concluded that loans from Korean branches of foreign banks (i.e., branches of U.S. and foreign-owned banks operating in Korea) did not confer countervailable subsidies. This determination was based upon our finding that credit from branches of foreign banks was not subject to the government's control and direction. Additionally, because these loans were not directed or controlled by the GOK, we used them as benchmarks to establish whether loans from domestic banks conferred a benefit upon respondents. In *S-Beams* and *CTL Plate*, the Department found that the GOK directed credit to "strategic" industries, such as steel, automobiles, and consumer electronics, throughout the 1970s, 1980s, and 1990s. In *S-Beams*, we found that, after the removal of the *de jure* preferences for "strategic" industries in 1985, the GOK continued to direct a disproportionate amount of lending to steel sector by examining the percentage of loans received by the steel sector in proportion to the steel sector's contribution to GDP. In *DRAMS Investigation*, we determined that the GOK continued to direct credit through 1998 to the semiconductor sector because it was a strategic sector.

The Department has also addressed GOK direction of credit in the years subsequent to 1998. The GOK argued in the *DRAMS Investigation* that the post-1997 financial reforms instituted

following the Korean financial crisis led to the liberalization of the Korean financial sector, resulting in the GOK not directing credit provided by domestic and government-owned banks since 1998. The GOK placed new information on the record during the *DRAMS Investigation* to support its claim that the GOK did not direct credit between 1999 and June 30, 2002. In *DRAMS Investigation*, the Department distinguished between banks that are themselves government authorities within the meaning of section 771(5)(B) of the Act and commercial banks that are not considered to be government authorities. In *CTL Plate* and *S-Beams*, we found that, although changes had been made to the legislation regulating government-controlled specialized banks, such as the KDB, in the aftermath of the financial crisis, the respondents did not provide any evidence to demonstrate that the KDB has discontinued its practice of selectively making loans to the steel sector. Record evidence from those investigations indicate that the KDB and other specialized banks, such as the Industrial Bank of Korea, continue to be government authorities within the meaning of section 771(5)(B) of the Act. Hence, the financial contributions they made fall within section 771(5)(B)(i) of the Act. As for the commercial banks in which the GOK owned a majority or minority stake, the Department determined that these entities are not GOK authorities within the meaning of section 771(5)(B) of the Act. These banks act as commercial banks, and temporary GOK ownership of the banks due to the financial crisis is not, by itself, indicative that these banks are GOK authorities.

#### Direction of Credit Specific to the Pulp and Paper Sector

A significant amount of evidence has been placed on the record by petitioner to support its allegation. In addition to the evidence contained in the petition filed on October 31, 2006, the Department sought and received additional information on direction of credit from petitioner. See Submissions on behalf of NewPage on November 6 and 9, 2006. Petitioner alleges that "directed lending to the Korean coated free sheet producers was specific because the GOK targeted the Korean paper industry as an industry selected for export growth and competitiveness \* \* \* within the meaning of section 771(5A)(D)(iii)(I-IV)." See Petition, at 43. Under section 771 (5A)(D)(iii)(I-IV) of the Act, a subsidy is *de facto* specific where (1) the actual recipients, either on an enterprise or industry basis are

limited in number; (2) a recipient, on an enterprise or industry level, is a predominant user of the subsidy; (3) a recipient, on an enterprise of industry level, receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority provides the subsidy involves discretion which indicates that the recipient industry or enterprise is favored over others.

Petitioner cites to various news articles, GOK/KDB publications and KDB's status as a government lender to support its direction of credit allegation. See Petition, at 39-43. In *S-Beams*, the Department found that direction of credit was specific to the steel industry because the Korea steel sector received a disproportionate amount of directed credit. See *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum, at "Direction of Credit," section (POI 1998). In the *DRAMS Investigation*, the Department found direction of credit specific to Hynix and the Hyundai Group companies from 1999 through mid-2002. See *DRAMS Investigation* Memorandum, at "Comment 2: Specificity Relating to Direction of Credit." In the first administrative review of DRAMS, the Department continued to find direction of credit specific to Hynix through 2003. See *DRAMS First Review* Memorandum. In the second administrative review of DRAMS, based on record facts particular to Hynix, the Department found that the GOK no longer directed credit to Hynix in 2004. See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 FR 7015 (February 14, 2007), and accompanying Issues and Decision Memorandum at "GOK Entrustment or Direction of Debt Reductions," section.

In this investigation, the Department is analyzing whether the GOK directed credit to the paper sector during the relevant time periods as it had done earlier to the steel and semiconductor sectors. We preliminarily determine that there was no GOK direction of credit specific to the paper industry that would provide a benefit during the POI. As noted above, the Department has found that the GOK exerted broad control of lending in Korea through 1998 and that this resulted in credit being directed specifically to such "strategic" sectors as the steel and semiconductor industries. However, although the paper industry was an important part of the Korean economy,

<sup>18</sup> See *DRAMS Investigation* Memorandum (through 1998).

<sup>19</sup> See *DRAMS Investigation* Memorandum, at 14-15 (through June 30, 2002); and Issues and Decision Memorandum for the *Final Results in the First Administrative Review of the Countervailing Duty Order on Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 71 FR 14174 (March 21, 2006) ("DRAMS First Review Memorandum") (through 2003).

we find that the record evidence in the instant investigation is not sufficient to support a conclusion that the paper industry was likewise a “strategic” sector to which, consequently, credit was specifically directed by the GOK through its wide control of lending.

For the period subsequent to 1998, we examined the paper sector using the two-part test articulated in the *DRAMS Investigation*, i.e., whether the GOK had a governmental policy favoring that sector and, whether record evidence establishes a pattern of practices by the GOK to act upon that policy to entrust or direct creditors to provide financial contributions to the paper sector. In evaluating the record in this investigation, we do not find that the evidence supports a finding that a GOK policy existed favoring the paper sector during the relevant period. There are no government statements stating that the paper sector is a critical or strategic economic sector of the Korean economy. There are also no statements by Korean officials claiming any paper company was “too big to fail.” Nor do we find sufficient evidence to support a finding that the GOK acted on any policy to entrust or direct the paper sector’s creditors to make financial contributions to the paper sector. Consequently, we preliminarily determine that there was no government entrustment or direction of private creditors, and no direction of credit, specific to the paper sector that is comparable to the earlier direction of credit to the steel and semiconductor sectors.

#### *B. Restructuring of Shinho Paper*

As outlined in the *Initiation Notice* and the *Initiation Checklist*, the Department is examining the various forms of financial assistance provided to Shinho Paper through restructuring of Shinho Paper from 1998 to 2005. This financial assistance included debt-to-equity swaps, conversions of convertible bonds to equity, the extension of debt maturities, reductions of interest obligations, and new loans. Because Shinho Paper received assistance directly from GOK-owned public lending institutions, we preliminarily determine that these institutions provided Shinho Paper financial contributions.

EN Paper reported that its predecessor company, Shinho Paper, was a member of the Shinho Group, a conglomerate of 28 companies that were engaged in the manufacture of paper, steel pipes, petrochemicals, electronics, and machinery, as well as financing, transportation, and construction. In late 1997, during Korea’s financial crisis, the

Shinho Group began experiencing financial difficulties and applied for emergency loans from its creditor banks. On February 23, 1998, the Shinho Group and Korea First Bank (“KFB”), the main creditor bank of the Shinho Group, entered into an agreement, undertaking to reduce the Shinho’s Group’s debt-to-equity ratios by mergers or disposition/liquidation of member companies or other assets. On July 9, 1998, the Shinho Group applied to the KFB for a “corporate workout” program pursuant to the Corporate Restructuring Agreement (“CRA”). On July 14, 1998, a Creditors Council was formed for the purpose of overseeing the restructuring of the Shinho Group. On July 16, 1998, the Creditors Council held its first meeting and composed three Creditors Councils—one for Shinho Paper, one for Shinho Petrochemical Co., Ltd., and one for Dongyang Steel Pipe Ltd. On July 17, 1998, Samil Accounting Corporation and PricewaterhouseCoopers were appointed to conduct separate “workout” plans for these three core companies.

On September 17, 1998, Samil Accounting Corporation and PricewaterhouseCoopers submitted the “workout” plan for Shinho Paper. On October 24, 1998, the Creditors Council approved a restructuring plan that was based on that evaluation. On December 11, 1998, the KFB and the Shinho Group entered into an Agreement of Corporate Restructuring to implement the plan.

The KFB proposed a second restructuring plan for Shinho Paper to the Creditors Council on November 2, 1999. Santong Accounting Corporation was hired to conduct an evaluation of the company, and on January 14, 2000, a second “workout” plan was submitted to the Creditors Council. After some revisions, the committee approved the plan on March 4, 2000.

On September 15, 2001, Korea’s Corporate Restructuring Promotion Act came into effect. Younghwa Accounting Corporation was then appointed to evaluate the financial condition of Shinho Paper and the progress it was making under its “workout” plan. On January 3, 2002, the accounting firm submitted its review to the Creditors Council. The Creditors Council approved the plan in early 2002.

EN Paper reported that, as of December 21, 2002, Shinho Paper faced de-listing from the Korea Stock Exchange because its stock price had fallen below the required minimum level. As a result, on June 11, 2003, Shinho Paper conducted a reverse stock conversion to reduce the number of shares and increase the price per remaining share. On November 3, 2002,

the Creditors Council decided to sell the shares of Shinho Paper and appointed KDB-Lone Star as the financial advisor to evaluate the value of the company and conduct the sale.

In April 2004, Aram Financial Service Inc. was selected as the winner of the bidding process, and on November 15, 2004, a Stock Purchase Agreement for Shinho Paper was signed. Thereafter, Shinho Paper secured a new large syndicated loan and a new credit ceiling for letters of credit. EN Paper reported that the funds from this new syndicated loan were used to repay outstanding loans in full, and that, with the takeover by Aram Financial Service Inc. and the repayment of its outstanding loans, Shinho Paper graduated from the restructuring plan in December 2004.

#### *Financial Contribution*

As discussed above, we preliminarily determine there was not direction of credit to the paper industry during these periods. See the *Direction of Credit* to the Pulp and Paper Industry section, above. We also preliminarily determine that information on the record does not support a finding that the GOK entrusted or directed other creditor banks to participate in financial restructuring plans, which involved providing credit and other financial assistance to Shinho Paper, in order to assist Shinho Paper through its financial difficulties. We reach this preliminary determination on the basis of a two-part test.

First, we examined whether the GOK had in place a governmental policy to support Shinho Paper’s financial restructuring and to prevent the company’s failure. Among the evidence cited by petitioners was an article from the Korea Herald indicating that the GOK promoted mergers and acquisitions in seven “overcrowded” industries, including petrochemicals and steel. See Petitioner’s submission of pre-preliminary comments, at 91 (March 8, 2007) (“Pre-Prelim Comments”), and Petitioner’s submission at Exhibit B–12 (November 6, 2007). Although these two industries are two of the “core businesses” of the Shinho Group for which “workout” plans were undertaken, there is no indication from the articles provided by petitioner that restructuring the Shinho Group or Shinho Paper was a policy goal. Additionally, petitioners argued that KFB, one of Shinho’s lead creditors, was instructed to keep Shinho Bank from liquidation. Although the article provided by petitioners in support of this argument states that Shinho Paper is in the process of normalization through debt restructuring, it does not

provide evidence of the entrustment or direction. See Pre-Prelim Comments, at 91 and Exhibit 25. At this point in the investigation, the record does not support a finding that the GOK had a governmental policy in place with respect to either the Shinho Group or Shinho Paper.

We next examined whether the GOK engaged in a pattern of practices to entrust or direct Shinho Paper's creditors to provide financial contributions to Shinho Paper. In undertaking this examination, as we did in *DRAMs Investigation*, we considered whether there was evidence that the GOK influenced financial dealings through entrustment or direction of Shinho Paper's creditors. One of the many factors we considered in making this decision in *DRAMs Investigation* was whether the Creditors Council established to oversee and administer the bailouts was dominated by GOK-owned or -controlled lending institutions. We preliminarily do not find the same dominance here that we did in *DRAMs Investigation*. Therefore, we preliminarily determine that the record does not support a conclusion that the Creditors Councils established to oversee and administer the bailouts of Shinho Paper were dominated by GOK-owned or -controlled lending institutions.

Additionally, we preliminarily determine that the GOK did not engage in the various types of actions that we found indicative of entrustment or direction in *DRAMs Investigation*. For example, there is insufficient evidence that GOK officials attended meetings of Shinho's creditors, that the GOK coerced or threatened Shinho's creditors to participate in the restructurings, or that the GOK used Shinho's lead bank to effectuate a policy of bailing out Shinho, among other things. See *DRAMs Investigation Memorandum*, at Comment 1. Thus, the evidence on the record is insufficient to demonstrate the existence of a GOK policy or pattern of practices to entrust or direct creditors to provide financial assistance to Shinho Paper.

#### Benefit

##### a. Debt-to-Equity Swaps and Conversion of Convertible Bonds to Equity

Under the first Shinho Paper "workout" plan, the Creditors Council authorized for Shinho Paper debt-to-equity swaps and conversion of debt to convertible bonds. Under the second "workout" plan, the Creditors Council authorized for Shinho Paper additional debt-to-equity swaps and approved conversion of convertible bonds to

equity. Under the third "workout" plan, the Creditors Council again authorized debt-for-equity swaps. EN Paper reported the total amount of debt, convertible bonds, and unpaid interest bonds that was swapped for equity.

To determine whether these conversions of debt and convertible bonds to equity conferred a benefit on Shinho Paper, we followed the methodology described in 19 CFR 351.507. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price paid by private investors for similar newly issued equity. Because private banks that participated in the restructuring converted debt to equity at the same time and terms as the GOK lending institutions, we preliminarily determine that there is evidence on the record that the price paid by the GOK lending institutions was a market price paid by private investors. See 19 CFR 351.507(a)(2). Consequently, we preliminarily determine that the debt-to-equity swaps by the GOK lending institutions were conducted consistent with usual investment practice of private investors and thus do not provide a benefit to Shinho Paper. See 19 CFR 351.507(a).

We note that, as outlined in the Initiation Checklist, petitioner alleged Shinho Paper received additional debt forgiveness from reductions or eliminations of interest obligations and debt writeoffs which respondents explain are accounting adjustments pertaining to the numerous debt-for-equity swaps and conversions of convertible bonds to equity. As noted above, EN Paper reported that, in addition to unpaid principal, unpaid interest was also converted to equity. However, EN Paper also reported that the total amount of debt, convertible bonds, and unpaid interest that was converted to equity was less than the total amount approved for conversion by the Creditors Council. At verification, we will examine whether any unpaid interest was forgiven as a result of Shinho Paper's restructuring process and whether EN Paper provided a complete reporting of its debt and bond conversions. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

##### b. Extension of Debt Maturities

As tenets of the "workout" plans, the Creditors Council approved reductions in interest rates for Shinho Paper's

outstanding loans and bonds, and evidence on the record indicates that Shinho Paper also received such extensions of debt maturities. However, most of Shinho Paper's debt and bond obligations was either forgiven through the equity conversions described above or paid off prior to the POI with funds from the syndicated loan that Shinho Paper received in late 2004.

EN Paper reported GOK lending institution long-term capital leases outstanding during the POI which had been restructured as a result of decrees by the Creditors Council. For these long-term leases, we followed the methodology described at 19 CFR 351.505 to determine whether the amount a firm pays on a government-provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market. As indicated in the Initiation Checklist, petitioners alleged that Shinho was uncreditworthy from 1998 to 2005. To determine whether use of an uncreditworthy benchmark interest rate was necessary, we examined whether there was evidence on the record indicating that Shinho Paper could not have obtained comparable long-term loans from conventional commercial sources. We preliminarily determine that, because the terms and rate structure decreed by the Creditors Council applied to long-term capital leases held by all of the lenders that participated in the restructuring, including lenders that are not GOK lending institutions, Shinho Paper was creditworthy during the year that the new loan structure was applied. See 19 CFR 351.505(a)(4)(ii).

The record evidence indicates that, upon the decree of the Creditors Council, both the government and commercial creditors received the same interest rate and structure for their long-term capital leases. Further, the record evidence does not indicate that the lending provided by the commercial creditors was accompanied by a government guarantee. Therefore, pursuant to 9 CFR 351.505(a), we preliminarily determine that the GOK lending institution capital leases outstanding during the POI do not provide a benefit to Shinho Paper. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

##### c. New Loans

For the large syndicated loan received by Shinho Paper during 2004, which was used to repay Shinho's creditors, including GOK lending institutions, we followed the methodology described at

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

#### IV. Programs for Which More Information Is Required

##### A. Industrial Base Fund<sup>20</sup>

The Industrial Base Fund ("IBF"), established in 1986,<sup>21</sup> provides policy loans pursuant to the: (1) Promotion of Small and Medium Enterprises and Encouragement of Purchase of their Products Act, (2) Industrial Development Act, and (3) Guidelines for IBF Operation. The purpose of the IBF is to contribute to strengthening the competitiveness and productivity of national industries through the development of a strong industrial base in Korea. IBF funding is provided to companies that expand their facilities and make investments in projects as provided in the IBF Plan. MOCIE manages and supervises the operation of the IBF.

The IBF consists of eight separate parts,<sup>22</sup> one of which, the Promotion of

Industrial Parts and Material, provided loans to Namhan. No other respondent received loans from the IBF. The GOK reported that the goal of the Promotion of Industrial Parts and Material is to provide long-term loans to companies in order to support the enhancement of the capacity of the facility, productivity, factory automation, and product development. Namhan received loans for the purchase of equipment applicable to both subject and non-subject merchandise.

The GOK reported that, to apply for a loan, a company must submit a business plan application, which requests information on the company and the investment project. The GOK provided a copy of a blank application with some English translation. *See* GOK questionnaire response at Exhibit I-4 (January 26, 2007). Petitioner submitted to the Department their translation of the "effects of investment" section of the business plan application. *See* Pre-Prelim Comments, at Exhibit 128. Petitioner states that the complete translation of the "effects of investment" section of the application includes a request for information on the project's "export effects" and "saleable effect of import substitution." *See id.* at page 81 and Exhibit 128. Petitioner, therefore, argues that the IBF program is an export subsidy under section 771(5A)(B) of the Act. We note that the IBF program could also be considered an import substitution subsidy under section 771(5A)(C) of the Act.

The Department was able to verify independently that the respondent did not provide a complete translation of this section of the application and that petitioner's translation is accurate with respect to the request for information on exports and import substitution in the "effects of investment" section of the application. *See* Memorandum to the File Regarding the IBF (March 29, 2007).<sup>23</sup>

While the application form may request such information, we find that the record is not adequately developed with information on how the GOK uses that information in its decision-making and whether the GOK, either in whole or in part, approves IBF loans based on a project's "export effects" and "saleable effect of import substitution." Therefore, we will be seeking more information about the IBF program from the GOK and Namhan. However, we

note that the burden is on the respondents to demonstrate that approval to receive benefits was made solely under non-export-related criteria. Therefore, the application materials themselves may be dispositive, although we will seek further information before making such a determination. *See Preamble*, 63 FR 65381.

##### B. Short-Term Financing Under the Aggregate Credit Ceiling Loan

As discussed in the "Background" section, petitioner, in its pre-preliminary comments, claims that respondents have received a significant amount of short-term lending, which was provided by the GOK for financing the importation of raw materials as well as the export of finished goods. Petitioner further claims that the BOK administers the trade financing under the Aggregate Credit Ceiling Loan ("ACCL") program. Because the Department did not initiate on the ACCL program, there is limited information on the record of this investigation concerning respondents' use of the program and short-term loans outstanding during the POI. Therefore, we find that additional information regarding the respondents' short-term lending is required to fully analyze the GOK's provision of these loans. Therefore, we will issue soon after this preliminary determination a supplemental questionnaire to respondent companies and the GOK concerning the ACCL and short-term lending during the POI.

#### V. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of CFS paper did not apply for or receive benefits during the POI under the programs listed below:

- A. Export Industry Facility Loans<sup>24</sup>
- B. Tax Programs under Restriction of Special Taxation Act ("RSTA")
  - 1. RSTA Article 71.
  - 2. RSTA Article 60.
  - 3. RSTA Article 63-2.

For purposes of this preliminary determination, we have relied on the GOK and respondents' responses to preliminarily determine non-use of these programs. During the course of verification, the Department will examine whether these programs were,

<sup>20</sup> In its allegation concerning the "Funding for Technology Development and Recycling Program," petitioner alleged that the GOK provides support to pulp and paper producers through the Industrial Base Fund. *See* Initiation Checklist at "Funding for Technology Development and Recycling Program."

<sup>21</sup> The IBF was originally named the "Manufacturing Industry Development Fund." The name of the fund was changed in 1999, because the Manufacturing Industry Development Act was amended to become the Industrial Development Act.

<sup>22</sup> IBF program consists of the following eight parts: (1) Promotion of Industrial Parts and Material; (2) Rationalization of Logistics; (3) Establishment of Environment-Friendly Industrial Base; (4) Development of Intellectual Industry; (5)

Activation of Industrial Complex; (6) Development of Regional Industry; (7) Cooperation among Large, Medium, and Small Enterprises; and (8) Establishment of Information System.

<sup>23</sup> A copy of this memorandum is available in CRU.

<sup>24</sup> In the *Final Affirmation Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, the Department found that the GOK terminated the Export Industry Facility Loan program in 1994 (64 FR 30636, 30662 (June 8, 1999), at Comment 19). However, this long-term loan program can provide residual benefits.

in fact, used by respondents during the POI.

#### Verification

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

#### Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for EN Paper, Hansol, Kyesung, and Moorim. The "All Others" rate is Hansol's CVD subsidy rate, because all other company rates are below *de minimis*. Pursuant to 705(c)(5)(A)(i) of the Act, we do not include *de minimis* subsidy rates in the "All Others" calculation. The rates are summarized below:

Producer/Exporter	Subsidy rate
EN Paper .....	0.08 <i>ad valorem</i> .
Hansol .....	1.76 <i>ad valorem</i> .
Kyesung (and its affiliate Namhan).	0.59 <i>ad valorem</i> .
Moorim (and its affiliate Moorim SP).	0.04 <i>ad valorem</i> .
All Others Rate .....	1.76 <i>ad valorem</i> .

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of the subject merchandise from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Notification of Parties

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. See 19 CFR 351.309(d).

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

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

Dated: March 29, 2007.

**David M. Spooner**,  
Assistant Secretary for Import  
Administration.

[FR Doc. E7-6500 Filed 4-6-07; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Exporters' Textile Advisory Committee (ETAC); Notice of Open Meeting; Addition to the Agenda

As stated in the notice published in the **Federal Register** on March 9, 2007 (72 FR 10709), a meeting of the Exporters' Textile Advisory Committee will be held on Thursday, April 12, 2007 from 1:00-4:00 at the Ronald

Reagan Building, Trade Information Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004, Training Room A.

#### Addition to the Agenda

There has been a change to the agenda. Mr. Dan Tannebaum, OFAC, U.S. Treasury will be briefing the ETAC Committee on Textile and Apparel Exporter Responsibilities in Complying with the Office of Foreign Asset Control (OFAC) Requirements Relating to Specially Designated Nationals: What Exporters Need to Know About their Customers and Suppliers.

The ETAC is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid at (202) 482-5154.

Dated: April 4, 2007.

**R. Matthew Priest**,  
Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E7-6637 Filed 4-6-07; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Transformation Advisory Group Meeting of the U.S. Joint Forces Command

**AGENCY:** Department of Defense.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The Transformation Advisory Group (TAG) will meet in closed session on 6-8 June 2007. The establishment date was already published in the **Federal Register** on 28 May 2003, in accordance with 41 CFR 102-3.150.

The mission of the TAG is to provide timely advice on scientific, technical and policy-related issues to the Commander, U.S. Joint Forces Command as he develops and executes the DOD transformation strategy. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated 17 April 1995, as amended March 2003.