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Sunset Review  
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August 1, 2005

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of  
the Countervailing Duty Order on Cut-To-Length Carbon-Quality Steel  
Plate from Korea; Final Results

### Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty order covering cut-to-length carbon-quality steel plate from Korea. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidies
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

### History of the Order

On December 29, 1999, the Department of Commerce (“the Department”) issued a final determination in the countervailing duty investigation, as amended on February 10, 2000.<sup>1</sup> The Department investigated both Dongkuk Steel Mill, Ltd. (“DSM”) and Pohang Iron and Steel

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<sup>1</sup> See Final Results of Investigation, 64 FR 73131 (December 29, 1999), as amended, Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

Company (“POSCO”). The Department found a net subsidy of 3.26 percent *ad valorem* for DSM and “all other” Korean producers/exporters of subject merchandise, with the exception of POSCO. The Department found a *de minimis* estimated net countervailable subsidy of 0.82 percent for POSCO and, therefore, excluded POSCO from the order.

The following programs were found to confer countervailable subsidies to Korean producers/exporters of subject merchandise:

- (1) the Government of Korea’s (“GOK”) Direction of Credit Policies (through 1991, and from 1992 through 1998);
- (2) GOK Infrastructure Investment at Kwangyang Bay;
- (3) Short-Term Export Financing;
- (4) Reserve for Export Loss;
- (5) Reserve for Overseas Market Development;
- (6) Technical Development Reserve Funds Under Article 8 of TERCEL
- (7) Investment Tax Credits;
- (8) Electricity Discounts Under the Requested Load Adjustment Program;
- (9) Asset Revaluation Pursuant to TERCL Article 56(2);
- (10) Exemption of Bond Requirement for Port Use at Asan Bay;
- (11) Price Discount for DSM Land Purchase at Asan Bay;
- (12) POSCO’s Dual-Pricing Scheme;
- (13) Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43); and
- (14) Research and Development (R&D).

The Department has not conducted any reviews of this order.

### Discussion of Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (“the ITC”) the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“Subsidies Agreement”).

Below we address the substantive responses of the interested parties.

## 1. Continuation or Recurrence of a Countervailable Subsidy

### Interested Parties' Comments

In their substantive response, the domestic interested parties<sup>2</sup> state that, in the final determination, the Department found countervailable subsidies were being provided to Korean producers of subject merchandise under several programs, including among others, long-term loans from government-owned banks, government-directed credit policies, investment tax credits, and other programs that provided long-term benefits allocated over time. Further, the domestic interested parties stated that the appropriate allocation period for these subsidies was 15 years. Since some of these benefits were provided as late as 1997, the benefit streams will continue through 2013. Because the benefit stream from these program continue beyond this sunset review, the domestic interested parties argue that the Department must find that revocation of this order would likely lead to continuation or recurrence of a countervailable subsidy.

### Department's Position

There have been no administrative reviews of this order and no evidence has been submitted to the Department demonstrating the termination of any of the countervailable programs. Moreover, the Department did not receive a response from the GOK and/or any respondent interested party. We agree with the domestic interested parties that the benefit streams of several of the subsidies investigated in the original investigation continue beyond the current sunset review. Absent any argument or evidence to the contrary, the Department concludes that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy for all Korean producers other than POSCO.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties' Comments

The domestic interested parties assert that the Department normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Additionally, the domestic interested parties argue that where no administrative review has been conducted of the order, the Department will not normally make an adjustment to the countervailable subsidy rate determined in the original investigation. Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is the rate calculated for all Korean producers in the original investigation: 3.26 percent.

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<sup>2</sup> A substantive response was filed on behalf of International Steel Group Inc. ("ISG"), IPSCO Steel Inc. ("IPSCO"), and Nucor Corporation ("Nucor"), collectively "domestic interested parties."

## Department's Position

As noted above, there have been no administrative reviews of the order. However, the Department has conducted administrative reviews on other Korean orders in which several of the programs found to provide benefits in the investigation of cut-to-length plate were reviewed. For example, in a review of the countervailing duty order on stainless steel sheet and strip from Korea, the Department found that POSCO was no longer controlled by the GOK and, therefore, POSCO's provision of steel inputs for less than adequate remuneration was no longer countervailable. In addition, the Department found that on December 28, 1998, the Tax Reduction and Exemption Control Act ("TERCL") was replaced by the Restriction of Special Taxation Act ("RSTA"), which continued to provide countervailable benefits. *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), as amended, *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 7419 (February 17, 2004). *See also, Final Results of Expedited Sunset Review of Countervailing Duty Order: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 75513 (December 17, 2004) and referenced unpublished memorandum. Therefore, we are adjusting the original rate to remove from the original CVD rate the subsidy of 0.90 percent attributable to POSCO's dual pricing scheme which is a program the Department has determined is no longer countervailable. As a result, the Department determines that a net countervailable subsidy of 2.36 percent would be likely to prevail if the order were revoked. This rate is the rate for all producers and exporters of subject merchandise from Korea, other than POSCO.

### 3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The following programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

*Reserve for Export Loss--Article 16 of the TERCL:* Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

*Reserve for Overseas Market Development - Article 17 of the TERCL:* A domestic person engaged in a foreign trade business can establish a reserve fund equal to one percent of its foreign

trade business exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

The following programs do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement; however, they could be found inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. We note that Article 6.1 of the Subsidies Agreement expired effective January 1, 2000. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Therefore, we are providing the ITC with the following program descriptions.

*Direction of Credit Loans Inconsistent with Commercial Considerations:* The GOK controls the practices of lending institutions in Korea and the steel sector receives a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits.

*Kwangyang Bay:* The GOK's infrastructure development at Kwangyang Bay constituted a specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user of the infrastructure.

*Short-Term Export Financing:* There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. We found this program to be countervailable because the interest rates charged on the loans were less than what a firm would have had to pay on a comparable short-term commercial loan.

*Technical Development Reserve Funds Under Article 8 of TERCL:* Article 8 of the TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three-percent reserve. Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determined that the program is countervailable. We note that the Department determined that the TERCL was replaced by the RSTA on December 28, 1998 (Article 8 of the TERCL was replaced by RSTA Article 9).

Investment Tax Credits: Under the TERCL, companies in Korea are allowed to claim tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. Because Korean companies receive a higher tax credit for investments made in domestically produced facilities, investment tax credits received under Articles 10, 18, 25, 26, 27 and 71 constitute import substitution subsidies. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, a financial contribution is provided. This program is, therefore, countervailable. As noted above, the TERCL program was replaced by the RSTA on December 28, 1998.

Electricity Discounts Under the Requested Load Adjustment Program: The GOK introduced the Requested Loan Adjustment (RLA) in 1990 to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter in to an RLA contract with KEPCO. Under this contract, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. Because the electricity discounts were only provided to a small number of customers, this program provides a countervailable benefit.

Selective Depreciation Due to Revaluation of Assets: TERCL Article 56-2 (Special Treatment for Revaluation of Assets at the Time of Going Public) allows a company that is making an initial public offering to revalue its assets without meeting the requirement in the Asset Revaluation Act of a 25-percent change in the wholesale price index since the company's last revaluation.

Exemption of Bond Requirement for Port Use at Asan Bay: The GOK waived the bond requirement for exclusive use of a port facility for POSCO. This program meets the specificity requirements under section 771(5A)(D) of the Act, and is therefore countervailable. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. For all these reasons, we determined that this program conferred a countervailable benefit.

Price Discount Land Purchase at Asan Bay: The Asan Bay Industrial Site is a GOK constructed industrial estate. We determined that steel companies received price discounts on purchases at Asan Bay. In addition, the GOK provided additional savings to the steel companies by exempting them from the registration tax, education tax, and the acquisition tax which would normally be paid on purchases of land. We determined, therefore, that this program was countervailable.

Research and Development Grants: The GOK, through MOCIE, provides research and development grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. We determined that the benefits received under this program were steel specific and therefore countervailable.

Final Results of Review

As a result of this review, we find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
Dongkuk Steel Mill, Ltd.	2.36
All others <sup>3</sup>	2.36

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish in the final results of review in the *Federal Register*.

AGREE: \_\_\_\_\_

DISAGREE: \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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(Date)

<sup>3</sup> POSCO was excluded from the order on the basis of a *de minimis* net subsidy rate of 0.82 percent. See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plated From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).