

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-851]

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

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

SUMMARY: The Department of Commerce is conducting an administrative
review of the countervailing duty order on dynamic random access memory
semiconductors from the Republic of Korea for the period January 1,
2007, through December 31, 2007. We preliminarily find that Hynix
Semiconductor, Inc. received countervailable subsidies during the
period of review, which result in a de minimis subsidy rate. If these
preliminary results are adopted in our final results of this review, we
will instruct U.S. Customs and Border Protection not to assess
countervailing duties as detailed in the "Preliminary Results of
Review" section of this notice. Interested parties are invited to
comment on these preliminary results. See the "Public Comment"
section of this notice.

EFFECTIVE DATE: August 4, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2003, the Department of Commerce ("the Department")
published a countervailing duty order on dynamic random access memory
semiconductors ("DRAMs") from the Republic of Korea ("ROK"). See
Notice of Countervailing Duty Order: Dynamic Random Access Memory
Semiconductors from the Republic of Korea, 68 FR 47546 (August 11,
2003) ("CVD Order"). On August 1, 2008, the Department published a
notice of "Opportunity to Request Administrative Review" for this
countervailing duty order. See Antidumping or Countervailing Duty
Order, Finding, or Suspended Investigation; Opportunity To Request
Administrative Review, 73 FR 44966 (August 1, 2008). On August 28,
2008, we received a request for review from Hynix Semiconductor, Inc.
("Hynix"). On September 2, 2008, we received a request for review of
Hynix and its affiliates from the petitioner, Micron Technology, Inc.
("Micron"). In accordance with 19 CFR 351.221(c)(1)(i), we published
a notice of initiation of the review on September 30, 2008. See
Initiation of Antidumping and Countervailing Duty Administrative
Reviews and Requests for Revocation in Part, 73 FR 56795 (September 30,
2008).

On December 12, 2008, we issued countervailing duty questionnaires
to the Government of the Republic of Korea ("GOK") and Hynix. We
received responses to these questionnaires on January 29, 2009. On

March 17, 2009, we issued supplemental questionnaires to the GOK and Hynix. We received timely responses to these supplemental questionnaires on April 14, 2009. We issued additional supplemental questionnaires to the GOK and Hynix on July 10, 2009 and received responses on July 23, 2009 and July 17, 2009, respectively.

We received new subsidy allegations from Micron on February 17, 2009.¹¹ On July 7, 2009, we decided not to initiate an investigation of any of the new subsidies that Micron alleged in this administrative review. In addition, we stated the timing of the benefit of a previously countervailed debt-to-equity swap ("DES") is not a new subsidy, but rather a valuation issue, and we would not reexamine the issue absent new information that would cast substantial doubt on our finding. See Memorandum to Susan Kuhbach, Director, Office 1, entitled "Fifth Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors from Korea: New Subsidy Allegations Memorandum" (July 9, 2009) ("NSA Memo"), available in the Central Records Unit, Room 1117 of the main Department building.

¹¹ See submission from Micron to the Department, Re: Dynamic Random Access Memory Semiconductors From Korea: New Subsidy Allegation (February 17, 2009) ("New Subsidy Allegations").

On April 14, 2009, we published a postponement of the preliminary results in this review until August 3, 2009. See

[[Page 38580]]

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review, 74 FR 17166 (April 14, 2009).

Scope of the Order

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

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

The scope of the order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of the order are removable memory modules placed on motherboards,

with or without a central processing unit, unless the importer of the motherboards certifies with U.S. Customs and Border Protection ("CBP") that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of the order does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to the order are currently classifiable under subheadings 8542.21.8005, 8542.21.8020 through 8542.21.8030, and 8542.32.0001 through 8542.32.0023 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.1040, 8473.30.1080, 8473.30.1140, and 8473.30.1180 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8443.99.2500, 8443.99.2550, 8471.50.0085, 8471.50.0150, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.61.0000, 8517.62.0010, 8517.62.0050, 8517.69.0000, 8517.70.0000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, 8542.21.8005, 8542.21.8020, 8542.21.8021, 8542.21.8022, 8542.21.8023, 8542.21.8024, 8542.21.8025, 8542.21.8026, 8542.21.8027, 8542.21.8028, 8542.21.8029, 8542.21.8030, 8542.31.0000, 8542.33.0000, 8542.39.0000, 8543.89.9300, and 8543.89.9600 of the HTSUS. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope.

Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. ("Cisco"), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the order. See CVD Order. The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the CVD Order provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. See Memorandum from Stephen J. Claeys to David M. Spooner, regarding Final Scope Ruling, Countervailing Duty Order on DRAMS from the Republic of Korea (January 12, 2006).

Period of Review

The period for which we are measuring subsidies, i.e., the period of review ("POR"), is January 1, 2007, through December 31, 2007.

Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003). The Department's new methodology is based on a rebuttable "baseline" presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life ("AUL") of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value. Hynix did not challenge this

baseline presumption. See Hynix's January 29, 2009, questionnaire response at 12.

Subsidies Valuation Information

Allocation Period

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

Discount Rates and Benchmarks for Loans

For loans that we found countervailable in the investigation or in the prior administrative reviews, and which continued to be outstanding during the POR, we have used the benchmarks from the prior administrative reviews.

Long-term Rates

Countervailable Loans from Prior Reviews

For long-term, won-denominated loans originating in 1986 through 1995, we used the average interest rate for three-year corporate bonds as reported

[[Page 38581]]

by the Bank of Korea ("BOK") or the International Monetary Fund ("IMF"). For long-term won-denominated loans originating in 1996 through 1999, we used annual weighted averages of the rates on Hynix's corporate bonds, which were not specifically related to any countervailable financing. We did not use the rates on

Hynix's corporate bonds for 2000-2003 for any calculations because Hynix either did not obtain bonds or obtained bonds through countervailable debt restructurings during those years.

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

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

For countervailable long-term foreign-currency denominated loans reported by Hynix, we used, where available, the company-specific,

weighted-average interest rates on the company's comparable commercial foreign currency loans from foreign bank branches in the ROK, foreign securities, and direct foreign loans outstanding during the POR. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), we used the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such loans were unavailable, the Department, consistent with 19 CFR 351.505(a)(3)(ii), followed its prior practice and relied upon lending rates as reported in the IMF's International Financial Statistics Yearbook. See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) and accompanying Issues and Decision Memorandum at 57.

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies

We examined the following programs determined to confer subsidies in the investigation

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

A. GOK Entrustment or Direction Prior to 2004

In the investigation, the Department determined that the GOK entrusted or directed creditor banks to participate in financial restructuring programs, and to provide credit and other funds to Hynix, in order to assist Hynix through its financial difficulties. The financial assistance provided to Hynix by its creditors took various forms, including new loans, convertible and other bonds, extensions of maturities and interest rate reductions on existing debt (which we treated as new loans), Documents Against Acceptance ("D/A") financing, usance financing, overdraft lines of credit, debt forgiveness, and DES. The Department determined that these were financial contributions that constituted countervailable subsidies during the period of investigation.

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

In an administrative review, we do not revisit past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would compel us to reconsider those findings. See, e.g., *Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR 45676, 45680 (July 30, 2004), unchanged in *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004). No such new factual information or evidence of changed circumstances has been placed on the record in this review. Thus, we preliminarily find that a re-examination of the Department's findings in the investigation and prior administrative reviews with respect to the debt forgiveness, loans, and extensions of maturities and/or interest rate deductions on existing debt is unwarranted.

Micron argues in its New Subsidy Allegations submission that the Department should reconsider its decision on the timing of the 2002 DES and find that the DES occurred in 2003. As noted above, we stated that the issue was not a new subsidy allegation, but rather a subsidy valuation issue, and we would not consider reexamining the issue absent new information that casts substantial doubt on this finding. See NSA Memo at 7.

In its argument, Micron provides new information\2\ with regard to one aspect of its claims, namely that the contingency requiring shareholder approval of a 21:1 capital reduction was not pro forma. Micron's "new information" is the list of Hynix board members at the time of the Micron deal in April 2002, who had unanimously rejected the deal, and the list of Hynix board members at the time of the Creditors' Council's restructuring plan in January 2003. See Micron's February 17, 2009, submission at 22. According to Micron, the lists show that three members of Hynix's board of directors ("BOD"), remained on the board following its vote on the Micron deal. Thus, Micron asserts, because the BOD still included members who had previously rejected the Micron deal, the BOD could still exercise independent judgment and would not merely "rubber stamp" any deal proposed by the Creditors' Council. As such, Micron concludes, the approval of the DES was not pro forma.

\2\ The list of Hynix board members at the time of the Micron vote, cited by Micron in its February 17, 2009, submission, was on the record of the second administrative review. However, Micron argues this same information was not on the record of the third administrative review when the Department last reconsidered this issue.

In DRAMS 1st AR, the Department determined that as the Creditors' Council controlled Hynix and its December 2002 approval was the singular factor in effectuating the restructuring. See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 71 FR 14174 (March 21, 2006), and accompanying Issues and Decision Memorandum at Comment 13 ("DRAMS 1st AR"). This decision was upheld by the Court of International Trade ("CIT").

[[Page 38582]]

See Micron Technology, Inc. v. United States, 535 F. Supp. 2d 1336, 1344 (CIT 2007). In DRAMS 3rd AR, we reexamined the timing of the 2002 DES based on new information submitted by Micron and concluded,

As stated in the AR1 Decision Memorandum and the Preliminary Results, the Creditors' Council owned a majority of shares of the company and effectively controlled the company. {See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 71 FR 14174 (March 21, 2006), and accompanying Issues and Decision Memorandum at 77 ("AR1 Decision Memorandum") and Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review 72 FR 51611 (September 10, 2007) ("Preliminary Results").} This situation effectively made its December 2002 approval the singular factor in effectuating the restructuring and the new information does not call into question the Creditors' Council's dominant role in the process nor raise questions as to whether the minority shareholders' opposition was significant enough to have an impact on or to alter the eventual terms and passage of the agreement. See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 73 FR 14218 (March 17, 2008) ("DRAMS 3rd AR") and accompanying Issues and Decision Memorandum at Comment 1. Thus, in our original and subsequent determinations on the timing of the 2002 DES, one of the underlying bases for our decisions was the Creditors' Council's majority stake in Hynix and its effective control over the company.

In submitting the "new information," Micron does not contest this

premise, but it highlights the fact that three members of the BOD remained after its unanimous rejection of the Micron deal in April 2002 and, Micron argues, therefore, that the BOD vote on the restructuring in January 2003 was not pro forma. However, based upon the information submitted by Micron, the simple fact that three members remained on the BOD from the time of the Micron vote to the restructuring vote does not cast substantial doubt on our finding that the Creditors' Council's majority ownership and control of Hynix meant that the Creditors' Council's approval of the restructuring in 2002 was the single effectuating event for the DES. Therefore, absent any other new information that might compel us to reconsider our prior determination, we will not reexamine it in the context of this administrative review. See *PPG Industries v. United States*, 978 F.2d 1232, 1242 (Fed. Cir. 1992). See also, *Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR at 45680, unchanged in *Certain Pasta from Italy: Final Results of Seventh Countervailing Administrative Review*, 69 FR 70657.

As the benefit from the 2002 DES was fully allocated in the prior administrative review and we are not reexamining our prior decision, we are only including in our benefit calculation the following financial contributions countervailed in the investigation and prior administrative reviews: bonds, debt forgiveness, and long-term debt outstanding during the POR. In calculating the benefit, we have followed the same methodology used in prior administrative reviews.

For loans, we have followed the methodology described at 19 CFR 351.505(c) using the benchmarks described in the "Discount Rates and Benchmarks for Loans" section above.

We divided the total benefits allocated to the POR from the various financial contributions by Hynix's POR sales. On this basis, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent ad valorem during the POR. Therefore, consistent with our past practice, we did not include this program in our preliminary net countervailing duty rate. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 16 ("CFS"); and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration," ("Uranium from France") (citing Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: *Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies")

B. Operation G-7/HAN Program

Implemented under the Framework on Science and Technology Act, the Operation G-7/HAN Program ("G-7/HAN Program") operated from 1992 through 2001. The purpose of this program was to raise the GOK's technology standards to the level of the G-7 countries. The Department found that the G7/HAN Program ended in 2001. See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at 25. However, during the POR, Hynix had outstanding loans that it had previously received under this program. See Hynix's January 29, 2009, questionnaire response at 14 and Exhibit 10.

We found that the G-7/HAN Program provided countervailable subsidies in the investigation. No interested party provided new evidence that would lead us to reconsider our earlier finding.

Therefore, we continue to find that these loans confer a

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Subsidy Valuation Information" section of this notice. Next, we divided the total benefit by Hynix's total sales of subject merchandise for the POR to calculate the countervailable subsidy. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent ad valorem during the POR.

C. 21st Century Frontier R&D Program

The 21st Century Frontier R&D Program ("21st Century Program") was established in 1999 with a structure and governing regulatory framework similar to those of the G-7/HAN Program, and for a similar purpose, i.e., to promote greater competitiveness in science and technology. The 21st Century Program provides long-term interest-free loans in the form of matching funds. Repayment of program funds is made in the form of "technology usage fees" upon completion of the project, pursuant to a schedule established under a technology execution or implementation contract.

Hynix reported that it had loans from the 21st Century Program outstanding during the POR. See Hynix's January 29, 2009, questionnaire response at 15 and Exhibit 10.

In the investigation, we determined that this program conferred a

[[Page 38583]]

countervailable benefit on Hynix. No interested party provided new evidence that would lead us to reconsider our earlier finding.

Therefore, we continue to find that these loans confer a countervailable subsidy.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Discount Rates and Benchmarks for Loans" section above. We then divided the total benefit by Hynix's total sales in the POR to calculate the countervailable subsidy rate. On this basis, we preliminarily find countervailable benefits of less than 0.005 percent ad valorem during the POR. Therefore, consistent with our past practice, we did not include this program in our preliminary net countervailing duty rate. See CFS and Uranium from France.

D. Import Duty Reduction Program for Certain Factory Automation Items

Article 95(1).4 of the Korean Customs Act provides for import duty reductions on imports of "machines, instruments and facilities (including the constituent machines and tools) and key parts designated by the Ordinance of the Ministry of Finance and Economy for a factory automatization applying machines, electronics or data processing techniques."

Hynix reported that it had received duty reductions under this program during the POR. See Hynix's January 29, 2009, questionnaire response at 16 and Exhibit 13.

In a prior administrative review, the Department found that the above program provided a financial contribution in the form of revenue forgone and a benefit in the amount of the duty savings. See DRAMS 3rd AR Final and the accompanying Issues and Decision Memorandum at 6 - 7 and Comment 6. The Department also found the program to be de facto specific under section 771(5A)(D)(iii)(III) of the Act. Id. No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these duty reductions confer a countervailable subsidy.

To calculate the benefit, we divided the total duty savings Hynix received during the POR by Hynix's total sales during the POR. On this

basis, we preliminarily determine the countervailable subsidy to be 0.01 ad valorem percent during the POR.

II. Program Preliminarily Determined To Confer Subsidies

A. Import-Export Bank of Korea Import Financing

In the fourth administrative review the Department did not make a finding on the countervailability of this program and said it would examine this program in a subsequent administrative review. See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 7395 (February 17, 2009) and accompanying Issues and Decision Memorandum at 7.

As outlined in Article 18, paragraph 1, subparagraph 4 of the Import-Export Bank of Korea ("KEXIM") Act, the "Import Financing Program" is provided to Korean importers to facilitate their purchase of essential materials, major resources, and operating equipment, the stable and timely supply of which is essential to the stability of the general economy. The equipment and materials eligible to be imported under the program fall under 13 headings listed in Article 14 of the KEXIM Business Manual. The listed items range from raw materials to factory automation equipment and include products and materials described in government notices.

Further, according to the GOK, any Korean company is eligible for the "Import Financing Program" as long as the equipment or material appears under the 13 headings of eligible items, the company can satisfy the financial criteria laid out in "KEXIM's Credit Extension Regulation," and KEXIM's Credit Extension Committee approves the financing application. Regarding the last item, the GOK stated that all decisions to offer this financing are based on the application and financial status of the applicant company.

Hynix received loans from KEXIM under this program in 2006 and 2007. See Hynix's April 14, 2009, supplemental questionnaire response at 3. See also, GOK's April 14, 2009, supplemental questionnaire response at 1.

We preliminarily determine that loans under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and also provide benefits equal to the difference between what Hynix paid on its loans and the amount it would have paid on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act.

Regarding specificity, information submitted by the GOK shows that loans provided under the program are available to any enterprise that meets the criteria as described above. See, e.g., GOK's January 29, 2009, questionnaire response at 12-14 and GOK's April 14, 2009, supplemental questionnaire response at Exhibit 5. Further, the GOK reported that eligibility is not limited by law to any enterprise or group of enterprises, or to any industry or group of industries. Id. Therefore, we preliminarily determine that there is no basis to find this program de jure specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is de facto specific, we examine the four de facto specificity factors under section 771(5A)(D)(iii) of the Act. The GOK provided program usage data for 2003 through 2007 showing the number of industries that received loans under this program as well as the number of recipients and the total amount financed for the same period grouped by industry, region, and eligible item. See GOK's April 14, 2009, supplemental questionnaire response at 8-12 and 14-16, and GOK's July 23, 2009, supplemental questionnaire response at 2-7. We preliminarily determine that the number of enterprises receiving this subsidy is limited within the meaning of section 771(5A)(D)(iii)(I) of the Act because only 482 companies received this award from 2003 through 2007. See GOK's April 14, 2009, supplemental questionnaire response at 12. Thus, we find the

program to be de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Therefore, we preliminarily find loans provided by KEXIM under this program provide countervailable benefits to Hynix.

To calculate the benefit under this program, we used the benchmarks described in the "Discount Rates and Benchmarks for Loans" section above, as well as the methodology described in 19 CFR 351.505(c). On this basis, we preliminarily determine that Hynix received a countervailable subsidy of 0.04 percent ad valorem under this program.

III. Program Preliminarily Found to Have Provided No Benefits

A. Short-Term Export Financing

KEXIM provides short-term export financing to small-, medium- and large-sized companies (not including companies included in the largest five conglomerates in the ROK, unless the company's headquarters is located outside the Seoul Metropolitan area). The loans are not tied to particular export transactions. However, a company, along with the financing application, must provide its export performance periodically for review by KEXIM. Further, any loan agreement

[[Page 38584]]

may only cover an amount ranging from 50 to 90 percent of the company's export performance up to 30 billion won.

Hynix received a loan under this program during the POR and provided documentation (e.g. loan application, approval document, and loan agreement), as well as data regarding the loan amount and interest paid during the POR. See Hynix's April 14, 2009, supplemental questionnaire response at 3 and 5. Upon examination of the documentation as well as the loan amount and interest paid during the POR, the Department preliminarily determines that there was no measurable benefit. Accordingly, it is unnecessary in this review for the Department to make a finding as to the countervailability of this program for this POR. We will include an examination of this program in a future administrative review.

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

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

A. Reserve for Research and Human Resources Development (formerly Technological Development Reserve) (Article 9 of RSTA / formerly, Article 8 of TERCL)

B. Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA / Article 25 of TERCL)

C. Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)

D. Reserve for Overseas Market Development (formerly, Article 17 of TERCL)

E. Reserve for Export Loss (formerly, Article 16 of TERCL)

F. Tax Exemption for Foreign Technicians (Article 18 of RSTA)

G. Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)

H. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/ FIPA (Formerly Foreign Capital Inducement Law)

I. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

J. Export Insurance

K. Electricity Discounts Under the RLA Program

L. Import Duty Reduction for Cutting Edge Products

M. System IC 2010 Project

See Hynix's January 29, 2009, questionnaire response at 20 and the GOK's January 29, 2009, questionnaire response at 22.

In the first administrative review, the Department found that "any benefits provided to Hynix under the System IC 2010 Project are tied to non-subject merchandise" and, therefore, that "Hynix did not receive any countervailable benefits under this program during the POR," in accordance with 19 CFR 351.525(b)(5). See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006), and the accompanying Issues and Decision Memorandum at 15. No new information has been provided with respect to this program. See Hynix's April 14, 2009 supplemental questionnaire at 1. Therefore, we preliminarily find that Hynix did not receive any countervailable benefits from the System IC 2010 Project during the POR.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Hynix, the producer/exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for Hynix for calendar year 2007 is 0.06 percent ad valorem, which is de minimis in accordance with 19 CFR 351.106(c)(1). Consequently, if these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate shipments of DRAMs by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2007, through December 31, 2007, without regard to countervailing duties. See 19 CFR 351.106(c)(1). We intend to issue these instructions 15 days after publication of the final results of this review.

On October 3, 2008, the Department published a Federal Register notice that, inter alia, revoked this order, effective August 11, 2008. See *Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Sunset Review and Revocation of Order*, 73 FR 57594 (October 3, 2008). As a result, CBP is no longer suspending liquidation for entries of subject merchandise occurring after the revocation. Therefore, there is no need to issue new cash deposit instructions in the final results of this administrative review.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

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

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

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

Dated: July 28, 2009.

**The Dumping and Subsidizing of
Cold-Rolled Steel in Coils and Strip**

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-18597 Filed 8-3-09; 8:45 am]

ia.ita.doc.gov/frn/2009/0908frn/E9-18597.txt

Public Attachment 186

COMPLAINT

BILLING CODE 3510-DS-S