

**DEPARTMENT OF COMMERCE****International Trade Administration**

(C-580-862)

**Ni-Resist Piston Inserts from the Republic of Korea: Preliminary Negative 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 not being provided to producers and exporters of Ni-resist piston inserts from the Republic of Korea (Korea).

**EFFECTIVE DATE:** July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1009.

**SUPPLEMENTARY INFORMATION:****Case History**

On January 26, 2009, the Department received a countervailing duty (CVD) petition concerning Ni-resist piston inserts from Korea filed in proper form by Korff Holdings, LLC, doing business as Quaker City Castings (Petitioner). This investigation was initiated on February 17, 2009. *See Ni-Resist Piston Inserts from Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations*, 74 FR 8054 (February 23, 2009) (*Initiation Notice*), and accompanying Initiation Checklist.<sup>1</sup> On March 20, 2009, the Department postponed the deadline for the preliminary determination by 65 days to no later than June 29, 2009. *See Ni-Resist Piston Inserts from Argentina and the Republic of Korea: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigations*, 74 FR 11910 (March 20, 2009).

On March 4, 2009, the Department selected Incheon Metal Co., Ltd. (Incheon Metal) as the mandatory respondent in this investigation. *See* Memorandum from the Team through Melissa Skinner, Director, Office 3, Operations, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty

Operations, regarding "Respondent Selection" (March 4, 2009).<sup>2</sup>

On March 6, 2009, we issued the initial CVD questionnaire to the Government of Korea (GOK) and Incheon Metal. On April 8, 2009, the GOK submitted its response to the initial CVD questionnaire. On April 28, 2009, Incheon Metal submitted its initial questionnaire response. On April 17, 2009, we issued a supplemental questionnaire to the GOK, to which it responded on April 28, 2009. On May 1, 2009, we issued a supplemental questionnaire to Incheon Metal, to which it submitted a response on May 29, 2009. On May 11, 2009, we issued a second supplemental questionnaire to the GOK, which submitted its response on May 18, 2009. On June 2, 2009, we issued a third supplemental questionnaire to the GOK. On June 11, 2009, the GOK submitted its response to the third supplemental questionnaire.

On April 20, 2009, petitioner submitted new subsidy allegations regarding six programs. On May 13, 2009, the Department initiated investigations of the six newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding "New Subsidy Allegations" (May 13, 2009). Questionnaires regarding these newly alleged subsidies were sent to the GOK and Incheon Metal on May 13, 2009. The GOK and Incheon Metal submitted their response to the questionnaires on the new subsidy allegations on June 10, 2009.

On May 11, 2009, petitioner submitted additional new subsidy allegations regarding one program. On May 27, 2009, the Department initiated an investigation of the one newly alleged subsidy program pursuant to section 775 of the Act. *See* Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding "Additional New Subsidy Allegations" (May 27, 2009). Questionnaires regarding this newly alleged subsidy were sent to the GOK and Incheon Metal on May 29, 2009. The GOK and Incheon Metal submitted their responses to the questionnaires on the additional new subsidy allegation on June 12, 2009.

**Scope of the Investigation**

The scope of this investigation includes all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names

including, but not limited to, "Ring Carriers," or "Alfin Inserts." Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5% - 17.5% Ni (nickel), 5.5% - 8.0% Cu (copper), 0.8% - 2.5% Cr (chromium), 0.5% - 1.5% Mn (manganese), 1.0% - 3.0% Si (silicon), 2.4% - 3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A-436 grade 1.

The scope of this investigation does not include piston rings nor did any other product manufacture using the Ni-resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of these investigations.

**Injury Test**

Because Korea is a "Subsidies Agreement Country" within the 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 March 25, 2009, 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 Korea of subject merchandise. *See Ni-Resist Piston Inserts from Argentina and Korea*, USITC Pub.4066, Inv. Nos. 701-TA-460-461, (March 2009) (Prelim.).

**Period of Investigation**

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year for the two respondents. *See* 19 CFR 351.204(b)(2).

**Allocation Period**

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken

<sup>1</sup> A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

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

from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 13 years. No interested party has claimed that the AUL of 13 years is unreasonable.

## ANALYSIS OF PROGRAMS

### Program Preliminarily Determined To Be Countervailable

#### *A. Tax Benefits under the Namdong National Industrial Complex Program*

During the POI Incheon Metal received tax benefits under the Namdong National Industrial Complex pursuant to the Framework Act on small and medium-sized enterprises (SMEs) from the GOK. Any SME involved in manufacturing, transportation, or information technology can locate inside the Namdong National Industrial Complex and receive assistance from the government. Under the program, firms inside the complex are eligible to receive exemptions from acquisition and registration taxes that are normally due on real estate transactions. Incheon Metal reported receiving such tax exemptions during the POI in connection with real estate transactions during the POI.

We preliminarily determine that the Incheon Metal received a financial contribution in the form of revenue forgone from the GOK within the meaning of section 771(5)(D)(ii) of the Act and that the exemptions are specific within the meaning of section 771(5A)(D)(iv) of the Act, because they limited to enterprises located inside the Namdong National Industrial Complex. Incheon Metal is located within this complex.

Pursuant to section 771(5)(E) of the Act, we find the tax exemption confers a benefit in the amount equal to the exemption during the POI. We divided the benefit under this program by Incheon Metal's total sales. The resulting net subsidy rate is less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we will find that the countervailable benefit is not measurable. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (HRC from India), and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at "Exemption from the CST."

### II. Programs Preliminarily Determined To Be Not Countervailable

#### *A. Technical Development for Innovation Production Environment (TDIPE)*

Incheon Metal's annual report indicates that it received grants from the GOK during the POI. *See* Incheon Metal's April 24, 2009 response at Exhibit 5. Supplemental questionnaire responses from Incheon Metal and the GOK indicate that Incheon Metal received two grants from the GOK's Small and Medium Business Administration under the TDIPE. *See* Incheon Metal's May 29, 2009 response at 2–3. In the narrative of its supplemental questionnaire response, Incheon Metal indicated that SME's that purchase equipment classified under Harmonized Tariff System (HTS) Chapters 10 through 33 are eligible to receive grants under the TDIPE. The GOK's description of the program and the portions of the TDIPE regulations and sample application forms submitted by the GOK do not make any reference to the grants being limited to purchases of equipment under HTS chapters 10 through 33. *See* GOK's June 12, 2009 response at Exhibits S–29 and S–30. In response to our request, the GOK also submitted information concerning the enterprises and industries that received grants under the TDIPE program during the period 2005 through 2008. *See* GOK's June 12, 2009 response at 19.

Based on our analysis of the information submitted by the GOK regarding the TDIPE program, including a copy of the relevant legislation, we preliminarily determine that the grants under the program are not *de jure* specific within the meaning of sections 771(5A)(A), (B), (C) and (D)(i) and (ii) of the Act. *See also* 19 CFR 351.502(e) and *see also* the GOK's June 12, 2009, response at Exhibits S–29 and S–30.

Where the Department finds no *de jure* specificity, section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are *de facto* specific, that is, whether the benefits are specific as a matter of fact. Subparagraphs under section 771(5A)(D)(iii) of the Act stipulate that a program is *de facto* specific if one or more of the following factors exist:

- (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- (II) An enterprise or industry is a predominant user of the subsidy.
- (III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department's request for information regarding these factors, the GOK provided the Department with a breakdown of the issuance of grants (both in terms of amounts and number of recipients), by industry, for the years 2005 through 2008. *See* GOK's June 12, 2009, questionnaire response at 19 and the Department's June 25, 2009, Memorandum to the File (Preliminary *De Facto* Specificity Analysis Memorandum), of which a public version is available in the Central Records Unit in Room 1117. In conducting our *de facto* specificity analysis, we examined the grant amounts issued by the GOK as well as the number of recipients, by industry, during the POI and each of the preceding three years. Specifically, we compared the amount of grants under the TDIPE program that were issued to the metals industry to the amount of grants that were issued to other industries under this program. We conducted the same analysis with regard to the number of recipients. *See* Preliminary *De Facto* Specificity Analysis Memorandum.

Based on our analysis of the data for the TDIPE program, we preliminarily determine that the benefits received by Incheon Metal or the metals industry under this program were not *de facto* specific within the meaning of sections 771(5A)(D)(iii)(I) through (III) of the Act, *i.e.*, we find no limitation as to the number of recipients, predominant use or disproportionate share, of the subsidy. Lastly, we preliminarily determine that there is no evidence on the record of the investigation indicating that the GOK exercised discretion in the decision to issue TDIPE grants which indicates that the metals industry was favored over other industries within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

Consequently, the Department preliminarily determines that the grants received by Incheon Metal under this program are neither *de jure* nor *de facto* specific and, therefore, not countervailable. We will continue to examine this program in this proceeding.

#### *B. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (Formerly Article 8 of TERCL)*

This program allows a company operating in manufacturing or mining,

or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three-percent reserve.

The Department has previously determined that firms that are entitled to establish a reserve up to the three percent level do not receive a countervailable subsidy. *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 in final results). Incheon Metal indicated in its questionnaire response that it established its reserve up to the three percent level. Consequently, we preliminarily determine that Incheon Metal's use of the program is not countervailable.

#### *C. Programs Preliminarily Determined To Have Been Terminated*

##### *1. Energy Rate Reductions Under the Request Load Adjustment Program*

Petitioner contends that the GOK provides reduced energy rates to companies that reduce their demand by twenty percent. Businesses are eligible

for a discount of 440 won per kW under the Requested Load Adjustment program. The GOK reported in its response that the program had been terminated as of January 1, 2005, by the Korean Electric Power Corporation and did not provide any residual benefits. *See* GOK's April 8, 2009, response at 5. Information submitted by the GOK, including translated copies of the relevant regulation, shows that the regulation covering the program has been abolished. *See* GOK's April 28, 2009, supplemental response at 3 and Exhibits S-1 and S-2. The GOK also stated that it has not implemented a successor program. Therefore, subject to verification, we preliminarily determine that this program has been terminated.

##### *2. Reserve for Investment Funds*

Petitioner alleged that this program allowed Korean firms engaged in manufacturing and mining outside of Seoul to establish a tax reserve. Petitioner further contended that the tax reserve allows eligible firms to reduce their taxable income in a given year and that the program is limited to a geographic area outside of Seoul. The GOK reported that the program was terminated on August 31, 1999, and that the relevant portion of the Restriction of Special Taxation Act was deleted. The GOK provided documentation demonstrating its assertion. *See* GOK's April 8, 2009, response at 7 and Exhibit 7. Therefore, subject to verification, we preliminarily determine that this program has been terminated.

#### *D. Programs Preliminarily Determined To Be Not Used*

1. Short-Term Export Financing
2. Loans under the Industrial Base Fund
3. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program
4. Subsidized Loans and Guarantees through the Korea Development Bank
5. Export Insurance and Guarantees through the Korea Export Insurance Corporation
6. SME Financing through the Industrial Bank of Korea
7. Export and Import Credit Financing and Guarantees from the Korean Export-Import Bank
8. Export and Import Credit Financing and Guarantees from the Korean Export-Import Bank
9. Financial Aid, Training Assistance and Export Services through the Small and Medium Business Administration
10. Free Economic Zone of Incheon

#### **Verification**

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by Incheon Metal and the GOK prior to making our final determination.

#### **Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

| Producer/Exporter            | Subsidy Rate                                |
|------------------------------|---------------------------------------------|
| Incheon Metal Co., Ltd. .... | <i>de minimis</i> percent <i>ad valorem</i> |
| All Others .....             | <i>de minimis</i> percent <i>ad valorem</i> |

Therefore, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of Ni-resist pistons in Korea. Further, we will direct U.S. Customs and Border Patrol (CBP) not to require suspension of liquidation of all entries of Ni-resist pistons from Korea.

#### **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.

#### **Disclosure and Public Comment**

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. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further

discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

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 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 and 19 CFR 351.221(b)(4).

Dated: June 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-15967 Filed 7-2-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-807]

#### **Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). This review covers one company, Kolon Industries Inc. (Kolon) and the period October 2, 2007, through May 31, 2008. We preliminarily determine that Kolon has not made sales below normal value (NV). If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4475 or (202) 482-0649, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On June 9, 2008, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on PET film from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 32557 (June 9, 2008).

In accordance with Section 751 (a)(1) of the Tariff Act, as amended (the Act) and 19 CFR 351.213(b)(2), on June 30, 2008, Kolon requested an administrative review of the antidumping duty order on PET film from Korea. On June 30, 2008, DuPont Teijin Films (DuPont), Mitsubishi Polyester Film, Inc. (Mitsubishi), and Toray Plastics America Inc. (Toray) (collectively "Petitioners"), also requested a review of Kolon.

On July 30, 2008, the Department initiated an administrative review for Kolon covering the period October 2, 2007, through May 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferment of Administrative Review*, 73 FR 44220 (July 30, 2008).

On June 30, 2008, we issued our antidumping questionnaire to Kolon. We received Kolon's response to our questionnaire on September 10, 2008 (Section A) and October 3, 2008 (Sections B, C, and D). During the period December 18, 2008, through April 1, 2009, we issued supplemental questionnaires to Kolon. We received responses to those questionnaires from January 23, 2009, through April 24, 2009.

On February 23, 2009, we extended the deadline for the preliminary results of this review until no later than June 30, 2009. *See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Extension of Time Limit for the Preliminary Results of the 2007/2008 Administrative Review*, 74 FR 8054 (February 23, 2009).

On May 26, 2009, Petitioners submitted comments concerning the profitability of Kolon's home market and U.S. sales and the model match methodology that should be employed in this review. On June 9, 2009, Kolon submitted rebuttal comments to Petitioner's May 26, 2009 letter. *See the "Product Comparisons" section of this*

Notice, *infra*, for a discussion of the Model match methodology that we have employed in this review.

##### **Scope of the Order**

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

##### **Period of Review**

On August 20, 2008, Kolon requested that the Department amend the time frame covered by the review to the period April 3, 2008, to May 31, 2008. *See Kolon's August 20, 2008, letter.* Kolon noted that April 3, 2008, is the date that the Department published its final results of the changed circumstances review in which Kolon was formally reinstated within the order. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 73 FR 18259 (April 3, 2008) (*Final Results of CC Review*). Kolon asserted the Department has no basis to review transactions prior to the date Kolon was formally reinstated into the order.

On August 27, 2008, Petitioners filed a rebuttal to Kolon's August 20, 2008 letter. *See Petitioners' August 27, 2008, letter.* Petitioners noted the Department ordered CBP to suspend liquidation of Kolon's entries on October 2, 2007, which is the date the Department issued its Preliminary Results of the Changed Circumstances Review. *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Changed Circumstances Review and Intent to Reinstatement Kolon Industries, Inc. in the Antidumping Duty Order*, 72 FR 56048 (October 2, 2007). Petitioners assert that because the Department ordered suspension of liquidation with respect to Kolon's entries effective October 2, 2007, that date is the proper date for the beginning of the review period.