

of the Act. The term "authority" is defined in section 771(5)(B) of the Act as "a government of a country or any public entity within the territory of the country." As stated in the *Preamble* to the Department's regulations, " \* \* \* we intend to continue our longstanding practice of treating most government-owned corporations as the government itself." See *Preamble*, 63 FR 65402.

In order to assess whether an entity such as the KDB should be considered to be the government for purposes of countervailing duty investigations, the Department has in the past considered the following factors to be relevant: (1) Government ownership; (2) the government's presence on the entity's board of directors; (3) the government's control over the entity's activities; (4) 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 *Sheet and Strip*, 64 FR 30642-43.

According to the BOK in a February 2002 report on ROK financial institutions, most of the specialized banks are government-controlled banks. With regard to the KDB, all of the KDB's shares are held by the GOK. Additionally, according to the KDB Act, the KDB's purpose is "the supply and management of major industrial funds to promote industrial development and the advancement of the national economy." All of KDB's senior management and its auditor are appointed by the ROK President or the Ministry of Finance and Economy ("MOFE"). KDB's annual business plan must be approved on an annual basis by the MOFE, and the KDB is supervised by the MOFE (except for prudential supervision, which is carried out by the Financial Supervisory Commission ("FSC")). Any net losses suffered by the KDB are covered by the GOK according to Article 44 of the KDB Act.

The purpose of the IBK is "to promote independent economic activities for small and medium enterprises and to enhance their economic status in the national economy." The majority of the IBK's shares are held by the GOK. The IBK's top officials are appointed by the ROK President or by a GOK ministry. According to the IBK Act, one of the IBK's activities is to "perform business entrusted by the Government and public entities," and to "achieve the purpose of the bank {as noted above} with the

approval of the relevant Minister." The IBK's annual business plan and operations manual (including its lending methods) must be approved by the relevant minister. Any annual losses suffered by the IBK are covered by the GOK.

Based on this information and our past findings, we preliminarily determine that the KDB and the other specialized banks, such as the IBK, are government authorities. 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, there is no evidence currently on the record that these entities are 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. Therefore, we must determine whether these banks, as well as other ROK lenders, were directed or entrusted by the GOK to provide funds to the respondents during the period 1999 through the end of the POI. See section 771(5)(B)(iii) of the Act.

In late 1997, the financial crisis that had been plaguing many countries in Asia came to a head in the ROK. A severe foreign exchange crisis, coupled with a sharp increase in interest rates and a drop in economic output, caused many large companies to be unable to meet their debt obligations and liquidity needs. As a result, many companies experienced serious financial difficulties, and many banks were weakened by the rapid increase in non-performing loans, a situation that threatened the stability of the financial system itself.

According to the GOK, this financial crisis in late 1997 brought about many market-oriented changes in the financial sector in the ROK. For example, as discussed in *CTL Plate and Structural Beams*, in January 1998, the GOK announced closure of some banks, and in April 1998, it launched the FSC which, according to the GOK, is a central government organization established for the purpose of consolidating and improving the GOK's monitoring and supervision of financial institutions. (The FSC's authority was later expanded to also cover specialized banks.) According to the GOK, these changes were part of a larger package of reforms including legal, regulatory, and policy changes intended to transform the ROK financial sector into a better managed, better supervised, and more market-oriented sector of the economy.

As part of these reforms, in the period 1999 through 2002, several commercial banks in the ROK were closed or merged with other banks. The closure of weak financial institutions was, according to the GOK, one of the most dramatic policy changes in the ROK. The GOK also points to the opening of the financial markets to foreign ownership and investment as another major change. For example, majority ownership of Korea First Bank ("KFB") was sold to a foreign investor, and shares in other banks, such as Korea Exchange Bank ("KEB"), were sold to foreign investors. Additionally, the GOK worked to tighten rules on accounting and best practices by applying international standards.

Finally, as noted above, the GOK implemented many new laws, regulations, and practices with regard to the financial system. In May 1999, the KDB Act was amended to entrust the FSC with regulatory oversight of KDB's financial prudentiality. In January 2000, the Depositor Protection Act was revised to ensure that officers and employees of financial institutions that are responsible for financial troubles of their employer can be required to compensate the financial institution for damages. The Bank Act was also revised to set forth procedures for the licensing and supervision of banks. In March 2000, the KDB enforcement decree was amended to expand to the KDB the loan exposure limits that applied to other banks. In October 2000, the Corporate Restructuring Vehicle Act was enacted to facilitate the resolution of bad loans held by financial institutions. The Financial Holding Company Act was also enacted, which established financial holding companies in the ROK for the first time. In November 2000, Prime Minister's Decree, Instruction No. 408 ("*Prime Minister's Decree*"), was issued, stating that government officials at financial supervisory organizations, such as the MOFE and the FSC, were not to interfere in the operations of commercial and specialized banks.

In December 2000, the Public Funds Management Act was enacted to enhance transparency in the use of public funds. The Depositor Protection Act was also revised to allow the Korea Deposit Insurance Corporation ("KDIC") to request information directly from banks, and to request assistance from the FSC if a financial institution looks as if it may become insolvent. In September 2001, the Corporate Restructuring Promotion Act ("CRPA") was enacted to allow creditor banks to initiate prompt restructuring measures against potentially insolvent companies and to provide a more formal framework