C-580-869
Investigation
01/01/11 – 12/31/11
Public Document
O6: JMN

December 18, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Large Residential Washers from the Republic of Korea

I. Summary

On June 5, 2012, the Department published the Preliminary Determination in this CVD investigation.[1] In the Preliminary Determination, the Department identified certain programs which required additional information. The Department collected additional information in questionnaires subsequent to the Preliminary Determination. The Department conducted verification of the questionnaire responses submitted by the GOK,[2] Samsung,[3] and LG,[4] from September 17 through September 27, 2012.

The "Subsidy Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination, which are fully discussed in this memorandum.

[1] For this Issues and Decision Memorandum, we are using short citations to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short citations as well as a guide to the acronyms. See Appendix.
[2] See GOK Verification Report.
[3] See SEC Verification Report.
[4] See LGE Verification Report.

II. Subsidy Valuation Information

A. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

B. Cross-Ownership and Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[5]

LG

LG has reported that two of its input producers, LG Chemical and Kum Ah Steel, are cross-owned via their shared membership in the LG Group. The LG Group, in turn, is headed by a holding company, LG Corporation, which owns 33.2 percent of LG. According to LG, LG Chemical is an input producer and a member of the LG Group as a subsidiary of LG Corporation, its largest shareholder, which holds 33.53 percent of the company's outstanding shares. LG identified Kum Ah Steel as a producer and seller of steel products. Kum Ah Steel is 51 percent owned by LG International, of which LG Corporation owns 27.6 percent.
LG has acknowledged that LG, LG Chemical, and Kum Ah Steel share common ownership through LG Corporation, the holding company of the LG Group, and information on the record substantiates this claim. According to LG, LG Corporation is only a holding company with no sales of its own, and it received no assistance from the programs under investigation.[6] Based on this information, we found in the Preliminarily Determination that LG Chemical and Kum Ah Steel are cross-owned with LG, through LG Corporation, in accordance with 19 CFR 351.525(b)(6)(vi). There is no new information on the record that would cause the Department to revisit this decision for the purposes of this final determination.

[5] See Fabrique, 166 F. Supp. 2d at 600-604.
[6] See LG's April 9, 2012 response at 12.

In response to our initial questionnaire, LG reported that "(n)o company with which LGE shares cross-ownership supplied LGE with any input that is primarily dedicated to the production of the downstream product, i.e., large residential washers."[7] In its initial questionnaire response, LG reported that LG Chemical's and Kum Ah Steel's sales of inputs to LG, as a proportion of their total sales, are not large, and that the majority of LG Chemical's and Kum Ah Steel's products are sold to companies other than LG.[8] Moreover, information on the record does not indicate that the input products provided by LG Chemical and Kum Ah Steel are primarily dedicated to the production of the downstream product. On this basis, we affirm our finding in the Preliminary Determination that the inputs produced by LG Chemical and Kum Ah Steel are not primarily dedicated to the production of the downstream product within the meaning of 19 CFR 351.525(b)(6)(iv). In the CVD Preamble, the Department indicates that "it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles."[9] Analogous to this example from the CVD Preamble, we find it would not be appropriate to attribute subsidies provided to LG Chemical and Kum Ah Steel to LG because the materials they produce are used in the production of many different products in different industries, and because LG is not their primary or sole customer.

In addition, LG identified two cross-owned services providers: ServeOne, a cross-owned company that purchases goods from input producers and resells them to LG for use in the production of subject merchandise; and HBL, which is responsible for arranging and coordinating the transportation of merchandise, including subject merchandise, destined for export. ServeOne is a wholly-owned non-producing subsidiary of LG Corporation. ServeOne's Maintenance, Repair, Operation business unit is the division of ServeOne responsible for selling inputs to LG. ServeOne does not produce these inputs; instead it purchases them from other suppliers/producers and then resells them to LG. HBL is a wholly-owned subsidiary of LG.

LG acknowledged that LG and ServeOne share common ownership through their parent company LG Corporation, and information on the record substantiates this claim.[10] In addition, LG identified HBL as its wholly-owned non-producing subsidiary. Based on this information, we found in the Preliminarily Determination that ServeOne and HBL are cross-owned with LG in accordance with 19 CFR 351.525(b)(6)(vi). There is no new information on the record that would cause the Department to revisit this decision for the purposes of this final determination. As such, any countervailable subsidies that we identify and measure as conferred on ServeOne or HBL will be treated as a subsidy to LG. In the Preliminary Determination, the Department analyzed ServeOne as a cross-owned service provider, subsidies to which are attributable to the respondent in a manner consistent with the analysis contemplated by the CVD Preamble:

> Analogous to the situation of a holding or parent company is the situation where a government provides a subsidy to a non-producing subsidiary (e.g., a financial

[7] See LG's April 9, 2012 response at 16.
[8] See LG's April 9, 2012 response at Exhibit 24.
[9] See CVD Preamble, 63 FR at 65401.
[10] LG has reported that "all companies in the LG Group are ultimately controlled by LG Corporation or its majority shareholders, and all companies in the LG Group are affiliated and cross-owned." See LG's April 9, 2012 response at 15.

> subsidiary) and there are no conditions on how the money is to be used. Consistent with our treatment of subsidies to holding companies, we would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group that includes the non-producing subsidiary. See, e.g., Certain Steel Products from Belgium, 58 FR 37273, 37282 (July 9, 1993).[11]

LG reported and we verified that ServeOne used some of the programs under investigation, and that HBL did not receive subsidies under any of the programs under investigation during the POI or AUL. Accordingly, the subsidies received by ServeOne are appropriately attributed to LG, and there is no new information that warrants a change in the Department's finding for this final determination.[12]

In addition, the Department examined petitioner's allegation that subsidies received by LG's unaffiliated input suppliers should be attributed to LG. However, in the Preliminary Determination, the Department found that cross-ownership did not exist between LG and any of its unaffiliated input suppliers, within the meaning of 19 CFR 351.525(b)(6)(vi), based on control, common ownership, management, or family ties. There is no new information on the record since the Preliminary Determination that warrants a change to this finding for this final determination.

Samsung

In the Preliminary Determination, the Department determined that Samsung was cross-owned with SGEC, which was responsible for the manufacture of the subject merchandise in tax year 2010, the returns for which were filed during the POI, in accordance with 19 CFR 351.525(b)(6)(vi). This finding was based on evidence on the record demonstrating that SGEC was virtually wholly-owned by Samsung during 2010, and therefore Samsung was able to "use and direct the individual assets of" SGEC in "essentially the same ways it can use its own assets."[13] Effective January 1, 2011, SGEC was merged into Samsung and all washing machines are now produced directly within Samsung. When SGEC was merged into Samsung, Samsung assumed all of the assets and liabilities of SGEC, including SGEC's tax liability for the 2010 tax year that was identified in the tax return filed in 2011. Information on the record indicates that, although the SGEC tax return filed in 2011 was prepared and filed under the name of SGEC, the tax liability was borne by Samsung. Furthermore, Samsung was intrinsically involved with the production, sales, and marketing of the subject merchandise. As such, we find that over the AUL period preceding the POI, Samsung and SGEC were cross-owned, and all non-recurring subsidies to SGEC are properly attributable to Samsung pursuant to 19 CFR 351.525(b)(6)(i). As such, the Department is examining subsidies received by SGEC over the AUL and attributing any benefits allocated to the POI to the total sales of Samsung.

In addition, in the Preliminary Determination the Department found cross-ownership to exist between Samsung and two domestic cross-owned companies that provide it with services related to the production of subject merchandise. SEL is a wholly-owned non-producing subsidiary of

[11] See CVD Preamble, 63 FR at 65402.
[12] See Comment 16, below.
[13] See Preliminary Determination, 77 FR at 33184. See also 19 CFR 351.525(b)(6)(vi).

Samsung that provides logistics management and transportation services for Samsung's merchandise, including washing machines. SES is a non-producing subsidiary of Samsung which provides after-sale warranty services in Korea. Both SEL and SES are consolidated into Samsung's financial statement. Based on information provided by Samsung, the Department found in the Preliminarily Determination that SEL and SES were cross-owned with Samsung in accordance with 19 CFR 351.525(b)(6)(vi). These companies were wholly- or virtually wholly-owned by Samsung during the POI, and therefore Samsung was able to "use and direct the individual assets of" these companies in "essentially the same ways it can use its own assets."[14] There is no new information on the record that would cause the Department to revisit this decision for the purposes of this final determination. As such, in accordance with the CVD Preamble, any countervailable subsidies that we identify and measure as conferred on SEL or SES are being treated as a subsidy to Samsung.

In addition, the Department examined petitioner's allegations that subsidies received by Samsung's unaffiliated input suppliers should be attributed to Samsung. However, in the Preliminary Determination the Department found that cross-ownership did not exist between Samsung and any of its unaffiliated input suppliers, within the meaning of 19 CFR 351.525(b)(6)(vi), based on control, common ownership, management, or family ties. There is no new information on the record of this investigation since the Preliminary Determination that warrants a change to this finding for this final determination.

C. 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. The regulations at 19 CFR 351.524(d)(2) create a rebuttable presumption that the AUL will be taken from the IRS Tables. For household appliances, the IRS Tables prescribe an AUL of 10 years. During this investigation, none of the interested parties disputed this allocation period. Therefore, we continue to allocate non-recurring benefits over the 10-year AUL.

D. Interest Rate Benchmarks for Loans

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii). For the "KDB and IBK Short-Term Discounted Loans for Export Receivables" program, an analysis of any benefit conferred by loans from KDB or IBK to the respondents requires a comparison of interest actually paid to interest that would have been paid using a benchmark interest rate.

[14] See Preliminary Determination, 77 FR at 33184.

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided short-term loan program, the preference would be to use a company-specific annual average of interest rates of comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. LG received KDB and IBK short-term loans under the KDB/IBK loan program. We also verified that LG received loans from commercial banks that are comparable commercial loans within the meaning of 19 CFR 351.505(a)(2)(i). We determine that the information provided by LG about its commercial loans satisfies the preference expressed in 19 CFR 351.505(a)(2)(iv). As such, we have used LG's short-term commercial loans to calculate a benchmark interest rate that represents a company-specific annual average interest rate.

Samsung also received loans under the program. However, Samsung did not provide complete information about its comparable commercial loans that would provide an appropriate basis for an interest rate benchmark.[15] Specifically, Samsung limited its reporting of loan information to loans outstanding at the end of the financial reporting period, rather than reporting all comparable commercial loans that were outstanding during the POI.[16] Pursuant to 19 CFR 351.505(a)(3)(ii), where a firm has not reported comparable commercial loans during the POI, the Department may use a national average interest rate for comparable commercial loans. In this instance, the GOK also did not provide usable information regarding national average interest rates. Because no such data were available, we relied on appropriate published sources, placed on the record, for information regarding average short-term commercial interest rates to select benchmark interest rates to determine whether there was any benefit to Samsung from the KDB and IBK loans.[17]

III. Application of Facts Available, Including the Application of Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

At the outset of this investigation, the Department selected Daewoo as a mandatory company respondent. As a result of Daewoo's declared intention not to participate in this investigation and its decision not to respond to the initial questionnaire, the Department finds that Daewoo withheld information that was requested by the Department and failed to provide information within the deadlines established. Further, by not responding to the initial questionnaire, Daewoo significantly impeded this proceeding. Thus, in reaching our final determination, pursuant to

[15] See Comment 4, below.
[16] See id.
[17] See Samsung Final Calculation Memorandum.

sections 776(a)(1), (2)(A), (B) and (C) of the Act, we are basing the CVD rate for Daewoo on facts otherwise available.

In addition, it is the finding of the Department that an adverse inference is warranted, pursuant to section 776(b) of the Act. By deciding not to respond to the initial questionnaire, Daewoo did not cooperate to the best of its ability in this investigation. Accordingly, we find that AFA is warranted to ensure that Daewoo does not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in an investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[18] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[19]

In CVD proceedings the Department computes a total AFA rate for the non-cooperating company using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[20] Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero.[21] If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-de minimis rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-de minimis subsidy rate calculated for the same or for a similar program in the same country, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating company.[22]

On this basis, we determine the AFA subsidy rate for Daewoo to be 72.30 percent ad valorem. This rate does not include a rate for either the "K-SURE – Short-Term Export Credit Insurance" or "GOK Supplier Support Fund Tax Deduction" programs because we have determined that the K-SURE program is not countervailable during the POI, and that the "GOK Supplier Support

[18] See, e.g., Drill Pipe from China; see also Semiconductors from Taiwan, 63 FR at 8932.
[19] See SAA at 870.
[20] See, e.g., Lawn Groomers from China (Preliminary Determination), 73 FR at 70975 (unchanged in Lawn Groomers from China (Final Determination) and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"). See also Aluminum Extrusions from China and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[21] There is an exception to this approach for income tax exemption and reduction programs; because there are no such programs in this investigation, the exception is not applicable here.
[22] See Aluminum Extrusions from China and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies"; see also Lightweight Thermal Paper from China and accompanying IDM at "Selection of the Adverse Facts Available Rate."

Fund Tax Deduction" program cannot be used until 2012, after the POI. For a detailed discussion of the AFA rates selected for each program under investigation, see "Memorandum to the Dana S. Mermelstein from Milton Koch, Re: Large Residential Washers from the Republic of Korea: Affirmative Countervailing Duty Determination: Application of Adverse Facts Available to Daewoo Electronics Corporation," dated concurrently with this memorandum.

IV. Analysis of Programs

A. Programs Determined To Be Countervailable

1. KDB and IBK Short-Term Discounted Loans for Export Receivables

We verified that LG and Samsung used this program during the POI. Under this program, the GOK, through two government-owned policy banks, KDB and IBK, provides support to producers of washing machines by offering short-term export financing. This financing is designed to meet the needs of KDB and IBK clients for early receipt of discounted receivables prior to their maturity. Exporters pay the bank a "fee" that is effectively a discount rate of interest for the advance payment. In this arrangement, the bank is repaid when the importer pays the bank directly the full value of the invoice; the exporter no longer bears the liability of non-payment from the importer.[23]

In the Preliminary Determination, the Department found that the receipt of short-term discounted loans under this program is contingent upon export performance.[24] The Department continues to find that short-term discount loans from KDB and IBK are specific within the meaning of sections 771(5A)(A) and (B) of the Act. The loans offered by KDB and IBK constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent of the difference between the amount of interest the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.

LG reported having loans from IBK outstanding during the POI that were for exports of subject merchandise to the United States. Thus, in the Preliminary Determination, to calculate the benefit for LG, for each of these IBK loans, the Department compared the amount of interest paid on the IBK loans to the amount of interest that would be paid on a comparable commercial loan in accordance with 19 CFR 351.505(a).[25]

Where the interest actually paid on these IBK loans was less than the interest that would have been payable at the benchmark rate, the difference is the benefit. For each of these IBK loans, the interest that LG actually paid was greater than the interest that would have been paid at the benchmark interest rate. Therefore, there is no benefit to LG from the IBK loans it received during the POI.

[23] See GOK QNR 4/9 at II-56.
[24] See Preliminary Determination, 77 FR at 33192.
[25] See "Subsidies Valuation Information" section, above.

Samsung also provided information about individual KDB and IBK loans that it received during the POI. For the Preliminary Determination, the information provided by Samsung indicated that the loans it received under the program were not tied at the point of bestowal to specific merchandise. Thus, we measured the benefit from all of Samsung's IBK and KDB loans, for exports of all products to all markets, and we attributed that benefit to Samsung's total export sales.

Since the Preliminary Determination, however, we have gathered additional information regarding these loans and verified the loan information provided by Samsung on its KDB and IBK loans. Based on the new information provided, we are able to identify those loans that are attributable to shipments of subject merchandise to the United States. We calculated the benefit for Samsung from the KDB and IBK loans attributable to exports of subject merchandise that were outstanding during the POI by comparing the amount of interest paid on these loans to the amount of interest that would have been paid using a benchmark selected according to the hierarchy discussed in the "Interest Rate Benchmarks for Loans" section, above.[26] Because these loans are made on a discounted basis (i.e., interest is paid up-front at the time the loans are received), where necessary, we converted the nominal short-term interest rate benchmark to an effective discount rate. We compared the interest paid by Samsung to the interest payments, on a loan-by-loan basis, that Samsung would have paid at the benchmark interest rate. Where the actual interest paid was less than the interest that would have been payable at the benchmark rate, the benefit is the difference. We then summed the differences for each loan and divided this aggregate benefit by the company's exports of subject merchandise to the United States during the POI. We therefore determine a countervailable subsidy of 0.06 percent ad valorem for Samsung.

2. Income Tax Programs

a. Research, Supply, or Workforce Development Investment Tax Deductions for "New Growth Engines" under RSTA Article 10(1)(1)

This program was first introduced in 2010 for the purpose of facilitating Korean corporations' investments in their respective R&D activities relating to the New Growth Engine program. The statutory basis for this program is Article 10(1)(1) of the RSTA. Paragraph 1 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(1) of the RSTA and Appendix 7 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program. The goal of the New Growth Engine program is to boost general national economic activities. RSTA Article 10(1)(1) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to eligible technologies listed in Appendix 7 of the Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.

In the Preliminary Determination, the Department found that only Samsung received a tax credit under RSTA Article 10(1)(1) during the POI. The Department confirmed at verification the amount of the tax credit received by Samsung, and that none of its affiliated companies used the

[26] See Samsung Final Calculation Memorandum.

program.[27] At verification it was also confirmed that neither LG nor its affiliated companies used the program.[28]

The language of the implementing provisions and the related appendices for this tax program limits eligibility for the use of this program to a limited list of "new growth engines." Therefore, the Department continues to find, as it did in the Preliminary Determination, that the provision of this tax benefit is de jure specific pursuant to section 771(5A)(D)(i) of the Act to enterprises investing in "new growth engines" technology.

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

The tax credit provided under this program is a recurring benefit, because income taxes are due annually. Thus, the benefit is allocated to the year in which it is received.[29] To calculate the benefit to Samsung from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[30]

b. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)

This program was first introduced in 2010 for the purpose of facilitating Korean corporations' investments in their respective R&D activities relating to core technologies covered by the New Growth Engine program. The statutory basis for this program is Article 10(1)(2) of the RSTA. Paragraph 2 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA and Appendix 8 of the Enforcement Decree sets forth a list of "core technologies" that are covered by the New Growth Engine program. The program is designed to facilitate the R&D activities within the context of the New Growth Engine program. The goal of the New Growth Engine program is to boost general national economic activities. RSTA Article 10(1)(2) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to "core technologies" listed in Appendix 8 of the Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.

In the Preliminary Determination, the Department found that only Samsung received a tax credit under RSTA Article 10(1)(2) during the POI. The Department confirmed at verification the

[27] See Samsung Verification Report at 15-16.
[28] See LG Verification Report at 9-10.
[29] See 19 CFR 351.524(a).
[30] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

amount of the tax credit received by Samsung, and that none of its affiliated companies used the program.[31] At verification it was also confirmed that neither LG nor its affiliated companies used the program.[32]

The language of the implementing provisions and the related appendices for this tax program limits eligibility for the use of this program to a limited list of "core technologies." Therefore, the Department continues to find, as it did in the Preliminary Determination, that the provision of this tax benefit is de jure specific pursuant to section 771(5A)(D)(i) of the Act to enterprises in "core technologies."

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

The tax credit provided under this program is a recurring benefit, because income taxes are due annually. Thus, the benefit is allocated to the year in which it is received.[33] To calculate the benefit to Samsung from the tax credit used, we divided the tax credit claimed under this program during the POI by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[34]

c. Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)

Under this program, companies can claim a credit toward taxes payable for eligible expenditures on research and human resources development. Companies can calculate their tax credit as either 40 percent of the difference between the eligible expenditures in the tax year and the average of the prior four years, or a maximum of six percent of the eligible expenditures in the current tax year. Article 10(1)(3) of the RSTA is the law authorizing the credit, and it is implemented through paragraphs 3, 4, 5 and 6 of Article 9 of the Enforcement Decree of the RSTA. The selection of a recipient and provision of support under Article 10(1)(3) are not contingent upon export performance.

In the Preliminary Determination, the Department found that Samsung, as well as its cross-owned companies SGEC, SES, and SEL, received tax credits under Article 10(1)(3) of the RSTA on the tax returns filed by those companies during the POI. Although LG itself did not use this program, LG's cross-owned service provider, ServeOne, received a tax credit under this program

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[31] See Samsung Verification Report at 15-16.
[32] See LG Verification Report at 9-10.
[33] See 19 CFR 351.524(a).
[34] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

on the tax return it filed during the POI. Each company's use of the program was confirmed at verification.[35]

As we found in the Preliminary Determination, and continue to do so here, the language of the law for this program as well as the language of the implementing provisions for this tax program do not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. Therefore, we examined whether the provision of this tax benefit is specific, in fact, to an enterprise or industry or group thereof pursuant to section 771(5A)(D)(iii) of the Act. Because information regarding the usage of tax credits under RSTA Article 10(1)(3) was not available for tax returns filed in 2011, we relied on data provided by the GOK showing the total number of corporations that received the tax credit in the prior year, 2010, as well as the total value of the credits taken during the same period.

While the record contains the total amount of the tax credits used by all beneficiaries during 2010, the most recent year for which information is available, the GOK did not provide information regarding specific amounts received by each of the more than 11,000 companies, except for the amounts received by Samsung and LG. The GOK also reported that it "does not compile the data of recipients in terms of business sectors or industries."[36] The GOK reported that more than 11,000 companies used this program in tax returns filed in 2010. Because the GOK did not compile the data on the basis of business sectors or industries, the Department cannot determine whether this program provides benefits to a limited number of recipients on an industry-specific basis. Therefore, the information on the record is not sufficient to evaluate predominance or disproportionality on an industry basis pursuant to sections 771(5A)(D)(iii)(II) and 771(5A)(D)(iii)(III) of the Act.

Using the information on the record, we examined Samsung's and LG's receipt of benefits as a portion of the total benefits granted by the GOK to all companies to determine whether these companies were disproportionate users of the subsidy. To determine whether Samsung and LG received a disproportionate amount of subsidy on an enterprise-specific basis, we compared the benefit amount received by each of respondent companies to the average amount received by all other companies. We found that in 2010, Samsung and LG each received a disproportionately large percentage of all the benefits granted under RSTA Article 10(1)(3).[37] Since the data provided by the GOK is business proprietary information, our analysis is included in our Final Calculation Memoranda.[38] Because information provided by the GOK indicates that the tax credits under this program were provided disproportionately to Samsung and LG, we determine that this program is de facto specific in accordance with section 771(5A)(D)(iii)(III) of the Act.[39] This is consistent with our finding in Bottom Mount Refrigerators, which relied on identical information provided by the GOK, Samsung, and LG for tax returns filed in 2010.

[35] See Samsung Verification Report at 15-16 and LG Verification Report at 9-10.
[36] See GOK QNR 4/9 at 116 of the Appendices Volume.
[37] See CORE from Korea AR Preliminary Results (Sept. 2010) and accompanying IDM at "R&D Grants Under the Act in Special Measures for the Promotion of Specialized Enterprises for Parts and Materials."
[38] See Samsung Final Calculation Memorandum and LG Final Calculation Memorandum.
[39] See Comment 6, below.

The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, effectively, the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

Samsung, SGEC, SES, and SEL received tax credits under Article 10(1)(3) of the RSTA on the tax return filed during the POI. ServeOne also received a tax credit under Article 10(1)(3) of the RSTA on the tax return it filed during the POI. The tax credits provided under this program are recurring benefits, because the taxes are due annually. Thus, the benefit is expensed in the year in which it is received.[40] To calculate the benefit to LG, we divided ServeOne's tax credits by the sum of ServeOne's sales of products, net of intercompany sales to LG, during the POI and LG's adjusted total FOB sales. The resultant ad valorem subsidy rate is less than 0.005 percent, and, as such, has no impact on LG's overall subsidy rate. Consistent with 19 CFR 351.525(b)(6)(i), to calculate the countervailable subsidy from the tax credits received by Samsung and SGEC, the tax credits for each corporate entity were summed and divided by Samsung's adjusted total FOB sales during the POI. In calculating the rate for Samsung, we included the benefit to SES and SEL. We therefore determine a countervailable subsidy of 0.72 percent ad valorem for Samsung.

d. RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities

This program was introduced in the Korean tax code in the predecessor of the RSTA to facilitate Korean corporations' investments in energy utilization facilities.[41] The underlying rationale for the program is that the enhancement of energy efficiency in the business sectors may help enhance the efficiency in the general national economy. The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Enforcement Regulation of RSTA. The eligible types of facilities investment are identified in Article 22(2) of the RSTA.

Under the program, corporations that have made investments in facilities to enhance energy utilization efficiency or to produce renewable energy resources, in accordance with the RSTA decree and regulation, are entitled to a credit toward taxes payable in the amount of 10 percent of the eligible investment. Once it is established that the requirements under the laws and regulations are satisfied, the provision of support under this program is automatic. Under Article 144(1) of the RSTA, if a company is in a tax loss situation in a particular tax year, the company is permitted to carry forward the applicable credit under this program for five years. The GOK agency that administers this program is the MOSF. Of the participating respondents, only Samsung claimed a credit under this program on its tax return filed during the POI.[42]

In the Preliminary Determination, the Department found that the information provided by the GOK on this record showed that only a limited number of companies claimed this tax credit in 2010 for the 2009 tax year, the most recent year for which the GOK was able to provide

[40] See 19 CFR 351.524(a).
[41] See GOK QNR 4/9 at 121 of the Appendices Volume.
[42] See Samsung Verification Report at 16.

information. Notwithstanding the arguments of the parties regarding this program, addressed in Comment 8, below, we continue to find this program is de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This finding is consistent with our decision regarding this program in Bottom Mount Refrigerators, in which we relied on information that is comparable to that which the GOK provided in the current investigation.[43] This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. To calculate the benefit to Samsung from the tax credit used, we divided the tax credit claimed under this program during the POI by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on Samsung's overall subsidy rate.

e. RSTA Article 26 Tax Deduction for Facilities Investment

Under this program, companies can take a credit toward taxes payable of seven percent of eligible investments in facilities. The relevant law authorizing the credit is Article 26 of the RSTA, as well as the implementing law, Article 23 of the Enforcement Decree of the RSTA. Article 23(1) of the Enforcement Decree limits eligibility for the program to "business assets out of overcrowding control region of the Seoul Metropolitan Area" (sic).

In the Preliminary Determination, the Department determined, based on information on the record, that the tax credit offered under this program is limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy. No new information regarding this finding has been placed on the record since the Preliminary Determination.[44] Therefore, the Department is continuing to find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.[45] The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

We verified that Samsung, SGEC, and SEL received tax credits under RSTA Article 26 on the tax returns filed by those companies during the POI.[46] Although we verified that LG did not use this program, ServeOne received a tax credit under RSTA Article 26 during the POI.[47] Consistent with 19 CFR 351.525(b)(6)(i), to calculate the countervailable subsidy from the tax credits received by Samsung and SGEC, the tax credits for each corporate entity were summed and divided by Samsung's adjusted total FOB sales during the POI. In calculating the rate for

[43] See Bottom Mount Refrigerators and accompanying IDM at 17-19 and at Comment 4, below.
[44] See Comment 9, below.
[45] See, e.g., Hot-Rolled Steel from Thailand and accompanying IDM at "Provision of Electricity for Less than Adequate Remuneration" section (where eligibility for a program was limited to users outside the Bangkok metropolitan area, we found the subsidy to be regionally specific under section 771(5A)(D)(iv) of the Act).
[46] See Samsung Verification Report at 16.
[47] See LG Verification Report at 9-10.

Samsung, we included the benefit to SEL, consistent with the CVD Preamble.[48] We therefore determine a countervailable subsidy of 1.05 percent ad valorem for Samsung. To calculate the benefit to LG from the tax credit received by ServeOne, we divided ServeOne's tax credits by the sum of ServeOne's sales of products, net of sales to LG, during the POI and LG's adjusted total FOB sales. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on LG's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for LG.[49]

3. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act

This tax program was introduced for the purpose of supporting the establishment of production facilities by corporations within the Gwangju City area. The program is intended to boost general economic activities in the region and to diversify the structure of the local economy by offering reductions and exemptions of various taxes related to property acquisition and ownership for certain companies located within designated industrial complexes. The current statutory basis for this program is Article 78 of the Special Local Tax Treatment Control Act, although it was previously administered under Article 276 of the Local Tax Act. Companies that newly establish or expand facilities within an industrial complex are exempt from property, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities, and are taxed at a reduced rate for another three years. In addition, liability for the local education tax arises only when the property tax is imposed and paid, and is set at 20 percent of the property tax. Therefore, exemptions from property tax are accompanied by exemptions from the local education tax. Although this is a program authorized by national law, it is administered at the local level by the Gwangju City government.

In the Preliminary Determination the Department determined that the tax exemptions under Article 78 of the Special Local Tax Treatment Control Act were countervailable. There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. We verified that only Samsung, and in years prior to the POI, SGEC, received these exemptions and reductions. For this final determination, we continue to find that the tax exemptions received by Samsung and SGEC constitute a financial contribution and confer a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we determine that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because Article 78 of the Special Local Tax Treatment Control Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because exemptions of acquisition and registration tax are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, 2011, and the prior nine years), in which Samsung claimed

[48] See CVD Preamble, 63 FR at 65402.
[49] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt.[50] For exemptions received by Samsung in 2011 and SGEC in 2002-2010, none of the exemptions claimed over the AUL period met the prerequisite for allocation over time, and the only benefits attributable to the POI are those benefits received during the POI.

The exemptions and reductions of real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually. Thus, the benefit is allocated to the year in which it is received.[51] The benefit to Samsung during the POI from the property tax exemption is the value of the real property tax that would have been due during the POI. Similar to the exemptions and reductions of real property tax, the exemptions and reductions from the education tax provided under this program are recurring benefits, because the taxes are otherwise due annually. Thus, the benefit is allocated to the year in which it is received.[52] The benefit to Samsung during the POI is the value of the education tax that would have been due during the POI.

Samsung also reported that, as a result of the exemption from acquisition and registration taxes, it is subject to an additional tax under the Act on Special Rural Development. This tax is assessed at 20 percent of the exempted acquisition or registration tax amount.[53] At the time of the Preliminary Determination, Samsung contended that this additional tax should be treated as an offset to the exemptions of the acquisition and registration taxes and subtracted from the exemption the Department recognizes as a benefit. In the Preliminary Determination, the Department examined the assessment of the Special Rural Development Tax in light of the provisions of section 771(6) of the Act, which limits the circumstances under which the Department may recognize an offset to a subsidy, and thereby reduce the subsidy measured. Section 771(6) of the Act limits offsets to amounts related to application fees, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received. As such, we preliminarily determined that the Special Rural Development Tax does not satisfy the statutory definition of an offset to the countervailable benefit conferred by the exemption of the acquisition and registration taxes. For this final determination, we continue to find that the Special Rural Development Tax does not meet the statutory requirement to be recognized as an offset.[54]

To calculate the countervailable subsidy from the four tax exemptions/reductions provided under this program to Samsung, we summed the values of the exemptions of acquisition, registration, real property, and education taxes received during the POI. This sum was divided by Samsung's adjusted total FOB sales during the POI. However, the calculation of the subsidy from these exemptions results in a rate that is less than 0.005 percent and, as such, this rate does not have an

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[50] See 19 CFR 351.524(b)(2).
[51] See 19 CRF 351.524(a).
[52] See 19 CFR 351.524(a).
[53] See Samsung Verification Report at 16-17.
[54] See Comment 10, below.

impact on Samsung's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculation for Samsung.[55]

4. Grant Programs

a. GOK Subsidies for "Green Technology R&D" and its Commercialization

According to the GOK, technology is a crucial factor in promoting and achieving green growth in all economic sectors and, thus, the development of relevant green technology has been regarded as the main pillar of the country's Green Growth policy. The technology development component is one of the important factors of the government's five-year Green Growth Plan, which was adopted by the GOK in January 2009. Under the plan, the GOK has selected 27 core technologies for support. The MKE is involved in this program and provides support to Green Technology R&D. This program provides for the establishment and enforcement of measures to facilitate research, development and commercialization of green technology, including financial support for these activities. Support is provided to approved applicants in the form of grants. The MKE determines the eligibility of the applicants for support under this program, consulting with affiliated research institutions when technological evaluation and confirmation are necessary. The GOK reported that the approval of the applicants is based on the merits of each application, which must be in accordance with the requirements set by the law and MKE's internal guidelines. According to the GOK, the provision of support under the program is automatic as long as the budgets earmarked for this program are available.

Both Samsung and LG reported receiving grants under this program. Samsung reported receiving assistance for 10 R&D projects under this program, but stated that "none of the projects involve subject merchandise directly or involves technologies related to subject merchandise or its production."[56] Samsung also provided, and the Department has verified, the application and approval documents related to the projects for which it received assistance from 2008 through 2011.[57] These were all the same projects for which Samsung reported receiving assistance under this program in Bottom Mount Refrigerators. In Bottom Mount Refrigerators, we found that all but one of these projects was tied to non-subject merchandise. Based on the Samsung verification report from Bottom Mount Refrigerators that was submitted on the record of this investigation,[58] and an examination of the application and approval documents provided by Samsung, we find that one project for which Samsung received benefits during the POI, the name of which cannot be identified because it is BPI, relates broadly to numerous types of products, including subject merchandise. Therefore, the grants provided for that project are not tied to any particular merchandise, subject or non-subject.[59]

LG reported that from 2009 through 2011, it received a number of grants under the Green Technology R&D program. Of these grants, LG has identified the "Development of Smart Grid Technology for Electronic Devices" project, as being the only project for which it received

[55] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."
[56] See Samsung's April 9, 2012 response at page 2 of Exhibit 17.
[57] See Samsung's April 9, 2012 response at Exhibits 17C and 17D, respectively.
[58] See Samsung's May 22, 2012 response.
[59] See 19 CFR 351.525(b)(5)(i).

grants that are applicable to subject merchandise. LG received grants for this project in 2009, 2010, and 2011. According to LG, the focus of this project is to make home appliances function in a more energy efficient manner. LG identified three of its business units that make products that can incorporate Smart Grid technology: Home Appliances, Air Conditioning, and Home Electronics. Because washing machines are classified as home appliances, we determined that the grant LG received for the development of Smart Grid technology is tied at the point of approval to the development of home appliances, which include washing machines.[60] For the remaining projects, LG has provided, and the Department has verified, approval documentation from the GOK indicating that grants for these projects are tied at the point of approval to the development of non-subject merchandise and that they are not related in any way to the production of subject merchandise. Therefore, we find that grants received under the Green Technology R&D program by LG for these projects, except for the Smart Grid technology project, are not attributable to subject merchandise and, thus, do not provide a benefit to subject merchandise.

The Department has previously determined that grants under the Green Technology R&D program are countervailable subsidies because financial assistance under this program is expressly limited by law to 27 core technologies related to "Green Technology," and is therefore de jure specific under section 771(5A)(D)(i) of the Act. Furthermore, the grants provide a financial contribution because they constitute a direct transfer of funds under section 771(5)(D)(i) of the Act and they provide a benefit in the amount of the grant, in accordance with 19 CFR 351.504(a).[61] There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination.

Although the GOK has indicated that this program should be considered to provide recurring benefits, we determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies; the GOK, Samsung, and LG have not provided any evidence that would warrant treating the grants as recurring. Accordingly, for Samsung, we examined the assistance provided under the relevant project for which Samsung received approval in years prior to the POI to determine whether the assistance exceeded 0.5 percent of the company's sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt.[62] Since the assistance received by Samsung did not meet the 0.5 percent test, the grants received in each year are appropriately expensed in the year of receipt. Therefore, the benefit under this program is the amount of the grant provided under the relevant project to Samsung in 2011, the POI. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on the overall subsidy rate for Samsung. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[63]

We also examined the Smart Grid technology project under which LG received grants in 2009, 2010, and 2011 to determine whether the assistance exceeded 0.5 percent of the company's sales

[60] See 19 CFR 351.525(b)(5)(i).
[61] See Bottom Mount Refrigerators and accompanying IDM at 27.
[62] See 19 CFR 351.524(b)(2).
[63] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt.[64] Since the Smart Grid technology assistance reported by LG did not meet the 0.5 percent test, the grants received in each year are appropriately expensed in the year of receipt. Therefore, the benefit under this program is the amount of the Smart Grid technology grant received by LG in 2011, the POI. We divided the benefit received by LG in 2011 from the Smart Grid technology grant by the FOB sales of LG's Home Appliance, Home Entertainment, and Air Conditioning divisions during the POI.[65] On this basis, we determine the countervailable subsidy provided to LG under this program to be 0.01 percent ad valorem.

b. GOK 21st Century Frontier R&D Program / Information Display R&D Center Program

The 21st Century Frontier R&D program was introduced by the GOK in 1999 to facilitate development of core technologies that can be applied in a broad range of industries across all business sectors of Korea. According to the GOK, this program provides long-term loans to eligible companies in the form of a matching fund, i.e., the selected company first pledges the commitment of its own funds for the R&D projects that are covered by this program and then the GOK provides a matching fund. The matching fund is provided by the MEST or by the MKE, depending on the nature of the project. The GOK explained that, although the rule for the government's provision of the matching fund is to provide the same amount of money as pledged by the applicant, the specific amount of the government's matching funds varies depending upon the nature of the project and the financial situation of the applicant. The recipient company is given a three-year, five-year or 10-year development period which is stipulated in the contract with MEST or MKE. When the development is successfully completed, the recipient company is required to repay the amount of the original assistance from the government. There is no interest applied to the GOK's matching funds.

The GOK reported that a total of 22 projects have been launched since 1999 under this program. Among these, the GOK identified as the only project relevant to the investigation, the Information Display R&D Center project that was established in 2002 and is administered by the MKE. The Information Display R&D Center project has three sub-projects of which two, the LCD and PDP display projects, were completed in June 2005. The third sub-project, the future display development project, is composed of two segments: the first segment was completed in March 2008; the second segment started in June 2008 and was completed in May 2012. The key criterion governing eligibility is whether the applicant possesses the research capability and adequate human resources sufficient to successfully carry out the task required by the research project. The MKE looks into the technological profiles and previous development records of the applicant in the information display area. The statutory bases for this program are Paragraphs 1 and 2 of Article 7 of the Technology Development Promotion Act, and Article 15 of the Enforcement Decree of the Act.

In DRAMS from Korea and Bottom Mount Refrigerators, the Department investigated the 21st Century Frontier R&D program and determined that the project area is the appropriate level of analysis for determining whether the program is specific. The Department has previously determined that grants under the "Information Display R&D Center" project area are de jure

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[64] See 19 CFR 351.524(b)(2).
[65] See Comment 14, below.

specific under section 771(5A)(D)(i) of the Act because assistance under this project is limited to information display technologies.[66] Further, we have previously determined that such grants constitute a direct transfer of funds under section 771(5)(D)(i) of the Act and provide a benefit in the amount of the grant, in accordance with 19 CFR 351.504(a).[67] There is no new information or evidence of changed circumstances that warrants the reconsideration of this determination, and we find our prior analysis equally applicable to the record of this POI.

We verified that Samsung and LG received funds under the Information Display Center 21st Century Frontier R&D program during the AUL period. The assistance that LG received was under the PDP project and was explicitly approved for technology development related to plasma display televisions of 70 inches or greater in size. The Department confirmed this information at verification in Bottom Mount Refrigerators,[68] and found that the assistance LG received was tied, at the point of approval, to the product identified by LG, and, as we did in Bottom Mount Refrigerators, we find that there is no information to indicate that this research would have any applications related to the development and production of washing machines. Therefore, we continue to determine that grants to LG under this program do not benefit the production of subject merchandise pursuant to 19 CFR 351.525(b)(5).

With regard to Samsung, the record contains no new information that would cause us to revisit the determination in Bottom Mount Refrigerators that the funds provided to Samsung under the Information Display Center 21st Century Frontier R&D program were not tied to any product at the time the assistance is approved. Accordingly, in the Preliminary Determination we found that it was appropriate to attribute the benefits received by Samsung from these grants to Samsung's total sales.[69] For this final determination, we continue to find that the grants provided to Samsung are not tied at the point of bestowal and thus, they benefit Samsung's total sales.

We consider the grants to be non-recurring benefits, in accordance with 19 CFR 351.524(c). For the assistance received under each of the projects, the LCD, PDP, and both segments of the future display project, we examined the assistance approved for the project to check whether the amounts approved exceeded 0.5 percent of the company's sales in the year of approval in order to determine whether the benefits should be allocated over time or expensed in the year of receipt. Under all of the projects, we determined that the amount of assistance did not meet the prerequisite for allocation over time. Thus, to calculate the subsidy, we took the total grant amount received in the POI and divided the resulting benefit by Samsung's adjusted total FOB sales during the POI. However, the calculation of the subsidy from these grants results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on the overall subsidy rate for Samsung. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for Samsung.[70]

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[66] See Bottom Mount Refrigerators and accompanying IDM at Comment 15.

[67] See, e.g., DRAMS from Korea (Final Determination) and accompanying IDM at Comment 27. See also Bottom Mount Refrigerators and accompanying IDM at 29.

[68] LG's verification report from Bottom Mount Refrigerators is on the record of this investigation. See LG QNR 5/22 at Exhibit 55.

[69] See 19 CFR 351.525(b)(5) and CVD Preamble, 63 FR at 65400.

[70] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

c. Support for SME "Green Partnerships"

The "Support for SME 'Green Partnerships'" program was implemented in 2003 in an effort to introduce a mechanism through which large corporations could provide SMEs with their expertise and knowhow regarding environmentally friendly business management, clean production technology, and cultivation of necessary human resources. These partnerships between large corporations and SMEs allow SMEs to accumulate expertise and technologies that enable them to produce parts and materials in an environmentally friendly manner. Partnerships are jointly funded by the MKE and participating large corporations on a project-by-project basis. Large corporations who participate in the program provide funds, which are matched by the MKE. Funds are deposited in the account of the large corporation, and it is from this account that a large corporation transfers funds to participating SMEs. It is the responsibility of the large corporation to take on the role of project manager, and to provide participating SMEs with its expertise and knowhow for establishing environmentally friendly business practices. The GOK reported that since the program began in 2003 and, through the POI, 35 large enterprises have participated in this program to provide assistance to 970 SMEs.

LG reported being approved to receive funds under this program during the POI, as well as in 2006 and 2007.[71] Samsung reported that it did not use the program during the POI, but that it was approved to receive funds under this program in 2006 and 2007. Because funds under the "Support for SME 'Green Partnerships'" program are, according to the GOK, only provided to "large corporations," we find that this program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act. Funds provided under the "Support for SME 'Green Partnerships'" program constitute a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act. A benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a).

Furthermore, we determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies; the GOK, Samsung, and LG have not provided any information that would warrant treating the grants as recurring. Accordingly, we examined the grants that Samsung and LG received for the years 2006 and 2007 to determine whether they exceeded 0.5 percent of each company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt.[72] Since the grants reported by Samsung and LG did not meet the 0.5 percent test, the grants received are appropriately expensed in the year of receipt. Because Samsung did not receive grants during the POI, there is no benefit to Samsung during the POI. To calculate the benefit to LG for the grant received by LG during the POI, we divided the amount of the grant received by LG during the POI by the company's total sales during that year. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent and, as such, this rate does not have an impact on LG's overall subsidy rate. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for LG.[73]

[71] See Comment 17, below.
[72] See 19 CFR 351.524(b)(2).
[73] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."

d. Grants Discovered at Verification

As part of our completeness tests at verification, we checked whether Samsung had reported all grants received through programs under investigation and all relevant assistance as requested by the Department. We identified additional grants not reported by Samsung. We requested and reviewed documentation related to these grants, the duration of the projects, and the sources of funding.[74] For all but one grant, the information we reviewed showed that the grant had been either identified and reported by Samsung as having been received through programs under investigation, or that the grant was tied at the point of bestowal to non-subject merchandise, and was not related to the production or sale of subject merchandise.

The one remaining grant was given for a project at a Samsung facility that produces components that are inputs into a number of products including washing machines. Samsung received several grants for this project during the POI. Samsung explained that the actual components produced at the facility that received the grant are not used in washing machines, and that when such components are incorporated into washing machines, they are purchased from outside suppliers.

In the initial questionnaire, the Department had asked Samsung:

> Does the GOK (or entities owned directly, in whole or in part, by the GOK or any provincial or local government) provide, directly or indirectly, any other forms of assistance to producers or exporters of washing machines? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the **Standard Questions Appendix**, as well as other appropriate appendices attached to this questionnaire. (emphasis in original)

Notwithstanding Samsung's explanation that the components produced at that facility are not actually incorporated into subject merchandise, and that Samsung obtains such components for subject merchandise from another supplier, we find that the assistance was provided to the production of components that are inputs into the manufacture of a wide array of products, including subject merchandise. The information on the record indicates that this assistance was only provided to Samsung, therefore, we determine that these grants are specific to an enterprise or industry under section 771(5A)(D)(i) of the Act. The grants provide a financial contribution under section 771(5)(D)(i) of the Act and under 19 CFR 351.504, the funds provided confer a benefit in the amount of the grant. We consider the grants to be non-recurring benefits, in accordance with 19 CFR 351.524(c). We do not have complete information regarding these grants over the 10-year AUL period prior to the POI. Therefore, we examined only the amounts received during the POI to determine whether the grants should be allocated over time or to the year of receipt. Because the grants received during the POI do not meet the prerequisite for allocation over time, we allocated the benefits received during the POI to the year of receipt.

To calculate the net countervailable subsidy, we divided the benefit received from the grant during the POI by Samsung's adjusted total FOB sales during the POI. On this basis, we

[74] See Samsung Verification Report at 24-31.

determine the countervailable subsidy provided to Samsung under this program to be 0.02 percent ad valorem.

B. Program Determined To Be Not Countervailable During the POI

A. K-SURE – Short-Term Export Credit Insurance

K-SURE's short-term export insurance program is designed to cover an exporter or letter of credit-issuing bank from the non-payment risk in transactions that have a payment period of less than two years. Under this program, insurance policies issued to Korean companies provide protection from risks such as payment refusal and buyer's breach of contract. In the Preliminary Determination, the Department noted that it must examine whether the premium rates charged are adequate to cover the program's long-term operating costs and losses, in accordance with 19 CFR 351.520(a)(1).[75] Based on a summary of K-SURE's income and expenses provided by the GOK, including premiums charged and claims recovered, and its expenses comprising claims paid and managing/operating expenses of the program, the Department preliminarily found that the premium rates charged were adequate to cover operating costs and losses over the long term, as required by the Department's regulation and discussed in the CVD Preamble.[76] These data demonstrated that over the five-year period including the POI, the premiums charged by K-SURE were adequate to cover the long-term operating costs and losses of the program within the meaning of 19 CFR 351.520(a)(1). Therefore the Department found that the program was not countervailable in accordance with the Department's regulations. We also noted that both Samsung and LG reported that they had no claims paid under this program related to exports of subject merchandise to the United States during the POI. We verified the information on which our Preliminary Determination was based.[77] Thus, we continue to find this program to be not countervailable during the POI within the meaning of section 771(5) of the Act.[78]

C. Programs Determined To Be Not Used

We determine that the participating respondents, Samsung and LG, did not apply for or receive any countervailable benefits during the POI under the following programs:

1. Daewoo Restructuring
    a. GOK-Directed Equity Infusions under the Daewoo Workout
    b. GOK-Directed Ongoing Preferential Lending under the Daewoo Workout
2. IBK Preferential Loans to Green Enterprises
3. KEXIM Export Factoring[79]

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[75] See Preliminary Determination, 77 FR at 33193.
[76] See 19 CFR 351.520(a)(1) and CVD Preamble, 63 FR at 65385.
[77] See GOK Verification Report at 2-4.
[78] See Comment 5, below.
[79] See Comment 17, below.

4. GOK Supplier Support Fund Tax Deduction

We verified that the "GOK Supplier Support Fund Tax Deduction" program came into existence in 2011, and that any benefits from this program would not be realized until the tax returns for 2011 are filed in 2012.[80] In accordance with 19 CFR 351.509(b)(1), we determine that this program was not used during the POI.

V. Analysis of Comments

Comment 1: Scope Exclusion of Smaller Top-Load Washers

LG's Arguments:

- The Department improperly modified the scope of these investigations, and should reincorporate smaller top-load washers into the scope of the investigations.
- Excluding smaller top-load washers substantially alters the scope of the investigations and raises serious concerns as to whether the ITC made its preliminary injury determination based upon a scope that is significantly different from the revised scope of the investigations.
- The Department should determine that interested parties were deprived of the procedures of notice and comment integrated in AD and CVD laws because the exclusion request was made so late in the proceedings, and the delay in the petitioner's scope exclusion request could have negative implications on the ITC's final injury determinations.

Whirlpool's Arguments:

- The Department should reject LG's request to reverse its scope exclusion decision because no overarching reasons have arisen since the preliminary determinations which support reversing the decision, and Whirlpool continues not to have an interest in obtaining AD or CVD relief on smaller top-load washers.
- LG's claim that the scope exclusion threatens the legitimacy of the investigations is speculative given that the Department has revised the scope language between the ITC's preliminary and final determinations in numerous past cases without hindering the legitimacy of those cases.[81]
- LG's claim that the scope exclusion substantially altered the present investigations is unsubstantiated, and does not support the reversal of the Department's decision.

Department's Position: We disagree with LG and, for the reasons explained below, have continued to exclude smaller top-load washers from the scope of the investigations in the final determinations.

If the Department and ITC determine in an investigation that the implementation of an AD or CVD order is warranted, one of the purposes of the investigation is to determine that the scope of that order adequately reflects the product(s) for which the domestic industry is seeking relief, and

[80] See GOK Verification Report at 8.
[81] See e.g., Narrow Woven Ribbons from Taiwan, 75 FR at 7240-41; and Live Swine from Canada, 69 FR at 61640-41.

excludes those products for which the petitioner does not seek relief.[82] Therefore, as acknowledged by LG and the petitioner, the Department's practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding.[83]

Additionally, section 732(b)(1) of the Act states that a "petition may be amended at such time, and upon such conditions, as the administering authority . . . may permit."[84] Nevertheless, the CIT has indicated that, at a certain point in an investigation, significant changes to the scope can raise a number of procedural concerns, such as whether or not injury has been or can be properly determined based on a revised scope.[85] As such, in determining the scope of an investigation, the Department must not only focus on whether the language of the scope contains a clear physical description of the products for which the petitioner seeks relief (as well as any exclusions), but also the Department must consider whether the scope language is administrable.

The Department granted the petitioner's request to exclude smaller top-load washers from the scope because, inter alia, the scope modification: (1) consisted of a scope reduction rather than expansion; (2) contained an exclusion that was based on a specific physical characteristic of the products for which the petitioner sought exclusion (i.e., washers with vertical rotational axes and a rated capacity less than 3.70 ft^3); and (3) CBP indicated that the scope exclusion request would be administrable, as the request specifically described the method by which the product would be determined to be out of the scope. We also found it contrary to the intent of AD and CVD laws to include products within the scope for which a petitioner has specifically stated that it does not wish to seek relief.[86]

We disagree with LG that the timing of the petitioner's exclusion request potentially threatens the conduct of future investigations and deprived the parties in the washers investigations of an opportunity to adequately defend their interests. The petitioner submitted its exclusion request before the issuance of any of the preliminary determinations in the washers investigations. Therefore, there was adequate opportunity for LG and the other parties to respond to the exclusion request and provide commentary on whether or not such an exclusion should be granted.[87] Moreover, as noted by the petitioner, the scope may often change during the course of the ITC's investigation without necessarily complicating the ITC's final injury determination. As a result, we have concluded that if the petitioner does not seek relief from imports of smaller

[82] See Nails from China, 73 FR at 33979 (excluding products which fell within the general scope definition, but for which the petitioner did not seek relief); see also Spring Table Grapes from Chile, 66 FR at 26832-26833.
[83] See Welded Pipe from China, 73 FR at 51789; Softwood Lumber from Canada and accompanying IDM at Scope Issues (stating that the Department possesses the authority to define or clarify the scope of an investigation throughout the investigation); Outboard Engines from Japan (Preliminary Determination), 69 FR at 49871 (citing Wire Rod from Japan, 59 FR at 5988-5989 and accompanying IDM at Comment l); and Allegheny (explaining the deference given to the Department in determining the scope of AD and CVD orders).
[84] See also section 702(b)(1) of the Act.
[85] See Smith Corona, 796 F. Supp. at 1535 and Allegheny, 342 F. Supp. 2d at 1187-88.
[86] See Spring Table Grapes from Chile, 66 FR at 26833 (stating the domestic industry is in the best position to identify the imports that they compete against and believe to be unfairly traded).
[87] See Smith Corona, 796 F. Supp at 1535 (in which the CIT held that there are various procedural safeguards included in the administration of AD and CVD laws which provide parties with the opportunity to respond and be heard during the course of a proceeding, all which applied in this case).

top-load washers, then the inclusion of those washers in the scope of the investigations and possible AD and CVD orders does not appear to be warranted.

Finally, the motivations of the petitioner in requesting a scope exclusion is not a factor which the Department has been tasked by Congress to consider as part of its analysis. The records of the washers investigations contain no evidence of manipulation on the part of the petitioner, and we otherwise find no reason to question the fact that the petitioner is not requesting relief from the potential harm caused by smaller top-load washers exported from Korea and Mexico. Accordingly, we have continued to exclude smaller top-load washers from Korea and Mexico from the scope of the investigations.

Comment 2: Request to Exclude Larger-Width Washers from the Scope

LG's Arguments:
- The Department should exclude larger-width washers (i.e., washers with widths of 29 inches or greater) from the scope of the investigations.[88]
- While one of the main purposes of AD and CVD laws is to provide relief to industries from unfair trade practices, the Department's practice is to exclude merchandise covered under the scope which the petitioner lacks interest.[89]
- In light of the fact that neither the petitioner nor any U.S. producer manufactures larger-width washers, the petitioner cannot have an actual interest in seeking AD and CVD duty relief on larger-width washers.[90]
- Although the Petition[91] cover washers up to 32 inches in width, the petitioner's argument that products are often included in the scope of an investigation because they are similar and competitive with domestic products is inapplicable to larger-width washers because they were not produced and sold in the United States when the petitions were filed, and have only been recently sold in the United States by LG.
- The rationale behind the petitioner's request to exclude smaller top-load washers (i.e., because they were not sold in the United States and the petitioner did not have an interest in seeking AD and CVD relief for them) is analogous to the rationale behind LG's scope exclusion request with respect to larger-width washers.

Whirlpool's Arguments:
- The Department should not grant LG's request to exclude larger-width washers from the scope of the investigations.
- The Department should give deference to the scope of the petition and the petitioner when analyzing scope modification requests.[92]
- The petitioner is not required to produce every individual product within the scope, and the Department has repeatedly rejected claims to modify the scope of a petition based on the fact that the product has not been produced in the United States.[93]

[88] See Cellular Telephones from Japan, 50 FR at 45449.
[89] See AD Preamble, 62 FR at 27323.
[90] See Aluminum Extrusions from China, 76 FR at 18532.
[91] See Petition.
[92] See Ad Hoc Shrimp, 637 F. Supp. 2d at 1174.
[93] See Wire Strand from Mexico (Preliminary Determination), 68 FR at 42379.

- LG failed to support its assertion that larger-width washers represent a different class of product from the other products covered in the scope, particularly in regards to the Department's Diversified Products analysis.[94]
- LG's assertion that larger-width washers were not produced in the United States is inaccurate given that the petitioner offered a larger-width washer with a rated capacity of 5.30 cubic feet for sale to an OEM customer.

Department's Position: We disagree with LG, and for the reasons explained below, have not excluded larger-width washers from the scope of the investigations in the final determinations.

As stated above in Issue 1, the Department's practice is to provide ample deference to the petitioner with respect to the definition of the product for which it seeks relief under the AD and CVD laws. Absent an "overarching reason to modify" the scope in the petition, the Department accepts the scope as proposed.[95] Although the Department has the authority to define the scope of an investigation, that authority cannot be used to deprive the petitioner of relief with respect to products the petitioner clearly and explicitly intended to be included in the investigation, unless the resulting order would be otherwise unadministrable. Therefore, without the petitioner's consent, the Department has rarely used its authority to narrow the scope of an investigation.[96]

In this case, the plain language of the scope explicitly states that "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and ***no more than 32.0 inches*** (81.28 cm) (emphasis added). Given the clarity of this language, and the absence of any overarching reasons to modify it, we find no reason to amend the scope language by excluding larger-width washers (i.e., washers with widths of 29 inches or greater) which are clearly included in the scope. Moreover, the statute does not require the petitioner to produce every type of product covered by the scope of the investigation.[97] Thus, while a petitioner is required to produce the domestic like product, it need not produce every permutation or model of the domestic like product. Furthermore, the petitioner has expressed its intent to continue to seek AD and CVD relief on larger-width washers. Accordingly, based on our analysis of the descriptions of the merchandise in the petitions, we find no reason to exclude larger-width washers from the scope of the investigations.

Comment 3: Whether Samsung's Export Receivables that Were Negotiated with KDB and IBK are Loans

Samsung's Arguments:

- Samsung did not receive short-term discounted loans from KDB or IBK during the POI; rather it negotiated its export receivables with KDB and IBK and paid negotiation charges

[94] See 19 CFR 351.225(k)(2). See also Diversified Products, 572 F. Supp. at 887.
[95] See Aluminum Extrusions from China and accompanying IDM at Comment 1; Welded Pipe from China, 73 FR at 51789; Pure Magnesium from Russia and accompanying IDM at Comment 12; and Mitsubishi Heavy Industries.
[96] See e.g., Wire Strand from Mexico (Preliminary Determination, unchanged in Wire Strand from Mexico (Final Determination).
[97] Pipe and Tube from Mexico (Preliminary Determination), 69 FR at 19402, unchanged in Pipe and Tube from Mexico (Final Determination) and accompanying IDM at Comment 5; Circular Steel Products from Japan and accompanying IDM at Comment 1; and Wire Strand from Mexico (Preliminary Determination), 68 FR at 42379.

related to these transactions.[98] Therefore, these transactions are not governable by section 771(5)(E)(ii) of the Act.

- Negotiation of export receivables is a regular financial practice used to increase cash flows, outsource the collection of funds, and receive payment earlier than a company otherwise would.
- The GOK has stated that companies using the program pay fees or interest to the bank in order to receive advance payment.[99] The GOK's statement or contention that these fees can be characterized as interest charges is incorrect.
- Because Samsung bears the risk of non-payment by the customer, these negotiated transactions are distinguishable from "factoring" used by companies with limited cash flow, where the bank bears the risk and charges a higher interest rate as a result. As a profitable company, Samsung has no need to borrow to fund its operations.
- Samsung's agreements with KDB and IBK do not indicate that either bank would bear the risk of non-payment as the result of a default by a customer.

Department's Position: Information collected from Samsung prior to the Preliminary Determination indicated that it received funds from KDB and IBK in exchange for the sale of export receivables at a discounted rate to these institutions.[100] This manner of funding matches the O/A discounted loans described by the GOK, which was also described in the Preliminary Determination.[101] Samsung has indicated that this type of financing allows it to receive discounted early payments from KDB and IBK on the value of exports receivables sold to these banks earlier than Samsung would otherwise receive payment from its export customers. Contrary to Samsung's argument, its payments to KDB and IBK do not represent "negotiation charges" for the sale of export receivables. Rather, these funds represent the interest, in the form of a discount, that Samsung pays for the early receipt of payment on its export accounts receivable.[102] That the funds received are less than the actual value of the receivables is indicative of their nature as short-term discounted financing.

Both D/A and O/A financing operate as a form of post-shipment financing for borrowers. KDB and IBK provide this type of financing to exporters. As we have previously stated, post-shipment export financing that takes the form of funds in exchange for discounted trade bills is a form of financing, and constitutes a financial contribution under section 771(5)(D)(i) of the Act.[103] Analogous to the O/A financing used by Samsung, D/A financing allows for the recipient to receive discounted funding from KDB or IBK in exchange for export-related documents at an earlier date than it would receive payment from its customer, as indicated in the export contract. Both D/A and O/A financing provide discounted funds at an earlier date than when those funds would otherwise be provided. As such, it would not be consistent to treat O/A financing received by Samsung differently than we have treated D/A financing in the past. Therefore, we continue to find, as we did in the Preliminary Determination, that the funding

[98] See GOK QNR 4/9 at 20 and Exhibit 18.
[99] See GOK QNR 4/9 at appendix 32.
[100] See Samsung QNR 4/9 at 20.
[101] See Preliminary Determination, 77 FR at 33192.
[102] See Bottom Mount Refrigerators and accompanying IDM at Comment 7.
[103] See PET Film from India (Final Determination) and accompanying IDM at "Analysis of Programs;" DRAMS from Korea (Final Determination) and accompanying IDM at Comment 12; Bottom Mount Refrigerators and accompanying IDM at Comment 7.

provided by KDB and IBK to Samsung constitutes the provision of short-term loans at a discounted interest rate, because interest is paid up-front at the time the loan is received. Finally, Samsung's arguments regarding this program, and its characterization of discounted interest charges as "negotiation charges," do not differ in substance from Samsung's arguments regarding this program in Bottom Mount Refrigerators.[104] The Department's finding that this program constitutes the provision of loans is consistent with our final determination in Bottom Mount Refrigerators.[105]

Comment 4: Whether the Department Erred in Selecting a Benchmark Interest Rate to Measure the Benefit to Samsung under the KDB/IBK Loan Program

Samsung's Arguments:

- The Department should measure the benefit under the KDB/IBK short-term discounted loan program using interest rates from comparable commercial loans received by Samsung in accordance with 19 CFR 351.505(a)(3)(i).
- KDB and IBK interest rates are often higher than those charged to Samsung by commercial lenders. As noted by the GOK, "discount rates offered by the KDB and IBK… are based on commercial interest rates," and are market-based.[106]
- If the Department determines that fees paid to KDB and IBK are countervailable, it must use the actual rates Samsung received on its commercial lending transactions during the POI.
- The Department should reverse its finding in the Preliminary Determination that Samsung did not provide adequate information regarding its comparable commercial interest rates as Samsung provided requested information.
- If the Department was unsatisfied with the responsiveness of Samsung's information, it was required to notify Samsung of the deficiency and provide it with a reasonable opportunity to remedy the deficiency in accordance with section 782(c)(d) of the Act.

Department's Position: In the Preliminary Determination, the Department used a national average interest rate as a benchmark to measure benefits to Samsung under this program. Although the regulations state a preference for relying on a company's actual experience in obtaining comparable commercial short-term loans, where such information is not available or is incomplete, the Department may use a national average interest rate as a benchmark.[107] As noted in the Preliminary Determination, the Department used a national average interest rate as a benchmark because Samsung provided information on its comparable commercial short-term loans from only one bank, when other information on the record indicated that Samsung had other outstanding short-term lending during the POI.[108] Specifically, in Samsung's financial statement, short-term liabilities were shown as having been provided by "Woori Bank, etc."[109] The comparable commercial loan information initially provided by Samsung pertained only to loans by provided by a single other bank. Thus, it was evident that Samsung had not provided information about all of its comparable commercial loans as requested by the Department.

[104] See Bottom Mount Refrigerators and accompanying IDM at Comment 7.
[105] See id.
[106] See GOK QNR 4/9 at II-57
[107] See 19 CFR 351.505(a)(3)(i) and 19 CFR 351.505(a)(3)(ii).
[108] See Preliminary Determination, 77 FR at 33186.
[109] See Samsung QNR 4/9 at Exhibit 4B.

Subsequent to the Preliminary Determination, the Department requested, and received, additional information regarding Samsung's receipt of commercial short-term loans that were outstanding during the POI.[110]

At verification, the Department attempted to confirm the completeness of the comparable commercial loan information that Samsung reported in its July 25, 2012 questionnaire response. As noted in the verification report, information in Samsung's SAP system indicated that Samsung had received short-term commercial loans that were not included in the database submitted to the Department.[111] When asked why these loans were not reported to the Department, Samsung responded that it only reported comparable commercial loans that reconciled to the outstanding short-term loan balance as of December 31, 2011 in Samsung's financial statement, as Samsung had understood the Department to have requested in its June 7, 2012 questionnaire.[112] We disagree with Samsung's interpretation of the Department's request for information. In the questionnaire issued to Samsung, the Department highlighted the specific part of Samsung's financial statements that illustrated that Samsung had not reported all of its comparable commercial short-term loans. The Department then requested that Samsung "report all of Samsung's short-term commercial borrowing that was outstanding during the POI" (emphasis in original). The request was not for all loans that reconciled to the outstanding short-term loan balance at the end of the POI, but all short-term loans that were outstanding during the POI. The information requested was also meant to include Samsung's short-term lending that was taken out during, and paid back prior to the end of, the POI. Due to the absence of this information, the Department concludes that Samsung did not report all short-term comparable commercial lending as requested.

Because the loan information provided by Samsung is incomplete the Department continues to apply, as an alternative, a national average interest rate, as provided for in 19 CFR 351.505(a)(3)(ii).

[110] See Samsung QNR 6/25 at Exhibit 2.
[111] See Samsung Verification Report at 14.
[112] The question Samsung referred to reads:

> "In Exhibit 6 of Samsung's May 10, 2012 questionnaire response, Samsung provided information regarding commercial loans from [ ] that were comparable to those Samsung reported receiving from IBK and KDB. However, page 26 of Samsung's unconsolidated financial statements for 2011, provided as Exhibit 4B of Samsung's April 9, 2012 response, indicates that Samsung had outstanding short term borrowings in the amount of KRW 4,259,170 million as of December 31, 2011. Note 13 to the financial statements, at page 42, indicates that these borrowings were from financial institutions that include Woori Bank and that the borrowings are secured by trade receivables.
> Please report all of Samsung's short-term commercial borrowing that was outstanding during the POI, regardless of currency or country of destination for any shipped goods. Please use the loan attachment from the original questionnaire to provide the requested information. If you believe that only the loans provided by [ ] qualify as comparable commercial loans, please explain why, and how the outstanding short-term loans that are noted in Samsung's 2011 financial statement do not meet the criteria identified in the Department's regulations. Please provide documentation to substantiate your response."

Comment 5: Whether Premiums Charged by K-SURE are Adequate to Cover the Long-Term Operating Costs and Losses of the Program

Samsung's Arguments:

- Any benefits that Samsung received from K-SURE are not countervailable because the K-SURE program operated on a profitable basis during the five year period of 2007-2011, in accordance with 19 CFR 351.520(a)(1). This was verified by the Department.[113]

Department's Position: To determine whether an export insurance program provides a countervailable benefit, we first examine whether premium rates charged are adequate to cover the program's long-term operating costs and losses.[114] In its initial questionnaire response, the GOK provided a summary of K-SURE's income and expenses compiled from K-SURE's financial statements with respect to its short-term export insurance program. The data contained K-SURE's income comprising premiums charged and claims recovered, and its expenses comprising claims paid and the managing/operating expenses of the program. The GOK provided these data for the POI and the four preceding years.[115] As required by the Department's regulation and discussed in the CVD Preamble, we have analyzed the data over the long-term. The Department takes a long-term approach because variances or anomalies in individual years are likely to be balanced out over the long term.[116] These data demonstrate that over the five-year period ending with the POI (i.e., 2007-2011), K-SURE's short term export insurance program met the standard for non-countervailability, within the meaning of 19 CFR 351.520(a)(1). This was confirmed at verification. Accordingly, we have determined that K-SURE's export insurance program was not countervailable during the POI. Further, Samsung demonstrated at verification that it did not receive any claims from K-SURE during the POI for exports of subject merchandise.[117]

Comment 6: Whether RSTA Article 10(1)(3) is De Facto Specific

GOK's Arguments:

- The program is available to all Korean corporations as long as they satisfy the requirements set forth in the statute.
- Any tax credit claimed by the respondents will be larger than comparable tax credits claimed by other companies because the respondents are among the largest corporations in Korea.
- By virtue of their size, the respondents will make more eligible expenditures on R&D than small corporations, thus their absolute benefit will be bigger.[118]
- Because the application of the tax credit is based on a standard percentage of eligible expenses for all companies that use the program, the absolute value of the credit is not meaningful to the Department's specificity analysis.

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[113] See GOK Verification Report at 3-4.
[114] See 19 CFR 351.520(a)(1). See also CVD Preamble, 63 FR at 65385.
[115] See GOK QNR 4/9 at II-79.
[116] See Bottom Mount Refrigerators and accompanying IDM at Comment 9.
[117] See Samsung Verification Report at 23-24.
[118] See Geneva Steel (where more heavily industrialized and populated regions of Belgium received greater benefits from a program based on location, the CIT upheld the Department's determination that there was disproportionality).

- The Department has previously determined that the size of a company should not substitute for a proper specificity finding.[119]
- Where a program's eligibility requirements are explicitly stated, all participants receive the same benefit, and there is no exercise of discretion or treatment favorable to any one industry, there is no disproportionality.[120]
- The Department should not take a mechanistic amount-determinative approach to finding disproportionality, and should make its determination based on the facts and circumstances of this investigation.[121]
- To find that a benefit conferred on a large company might be disproportionate merely because of the size of the company would produce an untenable result.[122]

Samsung's Arguments:

- The Department erred in the Preliminary Determination when it found that the RSTA Article 10(1)(3) program is de facto specific because Samsung received a disproportionate amount of benefits. [123]
- Based on information on the record, it is clear that benefits under the program are generally available and were not limited to a small and exclusive number of companies.
- Samsung received the same proportionate benefit as every other applicant, which is based on the amount invested in research and manpower development.
- Large firms, by virtue of their success, size, and revenue, will naturally invest more in research and manpower development than companies that are smaller or less successful.
- The fact that Samsung's absolute benefit was greater than that of other Korean firms does not support the Department's de facto specificity finding in the Preliminary Determination.[124]
- The Department is not required to examine benefits on an absolute basis when evaluating disproportionality.[125]
- The mere fact that an industry received a greater monetary benefit from a program than did other participants is not determinative of whether that industry was dominant or received disproportionate benefits.[126]

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[119] See CTL from Korea. See also Bethlehem Steel (where the CIT stated that the fact that the Korean steel industry received a greater monetary benefit from the program at issue than did other participants was not determinative of whether that industry was dominant or receiving disproportionate benefits).
[120] See Bethlehem Steel.
[121] See Proposed Regulations, 54 FR at 23368.
[122] See AK Steel.
[123] See id.
[124] Steel Products from Korea (where a respondent did not revalue more of its assets than was generally allowed under Korean law, and where there was no evidence that the GOK intervened to allow the respondent to revalue its assets any more than other firms were permitted to, the Department found the program was not specific); Pure Magnesium from Canada (1992), 57 FR at 30950 (investigating rates charged under a general electricity discount program, the Department stated that when the rate "is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, (the Department) would probably not find a countervailable duty." However, because the rates, expressed as a percentage, varied among electricity programs, the Department found the program to be specific. This is in contrast to the RSTA Article 10(1)(3) program, where a 40 percent tax credit is applied uniformly to all eligible recipients).
[125] See AK Steel (the CAFC rejected the domestic industry's claim that respondent received a disproportionately large benefit simply because it had received the most benefits in absolute terms).
[126] See Bethlehem Steel.

- The Department must consider what the GOK knew or intended to benefit when it enacted the tax code to determine specificity. There is no evidence on the record that the GOK intended to benefit one industry or company over another, since the GOK has no control or influence over how companies would utilize the tax credit in the future.

Whirlpool's Arguments:

- The arguments of the GOK and Samsung are identical to those made in Bottom Mount Refrigerators. The Department relied on the identical data to make its de facto specificity finding in Bottom Mount Refrigerators and the Preliminary Determination. There is no cause for the Department to reverse its previous finding.
- The CVD statute does not mandate any specific methodology in conducting the de facto specificity analysis, and the Department has discretion to apply any reasonable methodology in light of the facts and circumstances of each particular case.[127]
- The Department has the discretion to conduct its disproportionality analysis at an enterprise or industry level, and has no obligation to take into account economic factors that might have caused disproportionate use.[128]
- The Department can analyze the percentage share of total benefits received by an enterprise, and how many times greater the enterprise's benefit was compared to the average recipient.[129]
- Case law does not support Samsung's argument that the Department cannot find disproportionate use of RSTA Article 10(1)(3). The Court in AK Steel was not advocating for a strict rule to be applied regarding de facto specificity analyses, and was instead stressing that the Department should be allowed to approach its de facto specificity analysis in light of the circumstances of each case.
- As the Department noted in Bottom Mount Refrigerators, the point at issue in Steel Products from Korea required a different analytical approach to specificity because the Department was addressing the entrustment and direction of lending by private financial institutions by the GOK.
- Bethlehem Steel and Pure Magnesium from Canada (1992) dealt with the unique circumstances of electricity subsidies and de facto specificity, and those decisions should not be generalized to all de facto specificity analyses.

[127] See Bottom Mount Refrigerators and accompanying IDM at Comment 4; AK Steel ("Determinations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case"); Bethlehem Steel ("Commerce must on a case-by-case basis sequentially analyze each of the four factors listed in 19 U.S.C. § 1677(5)(A)(D)(II) and determine whether any of the factors is present").

[128] See Hardwood Flooring from Canada and accompanying IDM at Comment 7 (the Department is not obligated to "examine reasons that may explain why the industry at issues received a disproportionate share of the benefits. The statute does not require the Department to determine the cause of any de facto specificity that occurs as a result of the government action").

[129] See, e.g., Steel Wire Rod from Italy, 63 FR at 40486 (where the Department found that the respondent "received far more than the average recipient over this period"); CORE from Korea AR Preliminary Results (Sept. 2010), 75 FR at 55750 (where the Department found that the respondent received a disproportionate amount of assistance "because the amounts it received were significantly larger than the average amount disbursed to other companies in those years"); Alloy Magnesium from Canada (where the Department found disproportionality because the respondent's percentage share of the grants was greater than the percentage share of other beneficiaries and because the amount it received was several times greater than the typical grant amount").

- Geneva Steel supports the position that the Department is not bound by rigid rules in its analysis, but rather that it should consider the record evidence and apply a methodology that is appropriate for those facts.[130]
- The GOK and Samsung have conflated de jure and de facto specificity; the fact that benefits under the program were generally available and provided to a large number of companies, and that all companies receive the same tax credit by percentage, is relevant to a de jure specificity analysis, not a de facto specificity analysis.[131]
- The argument of the GOK and Samsung that benefits under this program were not limited to a small and exclusive number of enterprises relates to an analysis of de facto specificity under section 771(5A)(D)(iii)(I) of the Act, which is focused on whether the actual recipients of the benefits are limited in number on an enterprise or industry basis. This is not relevant to the Department's finding of specificity under section 771(5A)(D)(iii)(III) of the Act in the Preliminary Determination, which focuses on whether an enterprise or industry receives a disproportionately large amount of the benefits.
- There is no evidence on the record that there is a direct and invariable correlation between the size of a company, the size of their eligible expenditures, and the size of the tax credit received.
- Eligibility under RSTA Article 10(1)(3) is based on the amount of R&D undertaken, not the size of a company. The mere fact that a company is large does not mean that the company will invest more in R&D.[132]
- Section 771(5A)(D)(iii)(III) of the Act only requires the Department to determine de facto specificity based on whether or not an enterprise or industry received a disproportionately large amount of the subsidy. There is no precedent, law, or regulation requiring the Department to assess whether a large subsidy is reasonably expected in one set of circumstances but not in another.[133]
- The GOK failed to provide all the information requested by the Department, leading the Department to appropriately conduct this particular de facto specificity analysis using this particular methodology.
- Samsung's argument that the Department should consider the GOK's intentions when it enacted the tax code is without support in the statute, regulations, and judicial precedent.

Department's Position: Where a program is not specific on a de jure basis, the statute requires the Department to determine whether the program is specific on a de facto basis.[134] The statutory criteria for de facto specificity are set forth under sections 771(5A)(D)(iii)(I) through (IV) of the Act. Under section 771(5A)(D)(iii)(III) of the Act, the Department found in the Preliminary Determination that this program was de facto specific because two enterprises received a disproportionately large amount of the subsidy. The statute instructs that where the

[130] See Geneva Steel ("Commerce enjoys considerable deference in erecting methodologies and procedures for implementing the CVD laws. This Court is no position to require Commerce to modify its de facto test so long as the test as applied is reasonable and conforms to congressional intent").
[131] See Bottom Mount Refrigerators and accompanying IDM at Comment 4. See also Alloy Magnesium from Canada.
[132] See Bottom Mount Refrigerators and accompanying IDM at Comment 4 ("SEC's argument that large companies uniformly invest more in R&D than other companies is speculative").
[133] See Alloy Magnesium from Canada (NAFTA).
[134] See section 771(5A)(D)(iii) of the Act.

number of users of a subsidy is very large, the Department must assess predominant use and disproportionality factors. Furthermore, the SAA explicitly states that because the weight accorded to the individual de facto specificity factors is likely to differ from case to case, clause (iii) makes clear that the Department shall find de facto specificity if one or more factors exist.[135] The CVD statute does not mandate any specific methodology in conducting de facto specificity analysis and the Department has discretion to apply any reasonable methodology in making a de facto determination in light of facts and circumstances of each particular case.[136] The GOK, Samsung, and Whirlpool have made arguments regarding the applicability of AK Steel to this investigation. However, we do not construe AK Steel as mandating or prohibiting any particular methodology. In AK Steel, the CAFC affirmed the Department's specificity analysis in light of the facts and circumstances of that particular case and explained that "(d)eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case."[137]

In this investigation, the Department, as required by the statute and as directed by the SAA, has examined information on the record and used a reasonable methodology to analyze whether disproportionate benefits are provided to the companies under investigation. In the Preliminary Determination, the Department compared the benefits received by Samsung and LG to the average amount of the benefit received by the more than 11,000 other companies in Korea that used the program, and found that both Samsung and LG received a disproportionately large percentage of all benefits granted under this program in 2010, the most recent year for which information was available. Moreover, because information for the 2010 tax year, the annual returns for which were filed in 2011, was unavailable, the GOK submitted the same information regarding usage that was relied on in Bottom Mount Refrigerators to make the de facto specificity determination in that investigation. The Department's finding in the Preliminary Determination, which examined the same data as it applies to Samsung and LG, is identical to that which was made in Bottom Mount Refrigerators.[138]

Our choice of methodology for analyzing disproportionality of benefit received is consistent with our statute and is supported by the information on the record. Because the GOK did not provide the amounts of benefits provided to individual companies, we were limited by the information on the record to examining the amount of the tax credits that Samsung and LG received in 2010 in comparison to the number of total companies in Korea that received the tax credit during that year (more than 11,000), as well as the total amount of benefits granted under this program. Therefore, based on the information on the record, the Department properly compared the average amount of the tax credits provided to companies in Korea that used this program during 2010, to the actual amount of the tax credits received by Samsung and LG in that same year. It is a significant indicator of disproportionate use that Samsung and LG together accounted for a very large percentage of all tax credits provided under this program, when this program had more

[135] See SAA at 931.
[136] See e.g., AK Steel and Bethlehem Steel.
[137] See AK Steel, 192 F.3d at 1385; see also Proposed Regulations, 54 FR at 23368 ("The specificity test cannot be reduced to a precise mathematical formula. Instead, the Department must exercise judgment and balance various factors in analyzing the facts of a particular case").
[138] See Bottom Mount Refrigerators and accompanying IDM at Comment 4.

than 11,000 beneficiaries. Even though we would not expect each beneficiary to receive an equal percentage of the total benefits, in the case of Samsung and LG, the percentage of total benefits received is significant (the actual values are BPI, and are presented in the calculation memoranda). As noted above, the information relied upon by the Department is identical in both the current investigation and Bottom Mount Refrigerators. Because there has been no new information regarding the usage of this program since the Preliminary Determination, or since the previous Bottom Mount Refrigerators investigation, the Department continues to find that Samsung and LG received a disproportionate amount of the benefits granted under this program during the POI, thus mandating our determination that this program is de facto specific under section 771(5A)(D)(iii)(III) of the Act. This type of de facto analysis is fully consistent with prior administrative precedent.[139]

Furthermore, we do not find Samsung's argument regarding Bethlehem Steel to be persuasive. Our finding in that proceeding that electricity rates "will not be countervailed solely because the rates are provided to large consumers" if "the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than similarly situated consumers" was based on our examination of the Korean steel industry, which we determined was characterized by the large consumption of electricity.[140] More importantly, Bethlehem Steel concerned the standard related to determining whether there is a benefit conferred under 771(5)(E)(iv) of the Act for the government provision of a good or service, not whether a program is specific under 771(5A)(D) of the Act. Thus, the program and facts of Bethlehem Steel are not applicable to our analysis of this program and the facts in this investigation.

As well, we find unavailing Samsung's argument that all beneficiaries under this program receive the same proportional benefit because the tax credit is calculated as the same percentage of qualifying investments for all beneficiaries. This argument fails to recognize that the Department's analysis of disproportionality examines a respondent's use of the program in comparison to the universe of companies who use the program.

We are also not convinced by the GOK's and Samsung's argument that the Department should not find this program de facto specific, because all Korean companies that meet the statutory criteria are eligible to receive benefits under the program. As Whirlpool correctly states, this is a de jure specificity argument and is not relevant to the de facto specificity analysis conducted by the Department. Samsung has also argued that the program is not specific because it is not

[139] See, e.g., CORE from Korea AR Preliminary Results (Sept. 2010) ("we compared the amount of assistance approved for HYSCO to the average amount of assistance approved for other companies… HYSCO received a disproportionate share of assistance under this program… because the amounts it received were significantly larger than the average amount disbursed to other companies") (unchanged in CORE from Korea AR Final Results (Jan. 2011)). See also Alloy Magnesium from Canada (grants received by the respondent were disproportionately large when: 1) the total grants received, compared on a percentage basis, were larger than the percentage shares of all other recipients; 2) where the respondent's share of the total benefits was nearly three times larger than the next highest recipient; 3) where the respondent's benefit was greater than that received by 99 percent of all other beneficiaries; and 4) where the grant received by the respondent was over ninety times larger than the typical grant amount) and Wire Rod from Italy (benefits to the respondent were disproportionate where the respondent "received far more than the average recipient over this period").
[140] See Bethlehem Steel, 140 F. Supp. 2d at 1369.

limited to a small and exclusive number of companies, and both the GOK and Samsung have argued that the program is not specific because there is no exercise of discretion in the decision to grant the subsidy. Although these are de facto specificity arguments, they refer specifically to sections 771(5A)(D)(iii)(I) and 771(5A)(D)(iii)(IV) of the Act, respectively, whereas the Department found this program to be specific in the Preliminary Determination under section 771(5A)(D)(iii)(III) of the Act, and continues to do so in this final determination.

The GOK and Samsung also argue that the Department's determination that Samsung received a disproportionately large amount of the benefits under section 771(5A)(D)(iii)(III) of the Act is inconsistent with the language and purpose of the statute, because companies that receive a disproportionate share of the benefits only do so because they make more qualifying investments. We disagree with this conclusion. The very purpose for the analysis of de facto specificity set forth in the statute is to ensure that companies that qualify and receive more benefits under a government subsidy program do not escape redress of the countervailing duty law simply because the law implementing the subsidy program does not explicitly limit the benefits to a group of enterprises or industries. Furthermore, Samsung's argument that large companies, by virtue of their success, size, or revenue, naturally invest more in R&D than other companies is speculative, and there is no information on the record supporting such conjecture. Furthermore, even if this were accurate, we would still not apply this standard to determining de facto specificity of a government program because that would undermine the purpose of evaluating dominance or disproportionality. Receipt of benefits by each company must be evaluated in comparison to what other companies received under the program and cannot be adjusted to reflect the size of each company recipient.

Comment 7: Whether Income Tax Credits Should be Attributed to Non-Subject Merchandise

Samsung's Arguments:

- The majority of the tax credits received by Samsung under the RSTA are tied to investments that are attributable to non-subject merchandise at the point of bestowal, because, by law, they are automatically extended when a company makes qualifying expenditures.
- Tax credits are only granted based on expenditures for enumerated activities that Samsung must incur before it can calculate the amount of the tax credit and then claim that credit on its annual tax return.
- Most of the qualifying expenditures that Samsung made to receive these tax credits are tied to non-subject merchandise including semiconductors, LCD, and mobile telephones. Samsung had only minimal qualifying expenditures related to home appliance products for the year in which the tax return was filed during the POI.
- Legislative history regarding tying states that for non-recurring grants or loans, "reasonable methods of allocating the value of subsidies over the production or exportation of products benefitting them will be used."[141] Further "with regard to subsidies which provide an enterprise with capital equipment or a plant… the next amount of the subsidy should be… assessed in relation to the products produced with such equipment or plant."[142]

[141] See H. Rep. No. 317, 96th Cong., 1st Sess. 74-75 (1979).
[142] See id.

- The Department has stated that a tied subsidy is "a benefit bestowed specifically to promote the production of a particular product;"[143] in applying tying rules, it would "analyze the purpose of the subsidy based on information available at the time of bestowal."[144]
- The Department has indicated that it interprets Congressional intent regarding tying to mean that subsidies should be attributed to the products that directly benefit from the subsidy.[145]
- The Department cannot attribute benefits that are directly attributable to a particular plant or activity that is unrelated to the subject merchandise to all products of the company.[146]
- The Department has consistently elected not to countervail benefits from tax programs where the use of those programs was tied to non-subject merchandise.[147]
- Samsung provided information detailing its qualifying expenditures under these tax programs by the Business Areas that had incurred those expenses and made the qualifying investments. Furthermore, Samsung tied those expenditures and investments to non-subject merchandise. All such claims for qualifying investments are subject to audit by the GOK tax authority.[148]
- Only qualifying investments and expenses incurred for the Digital Appliance business unit, which is responsible for the production of washing machines, should be included in the Department's consideration of tax benefits under these programs.
- Benefits received under RSTA Article 25(2) are not related to subject merchandise, as verified by the Department.
- Tax credits under the RSTA Article 26 program are tied to specific products at the point of bestowal because they are extended based only on facility investments that companies make before they can calculate the amount of the tax credit and then claim the credit on the annual tax return.
- A company's investment in a qualifying facility denotes the point at which the subsidy is bestowed under RSTA Article 26.

[143] See Proposed Regulations, 54 FR at 23374.
[144] See CVD Preamble, 63 FR at 65403.
[145] See id.
[146] See Steel Wheels from China (the Department preliminarily determined that a grant was not countervailable because it was tied to the production of non-subject merchandise, i.e., steel wheels that were outside the scope of the investigation); CORE from Korea AR Preliminary Results (Sept. 2010) (unchanged in CORE from Korea AR Final Results (Jan. 2011)), (where the Department stated that, "consistent with 19 CFR 351.525(b)(5)(i) and our past practice, we determine that these grants are tied to non-subject merchandise and thus did not confer a benefit to HYSCO during the POR"); DRAMS 1st Administrative Review (where benefits provided under one project were tied to non-subject merchandise, the Department stated that, "in accordance with 19 CFR 351.525(b)(5), we find that Hynix did not receive any countervailable benefits under this program during the POR"); PET Film from India (AR 2004) and accompanying IDM at Comment 8 (where a license was used to produce only non-subject merchandise, the Department stated that because the license "exclusively relates to the production of non-subject merchandise, and the Department does not countervail benefits conferred on non-subject merchandise, the Department has not included the amount of the benefits related to this metallizer in its calculations for the final results"); Nitrocellulose from France (the Department noted that Congressional committees stressed "that the Department should reasonably allocate subsidies to the products that they benefit… It is… reasonable not to allocate to products under review benefits tied directly to products outside the scope of review).
[147] See Steel Wire from New Zealand (the Department determined that there was no benefit where a respondent's qualifying expenses under a tax program were tied to the export of non-subject merchandise, and where the respondent did not use the program to promote the sales of its subject merchandise); Kajaria Iron Castings ("Commerce erred in countervailing the portion" of the tax program because it was "tied to merchandise not within the scope of the review").
[148] See Kajaria Iron Castings, 156 F.3d. at 1176.

- None of Samsung's qualifying investments under RSTA Article 26 were related to its digital appliance related assets in 2010. Only a very small portion of the claimed tax credit was attributable to the home appliance division of Samsung, which resulted from tax credits carried over from prior years.
- Unlike in Bottom Mount Refrigerators, Samsung placed on the record details of its qualifying investments under RSTA Article 26 and the business areas of the company making those investments.[149]
- The Department's refusal at verification to examine information corroborating Samsung's claim that qualifying investments under RSTA Article 26 were tied to non-subject merchandise should not be used to support an inference that the tax credits under the program are tied to subject merchandise.

Whirlpool's Arguments:

- Samsung's argument that few of its qualifying expenses were incurred by its Home Appliance business unit during the POI, and that only investments and expenses incurred for the Digital Appliance business unit should be considered in the Department's analysis, is contrary to 19 CFR 351.525(b)(5), which lays out the Department's practice of allocating benefits for tax programs.
- The Department's practice for identifying a subsidy is well-established: "in identifying a tied subsidy, the agency looks to the 'stated purpose of the subsidy or the purpose we evince from the record at the time of bestowal.'"[150] The only purpose evinced in the RSTA is Article 1, which states that the law is designed "to contribute to the sound development of national economy."[151] The GOK had "no way to know" of Samsung's intended use for the subsidy benefits it received based on this stated purpose.[152] It does not matter whether the firm used the government funds or if some of its own funds were freed up as a result of the subsidy, as the Department does not trace the use of subsidies through a firm's books and records.[153]
- A subsidy "is tied when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy."[154] The Department must determine whether the subsidy was intended to benefit any particular product, and whether the intended use was known to the subsidy giver and was so acknowledged prior to or concurrent with the bestowal of the subsidy.[155]
- The tying of a subsidy to a particular product must be to the complete exclusion of the subject merchandise.[156]
- The GOK has stated that RSTA Article 10(1)(3) "covers R&D investments in general terms, unlike RSTA Articles 10(1)(1) and 10(1)(2) which address specific R&D investments…"[157] The GOK also stated that "respondents have incurred eligible expenditures with respect to

[149] See Samsung QNR 4/9 at Exhibit 25.
[150] See Royal Thai (citing CVD Preamble, 63 FR at 65403).
[151] See GOK 6/25 response at Exhibit S-4.
[152] See Royal Thai, 30 C.I.T. at 1085.
[153] See CVD Preamble, 63 FR at 65403.
[154] See Carbon Steel from Belgium, 47 FR at 39317. See also Bottom Mount Refrigerators and accompanying IDM at Comment 3.
[155] See Bottom Mount Refrigerators and accompanying IDM at Comment 3.
[156] See Steel Pipe from Turkey ("the respondent must demonstrate that the subsidy is, in fact, tied to out-of-scope merchandise and could not benefit production of in-scope merchandise").
[157] See GOK QNR 4/9 at 113 of the Appendices Volume.

general research and development activities in accordance with the RSTA and the Enforcement Decree of the RSTA."[158]

- Samsung itself has stated that, when it receives benefits under RSTA Article 10(1)(3) "such as R&D tax credits, those credits are tied to an activity that benefits world production. Review of the programs at issue in this case confirms that the benefits accrue to all products, regardless of country of origin."[159] Samsung further stated that, with respect to RSTA Article 10(1)(3), "(t)he returns did not specify the merchandise for which these reductions were claimed… express approval of the benefit is not required to obtain this tax reduction."[160]
- RSTA Article 10(1)(3) is by definition a "general" tax credit program for research and manpower development expenditures. The tax credit received by Samsung was a result of general research and development spending, and the manner in which the tax credit may be spent is not constrained.
- The Department correctly found in the Preliminary Determination that RSTA Articles 10(1)(1) and 10(1)(2) were countervailable because they were limited to lists of "new growth engines" and "core technologies," respectively. However, there is nothing in the limited lists of "new growth engines" or "core technologies" that suggests that the programs were intended to benefit any particular project to the exclusion of any other.
- Samsung's reliance on Steel Wheels from China is misplaced, as the purpose of the grant in that program was explicitly stated on the subsidy approval document furnished by the Government of the PRC at the time of bestowal with respect to the project-specific grant at issue.[161] The intended use was known to the subsidy provider and so acknowledged by the recipient prior to the bestowal of the benefit.[162]
- Cases relied upon by Samsung fail to support to its arguments.[163] The finding in Steel Wire from New Zealand is not applicable to this investigation because it dealt specifically with an export subsidy, and the respondent was not involved in the commercial export of the subject merchandise.
- Samsung's reliance on Kajaria Iron Castings is also misplaced, as the CIT in that case found the tax program at issue not countervailable only because it was coupled with another tax program that was tied to non-subject merchandise.[164] Only because of the particular facts of Kajaria Iron Castings did the CIT find that "a subsidy tied to non-subject merchandise – a

[158] See GOK QNR 4/9 at 115 of the Appendices Volume.
[159] See Samsung Case Brief at 50.
[160] See Samsung QNR 4/9 at Exhibit 22.
[161] See Steel Wheels from China, 77 FR at 55029.
[162] See Carbon Steel from Belgium, 47 FR at 39317. See also Bottom Mount Refrigerators and accompanying IDM at Comment 3.
[163] In CORE from Korea AR Preliminary Results (Sept. 2010), 75 FR at 55750, the R&D grant at issue was explicitly tied to non-subject merchandise at the point of bestowal; DRAMS 1st Administrative Review stands for the proposition that a subsidy provider's intention must be explicit to establish a tie between a subsidy and a particular product (see DRAMS 1st Administrative Review and accompanying IDM at 15); the program at issue in PET Film from India (Final Determination) with respect to export licenses was designed to support the production and export of specific non-subject merchandise listed on the individual licenses; and the facts of Nitrocellulose from France, in accompanying IDM at Comment 1, deal only with cross-subsidization and do not to support Samsung's position that subsidies should not be allocated to products under investigation if they are tied to products outside the scope.
[164] See Kajaria Iron Castings, 156 F.3d. at 1176.

non-countervailable subsidy – does not become countervailable merely by virtue of its being deductible under a separate, untied countervailable subsidy that is a tax deduction."[165]

- In the absence of the other tax program, the CIT in Kiswok Industries found the tax exemption examined in Kajaria Iron Castings to be an "untied and countervailable" subsidy, appropriately allocated to the respondent's total sales.[166]
- There is nothing on the record that supports Samsung's conclusion that the purpose of the RSTA Article 26 as contemplated by the GOK at the time of bestowal was to benefit production of non-subject merchandise "and could not benefit production of in-scope merchandise."[167] On the contrary, this program is a general tax credit that is attributable to "all products sold by a firm, including products that are exported."[168]
- Samsung has previously stated with respect to the RSTA Article 26 program that "(t)he tax reduction did not specify the merchandise for which this reduction was to be provided… express approval of the benefit is not required to obtain this tax reduction."[169]
- Samsung has provided no new information in this proceeding that demonstrates that the intended use of the RSTA Article 26 subsidy was known and acknowledged at the time of bestowal, that it was to benefit a particular product only, and that the product it was intended to benefit was non-subject merchandise.
- Where untied tax credits benefit the company as a whole, it is appropriate to attribute Samsung's receipt of tax credits under the RSTA Article 26 program to its total sales.[170]

Department's Position: The Department identifies the type and monetary value of a subsidy at the time the subsidy is bestowed and is not required to examine the use or effect of subsidies, i.e., to trace how benefits are used by companies.[171] We disagree with Samsung's claim that the point at which the tax credit is bestowed is determined at the time of the company's qualifying investment[172] and that the RSTA tax credits are tied to non-subject merchandise.[173] The Department's regulations at 19 CFR 351.525(b)(5)(i) state that generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." However, in making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.[174] A subsidy is tied only when the intended use is known to the subsidy giver (in this case, the GOK) and so acknowledged prior to or concurrent with the bestowal of the subsidy.[175] For example, in determining whether a loan is tied to a particular product, the Department examines the loan approval documents; to determine whether a grant is tied to a particular product, the Department examines the grant approval document. In the case of the tax credits at issue, the GOK had no way to know the

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165 See Kiswok Industries, 28 C.I.T. at 787.
166 See id.
167 See Steel Pipes and Tubes from Turkey and accompanying IDM at Section E.
168 See 19 CFR 351.525(b)(3).
169 Samsung 4/9 at Exhibit 24.
170 See Bottom Mount Refrigerators and accompanying IDM at Comment 3.
171 See CVD Preamble, 63 FR at 65403.
172 We note that, at the hearing, Samsung claimed that "A tax credit is bestowed when Samsung claims that credit on its tax return." See Hearing Transcript at 28.
173 See Samsung QNR 4/9 at Exhibit 25
174 See CVD Preamble, 63 FR at 65403.
175 See, e.g., PET Film from India (AR) and accompanying IDM at Comment 2; see also Phosphoric Acid from Israel, 63 FR at 13631, citing Carbon Steel from Belgium.

intended use at the time the company was authorized to claim the tax credits, nor can the recipient company acknowledge receipt of the subsidy prior to or concurrent with its bestowal. Furthermore, there is no evidence within Samsung's income tax return that the RSTA tax credits it claimed were tied to certain merchandise. As such, there is no basis to find that the benefits are tied to non-subject merchandise as Samsung claims. Therefore, we continue to determine that the total tax credits claimed under RSTA Articles 10(1)(1), 10(1)(2), 10(1)(3), 25(2), and 26, as shown on the tax returns submitted by Samsung, conferred benefits that are attributable to Samsung's adjusted total FOB sales. This is consistent with the Department's previous determination in Bottom Mount Refrigerators.[176]

Samsung has argued that tax credits received under the RSTA programs result from underlying investments that involve non-subject merchandise.[177] However, this claim is not supported by any evidence from the GOK or Samsung that the tax credits could only be claimed for non-subject merchandise nor is there any evidence in the tax returns provided on the record by Samsung for itself and its affiliate companies, which indicates that receipt of the tax credits is tied to specific products. Furthermore, these tax credits reduce Samsung's overall tax burden. As such, there is no basis to find that the benefits are tied to any merchandise or operating division at the point of approval or bestowal.

Samsung has also argued that, in contrast with the facts underlying the Department's decision in Bottom Mount Refrigerators, it has provided information on the record in the instant investigation that supports its contention that the tax credits under the RSTA result from underlying investments that are tied to non-subject merchandise.[178] However, this claim is not supported by the tax return provided on the record by Samsung, which does not evince that the tax credits provided under the RSTA were tied to any specific facility. In addition, the tax credit reduces Samsung's overall tax liability which benefits all of its domestic production and sales. While Samsung may maintain underlying documentation, these documents do not form the basis for bestowal and are not included in the annual tax returns that the company files with the Korean tax authority. As such, there is no basis to find that the benefits are tied to any specific facility or operating division at the point of bestowal. Therefore, the Department is continuing to find that the total tax credits claimed under the RSTA Articles, as shown on Samsung's annual tax returns filed in 2011, conferred a benefit that is attributable to Samsung's adjusted total FOB sales.

Comment 8: Whether RSTA Article 25(2) is De Facto Specific

Samsung's Arguments:

- A very large portion of the Korean economy is eligible for benefits under this program as described and illustrated by the GOK. Further, the Korea National Tax Service publication indicates that 220 companies used this program in 2009.[179]
- In the Preliminary Determination, the Department failed to consider evidence on the record showing that a large and diverse portion of the Korean economy is eligible to receive benefits

[176] See Bottom Mount Refrigerators and accompanying IDM at Comment 2.
[177] See Samsung 4/9 at Exhibit 25.
[178] See id.
[179] See GOK QNR 6/25 at Exhibit S-4.

under this program. Section 771(5A)(D) of the Act requires the Department to "take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy."

- The Department has previously declined to make a finding of specificity when approximately 200 Korean companies from a variety of industries took advantage of widely available government benefits.[180]
- Similar to the above cited cases, RSTA Article 25(2) is available to a large number of companies throughout a wide variety of industries, and therefore is not de facto specific.

Whirlpool's Arguments:

- Samsung has misconstrued the specificity analysis under section 771(5A)(D) of the Act, as applied by the Department in the Preliminary Determination. Whether a program is available to industries across the Korean economy is an issue relevant to de jure specificity, not de facto specificity.
- The record supports the Department's finding in the Preliminary Determination that the RSTA Article 25(2) program is de facto specific. The small number of companies that received benefits in 2010, the most recent year for which data were available, is starkly contrasted with the large number of companies that filed tax returns but did not use the program.

Department's Position: In the Preliminary Determination, the Department found the program to be de facto specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the information provided by the GOK demonstrated that the actual recipients of tax credits under this program during the POI are limited in number.

Under section 771(5A)(D) of the Act, the Department will find de facto specificity:

> (iii) Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is 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.

As noted in the Preliminary Determination, the information we relied on was for tax year 2009, the tax returns for which were filed in 2010. This is the most recent information the GOK provided on the record of this investigation. The data provided by the GOK demonstrate that only a limited number of companies received a tax credit under RSTA Article 25(2) during the POI.[181] As set forth in the SAA, the Department intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy.[182] Based on the information on the record, there are only a limited number of companies that received a tax credit under this program during the POI. Therefore, this program is not broadly available and widely used throughout the Korean economy. As such, the actual

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[180] See Steel Products from Korea, 57 FR at 57770, AK Steel, and CTL from Korea.
[181] Because this data is BPI, the data have been included in the Samsung Final Calculation Memorandum.
[182] See SAA at 929.

number of recipients of this program is limited and the program is de facto specific under section 771(5A)(D)(iii)(I) of the Act. Both the facts applicable to this investigation, and the Department's final determination, are consistent with the decision in Bottom Mount Refrigerators.[183]

With respect to Samsung's argument regarding Steel Products from Korea and AK Steel, the specificity determination in that case was made based on the particular facts on the record in that investigation, while the de facto specificity determination in the instant investigation is based upon the facts on this record. Furthermore, the Department reexamined the same program at issue in Steel Products from Korea in an investigation conducted six years later and found that program de facto specific within the meaning of section 771(5A)(D)(iii) of the Act based on the set of facts on the record of that investigation; among these was the fact that the program "effectively limited usage of the program to only 316 companies" during the three years the program operated while there were "15 to 24 thousand manufacturers in operation in Korea during that period."[184] We also stated that there was a "limited number of companies using this program" and "given the number of manufacturing companies in Korea during the effective period of the program's operation, there were very few companies receiving tax benefits under this program."[185] Although Samsung cited Steel Products from Korea, as support for its argument that RSTA Article 25(2) is not de facto specific, the Department's subsequent de facto specificity finding in CTL from Korea supports the Department's final determination in this investigation.

Comment 9: Whether RSTA Article 26 is Regionally Specific

GOK's Arguments:

- Tax credits provided under RSTA Article 26 are not limited to an enterprise or industry located within a designated geographical region, as required by the statute, because they were available to all Korean industries that satisfy the statutory eligibility requirements.
- The Overcrowding Control Region of the SMA represents only two percent of Korean territory. Because companies making investments in 98 percent of Korean territory are eligible to receive the tax credit, the program is not regionally specific.
- RSTA Article 26 does not designate a geographical region as required by U.S. law for a finding of regional specificity. As a general rule, it provides the benefit the entirety of Korean territory, only excepting the Overcrowding Control Region of the SMA.
- The purpose of the specificity requirement is to distinguish between subsidies that provide generally available benefits to society from those subsidies that are aimed at specific companies, industries, or sectors.[186]
- The fact that investments in one area of Korea are not eligible to receive assistance as a result of the program's operation, in accordance with administrative purposes such as administrative segregation or budgetary practices, should not lead to the finding that the program is regionally specific.[187]

[183] See Bottom Mount Refrigerators and accompanying IDM at Comment 1.
[184] See CTL from Korea, 64 FR at 73183.
[185] See id.
[186] See AL Tech Specialty.
[187] See id.

Samsung's Arguments:

- Tax benefits under RSTA Article 26 are available to, and used by, virtually every industry in Korea, and companies located within 98 percent of the Korean territory are eligible to receive a tax credit under the program.
- Section 771(5A)(D)(iv) of the Act's reference to a "designated geographical region" should be interpreted to mean an affirmative indication of limitation to a specific geographical region.
- The SAA clarifies the regional parameters of the specificity test, stating that it should generally be confined to administrative jurisdictions such as provinces or states.
- The purpose of the regional specificity provisions is to distinguish between subsidies that provide general country-wide policy objectives and those directed towards benefitting specific companies, industries, sectors, or geographical regions.
- Countries should be able to provide generally available benefits "without running the risk that such a benefit will be countervailable."[188]
- "Government assistance that is both generally available and widely and evenly distributed throughout the jurisdiction of the subsidizing authority is not an actionable subsidy."[189]
- Neither the statute nor the SAA contemplated the application of regional specificity to a program that is broadly available throughout 98 percent of a country's entire land area.
- The Department's reliance on Hot-Rolled Steel from Thailand to find regional specificity is misplaced, because the program at issue in that case was created to support a targeted group of low income users, whereas RSTA Article 26 is available to all users outside the SMA. Additionally, given the narrow focus of the program in that investigation, it is doubtful that it spanned 98 percent of the country, as does RSTA Article 26.

Whirlpool's Arguments:

- RSTA Article 26 clearly designates a geographic region to which it pertains in Article 23 of the Enforcement Decree,[190] consistent with the criteria set forth by Samsung and the SAA.
- The Department's finding of specificity is consistent with its prior practice, where the Department has found regional specificity where a program is limited to users outside of a geographic region.[191]
- Samsung has conflated regional specificity under section 771(5A)(D)(iv) of the Act with de jure specificity under section 771(5A)(D)(i) of the Act. Samsung's citations to Granite Products from Italy and Undercarriage Components from Italy are only applicable to findings of de jure specificity.

[188] See Inland Steel.
[189] See SAA at 913.
[190] See GOK QNR 4/9 at 142 of the Appendices Volume ("The term 'investment prescribed by Presidential Decree'… means the investment (which is for only business assets out of the overcrowding control region of the Seoul Metropolitan Area)").
[191] See Hot-Rolled Steel from Thailand (where the Department found that a program limited to users outside the Bangkok metropolitan area was regionally specific). See also Bottom Mount Refrigerators and accompanying IDM at Comment 3 (where the Department found that the previous version of RSTA Article 26, which offered credits in different amounts for companies located within and outside the SMA, was regionally specific because the law applied differently to designated geographic regions).

- The GOK's reliance on Al Tech Specialty is misplaced, because benefits under RSTA Article 26 are not available throughout all areas of Korea, rather than being "jurisdictionally segregated" for "administrative purposes."

Department's Position: As in Bottom Mount Refrigerators and the Preliminary Determination, the Department continues to find that this program is regionally specific under section 771(5A)(D)(iv) of the Act. It is clear from the text of Article 23 of the Enforcement Decree that benefits provided under RSTA Article 26 are limited to a designated geographical region. That designated region is all parts of the Korean territory outside of the Overcrowding Control Region of the SMA. It is not relevant to the Department's determination that investments in 98 percent of the Korean territory are eligible to receive benefits under the program, so long as the GOK designates a geographical region that it intends to exclude from these benefits. This percentage of land mass bears no relationship to regional specificity, or to the percentage of economic activities excluded under this specific program. Nor does the Department concede to Samsung's interpretation of the SAA that the regional specificity analysis is limited to administrative jurisdictions, in light of the fact that the designated region constitutes a significant portion of the Korean capital region and the Korean population.

Thus, the Department continues to find that the GOK has established a designated geographical region to which this program is available, and that section 771(5A)(D)(iv) of the Act requires a finding of regional specificity. Our decision that this program is regionally specific is supported by long-standing case precedent,[192] and none of the cases cited by the Samsung are applicable to this analysis.

Comment 10: Whether the Department Should Offset Exempted Acquisition or Registration Taxes by the Amount of Special Rural Development Tax Paid

Samsung's Arguments:

- The Department should offset the acquisition and registration taxes exempted by deducting the additional tax liabilities Samsung incurred and paid for the Special Rural Development Tax.
- The tax liability Samsung incurs under the Special Rural Development Tax is in addition to its normal tax burden, and results only when the acquisition or registration taxes are exempted as a percentage thereof.
- Any tax benefit Samsung receives for the exemption of acquisition or registration taxes is reduced by the additional Special Rural Development Tax.
- The Department erred in Bottom Mount Refrigerators regarding this program by limiting offsets to amounts related to application fees; the loss of value of the subsidy from a deferral required by the government resulting from deferred receipt; or export taxes or other charges levied to offset the subsidy. Section 771(6)(A) of the Act in fact permits offsets for amounts of application fees, deposits, or other similar payments paid in order to receive the benefit.

[192] See, e.g., Hydraulic Cement from Mexico, 48 FR at 43065 (loans that were available only to companies outside of Mexico City were regionally specific).

- The additional tax burden of the Special Rural Development Tax is tied to the receipt of acquisition and registration tax exemptions, and qualifies as an "other similar payment."

Department's Position: We examined the assessment of the Special Rural Development Tax in light of the provisions of section 771(6) of the Act, which limits the circumstances under which the Department may subtract from the countervailable benefit amounts related to application fees required in order to obtain the subsidy, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes imposed by the government specifically to offset CVDs imposed by the United States. We determine that the Special Rural Development Tax does not meet the statutory requirement to be recognized by the Department as an offset to the countervailable benefit conferred by the exemption of the acquisition and registration taxes. The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit conferred from a countervailable subsidy program, the Department does not consider the tax consequences of the benefit. Therefore, we find that the Special Rural Development Tax does not meet the statutory requirement to be recognized as an offset. The Department has previously addressed Samsung's offset argument regarding this program in Bottom Mount Refrigerators, and our finding in this case is consistent with that determination.[193]

Comment 11: Whether the Green Technology R&D Program is Countervailable

GOK's Arguments:

- The SCM Agreement does not interfere with governments' authority to pursue economic policy and policy objectives as summarized in Canada-Aircraft. Genuine R&D programs are closely related to policy objectives and thus necessitate careful scrutiny in CVD investigations in order not to restrict a government's authority. The GOK also notes that the U.S. government maintains similar R&D programs.
- The Green Technology R&D program is not de jure specific, because the 27 technologies cover almost all conceivable technologies relating to green growth, reduction of greenhouse gases, and/or renewable energy.
- The record shows that the Green Technology R&D program is part of the GOK's five year Green Growth Plan and is part of Korea's effort to establish general infrastructure to achieve green growth in all economic sectors. Thus, the Department should reverse its finding for the final determination.

Samsung's Arguments:

- None of the 10 R&D projects for which Samsung received funding under this program during the POI benefitted the production, sale, or export of subject merchandise.
- For the one project for which the Department found the grants countervailable at the Preliminary Determination, the Department has verified that the grants utilized for this project related to non-subject merchandise, and had no application to subject merchandise. Therefore, as required by 19 CFR 351.525(b)(5), benefits from these grants should no longer

[193] See Bottom Mount Refrigerators and accompanying IDM at 23-24.

be attributed to Samsung's total sales, but instead, only to the sales of the specific products that benefit from the R&D activities (i.e., non-subject merchandise).

- The Department's consistent practice has been to find that a respondent has not received countervailable benefits if the benefits are tied to the production of non-subject merchandise.[194] Therefore consistent with the regulation and past practice, the Department should determine that these grants did not benefit Samsung's production of subject merchandise during the POI.

Whirlpool's Arguments:

- The Department should continue to find the Green Technology R&D program to be de jure specific.
- This program is expressly limited by law to 27 core technologies related to green technology; the 27 core technologies are much more circumscribed than the "promotion of alternative energy."[195]
- The Department has previously addressed the GOK's arguments, stating that, "regardless of how broad the applicability of the R&D program may be within the confines of green growth, greenhouse gas reduction, and renewable energy utilization, it is still limited by law to these specific technologies."[196]
- The GOK failed to cite any prior Department decision or case law to demonstrate that the Department's determination with regard to the specificity of the Green Technology R&D program was improper or inconsistent with the Department's regular practice.

Department's Position: In the Preliminary Determination, the Department found this program to be de jure specific under section 771(5A)(D)(i) of the Act because it was "expressly limited by law to 27 core technologies related to 'Green Technology.'" The GOK's argument that this program cannot be specific, because R&D related to these technologies "virtually cover *almost all* conceivable technologies" related to green growth, greenhouse gas reduction, and renewable energy utilization, is flawed. As the Department stated in Bottom Mount Refrigerators, when the GOK made this same argument, the GOK ignored the fact that, regardless of how broad the applicability of this R&D program may be within the confines of green growth, greenhouse gas reduction, and renewable energy utilization, it is still limited by law to these specific technologies."[197] Applying a de jure specificity analysis under section 771(5A)(D)(i) of the Act, this program, by law, expressly limits access to this subsidy to enterprises in 27 core technologies that cover the limited fields of green growth, greenhouse gas reduction, and renewable energy utilization. Thus, this program is de jure specific under the statute. Although specificity is examined on a case-by-case basis, we note that this decision is consistent with our precedent in Bottom Mount Refrigerators, where we addressed the same argument and facts, and

[194] See CORE from Korea AR Preliminary Results (Sept. 2010) (unchanged in CORE from Korea AR Final Results (Jan. 2011)). See also DRAMS from Korea (Final Determination) and accompanying IDM at 15 and PET Film from India (AR 2004) and accompanying IDM at Comment 8.
[195] See CORE from Korea AR Preliminary Results (Sept. 2010), unchanged in CORE from Korea AR Final Results (Jan. 2011) (in which the Department concluded that where the GOK expressly limited access to the subsidy to the research, development, and promotion of alternative energy in seven broad green technology areas, the subsidy was de jure specific within the meaning of section 771(5A)(D)(i) of the Act).
[196] See Bottom Mount Refrigerators and accompanying IDM at Comment 13.
[197] See id.

CORE from Korea AR Preliminary Results (Sept. 2010), where we found de jure specificity when the GOK limited the program to the development and promotion of alternative energy.

Next, as we did in Bottom Mount Refrigerators, we turn to the GOK's argument that the Department should not countervail this program because it is designed to establish general infrastructure, and thus does not constitute a financial contribution under section 771(5)(D)(iii) of the Act and 19 CFR 351.511(d). The regulation defines general infrastructure as "infrastructure that is created for the broad societal welfare of a country, region, state, or municipality." The CVD Preamble, 63 FR at 65378, elaborates on the definition by providing examples to the sorts of projects that were contemplated to constitute such infrastructure which includes interstate highways, schools, health care facilities, sewage systems, and the provision of police protection. Accordingly, the GOK provision of R&D funding to assist companies in researching and developing green technologies does not constitute "general infrastructure" as contemplated by the statute and the regulations.

Finally, information on the record indicates that one of the projects for which Samsung received benefits under this program relates to numerous types of products, including subject merchandise. Although Samsung has stated in its brief that the Department verified that the grants received under this project were tied to non-subject merchandise, the Department continues, as it did in the Preliminary Determination, to rely on our determination in Bottom Mount Refrigerators that this project is not tied to any specific merchandise, subject or non-subject.[198] Samsung did not provide any documentation at verification in this investigation to alter that determination. Furthermore the Department does not examine the usage of subsidy assistance in determining the attribution of benefits.[199] Therefore, benefits under this project are attributable to Samsung's adjusted total FOB sales. The Department also continues to rely on its determination in Bottom Mount Refrigerators that the remaining projects for which Samsung received funding were tied at the point of bestowal to non-subject merchandise, and therefore do not provide countervailable benefits to the production of washing machines.

Comment 12: Whether Grants Received by Samsung under the "21st Century Frontier and Other R&D Programs" Program are Countervailable

Samsung's Arguments:

- This program applies to a broad range of industries spanning all business sectors; concerns basic and source technologies; and, is not tied to specific merchandise.[200] The Department verified that Project 1 terminated in 2005. The Department also verified that Project 2 is not related to subject merchandise.[201] Thus, the Department should determine the program is not countervailable because it is unrelated to subject merchandise.
- The products used in washing machines to which Project 2 pertained are produced by outside suppliers.

[198] See Bottom Mount Refrigerators and accompanying IDM at Comment 14.
[199] See CVD Preamble, 63 FR at 65403.
[200] See GOK QNR 4/9 at II-56-66 and Exhibits C31 and C32.
[201] See Samsung Verification Report at 21.

- The Department's finding that this program is de jure specific because it is limited to information display technologies is not consistent with the Department's decision to attribute benefits received under the program to Samsung's total sales.

Department's Position: As part of the 21st Century Frontier program, the Department examined several sub-projects, identical to those examined in the Bottom Mount Refrigerators investigation. In that investigation, the Department found that the R&D activities conducted under the program concern "basic or source technologies" and that the application and approval documents did not specify any particular merchandise. Samsung itself has argued in the current investigation, as it also did in Bottom Mount Refrigerators, that "R&D activities under this program concern basic and source technologies, and their application and approval are not tied to specific merchandise."[202] This argument ignores a fundamental rule of tying: grants that are not tied to a specific product, to the exclusion of other products, are attributable to all product sales. It would be inconsistent for the Department to tie a benefit to a specific product, when both the respondent company and government have argued that the program concerns "basic and source" technologies. By definition, a basic or source technology is a building block that is incorporated into other finished goods. The information on the record of investigation for this program supports a determination that this is an untied subsidy.

We note that in the Preliminary Determination, as in Bottom Mount Refrigerators, the Department found benefits under this program to be de jure specific under section 771(5A)(D)(i) of the Act because the program was limited to the development of information display technologies. It is clear from information on the record that "information display technologies," as a "basic or source" technology, are incorporated into a broad range of products, and are therefore not tied to any specific product, subject merchandise or otherwise. Therefore, it would not be appropriate to attribute benefits under the 21st Century Frontier program to any specific product but to a company's total sales.

Comment 13: Whether the Department Should Adjust Samsung's Total Sales Denominator to Exclude Sales of Services or Goods Manufactured Outside of Korea

Samsung's Arguments:

- Benefits received by Samsung, such as R&D tax credits, are tied to an activity that benefits worldwide production and accrue to all products, regardless of country of origin. Samsung's sales revenues are directly associated with government program benefits that the company received.
- Numerators and denominators must be calculated on a comparable basis. Therefore, where a program benefits both subject and non-subject merchandise, as well as both domestically- and foreign-produced merchandise, the appropriate denominator is Samsung's total sales of all products, produced in all markets.
- If the Department intends to exclude certain sales revenues (e.g., royalties, service payments, or commissions) from the denominator, it must likewise exclude the benefits attributable to these activities from the numerator.

[202] See Samsung Case Brief at 46.

- The Department has previously included processing fees in the denominator for a company's total sales.[203]
- The Department has previously determined that R&D performed by Samsung's Digital Appliance division is attributable to the global production of home appliance products.[204]

Whirlpool's Arguments:

- The denominator should not include sales revenue attributable to sales of products produced in countries other than Korea.
- Samsung has failed to meet the high threshold for attributing subsides to products produced outside of the jurisdiction in which the subsidy was granted.
- The Department's regulations state that "If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production."[205]
- The Department's default position is that subsidies are attributable to products produced only in the jurisdiction in which the subsidy was granted, because governments normally provide subsidies for the general purpose of promoting the economic and social health of that country.[206]
- In crafting its regulations, the Department considered and rejected arguments that subsidies should normally be attributable to foreign-produced merchandise, making it clear that only in certain circumstances will a subsidy be attributed to production in foreign jurisdictions. Claims that subsidies are attributable to foreign-produced merchandise must be supported by documentation explicitly stating the government's intention that the subsidy was being provided for more than domestic production.[207]
- In order for documentation to evince a government's intention to subsidize foreign production, the "documentation must show that, at the point of bestowal, of the express purposes of the subsidy was to provide assistance to the firm's foreign subsidiaries. Absent such a demonstration, all subsidies, whether tied or untied, will be attributed to the appropriate category of domestically-produced sales…"[208]
- Neither RSTA Article 10(1)(3) nor RSTA Article 26 demonstrate an express purpose of the GOK, at the point of bestowal, to subsidize Samsung's foreign subsidiaries.
- RSTA Article 10(1)(3) is explicitly designed to support only domestic production. The GOK has stated that this program "aims to facilitate Korean corporations' investment… and thus to boost the general national economic activities in all sectors."[209]

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[203] See DRAMS from Korea (Preliminary Determination) and DRAMS from Korea (Final Determination) (where the Department determined that "the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise"); Steel Fittings from India (where the Department stated that "we do not typically narrow our export subsidy denominator to less than total exports unless the benefits provided can be exclusively linked to a smaller subset of export sales. Therefore… we divided the benefit by the value of (respondent's) total exports, including the fees it received for (processing)").
[204] See Bottom Mount Refrigerators (AD) and Bottom Mount Refrigerators (Mexico).
[205] See 19 CFR 351.525(b)(7)
[206] See CVD Preamble, 63 FR at 65403.
[207] See id., 63 FR at 65403-4.
[208] See id., 63 FR at 65404.
[209] See GOK QNR 4/9 at 108 of the Appendices Volume.

- Likewise, with respect to RSTA Article 26, the GOK has stated that its aim is "to boost the general national economic activities… taking into consideration how to support the national economy in general."[210]
- Samsung has no basis for citing to the Department's finding in Bottom Mount Refrigerators (AD) that R&D tax credits are attributable to global production. The Department's finding in that investigation refers to "the treatment of R&D expenses in the calculation of a producer's/exporter's cost of production" pursuant to section 773(f)(1)(A) of the Act dealing with normal value and costs.

Department's Position: The Department has set a very high threshold before it will make a finding that subsidies provided by a government can benefit the production of merchandise produced in another country. The applicable regulation, 19 CFR 351.525(b)(7), which applies to firms with multinational production, states that the Department "will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy." This regulation creates a presumption that government subsidies benefit domestic production[211] but also provides an exception to this rule, where the Department will attribute a subsidy to multinational production if it is demonstrated that the subsidy was tied to more than domestic production. For the presumption to be rebutted, it must be demonstrated that the government granting the subsidy "explicitly stated that the subsidy was being provided for more than domestic production" in the application and/or approval documents.[212] Such documentation "must show that, at the point of bestowal, one of the express purposes of the subsidy was to provide assistance to the firm's foreign subsidiaries."[213]

Samsung has claimed that tax credits received for R&D benefit its world-wide production, and should therefore be attributable to its world-wide sales. We do not find that Samsung has demonstrated that the express purpose of these tax credits is to benefit not only domestic production, but also production that occurs outside of Korea, as called for in the CVD Preamble. The GOK's own statements on the record indicate that it provides tax credits to support the Korean economy; furthermore, the laws creating these tax credits clearly indicate that the intention of the GOK was to develop national economic activities, and there is no indication in the statutory provisions that a company could claim a tax credit on, for example, R&D conducted outside of Korea or a facility located outside of Korea. Furthermore, the tax returns themselves do not evince any evidence that the GOK's design includes the subsidization of foreign production. This same test has also not been met with regard to R&D grants under programs such as the Green Technology R&D or 21st Century Frontier programs, as there is no evidence that the GOK intended to support foreign production.

Moreover, we find it is appropriate to exclude Samsung's income from non-production related activities, such as royalties, sales of services, commissions, etc. The Department's regulations at 19 CFR 351.525(a) provides the basic rule for the calculation of an ad valorem subsidy rate. Under 19 CFR 351.525(a), the calculation of the subsidy rate is derived by dividing the amount

[210] See GOK QNR 4/9 at 140 of the Appendices Volume.
[211] See CVD Preamble, 63 FR at 65403, citing to GIA, 58 FR at 37231, British Steel, 929 F. Supp. at 453-55, and Inland Steel, 188 F.3d.at 1259.
[212] See CVD Preamble, 63 FR at 65403.
[213] See id. at 65404.

of the subsidy benefit by the sales value of the product or products manufactured by the respondent company. Thus, the Department is required to attribute subsidy benefits to products sold by a company, not to its non-production related income. While 19 CFR 351.525(a) does provide the Department with the ability to make appropriate adjustments to the sales value in instances where more than production is being subsidized, the only countervailable subsidies at issue in this investigation are subsidies to products produced by Samsung or to the export of products produced by Samsung.[214] Furthermore, we do not find Samsung's arguments regarding Steel Fittings from India to be persuasive, because the processing fees in that case were responsible for the generation of the tax benefits at issue. We have not identified any such tax benefits in this investigation.

Comment 14: Whether the Department Erred in Its Calculation of the Subsidy Rate for LG's Use of the "Green Technology R&D" Program

LG's Arguments:

- In the Preliminary Determination, the Department incorrectly attributed benefits received by LG to LG's sales of washing machines during the POI. The Department should attribute benefits to all of LG's home appliance sales, which include all sales by LG's Home Appliance, Air Conditioning, and Home Entertainment business units.
- "Smart Grid" technology is applicable to all home appliances that LG produces, including washers, dryers, refrigerators, air conditioners, televisions, etc.
- The Department should not attribute the entirety of the grant for Smart Grid technology to LG because the project was undertaken by a consortium of companies, of which LG was just one member.
- Because the Department did not accept as a minor correction at verification LG's attempt to demonstrate the distribution of funds received under the Smart Grid project among consortium members, the Department should allocate the grant amount equally to all consortium members.

Department's Position: We agree that the Department should use a different denominator for the purpose of calculating the final subsidy rate for this program with regard to LG. In the Preliminary Determination, the Department selected LG's FOB sales of washing machines as the denominator used for calculating the subsidy rate for this program. At that time, the Department had attempted to ascertain an appropriate denominator based on LG's sales of home appliances. In response to efforts to gather this information, LG provided information regarding the sales of its Home Appliance, Home Entertainment, and Air Conditioning divisions.[215] As the Department stated in the Preliminary Determination, "the denominator provided by LG includes more than home appliances, based on the common definition of home appliances."[216] The Department also stated in the Preliminary Determination that it would continue to gather information regarding the products to which the development of "Smart Grid" technology as supported by GOK grants would be attributable. Since that time, the Department requested and verified new information which shows that this technology applies to a broader range of

[214] For example, if freight or insurance costs are subsidized by the government, the Department may include these within the sales denominator, i.e., use a delivered sales value instead of an FOB sales value.
[215] See LG QNR 5/10 at 16.
[216] See Preliminary Determination, 77 FR at 33190 at footnote 73.

products.[217] It is appropriate to use as a denominator those home appliance divisions of LG that benefit from this technology. Therefore, for the purpose of this final determination, the Department is selecting as its denominator for the Green Tech R&D program the adjusted FOB sales of LG's Home Appliance, Home Entertainment, and Air Conditioning divisions.

We next turn to LG's argument that the Department should reduce the numerator for this program to account for portions of the grant not retained by LG. As the Department has stated, it will generally "not trace the use of subsidies through a firm's books and records. Rather, we analyze the purpose of the subsidy based on information available at the time of bestowal."[218] The point of bestowal normally serves as the point at which the relevant government authority provided a benefit to a recipient and the point at which the statute requires the identification and measurement of the subsidy.[219] Evidence on the record indicates, and the respondents have confirmed, that LG applied for, and received, funding under this program directly from the GOK.[220] LG tried to present at verification, as a minor correction, information showing that LG distributed portions of this funding research partners. The Department rejected this information at verification as it was new information for which the deadline had already passed. However, regardless of the information LG wished to provide, the Department does not trace the actual use of government funds once they are received by the company. LG is the recipient of the subsidy at the point of bestowal, and the statute does not permit the consideration of the use of the subsidy.[221]

Comment 15: Whether the Department Erred in Finding that the "SME Green Partnerships" Program Provides a Benefit to LG

LG's Arguments:
- The Department erred in the Preliminary Determination when it determined that a grant received in 2011 under the "SME Green Partnerships" program benefited LG.
- Both LG and the GOK provided information at verification indicating that LG used the funds received under this program during the POI to retain a consultant who prepared a report on reducing carbon emissions for the purpose of benefitting SMEs.
- The only beneficiaries of the funds received under this program were SMEs, not LG.

Department's Position: We disagree with LG's contention that only SMEs were the beneficiary of funds distributed under this program. As the Department has stated, it will generally "not trace the use of subsidies through a firm's books and records. Rather, we analyze the purpose of the subsidy based on information available at the time of bestowal."[222] The point of bestowal normally serves as the point at which the relevant government authority provided a benefit to a recipient and the point at which the subsidy can be identified and measured. Evidence on the record indicates, and the respondents have confirmed, that LG received funding

[217] See LG QNR 6/25 at Exhibit 62.
[218] See CVD Preamble, 63 FR at 65403.
[219] See id.
[220] See LG Verification Exhibit 9.
[221] See CVD Preamble, 63 FR at 65403.
[222] See id.

under this program directly from the GOK.[223] At verification, the Department was informed by both the GOK and LG that the funding LG received under this program was transferred to a third party responsible for preparing a report on reducing carbon emissions that would benefit SMEs.[224] The Department does not trace the actual use of government funds once they are received by the company.

Comment 16: Whether the Department Erred in Attributing Subsidies Received by ServeOne to LG

LG's Arguments:

- The Department's rationale for attributing subsidies received by ServeOne to LG based on the CVD Preamble is flawed. The CVD Preamble is not a regulation.
- As a general rule the Department must attribute subsidies to the products produced by the corporation that received the subsidy.[225]
- None of the exceptions found in 19 CFR 351.525(b)(6)(ii)-(iv) for attributing subsidies received by another company to a respondent are applicable to this case.
- It is legal error to interpret the phrase "holding company" in 19 CFR 351.525(b)(6)(iii) to include "non-producing subsidiaries" based on a statement in the CVD Preamble.
- The language from the CVD Preamble that the Department relied on in the Preliminary Determination refers to situations where a subsidy is granted to a shell company, i.e., a company with no business activities of its own.
- That the CVD Preamble refers to non-operational companies is supported by the fact that the Department provided "financial subsidiary" as a specific example of the kind of company it was contemplating.
- In light of the types of companies referenced by the CVD Preamble, the phrase "non-producing subsidiary" should be interpreted to mean a non-operational company.
- Although ServeOne does not produce goods, it does have its own operations through its four business divisions.
- It would be legal error for the Department to attribute benefits received by ServeOne as a result of its own operations to another company without any evidence of a transfer between the companies.
- In the Preliminary Determination, the Department did not address the requirement of the CVD Preamble that the assistance received by the cross-owned company must "have no conditions on how the money is to be used."
- ServeOne received its tax credits because of funds it had already spent; the receipt of benefits under these tax programs was specifically conditioned on the requirement that ServeOne spend its money in a particular way.

Department's Position: A company, such as ServeOne, that does not produce goods, but receives subsidies nonetheless, is the sort of non-producing company contemplated by the CVD Preamble. If subsidies received by operational companies that provide services that benefit the production and/or sale of the subject merchandise are not attributable to related companies

[223] See LG Verification Exhibit 10.
[224] See GOK Verification Report at 9-10 and LG Verification Report at 1-2.
[225] See 19 CFR 351.525(b)(6)(i).

producing goods, such service providers could be subsidized with impunity by governments, allowing producers to benefit. In this case, ServeOne's receipt of subsidies is not tied to any products that the company produces. However, ServeOne acts as a buying agent for LG, sourcing certain inputs from suppliers and selling them to LG. This is a service which ServeOne provides to LG. Such a service (buying inputs for LG) is appropriately attributable to the products produced by LG. The goods which ServeOne sells are the only products that ServeOne sells to which subsidies can be applied. The fact that these goods are then provided to LG to produce products makes it appropriate to attribute these subsidies to LG, by using a denominator that reflects LG's sales combined with the sales of ServeOne. To do otherwise would be inconsistent with the Department's attribution rules, and with the explanatory language regarding attribution provided in the CVD Preamble.

Neither the regulations nor the CVD Preamble identify all possible situations in which it is appropriate to attribute subsidies. The examples provided therein are illustrative, not exhaustive. Therefore, the Department correctly attributed the subsidies received by ServeOne, a non-producing service provider, to the products produced by LG.

Comment 17: Whether the Department Should Continue to Find Other Programs to be Not Countervailable

Samsung's Arguments:

- The Department should continue to find, as it did in the Preliminary Determination, that any benefits provided by the following programs have no impact on Samsung's overall subsidy rate:
  - Research, Supply, or Workforce Development Investment Tax Deductions for "New Growth Engines" under RSTA Article 10(1)(1)
  - Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
  - RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities
  - Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act
  - GOK Subsidies for "Green Technology R&D" and its Commercialization
  - GOK 21st Century Frontier and Other R&D Programs
- The Department should continue to find, as it did in the Preliminary Determination, that Samsung did not receive benefits under the following programs:
  - IBK Preferential Loans to Green Enterprises
  - Green Partnerships with SMEs
- The Department should continue to find, as it did in the Preliminary Determination, that benefits Samsung received under the following programs were tied to non-subject merchandise:
  - K-SURE Short-Term Export Credit Insurance
  - KEXIM Export Factoring

Department's Position: The Department has determined that several of the above-listed programs, described in more detail in the "Analysis of Programs" section, above, provided countervailable benefits to Samsung during the POI. As in the Preliminary Determination, the calculated subsidy rate for each of the programs is less than 0.005 percent.[226] As such, in accordance with the Department's practice, the benefits provided by these programs have no impact on Samsung's overall subsidy rate.[227]

The Department preliminarily determined, and has since verified, that Samsung did not receive benefits under the "IBK Preferential Loans to Green Enterprises" and "Green Partnerships with SMEs" programs.

In the Preliminary Determination the Department also determined that Samsung received benefits during the POI that were tied to non-subject merchandise for some of the above-listed programs, and this was confirmed at verification. For this final determination, the Department continues to find that Samsung did not benefit from those programs.

Comment 18: Whether the Department Should Countervail Other Grants Received by Samsung that were Identified at Verification

Samsung's Arguments:

- None of the grants identified by the Department at verification conferred a benefit on the production, export, or sale of subject merchandise or any input related to subject merchandise.
- Section 703(b)(1) of the Act only permits the imposition of a countervailing duty where "a countervailable subsidy is being provided with respect to the subject merchandise."
- The Department never requested Samsung to report all grants received during the POI regardless of whether any of those benefits related to the production, export, or sale of subject merchandise or related inputs.
- The Department's initial questionnaire to both Samsung and the GOK indicated that it would investigate other subsidy programs discovered during the course of the investigation only if they pertained to the manufacture, production, or exportation of washing machines.
- The identified grants should be distinguished from the compressor grant discovered in the Bottom Mount Refrigerators investigation, because that grant was directly related to the production of an input used in the subject merchandise.

Department's Position: Section 775(1) of the Act provides that the Department can investigate any subsidy that it discovers during the course of the investigation. The Department is not prohibited from investigating and making a determination on a program that was unknown to it at the time of initiation. Typically, the discovery at verification of a government-provided grant that is attributable to the production of subject merchandise provides sufficient cause for the Department to determine that such a grant is countervailable.[228]

The information examined at Samsung's verification is sufficient to conclude that one project for which the grants were discovered at verification is related to components that can be incorporated into products including subject merchandise.[229]

[226] See Samsung Final Calculation Memorandum.
[227] See, e.g., HRS from India and accompanying IDM at "Exemption from the CST."
[228] See e.g., Bottom Mount Refrigerators and accompanying IDM at Comment 17.
[229] See Samsung Verification Report at 25 and Samsung Verification Exhibit 21.

With respect to Samsung's argument that the Department's initial questionnaire sought information that pertained only to subject merchandise, information on the record indicates that the facility that received the grants produces components that can be incorporated into subject merchandise. The Department is investigating programs related to the production of washing machines and their component parts and it is appropriate for the Department to examine these grants. Had Samsung reported the grants received for this project in its questionnaire response, the Department would have had ample time prior to the Preliminary Determination to thoroughly examine the program under which these grants were provided and to fully address the countervailability of the program. Samsung is obligated to report information about other subsidies such as these grants, so that the Department can collect the information necessary to determine whether or not the assistance benefits the production or export of subject merchandise.

It is the Department, not interested parties, which has the authority to determine whether government assistance provided to a company is related to subject merchandise. These grants were listed in Samsung's books and records in an account maintained to receive funding from the GOK;[230] thus, grants recorded in this account would appropriately be reported under either the programs under investigation or as part of the request by the Department for the respondent to report any other subsidies it received.[231] Hence, with respect to one of the programs that the Department discovered at verification, we have made the determination that the grants provided under that program benefited the production of subject merchandise, and that they are countervailable.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If this recommendation is accepted, we will publish the final determination in the Federal Register and notify the ITC of our determination.

✓ ________________   ________________

Agree   Disagree

Paul Piquado
Assistant Secretary
for Import Administration

18 December 2012
Date

[230] See Samsung Verification Report at 24.
[231] See Ningbo Dafa, 577 F. Supp. 2d at 1309 (citing PPG Indus., 978 F.2d at 1238 (upholding the Department's discretion to determine the extent of information it needs, even where respondent argued such information was not necessary).

APPENDIX

I. *ACRONYMS AND ABBREVIATIONS*

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
AUL	Average useful life
CAFC	Court of Appeals for the Federal Circuit
CBP	Customs and Border Protection
CFR	Code of Federal Regulations
CIT	Court of International Trade
CVD	Countervailing Duty
D/A	Documents Against Acceptance
Department	Department of Commerce
HBL	Hi Business Logistics, Co.
IBK	Industrial Bank of Korea
IDM	Issues and Decision Memorandum
IRS Tables	IRS 1977 Class Life Asset Depreciation Range System
ITC	International Trade Commission
KDB	Korea Development Bank
KEXIM	Korean Export Import Bank
Kum Ah Steel	Kum Ah Steel Co., Ltd.
K-SURE	Korea Trade Insurance Corporation
LG Chemical	LG Chemical, Ltd.
LGE	LG Electronics, Inc.
LGI	LG International Corp.
MEST	Ministry of Education, Science, and Technology
MKE	Ministry of Knowledge Economy
MOSF	Ministry of Strategy and Finance
O/A	Open Account Export Transaction
POI	Period of Investigation
PRC	People’s Republic of China
R&D	Research and Development
Samsung	Samsung Electronics Co., Ltd.
SEL	Samsung Electronics Logitech
SES	Samsung Electronics Service
ServeOne	ServeOne Co., Ltd.
SGEC	Samsung Gwangju Electronics Co., Ltd.
SMA	Seoul Metropolitan Area
SME	Small- and Medium-Sized Enterprises
Whirlpool/petitioner	Whirlpool Corporation

II. U.S. COURT AND NAFTA PANEL DECISIONS

Short Cite	**Cases**
Ad Hoc Shrimp	Ad Hoc Shrimp Trade Action Comm. v. United States, 637 F. Supp. 2d 1166 (CIT 2009)
AK Steel	AK Steel Corp. v. United Stated, 192 F.3d 1367 (Fed. Cir. 1999)
Allegheny	Allegheny Bradford Com. v. United States, 342 F. Supp. 2d 1172 (CIT 2004)
Alloy Magnesium from Canada (NAFTA)	Re: Alloy Magnesium from Canada, Final Results of US Department of Commerce Countervailing Duty New Shipper Review (2003), USA-CDA-2003-1904-02 (Ch. 19 Panel)
AL Tech	AL Tech Specialty Steel Corp. et al. v. United States, 28 C.I.T. 1468 (September 8, 2004)
Bethlehem Steel	Bethlehem Steel Corp. v. United States, 140 F. Supp. 2d 1354 (CIT 2001)
British Steel	British Steel plc v. United States, 929 F. Supp. 426 (CIT 1996)
Diversified Products	Diversified Products Corporation. v. United States, 572 F. Supp. 883 (CIT 1983)
Fabrique	Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593 (CIT 2001)
Geneva Steel	Geneva Steel v. United States, 914 F. Supp. 563 (CIT 1996)
Inland Steel	Inland Steel Indus. v. United States, 188 F.3d. 1349 (CAFC 1999)
Kajaria Iron Castings	Kajaria Iron Castings Pvt. Lt. v. United States, 156 F.3d. 1163 (CAFC 1998)
Kiswok Industries	Kiswok Industries Pvt. Ltd. And Calcutta Ferrous Ltd. v. United States, 28 C.I.T. 774 (May 20, 2004)
Magnola Metallurgy	Magnola Metallurgy Inc. v. United States, U.S. Magnesium LLC, 464 F. Supp. 2d 1376 (CIT 2006); Magnola Metallurgy Inc. v. United States, U.S. Magnesium LLC, 508 F.3d 1349 (CAFC 2007)
Mitsubishi Heavy Industries	Mitsubishi Heavy Industries, Ltd. v. U.S., 986 F. Supp. 1428 (CIT 1997)
Ningbo Dafa	Ningbo Dafa Chem. Fiber Co. v. United States, 577 F. Supp. 2d 1304 (CIT 2008)
PPG Indus.	PPG Indus. v. United States, 978 F.2d 1232 (1992)
Royal Thai	Royal Thai Government, et al. v. United States, 30 C.I.T. 1072 (2006)
Smith Corona	Smith Corona Corp. v. United States, 796 F. Supp. 1532 (CIT 1992)

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES

Note: if "certain" is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	Large Residential Washers – Korea
Preliminary Determination	Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 77 FR 33181 (June 5, 2012)
Scope Amendment	Large Residential Washers from the Republic of Korea: Amendment to the Scope of the Countervailing Duty Investigation, 77 FR 46715 (August 6, 2012)
	Aluminum Extrusions – China
Aluminum Extrusions from China	Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011).
	Bottom Mount Refrigerators – Korea
Bottom Mount Refrigerators	Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 17410 (March 26, 2012)
Bottom Mount Refrigerators (AD)	Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea, 77 FR 17413 (March 26, 2012)
Bottom Mount Refrigerators (Mexico)	Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico, 77 FR 17422 (March 26, 2012)
	Carbon Steel – Belgium
Carbon Steel from Belgium	Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium, 47 FR 39304 (September 7, 1982)
	Cellular Phones – Japan
Cellular Phones from Japan	Cellular Mobile Telephones and Subassemblies From Japan; Final Determination of Sales at Less Than Fair Value, 50 FR 45447 (October 31, 1985)
	Circular Steel Products – Japan
Circular Steel Products from Japan:	Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan:, 65 FR 42985 (July 12, 2000)
	Corrosion-Resistant Carbon Steel Flat Products – Korea
CORE from Korea AR Preliminary Results (Sept. 2010)	Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 75 FR 55745 (September 14, 2010)

CORE from Korea AR Final Results (Jan. 2011)	Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 754 FR 3613 (January 20, 2011)
	Cut-to-Length Carbon-Quality Steel Plate – Korea
CTL from Korea	Final Affirmative Countervailing Duty Determination: Cut-to-Length Carbon-Quality Steel Plate from Korea, 64 FR 73176 (December 29, 1999)
	Drill Pipe – China
Drill Pipe from China	Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (Jan. 11, 2011)
	Dynamic Random Access Memory Semiconductors – Korea
DRAMS from Korea	Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination, 68 FR 16766 (April 17, 2003)
DRAMS from Korea (Final Determination)	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003)
DRAMS 1st Administrative Review	Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 71 FR 14174 (March 21, 2006)
	Hot-Rolled Carbon Steel Flat Products – Thailand
Hot-Rolled Steel from Thailand	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
Hardwood Flooring from Canada	Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) From Canada, 62 FR 5201 (February 4, 1997)
	HRS – India
HRS from India	Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009)
	Hydraulic Cement – Mexico
Hydraulic Cement from Mexico	Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Portland Hydraulic Cement and Cement Clinker From Mexico, 48 FR 43063 (September 21, 1983)
	Granite Products – Italy
Granite Products from Italy	Final Negative Countervailing Duty Determination; Certain Granite Products from Italy, 53 FR 27197 (July 19, 1988)
	Lawn Groomers – China
Lawn Groomers from China (Preliminary Determination)	Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971 (November 24, 2008)

Lawn Groomers from China (Final Determination)	Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009)
	Lightweight Thermal Paper – China
Lightweight Thermal Paper from China	Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008)
	Live Swine – Canada
Live Swine from Canada	Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine From Canada, 69 FR 61639 (October 20, 2004)
	Magnesium – Canada
Pure Magnesium from Canada (1992)	Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13,1992)
Alloy Magnesium from Canada	Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review, 68 FR 22359 (April 28, 2003)

	Magnesium – Russia
Pure Magnesium from Russia	Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001)
	Nails – China
Nails from China	Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008)
	Narrow Woven Ribbons – Taiwan
Narrow Woven Ribbons from Taiwan	Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7236 (February 18, 2010)
	Nitrocellulose - France
Nitrocellulose from France	Industrial Nitrocellulose from France: Final Results of Countervailing Duty Administrative Review, 52 FR 833 (January 9, 1986)
	Outboard Engines – Japan
Outboard Engines from Japan (Preliminary Determination)	Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Outboard Engines from Japan, 69 FR 49863 (August 12, 2004)
Outboard Engines From Japan (Final Determination)	Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines From Japan, 70 FR 326 (January 4, 2005)
	PET Film – India
PET Film from India (Final Determination)	Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002)
PET Film from India (AR 2004)	Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004)
	Pipe and Tube – Mexico
Pipe and Tube from Mexico (Preliminary Determination)	Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19400 (April 13, 2004)
Pipe and Tube from Mexico (Final Determination)	Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004)
	Phosphoric Acid – Israel
Phosphoric Acid from Israel	Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626 (March 20, 1998)
	Semiconductors – Taiwan
Semiconductors from Taiwan	Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909 (February 23, 1998)

	Spring Table Grapes – Chile/Mexico
Spring Table Grapes from Chile	Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico, 66 FR 26831 (May 15, 2001)
	Softwood Lumber – Canada
Softwood Lumber from Canada	Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada, 67 FR 15539 (April 2, 2002)
	Steel Fittings – India
Steel Fittings from India	Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from India, 60 FR 10565 (February 27, 1995)
	Steel Pipes and Tubes – Turkey
Steel Pipes and Tubes from Turkey	Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Administrative Review of the Countervailing Duty Order, 77 FR 46713 (Aug. 6, 2012)
	Steel Products – Austria
GIA	Final Affirmative Countervailing Duty Determination: Steel Products from Austria, 58 FR 37062 (July 9, 1993)
	Steel Products – Korea
Steel Products from Korea	Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea, 57 FR 57761 (December 7, 1992); Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea, 57 FR 37338 (July 9, 1993)
	Steel Wheels – China
Steel Wheels from China	Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012)
	Steel Wire – New Zealand
Steel Wire from New Zealand	Steel Wire from New Zealand: Preliminary Results of Countervailing Duty Administrative Review, 55 FR 33548 (August 16, 1990); Steel Wire from New Zealand: Final Results of Countervailing Duty Administrative Review, 55 FR 40902 (October 5, 2012)
	Undercarriage Components – Italy
Undercarriage Components from Italy	Final Affirmative Countervailing Duty Determination; Forged Undercarriage Components from Italy, 48 FR 52111 (November 16, 1983)
	Welded Carbon Alloy Steel Standard Pipe – Turkey
Steel Pipe from Turkey	Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006)

	Welded Pipe – China
Welded Pipe from China	Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788 (September, 5 2008)
	Wire Rod – Italy
Wire Rod from Italy	Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474 (July 29, 1998)
	Wire Rod – Japan
Wire Rod from Japan	Final Determination of Sales at Less Than Fair Value: Certain Carbon Alloy Wire Rod from Japan, 59 FR 5987 (February 9, 1994)
	Wire Strand – Mexico
Wire Strand from Mexico (Preliminary Determination)	Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand From Mexico, 68 FR 42378 (July 17, 2003)
Wire Strand from Mexico (Final Determination)	Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003)

IV. *NON-IDM MEMORANDA AND OTHER CITED EXHIBITS/DOCUMENTS*

Short Cite	**Full Name**
Petition	Petitions for the Imposition of Antidumping and Countervailing Duties, Large Residential Washers from the Republic of Korea and Mexico (December 30, 2011)
Hearing Transcript	Public Hearing; Large Residential Washers from the Republic of Korea, November 15, 2012
GOK Verification Report	Countervailing Duty Investigation of Large Residential Washers from the Republic of Korea: Verification of the Questionnaire Response Submitted by the Government of the Republic of Korea (October 22, 2012)
GOK QNR 4/9	GOK questionnaire response dated April 9, 2012
GOK QNR 6/25	GOK supplemental questionnaire response dated June 25, 2012
LG Verification Report	Countervailing Duty Investigation of Large Residential Washers from the Republic of Korea; Verification of the Questionnaire Responses Submitted by LG Electronics, Inc. (LG) and ServeOne, Inc. (ServeOne) (October 22, 2012)
LG QNR 5/10	LG supplemental questionnaire response dated May 10, 2012
LG QNR 5/22	LG supplemental questionnaire response dated May 22, 2012
LG QNR 6/25	LG supplemental questionnaire response dated June 25, 2012
Samsung Case Brief	Countervailing Duty Investigation on Large Residential Washers from the Republic of Korea: Case Brief (November 2, 2012)
Samsung Verification Report	Countervailing Duty Investigation of Large Residential Washers from the Republic of Korea; Verification of the Questionnaire Responses Submitted by Samsung Electronics Co., Ltd. (Samsung), Samsung Electronics Logistics (SEL), and Samsung Electronics Service (SES) (October 22, 2012)
Samsung QNR 4/9	Samsung questionnaire response dated April 9, 2012
LG Final Calculation Memorandum	Final Countervailing Duty Determination: Large Residential Washers from the Republic of Korea; Calculations for LG Electronics Inc. (December 18, 2012)
Samsung Final Calculation Memorandum	Final Countervailing Duty Determination: Large Residential Washers from the Republic of Korea; Calculations for Samsung Electronics Co., Ltd. (December 18, 2012)

V. MISCELLANEOUS

Short Cite	**Full Name**
AD Preamble	Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296 (May 19, 1997).
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)
Canada-Aircraft	Panel Report, Canada – Measures Affecting the Export of Civilian Aircraft, WT/DS70/R, adopted August 20, 1999
Proposed Regulations	Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties), 54 FR 23366 (May 31, 1989)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session, Vol. I (1994)
SCM Agreement	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)