



C-580-866  
Investigation  
1/1/10 – 12/31/10  
Public Document  
O6:JMN/ML/MK

March 16, 2012

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

**FROM:** Gary Taverman *GT*  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Bottom Mount  
Combination Refrigerator-Freezers from the Republic of Korea

## I. Summary

On September 6, 2011, the Department published the Preliminary Determination in this CVD investigation.<sup>1</sup> 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,<sup>2</sup> SEC,<sup>3</sup> LGE,<sup>4</sup> and DWE<sup>5</sup> from December 5 through December 16, 2011. On December 21, 2011 the Department issued the Post-Preliminary Analysis (NSA) concerning new subsidy allegations alleged by Petitioner on July 15, 2011.<sup>6</sup> On that same day, the Department also issued Post-Preliminary Analyses regarding cross-ownership<sup>7</sup> and the restructuring of DWE.<sup>8</sup> On February 21, 2012, the Department issued the Post-Preliminary Analysis (Preferential Lending) addressing the loans received by DWE from KAMCO.<sup>9</sup>

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<sup>1</sup> 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.

<sup>2</sup> See GOK Verification Report.

<sup>3</sup> See SEC Verification Report.

<sup>4</sup> See LGE Verification Report.

<sup>5</sup> See DWE Verification Report.

<sup>6</sup> See Post-Preliminary Analysis (NSA).

<sup>7</sup> See Post-Preliminary Analysis (Cross-Ownership).

<sup>8</sup> See Post-Preliminary Analysis (Daewoo Restructuring).

<sup>9</sup> See Post-Preliminary Analysis (Preferential Lending).



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, which contains the Department’s response to the issues raised in the briefs. 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. We recommend that you approve the positions described in this memorandum.

## **II. Subsidy Valuation Information**

### **A. Period of Investigation**

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

### **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.<sup>10</sup>

#### **LGE**

In the Post-Preliminary Analysis (Cross-Ownership), the Department found that cross-ownership existed between LGE and the following reported cross-owned companies: (1) ServeOne, a non-producing trading company that purchases numerous inputs that are resold to LGE and used in the production of the subject merchandise; (2) LGI, a non-producing trading company that purchased an input that was sold to LGE and used in the production of the subject merchandise; (3) HBL, a provider of shipping services; (4) LG Chemical, a producer of inputs used in the production of refrigerators; (5) LG Hausys, a producer that sold vacuum insulation to LGE that was used in the production of subject merchandise; (6) Kum Ah Steel, a producer of steel

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<sup>10</sup> See Fabrique, 166 F. Supp. 2d at 600-604.

products used in the subject merchandise; and (7) LG Corporation itself, which licenses LG Group trademarks to LGE. All companies reported by LGE to be cross-owned were preliminarily found to be cross-owned by the Department. One other company, the name of which is proprietary, was reported by LGE to be affiliated, but not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). The Department preliminarily found that this company was not cross-owned with LGE. We find that no changes to our preliminary cross-ownership decisions regarding LGE are warranted for this final determination.

In the Post-Preliminary Analysis (Cross-Ownership), the Department analyzed ServeOne, LGI, and HBL as cross-owned service providers, subsidiaries 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 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).<sup>11</sup>

However, we verified that only ServeOne received subsidies during the POI. Accordingly, the subsidies received by ServeOne are appropriately attributed to LGE.<sup>12</sup> We have continued to attribute subsidies received by ServeOne to LGE in this final determination.<sup>13</sup>

The Department analyzed LG Chemical, LG Hausys, and Kum Ah Steel as cross-owned input suppliers in accordance with the “primary dedication” standard provided in 19 CFR 351.525(b)(6)(iv). The Department preliminarily found that none of the inputs provided by these companies were primarily dedicated to the production of the downstream product, within the meaning of the regulation.<sup>14</sup> We continue to find for the final determination that the goods provided by these companies to LGE are not primarily dedicated to the downstream product, in accordance with 19 CFR 351.525(b)(6)(iv). LG Corporation, the parent company of LGE, is cross-owned with that company within the meaning of 19 CFR 351.525(b)(6)(vi). However, we verified that LG Corporation did not receive any subsidies during the POI.<sup>15</sup>

In addition, the Department examined Petitioner’s allegations that subsidies received by LGE’s unaffiliated input suppliers should be attributed to LGE. However, the Department preliminarily found that cross-ownership did not exist between LGE 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. We find that no changes to these decisions are warranted in this final determination.

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<sup>11</sup> See CVD Preamble, 63 FR at 65402.

<sup>12</sup> See Post-Preliminary Analysis (NSA) at 6.

<sup>13</sup> See Comment 22, below.

<sup>14</sup> See Post-Preliminary Analysis (Cross-Ownership) at 4-6.

<sup>15</sup> See LGE Verification Report at 11-12.

## SEC

In the Preliminary Determination, the Department determined that SEC was cross-owned with SGEC, the manufacturer of the subject merchandise, in accordance with 19 CFR 351.525(b)(6)(vi) because “SGEC was virtually wholly-owned by SEC during the POI, and therefore SEC was able to ‘use and direct the individual assets of’ SGEC in ‘essentially the same ways it can use its own assets.’”<sup>16</sup> Thus, consistent with 19 CFR 351.525(b)(6)(i), the Department attributed subsidies received directly by SGEC to SGEC’s total sales. In addition, consistent with 19 CFR 351.525(b)(6)(iii) the Department attributed subsidies conferred on SEC to SEC’s consolidated sales, which include all of SGEC’s sales. We continue to attribute subsidies received by SEC and SGEC as we did in the Preliminary Determination.

In the Post-Preliminary Analysis (Cross-Ownership) the Department examined SEC’s relationship with input suppliers that provided materials or services to SEC for use in the production of subject merchandise. One service company, SEL, was found to be both cross-owned with SEC, and to have received countervailable benefits during the POI. As such, in accordance with the CVD Preamble, the Department attributed subsidies received by SEL to the sales of SEC. For one company that the Department preliminarily determined to be cross-owned, the name of which is proprietary, we verified that the inputs provided to SEC are not primarily dedicated to the downstream product, in accordance with 19 CFR 351.525(b)(6)(iv). Another company that SEC reported as affiliated but not cross-owned, the name of which is also proprietary, was verified to be not cross-owned with SEC. We find that no changes to these decisions are warranted in this final determination.<sup>17</sup>

In addition, the Department examined Petitioner’s allegations that subsidies received by SEC’s unaffiliated input suppliers should be attributed to SEC. However, in the Post-Preliminary Analysis (Cross-Ownership), the Department found that cross-ownership did not exist between SEC 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. For purposes of this final determination, we find that no changes to this decision are necessary or appropriate.

## **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.

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<sup>16</sup> See Preliminary Determination, 76 FR at 55047.

<sup>17</sup> See Comment 21, below.

## **D. Discount Rates and Interest Rate Benchmarks For Loans**

### Discount Rates

Pursuant to 19 CFR 351.524(d)(3)(i), the Department uses, when available, the company-specific cost of long-term, fixed-rate loans (excluding loans determined to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2)(ii), a comparable commercial loan is defined as a loan taken out by a firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. In instances where no applicable company-specific, comparable commercial loans are available, 19 CFR 351.505(a)(3)(ii) allows the Department to use a national average interest rate for comparable commercial loans.

DWE did not receive comparable commercial loans contemporaneous to the debt-to-equity conversions in 2001 and 2002.<sup>18</sup> Therefore in accordance with 19 CFR 351.505(a)(3)(ii) and consistent with prior proceedings,<sup>19</sup> we are using the national average of the yields on three-year won-denominated corporate bonds, as reported by the Bank of Korea, as the discount rate.<sup>20</sup>

As discussed in the “Creditworthiness” section, we determine that DWE and DWJ were uncreditworthy in 2001 and 2002. Thus we added a risk premium to the discount rate in accordance with 19 CFR 351.505(a)(3)(iii).

Thus, in the absence of long term fixed rate loans obtained by DWJ/DWE, we are using as a discount rate the national average of the yields on three-year won-denominated corporate bonds, pursuant to 19 CFR 351.524(d)(3)(i)(B) as reported by the Bank of Korea.<sup>21</sup>

### 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/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.

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<sup>18</sup> See “GOK 2001 and 2002 Debt to Equity Conversions Under The Daewoo Workout” below.

<sup>19</sup> See, e.g., DRAMS from Korea AR (Jan. 2011), CFS Paper from Korea, and CORE from Korea AR Final Results (Jan. 2009).

<sup>20</sup> See DWE QNR 9/29 at Exhibit 16.

<sup>21</sup> See id.

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. LGE received KDB and IBK short-term loans. We also verified that LGE 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 LGE about its commercial loans satisfies the preference expressed in 19 CFR 351.505(a)(2)(iv). As such, we have used LGE's short term commercial loans to calculate a benchmark interest rate that represents a company-specific annual average interest rate.

SEC also received loans under the KDB and IBK short-term loan program. However, SEC/SGEC did not provide information about comparable commercial loans that would provide an appropriate basis for an interest rate benchmark. 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 which were placed on the record for information regarding average commercial interest rates to select benchmark interest rates to measure the benefit to SEC/SGEC from the KDB and IBK loans.<sup>22</sup>

For DWE, we have determined that the conversion of debentures to long-term loans in 2009 is countervailable.<sup>23</sup> We have also determined that DWE did not receive comparable commercial loans that satisfy 19 CFR 351.505(a)(2)(iv). Thus, pursuant to 19 CFR 351.505(a)(3)(ii) we have used a national average interest rate to measure the benefit to DWE. In addition, because we determine that DWE was uncreditworthy in 2009, below, we added a risk premium to the benchmark in accordance with 19 CFR 351.505(a)(3)(iii).

### Creditworthiness of DWE

#### 2001 and 2002

In the Post-Preliminary Analysis (Daewoo Restructuring), we found that DWJ/DWE was uncreditworthy based on our examination of (1) the receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. 19 CFR 351.505(a)(4)(i).

DWE did not receive comparable commercial loans contemporaneous to the debt-to-equity conversions in 2001 and 2002. In August 1999, DWJ was placed into a government-created debt restructuring workout program, which was an alternative to a formal court bankruptcy procedure. The debt restructuring and workout of DWJ was overseen by its creditors. Furthermore, on January 26, 2000, DWJ entered into an MOU with the Creditors' Council, declaring deferment

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<sup>22</sup> See SEC Preliminary Calculations and SEC Final Calculations.

<sup>23</sup> See "GOK Preferential Lending under the Daewoo Workout" section below.

on repayment of debt until December 31, 2004.<sup>24</sup> This action amounts to a complete deferment of interest and principal payments on all liabilities by DWJ, demonstrating that DWJ was unable to meet its debt payments and financial obligations. On November 15, 2002, DWE entered into an MOU with the Creditors' Council, again declaring deferment on repayment of debt until December 31, 2006. Similar to DWJ, DWE reached a standstill with its creditors and discontinued servicing its debt obligations.

As discussed below in the "Equityworthiness" section, the present and past indicators of DWJ/DWE's financial health prior to 2001 showed that DWJ/DWE was unprofitable; had severe liquidity problems; and could only expect marginal improvements through its restructuring as detailed in the due diligence reports, specifically the BAH Report issued in 2000 and the E&Y report in 2002. Consequently, neither DWJ nor DWE meets the criteria of creditworthiness under 19 CFR 351.505(a)(4)(i)(D) due to the inability to meet debt payments and financial obligations in 2001 and 2002, the years in which the companies received debt-to-equity conversions, respectively.

As a result of this determination, we added a risk premium to the discount rate we used to allocate over time the benefit from debt to equity conversions, as required by 19 CFR 351.524(d)(3)(ii) and 19 CFR 351.505(a)(3)(iii).

## 2009

In the Post-Preliminary Analysis (Preferential Lending), we found DWE to be uncreditworthy at the time of the 2009 restructuring. DWE received no comparable commercial loans in 2009 or in the preceding year. Indeed, by 2009, DWE had been in a government-led debt workout program for over 10 years. In 2009, the 29<sup>th</sup> Creditors' Council meeting decided to restructure DWE's debt, which included the conversion of expired debentures held by KAMCO into long-term loans. In examining the firm's financial health, and its ability to meet its obligations, we reviewed DWE's financial history. On December 1, 2006, prior to the December 31, 2006, deadline for repayment of debt, DWE's Creditors' Council approved the postponement of the repayment deadline to December 31, 2007.<sup>25</sup> This deadline has been repeatedly extended by the Creditors' Council to March 31, 2009; March 31, 2010; March 31, 2011; and most recently to March 31, 2012.<sup>26</sup> Thus, DWE has a demonstrated inability to meet its debt obligations throughout 2009, the time of the conversion of the debentures into long term loans. In addition, we found that DWE was unable to obtain financing outside of that provided in the continued extension of the terms of existing non-paid loans through the ongoing "workout." Furthermore, the majority of the shares of DWE are held by government-owned financial institutions; under 351.505(a)(4)(ii) loans received by a state-owned company may not be considered dispositive as to the company's creditworthiness.<sup>27</sup> Accordingly, DWE does not meet the standard for a creditworthy company under 19 CFR 351.505(a)(4)(i)(D) due to the inability to meet debt

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<sup>24</sup> The workout process is controlled and managed by a Creditors' Council comprised of DWE's creditors. The voting rights on the Creditors' Council are assigned according to each participating creditor's share of the total outstanding debt.

<sup>25</sup> See DWE QNR 11/8.

<sup>26</sup> See *id.*

<sup>27</sup> See, e.g., Hot-Rolled Steel from Indonesia.

payments and financial obligations in 2009, the year in which the company restructured debt and converted debentures to long term liabilities. As a result, we have included a risk premium to the interest rate benchmark we used to measure the benefit to DWE from the conversion of debentures to long term loans, as required by 19 CFR 351.505(a)(3)(iii).

**E. Equityworthiness of DWJ and DWE**

In the Post-Preliminary Analysis (Daewoo Restructuring), we determined that DWJ and DWE were unequityworthy at the time of the 2001 and 2002 debt-to-equity conversions, respectively. We first analyzed whether private investor prices were available that could be used to determine whether the government-provided equity infusions were consistent with the usual investment practice of private investors.<sup>28</sup> While there was some limited participation of private creditors in both debt-to-equity conversions, because DWJ's and DWE's Creditors' Councils were under the control of the GOK and determined the terms of the 2001 and 2002 debt-to-equity conversions, we found that the share price paid by the private creditors is not reliable for purposes of determining a benchmark market price under 19 CFR 351.507(a)(2)(i). Because we determined that the prices paid by the private creditors were not reliable as a benchmark, there was no need to address the issue of whether private sector participation in the debt-to-equity conversions was "significant" as required under 19 CFR 351.507(a)(2)(iii).

In the absence of private investor prices, pursuant to 19 CFR 351.507(a)(3)(i), we examined whether DWJ and DWE were equityworthy at the time of the equity infusions. To determine whether, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time, we examined the following factors: (1) objective analyses of the future financial prospects of the recipient firm; (2) current and past indicators of the firm's financial health; (3) rates of return on equity in the three years prior to the government equity infusion; and (4) equity investment in the firm by private investors.

In accordance with 19 CFR 351.507(a)(4)(ii), we considered "the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." We analyzed the independent reports prepared by Deloitte in 1999, BAH in 2000, and E&Y in 2002, and found DWJ/DWE to be unequityworthy because a reasonable private investor would not accept the potential risks associated with the uncertainty surrounding DWJ's/DWE's restructuring plan. After considering the arguments of the parties, addressed in the "Analysis of Comments" section below, we continue to find DWJ and DWE unequityworthy for this final determination. We would expect a reasonable private investor to neither invest in an existing entity that held no value, nor accept the potential risks associated with the prospects of spinning-off a new entity that could not, in the foreseeable future and under the best of circumstances, meet its debt obligations or generate a return on equity. Therefore, for this final determination, we find DWJ to be unequityworthy in 2001 and DWE to be unequityworthy in 2002. We also note that DWJ/DWE had been placed in a government-created debt restructuring workout program in August 1999. Since its placement in this workout program, it was unable to attract any equity investment from outside private investors.

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<sup>28</sup> See section 771(5)(E)(i) of the Act and 19 CFR 351.507(a).



### 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. In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record.

With regard to our examination of SEC’s receipt of benefits under the K-SURE program, we find that necessary information is not available on the record and that SEC provided information that could not be verified as provided by section 782(i) of the Act. Specifically, as described further in the “Analysis of Programs” section and in the “Analysis of Comments” section, SEC, in its questionnaire response, reported that, during the POI, it had received payments for claims under K-SURE’s short-term export insurance program for U.S. exports. The Department relied on additional business proprietary information<sup>29</sup> provided by SEC to find the K-SURE short-term export insurance program not used in the Preliminary Determination. Subsequently, in the verification outline, the Department explicitly notified SEC that it must provide documentation to demonstrate that the payout it received during the POI for U.S. exports did not cover subject merchandise. As discussed more fully in Comment 10, below, several times during the course of verification, SEC was asked to provide the documentation and officials stated they were looking for the documentation and that they would provide the documents to the verification team in the afternoon on the last day of verification; in addition, SEC officials explained that they were not required to identify the merchandise in making claims with K-SURE. Ultimately, SEC informed the Department officials that they did not have the documentation, adding they could not locate the invoice because the sales had occurred some years ago through SEA.<sup>30</sup> The Department required this supporting documentation to substantiate SEC’s questionnaire response as to whether the insurance claim at issue was paid on subject or non-subject merchandise.

Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A)(C) and (D) of the Act, we are relying on the facts otherwise available. As the results of verification demonstrate,<sup>31</sup> SEC did not provide information that the Department specifically highlighted in the verification outline as necessary for the examination of the K-SURE program and the verification of the Preliminary Determination that SEC did not use K-SURE because the claims on which it had received payment during the POI did not cover exports of subject merchandise to the United States. Further, not until the last day of verification did SEC indicate that it could not provide the

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<sup>29</sup> This business proprietary information is discussed in the SEC Final Calculations.

<sup>30</sup> See SEC Verification Report at 35.

<sup>31</sup> See id.

documentation, information that K-SURE indicated was necessary for making a claim<sup>32</sup> and that the other two companies under investigation were able to provide.<sup>33</sup> Therefore, we find that SEC failed to cooperate by not acting to the best of its ability because SEC provided information that could not be verified as provided by section 782(i) of the Act, withheld the supporting information requested by the Department and/or significantly impeded the proceeding. Therefore, the application of an adverse inference is warranted. As an adverse inference, we are determining that this claim covered only subject merchandise.<sup>34</sup>

## **Corroboration**

The corroboration requirement of section 776(c) is not applicable to the use of AFA or FA in this investigation, as the information we are using is SEC's own information and does not rely on "secondary information" within the meaning of the SAA and regulations.

## **IV. Analysis of Programs**

### **A. Programs Determined To Be Countervailable**

#### **1. Restructuring of Daewoo Electronics Corporation**

##### **a. GOK Equity Infusions under the Daewoo Workout**

As discussed in detail in Post-Preliminary Analysis (Daewoo Restructuring), DWJ's debt-to-equity conversions were executed in the context of corporate restructuring workouts pursuant to the CRPA and its predecessor, CRA, Korea's statutory framework for debt restructurings. Daewoo Group collapsed in August 1999 and the 12 companies formerly a part of Daewoo Group undertook separate restructurings under out-of-court "workout" programs pursuant to the CRA/CRPA. DWJ was included among these 12 companies, and DWE was later spun off as part of the DWJ restructuring. DWJ formally entered its "workout" on August 26, 1999 with its creditors managing the restructuring through a creditors' council initially under the CRA and then later under the CRPA.<sup>35</sup>

According to the GOK, "{t}he CRPA provided a general legal framework under which creditors can discuss, determine, and implement debt restructurings of financially troubled companies."<sup>36</sup> Decisions of a company's Creditors' Council are made by vote, with a supermajority of 75 percent, based on the percentage of debt held, required for any resolution to pass. DWE reported that DWJ's Creditors' Council authorized debt-to-equity conversions in 2001 and 2002. We continue to find that the substantive terms of these debt-to-equity conversions were approved at the 22<sup>nd</sup> and 33<sup>rd</sup> Creditors' Council meetings, respectively.<sup>37</sup> We determine that, through its participation in DWJ/DWE's "workout" plans, the GOK provided DWJ/DWE direct financial assistance, as defined in section 771(5)(B)(iii) of the Act.

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<sup>32</sup> See GOK Verification Report at 39.

<sup>33</sup> See DWE Verification Report at 15, and LGE Verification Report at 29.

<sup>34</sup> See our discussion below in the "Analysis of Programs" section and in the "Analysis of Comments" section.

<sup>35</sup> See Post-Preliminary Analysis (Daewoo Restructuring) at 5.

<sup>36</sup> See GOK QNR 9/19 Response at 2.

<sup>37</sup> See Comment 27.

After considering the arguments of the parties, which are addressed below in detail in Comments 24 through 29, we continue to find that the conversion of government-held debt to equity is countervailable. For purposes of our final determination, we continue to find that companies in the Daewoo Group received a disproportionate share of the debt-to-equity conversions; therefore, these debt-to-equity conversions are specific under section 771(5A)(D)(iii)(III) of the Act. As outlined in the Post-Preliminary Analysis (Daewoo Restructuring), we examined whether the actions of the GOK were specific pursuant to section 771(5A)(D)(iii) of the Act, and found that the Daewoo Group companies received a predominant or disproportionate share of the debt-to-equity conversions provided to all companies undergoing workout programs under the CRPA.<sup>38</sup>

Finally, because the private creditors' representation and participation on the Creditors' Council was not significant enough to prevent the government-controlled supermajority from imposing the terms of the 2001 and 2002 debt-to-equity conversions,<sup>39</sup> we do not find the share price paid by these private creditors to be reliable for purposes of determining a benchmark share price under 19 CFR 351.507(a)(2)(i). Because we determine that DWJ/DWE were unequityworthy in 2001 and 2002, we find the benefit to be the entire amount of the debt to equity infusion made by GOK-owned or -controlled financial institutions. In accordance with 19 CFR 351.507(a)(6)(ii), we treated the benefit as a non-recurring subsidy and allocated the benefit over the AUL in accordance with 19 CFR 351.524(d).<sup>40</sup> We added a risk premium to the discount rate to reflect our finding that DWJ/DWE were uncreditworthy in 2001 and 2002 pursuant to 19 CFR 505(a)(3)(iii).<sup>41</sup> We determine the countervailable subsidy provided to DWE by GOK debt to equity conversions under the Daewoo "workout" to be 11.20 percent ad valorem.

**b. GOK Preferential Lending under the Daewoo Workout**

In the Post-Preliminary Analysis (Preferential Lending), the Department found that the GOK held a supermajority at the 29<sup>th</sup> Creditors' Council meeting, making the actions of the 29<sup>th</sup> Creditors' Council those of the GOK. Consequently, we found that the restructuring of DWE's liabilities held by KAMCO constituted a financial contribution in accordance with section 771(5)(D) of the Act which was specific to DWE under section 771(5A)(D)(iii)(I) of the Act. Because the GOK supermajority in the Creditors' Council approval of this action invalidated the private creditor loans as "comparable commercial loans," we found it inappropriate to use as a benchmark the private creditor's debt restructuring on the same terms as KAMCO's debt for measuring the benefit.

In light of comments by parties, we have re-evaluated our analysis of GOK representation in the voting at the 29<sup>th</sup> Creditors' Council and made adjustments as discussed below at Comment 31. After making these adjustments, we do not find that the approval of resolutions at the 29<sup>th</sup> Creditors' Council meeting was reached with a supermajority of GOK interests. Thus, we must re-examine the countervailability of DWE's liabilities held by KAMCO, both the restructured long-term loans and the expired debentures that were converted to long-term loans.

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<sup>38</sup> See Post-Preliminary Analysis (Daewoo Restructuring) at 9-10.

<sup>39</sup> See Comment 26.

<sup>40</sup> See DWE Final Calculations.

<sup>41</sup> See "Subsidy Valuation Information" section above.

In examining the KAMCO liabilities that did not originate as debentures, we find that private creditors restructured the debt on the same terms as the GOK-owned creditors, including KAMCO. Following the precedent of CFS Paper from Korea, the liabilities restructured contemporaneously by private creditors are comparable to the KAMCO non-debenture liabilities. Measured against the identical private creditor terms, we determine the KAMCO non-debenture liabilities provide no benefit to DWE, as discussed in more detail in Comment 33.

However, the conversion of expired debentures to long-term loans is a distinct action separate from the restructuring of existing long-term loans. We continue to find that it is not appropriate to measure the benefit, if any, from the KAMCO loans that were formerly expired debentures by comparison with the restructured terms of DWE's pre-existing long-term loans held by private creditors. We cannot conclude that the pre-existing loans qualify as "comparable commercial loans" as required by 19 CFR 351.505(a)(3)(i) when the essential nature of the liability is different, and the conversion of debentures to a long-term loan differs from modification of the terms of an existing loan. In addition, the debenture-originated debt does not qualify as a loan that DWE could actually obtain on the market, as contemplated by 19 CFR 351.505(a)(3)(i), because it does not represent the considerations of a commercial lender evaluating a borrower seeking new financing. Because DWE did not obtain any comparable commercial loans, we selected a benchmark in accordance with 19 CFR 351.505(a)(3)(ii).<sup>42</sup>

We also analyzed DWE's creditworthiness in 2009. In examining the firm's financial health, and its ability to meet its obligations, we reviewed DWE's financial history. On December 1, 2006, prior to the December 31, 2006, deadline for repayment of debt, DWE's Creditors' Council approved the postponement of the repayment deadline to December 31, 2007.<sup>43</sup> This deadline has been repeatedly extended by the Creditors' Council to March 31, 2009; March 31, 2010; March 31, 2011; and, most recently to March 31, 2012.<sup>44</sup> Thus, DWE had a demonstrated inability to meet its debt obligations through the end of 2009, the year of the decision to convert the KAMCO-held debentures into long-term loans. Thus, we determine that DWE was uncreditworthy in 2009 and we have added a risk premium to the benchmark interest rate in accordance with 19 CFR 351.505(a)(3)(iii) as discussed in detail at Comment 32. We determine the countervailable subsidy to be 1.65 percent ad valorem.

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

We verified that LGE and SEC used this program during the POI. Under this program, the GOK, through two government-owned policy banks, KDB and IBK, provided support to producers of bottom mount refrigerators by offering short-term export financing. According to the GOK, the short-term export financing offered by KDB and IBK operate as both D/A and O/A

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<sup>42</sup> DWE's 2009 Financial Statements at 27 show that Hana Bank had KRW three million in debentures in 2008 and zero in 2009, indicating that in 2009 these debentures underwent the same transformation as the KAMCO debentures. The KAMCO debentures were valued at approximately KRW 101,000 million, roughly more than US \$80 million. However, the Hana Bank debentures amount to less than \$3,000. Based on its negligible size, this conversion of Hana Bank debentures into loans is not meaningful to our selection of a benchmark. See DWE QNR 7/7 at Exhibit 2.

<sup>43</sup> See DWE QNR 11/8.

<sup>44</sup> See id.

financing. These types of financing are designed to meet the needs of KDB and IBK clients for early receipt of discounted receivables prior to their maturity. In a D/A transaction, the exporter first loads contracted goods for shipment per the contract between the exporter and the importer, and then presents the bank with the bill of exchange and the relevant shipping documents specified in the draft to receive a loan from the bank in the amount of the discounted value of the invoice, repayable when the borrower receives payment from its customer. In an O/A transaction, the exporter effectively receives advance payment on its export receivables by selling them to the bank at a discount prior to receiving payment by the importer. The exporter pays 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.<sup>45</sup>

Because receipt of D/A and O/A loans is contingent upon export performance, we determine that D/A and O/A loans from KDB and IBK are specific within the meaning of sections 771(5A)(A) and (B) of the Act. The Department finds that D/A and O/A loans from 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, we determine that 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.

LGE had D/A loans outstanding during the POI on exports of subject merchandise to the United States. To calculate the benefit for LGE in the Preliminary Determination, for each KDB and IBK loan, we compared the amount of interest paid on the KDB and IBK loans to the amount of interest that would be paid on a comparable commercial loan in accordance with 19 CFR 351.505(a).<sup>46</sup> Where the interest actually paid on the KDB and IBK loans was less than the interest that would have been payable at the benchmark rate, the difference is the benefit. For this final determination, we have analyzed KDB and IBK loans received by LGE in the same manner. We summed all of the individual loan benefits and divided the difference by the company’s exports of subject merchandise to the United States during the POI. On this basis, we determine the countervailable subsidy to LGE under this program to be less than 0.005 percent ad valorem.

Although SEC reported using the program, it stated that these were not loans and that it did not pay interest. Rather SEC stated that it paid “negotiation fees” and it reported the fees it paid during the POI on a monthly basis. SEC did not provide information about individual loans. However, the GOK did provide information about all the loans KDB and IBK had provided to SEC, related to all of SEC’s exports to the United States and that were outstanding during the POI. Therefore, in the Preliminary Determination, because SEC did not provide information on its comparable commercial short-term loans, we calculated the benefit for SEC from the loans it received on an O/A basis during the POI by comparing the amount of interest paid on the KDB and IBK loans, as reported by the GOK, to the amount of interest that would have been paid using a benchmark selected according to the hierarchy discussed in the “Subsidy Valuation Information” section, above. Notwithstanding SEC’s continued arguments that this program

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<sup>45</sup> See GOK QNR 6/29 at 12-13.

<sup>46</sup> See “Subsidy Valuation Information” section, above.

does not provide loans, and for the reasons discussed in Comment 7 below, we have continued to analyze KDB and IBK loans received by SEC in this same manner. 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 a discount interest rate. We compared the interest paid by SEC, as reported by the GOK, to the interest payments, on a loan-by-loan basis, that SEC 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 and divided this aggregate benefit by the company's total export sales during the POI. On this basis, we determine the countervailable subsidy to SEC/SGEC under this program to be 0.01 percent ad valorem.

### 3. K-SURE Short-Term Export Insurance

The KEIC was established pursuant to the Export Insurance Act of 1968 for the purpose of providing export insurance. KEIC became K-SURE during the POI. In 2010, a statutory amendment increased the scope of K-SURE's ability to provide coverage for import, export, and overseas trade transactions.

Among the services provided by K-SURE is a short-term export insurance program. Under this program, insurance policies issued to Korean companies provide protection from risks such as payment refusal and buyer's breach of contract. Claims are paid from the Export Insurance Fund, which is managed by K-SURE, and funded by insurance premium payments paid by the private sector companies electing export insurance coverage. K-SURE determines premium rates by considering numerous factors, including the creditworthiness of the importing party and the term of the policy.

According to the GOK, the short-term export insurance scheme is designed to cover an exporter or L/C issuing banks (policyholder) from the non-payment risk in those transactions that have a payment period of less than two years and it is the most frequently used facility among various export insurance schemes. Through the application process described by the GOK, when an applicant submits an application form and supporting documentation, K-SURE reviews those materials to determine the eligibility of the applicant and the associated risks involved. The applicant has to submit the relevant export contract and other relevant materials pertaining to the transaction and the importer in question. The actual approval of the application and conclusion of insurance contracts are dependent upon the outcome of the evaluation of the totality of circumstances including credit risks of the importers involved (financial condition, number of employees and total sales volume, etc.), sovereign risks of the importers' countries of nationality, records of prior transactions with the importers and the amounts of export under applicable export contracts. Proof of export transaction such as an export contract, is a pre-requisite for insurance coverage.<sup>47</sup>

At verification, K-SURE officials explained that all Korean exporters qualified for export insurance. When a Korean company applies for export credit insurance, K-SURE investigates by commissioning a study by a foreign professional firm of the foreign buyer's credit risk.

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<sup>47</sup> See GOK QR, Appendices Volume at 55-62.

Without this evaluation, K-SURE will not provide insurance coverage. K-SURE also relies on information from credit reporting agencies. K-SURE grants a credit limit for each Korean exporter. Once the credit limit is approved, the exporter can ship its products and receive coverage from K-SURE. The procedures require the exporter to report the amount and value shipped by providing K-SURE with the shipping documents (invoice, bill of lading, customs documents, etc.) which K-SURE then uses to calculate the premium. K-SURE will cover the shipments as long as the exporter has not exceeded the credit limit. Exporters covered by K-SURE (those for whom K-SURE has established a credit limit) use an on-line system to notify K-SURE of their shipments, and the system by which the exporter applies for, pays for, and receives insurance coverage is completely automated. Each month, exporters register their shipments for that month, and K-SURE approves the insurance for the next month, and the company pays the premium the following month. If K-SURE requires a credit risk analysis be conducted for a foreign buyer it would take more time.<sup>48</sup>

The GOK reported that K-SURE's contracts with respondent companies were under umbrella insurance policies that cover all shipments falling under a designated period of time within the insurance ceilings of the respective insurance contracts. K-SURE officials provided further information at verification, stating that the rate at which it charges premiums is governed by Article 4 of the Trade Insurance Law. In order for K-SURE to achieve a profit, they focus on two points for calculating the premium: the buyer's credit rating, graded from A through G; and the period of settlement. The longer the period of insurance, the higher the premium rate.

With respect to how an exporter makes a claim, K-SURE officials explained that the exporter is required to notify K-SURE of an incident of non-payment. The exporter is required to provide documentation to substantiate the incident and the claim. The required documentation includes the agreement between the exporter and the foreign buyer, the proof of shipment, proof that the exporter has not been paid, and an explanation of why the buyer has not paid. The exporter is required to notify K-SURE within one or two months after the date payment is otherwise due. After K-SURE receives notification, K-SURE contacts the foreign debt collection company to reach the buyer. After contacting the buyer, they examine the reason why it failed to pay and whether the buyer can make payment. If non-payment by the buyer is found to be the exporter's fault, due to defective goods, or quality or size not meeting agreed terms, K-SURE will not reimburse the claim; otherwise K-SURE normally takes three months to review and pay a claim.

In the Preliminary Determination, the Department found that LGE, SEC, and DWE elected short-term export insurance provided by K-SURE during the POI; to the extent that the respondents had received payments for claims from K-SURE during the POI, they reported that those claims did not cover exports of subject merchandise to the United States. We relied on their reported information to find the K-SURE short-term export insurance program not used by any of the respondent companies in the Preliminary Determination. Verification confirmed that LGE's and DWE's claims on K-SURE short-term export insurance were either for non-subject merchandise or for exports to countries other than the United States.<sup>49</sup> However, SEC did not establish that the claim for which payment was received during the POI covered only non-subject merchandise. As discussed in detail in the "Application of Facts Available, Including the

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<sup>48</sup> See GOK Verification Report at 38-40.

<sup>49</sup> See LGE Verification Report at 29 and DWE Verification Report at 15.

Application of Adverse Inferences” section above and in Comment 10 below, we determine, based on AFA, that the payment received by SEC during the POI on a claim made for exports to the United States covered only subject merchandise, and therefore provides a countervailable subsidy to the extent the other criteria for countervailability are met.

Because insurance provided through this program is contingent upon export performance, we determine that short-term export insurance provided by K-SURE is specific within the meaning of 771(5A)(B) of the Act. The Department finds that short-term export insurance provided by K-SURE constitutes 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, we determine that the insurance provided by K-SURE confers a benefit in accordance with section 771(5)(E) of the Act and 19 CFR 351.520, to the extent that the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

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.<sup>50</sup> In examining whether rates are inadequate, the Department will normally examine a five-year period, POI inclusive.<sup>51</sup>

The GOK reported a summary of K-SURE’s balance sheets regarding short-term export insurance, which showed its income from premiums and claims received, expenses of claims paid, its managing/operating expenses, and the net balances for the POI and four preceding years.<sup>52</sup> These data demonstrate that over the five-year period ending with the POI, K-SURE’s short term export insurance program experienced a net operating loss, and thus the premiums charged under the program have not covered the program’s long-term operating costs and losses as required under 19 CFR 351.520(a)(1).<sup>53</sup> Thus, because we have determined that K-SURE’s premiums do not cover long-term operating costs and losses, the regulations at 19 CFR 351.520(a)(2), direct us to calculate the benefit to the recipient company to be the difference between the amount of premiums paid and the amount received under the insurance program.

Because SEC did not provide documentation necessary to demonstrate that its K-SURE claim did not cover subject merchandise, the Department determines, based on AFA, that the claim applied only to subject merchandise. Our decision to rely on AFA is discussed above in the “Application of Facts Available, Including the Application of Adverse Inferences” section, and below in Comments 10 through 13. We first calculated an estimate of the premiums SEC would have paid on this shipment to the United States. To calculate the benefit, we compared the calculated premium to the payout SEC received during the POI on this claim. Because the payout exceeded the premium, we took the amount by which the payout exceeded the premium and divided this amount by SEC’s exports of subject merchandise to the United States.<sup>54</sup> We thus determine the countervailable subsidy received by SEC/SGEC under the K-SURE short-term export insurance program to be 1.64 percent ad valorem.

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<sup>50</sup> See 19 CFR 351.520(a)(1).

<sup>51</sup> See CVD Preamble at 65385.

<sup>52</sup> See GOK QNR 6/29 at 28-29 and GOK QNR 8/15 at 11.

<sup>53</sup> See also GOK Verification Report at 38-40.

<sup>54</sup> See SEC Final Calculations.



#### 4. Tax Programs

##### a. 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. The GOK provided the relevant law authorizing the credit: Article 10(1)(3) of the RSTA, as well as the implementing law, paragraphs 3, 4, 5 and 6 of Article 9 of the Enforcement Decree of the RSTA.<sup>55</sup> Further, in its supplemental response, the GOK provided a copy of Article 10(1) of the RSTA, the version of RSTA Article 10(1)(3) that was in effect during 2009. It was in a 2010 update of the RSTA that Article 10(1) became the Article 10(1)(3) Tax Reduction for Research and Manpower Development program currently under examination. The GOK explained there were no differences in substance between Article 10(1) in effect during 2009 and Article 10(1)(3) in effect in 2010. The same update established two new provisions of the RSTA: Articles 10(1)(1) for the New Growth Engines and 10(1)(2) for Core Technologies, which were added effective January 1, 2010. The GOK stated that the selection of a recipient and provision of support under Article 10(1)(3) are not contingent upon export performance.

In the Post-Preliminary Analysis (NSA), we noted that the respondents' tax returns showed that SEC, as well as its cross-owned companies SGEC and SEL, received tax credits under Article 10(1)(3) of the RSTA on the tax returns filed by those companies during the POI. We also noted that LGE and its cross-owned service provider, ServeOne, received tax credits under this program on the tax returns filed during the POI. The GOK reported that DWE did not use this program on the tax return filed during the POI. This was confirmed at verification for each company.<sup>56</sup>

As we found in the Post-Preliminary Analysis (NSA), and continue to do so here, the language of the implementing provisions for this tax program does not limit eligibility to a specific enterprise or industry or group thereof. 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. For the purposes of the analysis, we relied on data provided by the GOK showing the total number of corporations that received the tax credit during the POI and in each of the three preceding years, as well as the total value of the credits taken during the same period. The GOK also reported that it "does not compile the data of recipients in terms of business sectors or industries."<sup>57</sup> The GOK reported that more than 11,000 companies used this program during the POI. Because the GOK does not compile the data on the basis of business sectors or industries, we were unable to determine whether this program provides benefits to a limited number of recipients on an industry-specific basis. Therefore, the evidence 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.

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<sup>55</sup> See GOK QNR 9/19 at 8-12.

<sup>56</sup> See SEC Verification Report, LGE Verification Report, and DWE Verification Report.

<sup>57</sup> See GOK QNR 9/19 at 16.

We examined SEC/SGEC's and LGE'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. While the record contains the total amount of the subsidy disbursed during the relevant period, the GOK did not provide information regarding specific amounts for each of the more than 11,000 companies, except for the amounts received by SEC/SGEC and LGE. To determine whether SEC/SGEC and LGE received a disproportionate amount of subsidy 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, SEC/SGEC and LGE each received a disproportionately large percentage of all the benefits granted under Article 10(1)(3).<sup>58</sup> Since the data provided by the GOK is business proprietary information, our analysis is included in our Calculation Memoranda.<sup>59</sup> These facts demonstrate that SEC, SGEC and LGE received a disproportionate amount of the tax credits under the Article 10(1)(3) program. Because information provided by the GOK indicates that the tax credits under this program were provided disproportionately to SEC/SGEC and LGE, we determine that this program is de facto specific in accordance with section 771(5A)(D)(iii)(III) of the Act.<sup>60</sup>

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).

SEC, SGEC and SEL received tax credits under Article 10(1)(3) of the RSTA on the tax return filed during the POI. LGE and ServeOne also received tax credits under Article 10(1)(3) of the RSTA on the tax return 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.<sup>61</sup> To calculate the benefit to LGE, we first divided LGE's tax credits by its total FOB sales during the POI. The resultant ad valorem subsidy rate is 0.12 percent. Next, we divided ServeOne's tax credits by the sum of ServeOne's sales of products during the POI and LGE's total FOB sales net of intercompany sales.<sup>62</sup> The resultant ad valorem subsidy rate is less than 0.005 percent, and, as such, has no impact on LGE's overall subsidy rate. Consistent with

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<sup>58</sup> See CORE from Korea AR Preliminary Results (Sept. 2010) at "R&D Grants Under the Act in Special Measures for the Promotion of Specialized Enterprises for Parts and Materials."

<sup>59</sup> See SEC Final Calculations and LGE Final Calculations.

<sup>60</sup> See Comment 4.

<sup>61</sup> See 19 CFR 351.524(a).

<sup>62</sup> As we did in the Post-Preliminary Analysis (NSA), we are attributing ServeOne's subsidies to LGE based on the CVD Preamble, 63 FR at 65402, which states that, "(c)onsistent 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 Comment 2. ServeOne is a member of the LG Group and normally we would attribute subsidies received by ServeOne to those cross-owned companies to which it provides services. However, we do not have that sales information on the record. Therefore, for purposes of this calculation we are using a denominator consisting of only the sales of ServeOne and LGE (net of sales between ServeOne and LGE). Using this methodology, the calculated rate is well less than 0.005 percent. As such, there is no impact on the overall subsidy rate. Therefore, even if we were to use the larger sales denominator, i.e., to include more sales in the denominator, the subsidy rate would be diluted further and there would continue to be no impact on the overall subsidy rate.

19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the countervailable subsidy from the tax credits received by SEC and SGEC, for each corporate entity we divided the benefit, the tax credit claimed under this program during the POI, by each company's total sales during the POI. In calculating the rate for SEC, we included the benefits to SEL, consistent with the CVD Preamble.<sup>63</sup> We combined the two resulting rates of SEC and SGEC to determine a countervailable subsidy of 0.43 percent ad valorem for SEC/SGEC.

b. 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 the energy utilization facilities.<sup>64</sup> 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 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 Ministry of Strategy and Finance. SEC and SGEC both claimed credits under this program on their tax returns filed during the POI; LGE and DWE did not.<sup>65</sup>

In the Preliminary Determination, the Department found, based on information in the GOK's 2010 Statistical Yearbook of National Tax, that the actual recipients which claimed tax credits under Article 25(2) were limited in number. Only 220 companies claimed this tax credit for tax year 2009, for which tax returns were filed during the POI. The GOK provided an excerpt from the 2011 Statistical Yearbook of National Tax which contained data for 2010.<sup>66</sup> However, this update of data for 2010 with respect to the number of recipients that received benefits under the RSTA 25(2) program does not significantly differ from the information relied on in the Preliminary Determination. Moreover, the data for 2009 is the only year relevant to our analysis as that is the tax year for which the tax credits were claimed.

Notwithstanding the arguments of the parties regarding this program, addressed in Comments 1 and 2 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 program

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<sup>63</sup> See CVD Preamble, 63 FR at 65402.

<sup>64</sup> See GOK QNR 6/29 at 246 of the Appendices Volume.

<sup>65</sup> See SEC Verification Report at 18, DWE Verification Report at 9, and LGE Verification Report at 25.

<sup>66</sup> See GOK 2011 Tax Excerpt.

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. Consistent with 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the benefit to SEC from the tax credits used by SEC and SGEC, for each corporate entity, we divided the tax credit claimed under this program during the POI by each company's total sales during the POI. We added together the two resulting rates to determine a countervailable subsidy for SEC/SGEC that is less than 0.005 percent ad valorem. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is too small to have an impact on the overall rate. Consistent with the CVD Preamble, to calculate the benefit to LGE from the tax credits used by ServeOne under this program, we used as the denominator the sum of ServeOne's total FOB sales of products during the POI and LGE's total FOB sales during the POI, minus intercompany sales of products during the POI.<sup>67</sup> The resultant ad valorem subsidy rate is less than 0.005 percent, and, as such, has no impact on LGE's overall subsidy rate.

c. RSTA Article 26 Tax Deduction for Facilities Investment

In the Preliminary Determination, we found that, under this program, companies can take a credit toward taxes payable of seven percent of eligible investments in facilities. Although the Department had found this program not countervailable in the past,<sup>68</sup> we initiated on it because the petitioner had provided sufficient new information in the Petition to indicate that benefits under this tax credit program are de facto specific because recipients of the tax credit are limited in number on an enterprise or industry basis, or because an enterprise or industry is a predominant user of the program or receives a disproportionately large amount of the benefit.<sup>69</sup>

The GOK provided the relevant law authorizing the credit, Article 26 of the RSTA, as well as the implementing law, Article 23 of the Enforcement Decree of the RSTA. The GOK explained that although Article 26 of the RSTA specifies a 10 percent credit toward taxes payable, the 10 percent was a cap on the total amount of the credit; the actual tax credit was prescribed in Article 23(4) of the Enforcement Decree of the RSTA as seven percent.<sup>70</sup> In addition, the GOK provided data showing the total number of corporations that received the tax credit during the POI, as well as the total value of the credits taken. The GOK also reported that it "does not compile the data of recipients in terms of sectors or industries." However, because SEC reported that only "{c}ompanies which are located outside the Seoul Metropolitan Area (SMA) are eligible" for the tax credit provided by this program, we asked the GOK to confirm whether this tax credit is limited to companies outside the SMA, and that investments made within the SMA are not eligible for this program. The GOK confirmed, prior to the Preliminary Determination, that tax credits under Article 26 of the RSTA are, in fact, limited to the investment of a corporation in facilities located outside the "Overcrowding Control Region" of the SMA. The GOK further confirmed that corporate investments in facilities located within the Overcrowding

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<sup>67</sup> See Exhibit 32 of LGE QNR 8/9 and LGE QNR 12/1 at 3.

<sup>68</sup> See DRAMS from Korea (Final Determination).

<sup>69</sup> See section 771(5A)(D)(iii)(I)-(III) of the Act.

<sup>70</sup> See GOK QNR 6/29 at 204-5 of the Appendices Volume.

Control Region of the SMA are not eligible for credits under this tax program,<sup>71</sup> and our review of the complete translation of Article 23(1) of the Enforcement Decree of the RSTA confirmed that eligibility for the tax credit under Article 26 is limited to investments made outside the Overcrowding Control Region of the SMA.

On this basis, we preliminarily determined that this program was regionally specific in accordance with section 771(5A)(D)(iv) of the Act.<sup>72</sup> However, prior to the start of verification the GOK informed us that it had inadvertently provided the wrong version of RSTA Article 26 and its implementing provision, explaining that the version provided in its questionnaire response and relied upon in the Department's Preliminary Determination was not yet in effect during the 2009 tax year, returns for which were filed during the POI. The GOK provided the version of RSTA Article 26, and its related Enforcement Decree, in effect for the 2009 tax returns which were filed in the POI.<sup>73</sup> This version of the law indicated that companies both inside and outside the Overcrowding Control Region of the SMA can receive tax credits of either three or 10 percent, respectively, under this program. Therefore, the GOK has argued, because all companies in Korea are eligible for a tax credit under this program, the Department no longer has a basis for finding the program regionally specific as it did in the Preliminary Determination. For the reasons discussed in Comment 3, below, we are continuing to find the RSTA Article 26 program regionally specific, as we did in the Preliminary Determination, under section 771(5A)(D)(iv) of the Act.

Moreover, we determine, as we did in the Preliminary Determination that tax credits under RSTA Article 26 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 LGE and ServeOne, as well as SEC and SGEC received tax credits under Article 26 of the RSTA on the tax returns filed during the POI.<sup>74</sup> We verified that DWE did not receive tax credits under the program on the tax return filed during the POI.<sup>75</sup> To calculate the benefit for LGE, we divided the tax credit claimed by LGE under this program during the POI by the company's total sales during the POI. The resultant ad valorem subsidy rate is 0.05 percent. For the tax credits received by ServeOne under this program, we used as the denominator the sum of ServeOne's total FOB sales of products during the POI and LGE's total FOB sales during the POI, minus intercompany sales of products during the POI.<sup>76</sup> The resultant ad valorem subsidy rate is less than 0.005 percent, and, as such, has no impact on LGE's overall subsidy rate. Consistent with 19 CFR 351.525 (b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the benefit from the tax credits used by SEC and SGEC, for each corporate entity, we divided the tax credit claimed under this program during the POI by each company's total sales during the POI. We added together the

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<sup>71</sup> See GOK QNR 8/15 at 29.

<sup>72</sup> See, e.g., Hot-Rolled Steel from Thailand at the "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).

<sup>73</sup> See GOK Verification Report at Verification Exhibit 1.

<sup>74</sup> See SEC Verification Report and LGE Verification Report.

<sup>75</sup> See DWE Verification Report.

<sup>76</sup> See Exhibit 32 of LGE QNR 8/9 and LGE QNR 12/1 at 3.

two resulting rates to determine a countervailable subsidy of 0.33 percent ad valorem for SEC/SGEC. Because SEL's receipt of benefits under this program results in a countervailable subsidy of less than 0.005 percent, it has no impact on SEC/SGEC's overall subsidy rate.<sup>77</sup>

d. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Tax Exemptions

Under Article 276(1) 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. DWE reported that because it was exempt from paying property tax, it also received an additional exemption on the local education tax.<sup>78</sup> The GOK reported that, although Article 276(1) is a national program, it is administered at the local level by the Gwangju City government. The GOK provided the relevant sections of the City Tax Exemption and Reduction Ordinance of Gwangju City which shows Article 276(1) is administered by the Gwangju City government.

In the Preliminary Determination the Department determined that the tax exemptions under Article 276(1) of the Local Tax Act were countervailable. There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. We verified that only SGEC and DWE received these exemptions. For this final determination, we continue to find that the tax exemptions received by SGEC and DWE 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 276(1) of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because these exemptions 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, 2010, and the prior nine years), in which a respondent claimed 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.<sup>79</sup> For both SGEC and DWE, 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 from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year

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<sup>77</sup> See Comment 21, "Whether the Attribution Rules Were Correctly Applied to the Calculation of Benefits to SGEC, SEL and SEC."

<sup>78</sup> See DWE QNR 7/7 at 5 and Exhibit D-2.

<sup>79</sup> See 19 CFR 351.524(b)(2).

period. Thus, the benefit is allocated to the year in which it is received.<sup>80</sup> The benefit to each company during the POI is the value of the real property tax exempted during the POI.

Although DWE reported receiving an additional exemption of the education tax, we did not include the amount of that exemption during the POI in our benefit calculation for the Preliminary Determination. In the Preliminary Determination, the Department stated it would gather additional information about this exemption from the GOK and the respondents in order to conduct a full analysis for the final determination. In a supplemental questionnaire, the Department requested the GOK to explain the basis on which companies receive exemptions of the education tax and to report such exemptions received by the respondent companies. The GOK explained that the education tax liability arises only when the property tax is paid. Articles 260-2 and 260-3 of the Local Tax Act (which applied during the POI) are provisions relating to the local education tax. Paragraph 1 of Article 260-3 stipulates that the local education tax will be set at 20 percent of the property tax. When the property tax is zero, the local education tax automatically becomes zero as well.<sup>81</sup>

At the GOK verification, GOK Gwangju officials explained that the education tax rate is 20 percent of the property tax, according to Article 260-3 of the Local Tax Act. But if the property tax is zero because of exemptions, no education tax is due. In other words, a company that is exempt from property tax is also exempt from education tax. The property tax is imposed every year in June. Gwangju officials stated the exemption lasts for five years. With regard to how eligibility is determined for these tax exemptions, Gwangju officials stated that a property located in the industrial zone is automatically exempt and, further clarified, that the industrial zones are specially designated zones, in accordance with law.<sup>82</sup>

At SEC's verification, SEC informed us that it had forgotten that it had received an education tax exemption it received as an aspect of this program, and reported the appropriate amount in its minor corrections.<sup>83</sup>

Similar to the exemptions from real property tax, we determine that the exemptions from the education tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the education tax exemption which is tied to the property tax exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.<sup>84</sup> The benefit to each company during the POI is the value of the education tax exempted during the POI.

Additionally, both SGEC and DWE reported that, as a result of their exemption from acquisition and registration taxes, they are subject to an additional tax under the Act on Special Rural Development. This tax is assessed at 20 percent of the value of the acquisition and registration tax exemption. At the time of the Preliminary Determination, SGEC and DWE contended that this additional tax should be treated as an offset to the exemptions of the acquisition and

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<sup>80</sup> See 19 CRF 351.524(a).

<sup>81</sup> See GOK QNR 10/4 at 3-4.

<sup>82</sup> See GOK Verification Report at 6-7.

<sup>83</sup> See SEC Verification Report at 2-3 and 19-23.

<sup>84</sup> See 19 CFR 351.524(a).

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 grant an offset. 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 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. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit, the Department does not consider the tax consequences of the benefit. 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.

To calculate the countervailable subsidy from the four tax exemptions provided under this program to SGEC and to DWE, for each company, we added the value of exemptions of acquisition and registration tax received during the POI to the value of exemptions of real property tax and education tax received during the POI. We divided the resulting benefit by each company's total sales during the POI. On this basis we determine a countervailable subsidy of 0.01 percent ad valorem for SEC/SGEC<sup>85</sup> and 0.01 percent ad valorem for DWE.

e. Gyeongsangnam Province Production Facilities Subsidies: Tax Reductions and Exemptions

Under Article 276(1) 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. The GOK initially reported that although Article 276(1) is a national program, it is administered at the provincial or local level, as appropriate. In this instance, because Changwon City, where LGE's production takes place, is not a metropolitan city, it does not have the authority to administer the provisions of the Local Tax Act; therefore, the GOK stated, the program is administered by the Province of Gyeongsangnam. At the GOK verification, Changwon City officials clarified that Changwon City administers the taxes under this program.<sup>86</sup> LGE also stated that payment of taxes is made to Changwon City, not the provincial Gyeongsangnam government.<sup>87</sup> We verified that LGE received tax exemptions under this program.<sup>88</sup>

In the Preliminary Determination the Department determined that the tax exemptions under Article 276(1) of the Local Tax Act were countervailable. There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. We verified that LGE received these exemptions. Therefore, for this final determination, we

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<sup>85</sup> See 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii).

<sup>86</sup> See GOK Verification Report at 8.

<sup>87</sup> See LGE Verification Report at 23.

<sup>88</sup> See *id.*



continue to find that the tax exemptions received by LGE constitute a financial contribution and confers 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 276(1) of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because they 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, 2010, and the prior nine years), in which LGE claimed 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. None of the exemptions LGE 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 from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.<sup>89</sup> The benefit to LGE during the POI is the value of the real property tax exempted during the POI.

In addition to the above exemptions, we learned at verification that, similar to Gwangju, Changwon also provides an exemption of education tax to companies that are exempt from property tax. Changwon officials explained that the education tax rate is 20 percent of the property tax. The company is exempt from education tax if no property tax is owed. Changwon officials further informed us that a Special Rural Development Tax is due at 20 percent of the acquisition tax regardless of whether the company is exempt from the acquisition tax.<sup>90</sup> At LGE's verification, we asked if the company was exempted from the education taxes that were related to property tax exemptions. LGE did not provide any information on the subject.<sup>91</sup>

Similar to the exemption from real property tax, we determine that the exemption from the education tax provided under this program is a recurring benefit, because the taxes are otherwise due annually, and the education tax exemption is tied to the property tax exemption that is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.<sup>92</sup> The benefit to LGE during the POI is the value of the education tax exempted during the POI. Therefore, for the final determination we are including the education tax exemption in our calculation of the ad valorem rate for this program.

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 an amount from the countervailable benefit 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

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<sup>89</sup> See 19 CFR 351.524(a).

<sup>90</sup> See GOK Verification Report at 8.

<sup>91</sup> See LGE Verification Report at 25.

<sup>92</sup> See 19 CFR 351.524(a).

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. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit, 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.

To calculate the countervailable subsidy rate for LGE, we divided the sum of all taxes exempted during the POI, including the education tax exempted, by LGE's total sales on an FOB basis during the POI. On this basis we determine a countervailable subsidy that is significantly less than 0.005 percent ad valorem. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is too small to have an impact on the overall subsidy rate.<sup>93</sup>

## 5. 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, 27 core technologies have been selected for support and fall under the jurisdiction of multiple governmental agencies. The MKE is involved in this program and provides support for 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. According to the GOK, the approval of the applicants is based on the merits of each application, and according to the requirements set by the law and MKE's internal guidelines. At verification, we learned that, while the MKE has a supervisory role regarding the program, several other GOK agencies are involved in administering the projects and the distribution of funds.<sup>94</sup> According to the GOK, the provision of support under the program is automatic as long as the budgets earmarked for this program are available.

The GOK reported that SEC and LGE used this program, and the companies also confirmed use of this program. The GOK, as well as SEC and LGE, reported the amounts of assistance received during 2009 and 2010. The GOK also identified the total number of companies that received assistance under this program and the total amount of assistance approved for all companies in each of the years 2009 and 2010. The GOK was unable to provide data on program use by industrial classification and noted that it does not compile that data in its normal

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<sup>93</sup> See, e.g., Hot-Rolled Steel from India at "Exemption from the CST."

<sup>94</sup> See GOK Verification Report at 27 and SEC Verification Report at Verification Exhibit 15A.

course of business.<sup>95</sup> In addition, since the Post-Preliminary Analysis (NSA), we have learned that for several projects, respondents served as “lead companies,” and were responsible for distributing a portion of the funds received to research partners.<sup>96</sup> However, while several of the approval documents on the record indicate the amounts distributed to SEC and LGE, and many of these amounts were verified, these approval documents do not establish a requirement that SEC or LGE distribute a portion of these funds to research partners, nor do they identify the portions of the funds to be distributed.<sup>97</sup>

Because information provided by the GOK indicates that the financial assistance under this program is expressly limited by law to 27 core technologies related to “Green Technology,” in the Post-Preliminary Analysis (NSA) we preliminarily found that this program was de jure specific under section 771(5A)(D)(i) of the Act.<sup>98</sup> Although the GOK has argued that our specificity finding in the Post-Preliminary Analysis (NSA) was incorrect, we continue to find that this program is de jure specific under section 771(5A)(D)(i) of the Act.<sup>99</sup> Furthermore, we find the grants to be a financial contribution as a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grants.<sup>100</sup>

We verified that SEC and LGE received grants under the Green Technology R&D program in 2009 and 2010. SGEC and DWE reported, and we verified, that they did not receive financial assistance under the program. Although SEC and LGE reported that the grants received do not relate to subject merchandise or to inputs used in the production of subject merchandise, in the Post-Preliminary Analysis (NSA) we relied on SEC’s statement that the R&D activities conducted under this program pertain to theoretical or experimental research aimed at obtaining new knowledge, without any direct concern about benefits for specific applications, lines of business, or products.<sup>101</sup> Because these grants were not tied to any product at the time that the assistance was approved or bestowed, we preliminarily determined that it was appropriate to attribute the benefits from the grants received by SEC to its total sales.<sup>102</sup> At verification, SEC provided us with the approval documentation related to the 10 projects for which it received grants under this program.<sup>103</sup> After review of these documents, we have determined that all but one of the projects for which SEC received grants were tied at the point of approval to products other than subject merchandise. The remaining project is not tied to any specific product. In addition, SEC stated that this project is applicable to all products.<sup>104</sup> Because the details of these projects are proprietary, we have discussed them in greater detail in our SEC Final Calculations. LGE reported that it received grants for eight projects under this program, and stated that all of the projects were related to technologies and products other than the merchandise under investigation and thus, the grants were tied at the point of approval to non-subject merchandise.

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<sup>95</sup> See GOK QNR 9/19 at 36.

<sup>96</sup> See GOK Verification Report at 27.

<sup>97</sup> See SEC Verification Report at Verification Exhibit 15A and LGE QNR 12/1 at Exhibit 83.

<sup>98</sup> See CORE from Korea AR Preliminary Results (Sept. 2010) at “R&D Grants Under the Act on the Promotion of the Development of Alternative Energy” (unchanged in CORE from Korea AR Final Results (Jan. 2011)).

<sup>99</sup> See Comment 13.

<sup>100</sup> See 19 CFR 351.504(a).

<sup>101</sup> See SEC QNR 9/19 at page 2 of Exhibit NS-3.

<sup>102</sup> See 19 CFR 351.525(b)(5); see also CVD Preamble, 63 FR at 65400.

<sup>103</sup> See SEC Verification Report at Verification Exhibit 15A.

<sup>104</sup> See SEC Verification Report at 26.

However, based on the information provided by LGE, we preliminarily found that one project was tied to the development of technology for use in refrigerators. Because no sales information for all refrigerators was provided, we calculated a rate for this grant by attributing the benefits to sales of subject merchandise. At verification, we gathered information related to LGE's sales of refrigerators, and we have used that value as our denominator for this final determination.<sup>105</sup>

Although the GOK has indicated that this program should be considered to be recurring, 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, and neither the GOK nor SEC and LGE have provided us any evidence that would warrant treating the grants as recurring. Accordingly, for the relevant SEC and LGE grants received in 2009, the first year the program was operational, and in 2010, the POI, we examined the amounts received 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. Since none of the grants reported by SEC and LGE met the 0.5 percent test, the grants received in 2009 and 2010 were expensed in the year of receipt. Therefore, the benefit under this program, is the amount of the 2010 grants, which were received by SEC and LGE in the POI. For the one relevant SEC project, we divided the amount of the grant received by SEC in 2010 by SEC's total sales during the POI because the benefits from this R&D grant are not tied to any particular product at the point of bestowal. For LGE, we divided the benefit received in 2010 from this grant to LGE's sales of all refrigerators during the POI. On this basis, we determine the countervailable subsidy provided to SEC/SGEC under this program to be less than 0.005 percent ad valorem, and to LGE, 0.13 percent ad valorem.

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

The 21<sup>st</sup> 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. At verification, the GOK explained that both SEC and LGE were lead companies for projects under this program. 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

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<sup>105</sup> See Comment 16.

Information Display R&D Center project that started 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 is due to be 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.

Although the GOK characterized assistance under this program as long-term loans, the GOK later clarified that repayment is not required where the developed technology is not applied to commercial production.<sup>106</sup> Further, SEC stated that the program provides a grant and not a loan.<sup>107</sup>

In DRAMS from Korea (Final Determination),<sup>108</sup> the Department investigated the 21<sup>st</sup> Century Frontier R&D program and determined that the project area is the appropriate level of analysis for determining whether the program is specific. In the Post-Preliminary Analysis (NSA), we examined specificity at the level of the Information Display R&D project. The GOK has argued that the Department should not review the specificity of this program at the project level, but instead look at the 21<sup>st</sup> Century Frontier R&D program as a whole. For the reasons set forth in Comment 15, we have rejected the GOK's argument that this program should not be analyzed at the project level.<sup>109</sup> Therefore, we have reviewed the "Information Display R&D Center" project and determine that the project is de jure specific under section 771(5A)(D)(i) of the Act because assistance under this project is limited to information display technologies. Further, we find the financial assistance is provided by the GOK in the form of a grant. We find the grants to constitute financial contribution through a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grants.<sup>110</sup>

We verified that SEC and LGE received funds under the Information Display R&D Center program. We also verified no other respondent companies received financial assistance under this program. LGE stated that the assistance it received under the PDP project was specifically for technology development related to plasma display televisions of 70 inches or greater in size.<sup>111</sup> Our review of the documentation provided by the GOK shows that the assistance LGE received was tied, at the point of approval, to the product identified by LGE, and there is no information to indicate that this research would have any applications pertaining to the development and production of refrigerators or any part or component of refrigerators.<sup>112</sup> Therefore, we determine that grants to LGE under this program do not benefit the production of

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<sup>106</sup> See GOK QNR 10/21 at 11.

<sup>107</sup> See SEC 7/5 at 3.

<sup>108</sup> See DRAMS from Korea (Final Determination) and accompanying IDM at Comment 27.

<sup>109</sup> See Comment 15.

<sup>110</sup> See 19 CFR 351.504(a).

<sup>111</sup> See LGE Verification Report at 26.

<sup>112</sup> See GOK QNR 9/19 at Exhibit 8.

subject merchandise pursuant to 19 CFR 351.525(b)(5). In the Post-Preliminary Analysis (NSA), we found that SEC participated in all three sub-projects, the LCD, PDP and both segments of the future display project. SEC reported that the R&D activities conducted under the program concern “basic or source technologies,” and that the application and approval documents do not specify any particular merchandise.<sup>113</sup> Because the record demonstrated that the funds provided to SEC were not tied to any product at the time the assistance is approved, we preliminarily determined that it was appropriate to attribute the benefits received by SEC to SEC’s total sales.<sup>114</sup> At verification, SEC provided more specific information about its use of the program. For the Information Display R&D project, SEC indicated that it received funds for developing technology related to viewing angle improvement for LCD displays.<sup>115</sup> SEC indicated that the rest of the funds it received under the program were related to the future display project. Although the details of this research are proprietary, there is no evidence on the record indicating that this funding is tied to particular products or to non-subject merchandise.<sup>116</sup> Thus, we affirm our decision in the Post-Preliminary Analysis (NSA) and continue to attribute benefits received by SEC under this program to the company’s total sales.

We consider the grants to be non-recurring benefits, in accordance with 19 CFR 351.524(c). For each year over the 10-year AUL period (the POI, 2010, and the prior nine years), in which SEC received financial assistance, we checked whether the amounts received exceeded 0.5 percent of the company’s sales in that year in order to determine whether the benefits should be allocated over time or to the year of receipt. None of the grants reported over the average useful life (AUL) period met the prerequisite for allocation over time. Therefore, we expensed all grants to the year of receipt. Thus, to calculate the subsidy, we summed all grants received in the POI and divided the resulting benefit by the company’s total sales during the POI. On this basis, we determine the countervailable subsidy provided to SEC/SGEC under this program is less than 0.005 percent ad valorem.

c. R&D Grants Discovered at Verification

i. SGEC R&D Grants for Refrigerator Compressors

During the verification of SEC/SGEC, the Department discovered that SGEC received grants during the POI and the prior year related to R&D. As explained by SEC, the grants were provided to SGEC to conduct research on compressors used in refrigerators. The research project commenced in 2009 and was completed in 2011. SEC informed us that the funds were granted to SGEC through the Korea Industry and Technology Evaluation Institute, a national research institute.

In the initial questionnaire, the Department had asked SEC:

Please provide the following information for your company and for any cross-owned companies:

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<sup>113</sup> See SEC QNR 9/19 at page 1 of Exhibit NS-7.

<sup>114</sup> See 19 CFR 351.525(b)(5) and CVD Preamble, 63 FR at 65400.

<sup>115</sup> See SEC Verification Report at 30.

<sup>116</sup> See SEC Verification Report at 31-32.

- a. Identify all locations of production facilities in Gwangju City or any area covered by Gwangju City programs involved in the production of the subject merchandise (including design, engineering, and research and development), including the facilities of cross-owned input suppliers (including components, parts, materials, technologies, and other inputs). Explain the activities that take place at each location.

SEC responded:

All production facility locations covered by Gwangju City programs and the activities at each location are provided in attached Exhibit 9. In addition to producing refrigerators, SGEC conducts R&D activities for compressors used in those refrigerators, as well as R&D for vacuum cleaners.<sup>117</sup>

In the same initial questionnaire, the Department asked about other subsidies received:

Does the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms and answer all questions in the appropriate Appendices.

SEC responded:

SEC did not receive, directly or indirectly, any other assistance from the government. SEC and SGEC did receive the following tax reductions under in RSTA, as indicated in their respective returns. The tax reductions were as follows: ....<sup>118</sup>

Although SEC provided information about the RSTA tax reductions, it did not report the R&D grants received for refrigerator compressors. Therefore, the Department had no information that SGEC had received grants for the research on compressors used in refrigerators that SEC reported was being conducted by SGEC. The Department proceeded to ask SEC, in its supplemental questionnaire, to identify all the locations of SEC/SGEC's R&D activities. SEC responded by stating that SGEC performs R&D for compressors at a factory within the Advanced Science Complex and for vacuum cleaners at a factory within the Hanam Industrial complex. SEC added there was no other location where SEC or SGEC performs R&D operations covered by the Gwangju City programs.<sup>119</sup>

When we discovered at verification that SEC had received grants not reported in its questionnaire responses, we requested and reviewed documentation related to these grants to identify the total amounts of the grants. Details of these grants are provided in the SEC Verification Report.<sup>120</sup>

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<sup>117</sup> See SEC QNR 6/29 at III-15.

<sup>118</sup> See SEC QNR 6/29 at III-24.

<sup>119</sup> See SEC QNR 8/9 at S2-7.

<sup>120</sup> See SEC Verification Report at 38.

Because the grants were provided for research on compressors to be used in refrigerators, we determine the 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 grants 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). For each year over the 10-year AUL period in which SGEC received financial assistance, we examined the amounts received to determine whether the benefits should be allocated over time or to the year of receipt. None of the grants received during the AUL period met the prerequisite for allocation over time, and we allocated the benefits, including the benefits received during the POI, to the year of receipt.

The appropriate denominator for this program would be SGEC's sales of refrigerators because the funds were provided for the conduct of research on compressors, a component of refrigerators. Normally, for unreported grants discovered at verification, we would apply facts available, with an adverse inference, pursuant to 776(b) of the Act, to calculate the benefit. However, in this case, as part of verifying total sales and total sales of subject merchandise (which is only a portion of all refrigerators), the worksheets provided by SEC/SGEC to trace reported sales information to the financial statements, includes line items for sales of refrigerators. Because we tied this worksheet into the financial statements, we consider it appropriate in this instance to use the sales figure for refrigerators to calculate the benefit instead of applying an adverse inference.<sup>121</sup>

To calculate the net countervailable subsidy, we divided the benefit received from the grants during the POI by SGEC's sales of refrigerators during the POI. On this basis, we determine the countervailable subsidy provided to SEC/SGEC under this program to be 0.04 percent ad valorem.

ii. DWE R&D Grant

During DWE's verification, we discovered that, during the POI, DWE had received a grant from the GOK to fund R&D. This grant was a "National Project," that was administered by KIAT and the MKE. During verification, we reviewed the announcement by the MKE soliciting project proposals. We also reviewed the summary page for DWE's application, which identifies the project as applying to products for export. We find that we have enough information in the record to examine this grant. Because the project documents specify that the R&D was for products for export, we determine that this assistance is contingent on export performance, and therefore it is specific as an export subsidy under 771(5A)(B) of the Act. There is a financial contribution in the form of a grant, under 771(5)(D)(i) of the Act, and a benefit in the amount of the grant in accordance with 19 CFR 351.504(a).

DWE claimed that as a condition of receiving this R&D grant, it was required to distribute a portion of the funding to its research partners. However, they provided no documentation at verification to support this claim. Thus, we determine that the full amount of the grant was provided to DWE. We consider this grant to be a non-recurring grant as described in 19 CFR 524(c). As such, we performed the test provided in 19 CFR 351.524(b)(2). Because this grant

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<sup>121</sup> See SEC Verification Report Verification Exhibit 4 at 16.



did not meet the threshold for allocation over time, we have expensed the grant to the POI, the year of receipt. We divided the amount of the grant by DWE's total exports to determine a countervailable subsidy of 0.04 percent ad valorem for DWE.

We also discovered that DWE received other R&D grants in years prior to the POI for other R&D projects. However, because the funding from those grants did not exceed the 0.5 percent threshold under 19 CFR 351.524(b)(2) for allocation over time, the benefits from these grants were attributed entirely to the years of receipt, which were prior to the POI.

## **B. Program Determined To Be Not Countervailable**

### Gyeongsangnam Province and KEMCO Energy Savings Subsidies/ESF Program

In the Preliminary Determination, we correctly identified this program as the ESF program, a program administered by KEMCO, providing loans to fund the replacement of existing energy-consuming facilities. Funds for this loan program are provided by the ESF. KEMCO administers the program in accordance with the "Energy Use Rationalization Act," and disbursements from the fund are completed through independent financial institutions.

In the Preliminary Determination the Department noted that it has previously investigated this program and found it not countervailable. In DRAMS from Korea (Final Determination), we determined that the ESF program was a widely available program seeking to promote goals not specific to any industries or companies and that it was "used by a significant number of companies in a wide range of industries," and was therefore not de facto specific.<sup>122</sup>

In the Preliminary Determination we found this program to be not de facto specific to producers/exporters of bottom mount refrigerators during the POI. We verified the information on which our Preliminary Determination was based. There is no new information that warrants reconsideration of our Preliminary Determination. Thus, we continue to find this program to be not countervailable within the meaning of section 771(5) of the Act.

## **C. Programs Determined To Be Not Used**

We determine that the respondents did not apply for or receive any benefits during the POI under the following programs:

1. KEXIM Programs
  - A. KEXIM Short-Term Export Credit
  - B. KEXIM Export Loan Guarantees
  - C. KEXIM Trade Bill Rediscounting Program
  - D. KEXIM Export Factoring
2. K-SURE – Export Credit Guarantees

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<sup>122</sup> See DRAMS from Korea (Final Determination) and accompanying IDM at 34.

3. Gwangju Metropolitan City Programs
  - A. Relocation Grants
  - B. Facilities Grants
  - C. Employment Grants
  - D. Training Grants
  - E. Consulting Grants
  - F. Preferential Financing for Business Restructuring
  - G. Interest Grants for the Stabilization of Management Costs
  - H. “Special Support” for Large Corporate Investors
  - I. Research and Development and Other Technical Support Services
4. Changwon City Subsidy Programs
  - A. Relocation Grants
  - B. Employment Grants
  - C. Training Grants
  - D. Facilities Grants
  - E. Grant for “Moving Metropolitan Area-Base Company to Changwon”
  - F. Preferential Financing for Land Purchase
  - G. Financing for the Stabilization of Business Activities
  - H. Special Support for Large Companies
5. Other GOK Programs
  - A. Research, Supply, or Workforce Development Investment Tax Deductions for “New Growth Engines” Under RSTA Art. 10(1)(1)
  - B. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” Under RSTA Art. 10(1)(2)

We verified that these provisions of the RSTA came into existence in 2010, and that any benefits from these programs would not be realized until the tax returns for 2010 are filed in 2011.<sup>123</sup> In accordance with 19 CFR 351.509(b)(1), we determine that these programs did not provide countervailable benefits to the respondents during the POI.

- C. Targeted Facilities Subsidies through KoFC, KDB, and IBK “New Growth Engines Industry Fund”
- D. GOK Green Fund Subsidies
- E. IBK Preferential Loans to Green Enterprises
- F. Gwangju PIPP Product Development Support

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<sup>123</sup> See GOK Verification Report at 24.

## V. Analysis of Comments

### Comment 1: Whether RSTA Article 25(2) is De Facto Specific

#### *GOK's Arguments*

- Given that the record shows the program has been utilized by a large number of Korean companies and is widely available, the Department should reverse its finding that RSTA Article 25(2) is de facto specific.
- This program was created as Korea's part of an international effort to reduce greenhouse gases. Treating tax credits for green house gas reduction as illegal subsidies disregards crucial international efforts. The Department should factor this into its consideration of RSTA Article 25(2).

#### *SEC'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 220 companies used this program in 2009.<sup>124</sup>
- 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.<sup>125</sup>
- 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.

#### *Petitioner's Rebuttal Arguments*

- The Department correctly determined that RSTA Article 25(2) is de facto specific.
- The GOK and SEC have misconstrued the specificity analysis under section 771(5A)(D) of the Act.
  - Whether a program is widely available is an issue relevant to the determination as to whether a program is de jure specific and is irrelevant to determining whether a program is de facto specific.
  - The only considerations relevant to a de facto specificity analysis on the basis of section 771(5A)(D)(iii)(i) of the Act are the number of enterprises or the number of industries that actually received the benefit.
- The actual number of recipients of the program is a limited number pursuant to section 771(5A)(D)(iii)(i) of the Act, and this finding is supported by the record.<sup>126</sup>
- The small number of companies which receive benefits under this program is starkly contrasted with the large number of companies which file tax returns in Korea.

**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 are limited in number. Although the GOK updated this information on January 5, 2012,

<sup>124</sup> See GOK QNR 6/29 at 246-255 of the Appendices Volume and GOK QNR 8/15, Exhibit S-26 at 512.

<sup>125</sup> See Steel Products from Korea, 57 FR at 57770, AK Steel, and CTL from Korea.

<sup>126</sup> See Preliminary Determination, 76 FR at 55050. See also GOK QNR 6/29 and GOK QNR 8/15.

by providing the GOK 2011 Tax Excerpt which contained data for 2010, this information does not differ significantly from the information relied on in the Preliminary Determination.<sup>127</sup> Furthermore, the information provided by the GOK previously for 2009 is more relevant to our analysis as that is the tax year for which respondents received tax credits.

Under section 771(5A)(D), 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.

The data provided by the GOK demonstrates that of the more than 30,000 tax returns filed by businesses for 2009, only 220 companies received RSTA Article 25(2) tax credits. 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. Based on the information on the record, there are at least 30,000 businesses in Korea that filed corporate tax returns, and only 220 companies received tax credits under this program. Therefore, this program is not broadly available and widely used throughout the Korean economy. As such, the actual 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.

With respect to SEC's argument about 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 program at issue in an investigation conducted six years after Steel Products from Korea and found this 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."<sup>128</sup> 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."<sup>129</sup> Although SEC cited Steel Products from Korea, as support for their 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 determination in this investigation.

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<sup>127</sup> See GOK 2011 Tax Excerpt.

<sup>128</sup> See CTL from Korea.

<sup>129</sup> See CTL from Korea at 73183.

## Comment 2: Whether RSTA Article 25(2) relates to Subject Merchandise

### *SEC's Arguments*

- SEC and SGEC's benefits received under RSTA Article 25(2) are not related to subject merchandise. As confirmed by the Department at verification, most of the facilities in which the tax creditable investments were made do not produce subject merchandise. Because the benefits are attributable to the production of non-subject merchandise they are not countervailable under 19 CFR 351.525(b)(5)(i).<sup>130</sup>
- Even if the Department found that the tax credits received by SEC and SGEC under this program are countervailable, it should continue to find they are negligible as found in the Preliminary Determination.

### *Petitioner's Rebuttal Arguments*

- Although the Department verified that most of SEC's investments in energy economizing facilities were related to its semiconductor business, it did not verify that all of the eligible investments did not include facilities used in the production of subject merchandise. Absent any evidence that none of these funds went to subject merchandise, the Department should continue to find that RSTA Article 25(2) is related to the production of the subject merchandise.

**Department's Position:** The regulation that SEC cites, 19 CFR 351.525(b)(5)(i), relates to how the Department will attribute subsidies tied to a particular product. However, 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 effects of subsidies, *i.e.*, to trace how benefits are used by companies. Therefore, information provided by SEC on how it used the benefits is not dispositive, unless the subsidy was tied to certain merchandise at the time of bestowal.<sup>131</sup> In this instance, there is no evidence that the RSTA Article 25(2) program was tied to certain merchandise at the time of bestowal. As such, there is no basis to find that the benefits are tied to non-subject merchandise as SEC claims. Therefore, we continue to determine that the total tax credits claimed under Article 25(2), as shown on SEC and SGEC's tax returns, conferred a benefit. However, as noted by SEC/SGEC, the countervailable subsidy from these tax credits is significantly less than 0.005 percent, and, as such they have no impact on the overall subsidy rate.

## Comment 3: Whether RSTA Article 26 Benefits are Specific

### *GOK's Arguments*

- The Department's Preliminary Determination that RSTA 26 is geographically specific is erroneous. The overcrowding control region of the SMA is a small section of Korea, the area determined to be geographically specific is the majority of Korean territory.
- Calculating a countervailable benefit for RSTA 26 should take into account that companies in the overcrowded area receive a tax credit of three percent. If the Department continues to find the program to be geographically specific, the benefit should be the difference between the tax credit amount available in the two areas, seven percent.

<sup>130</sup> See SEC QNR 6/29 at III-22 and Exhibit 16, and SEC Verification Report at 19 and Verification Exhibit 11.

<sup>131</sup> See Cold Rolled Steel from Brazil.

### *SEC's Arguments*

- The Preliminary Determination that RSTA Article 26 was de facto specific was based on the conclusion that the program was available only to companies with facilities located outside the SMA and thus, regionally specific under section 771(5A)(D)(iv) of the Act.
- Under 19 CFR 351.525(b)(5), if a subsidy is tied to the production of a particular product, the Department will attribute the subsidy only to that product. RSTA Article 26 provides tax benefits for making investments in facilities and, therefore benefits generated by this program are attributable to the products manufactured in those facilities. As the record indicates, only SGEC produced subject merchandise and therefore, only SGEC's benefits should be included in the calculation of benefits for this program. SEC did not operate any facilities that produced subject merchandise during the POI and therefore, benefits received by SEC are unrelated to subject merchandise and should not be included in the benefits calculation.<sup>132</sup>
- In 2009, the year for which SEC and SGEC filed their returns in 2010, businesses within the SMA were eligible for a three percent tax credit and businesses outside the SMA were eligible for a 10 percent tax credit for eligible investments. Therefore, all companies throughout Korea could receive a three percent tax credit under the 2009 version of RSTA Article 26.<sup>133</sup>
- Record evidence does not support a finding of de jure or de facto specificity under section 771(5A) of the Act, because the three percent benefit is available to virtually every industry and, a large number of corporations received benefits during the POI. There is also no evidence on the record that this program is aimed at, or used predominantly by, one industry. Moreover, in DRAMS from Korea (Final Determination) at Comment 26, the Department previously found that benefits received by SEC under RSTA Article 26 were neither de jure nor de facto specific and thus not countervailable.<sup>134</sup>
- Should the Department continue to find RSTA Article 26 countervailable, it should reduce its benefit calculation by to reflect that everyone received a three percent credit, the amount generally available throughout Korea.

### *Petitioner's Rebuttal Arguments*

- The Department's finding in the Preliminary Determination that the RSTA Article 26 constitutes a countervailable subsidy is correct.
- SEC's argument that it did not operate any facilities that produced subject merchandise during the POI, and that only SGEC's tax credit should be analyzed, is flawed.
  - Nothing in RSTA Article 26 or its Enforcement Decree specifies that only investments relating to manufacturing facilities are eligible for a tax credit.
  - The Enforcement Decree lists several non-manufacturing businesses that are eligible for the credit.
  - There is no evidence on the record to demonstrate that SEC's tax credits under the program were related to facilities only dealing with non-subject merchandise.

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<sup>132</sup> See SEC QNR 6/29 at 1.

<sup>133</sup> See GOK Verification Report at Verification Exhibit 1.

<sup>134</sup> See also SSSS Coils from Korea, 71 FR at 50889 (unchanged in final results).

- The Department's regulations do not require limiting its analysis to the manufacture of subject merchandise.<sup>135</sup>
- The Department's attribution rules require that any subsidies conferred on SGEC are to be applicable to SEC.<sup>136</sup>
- The Department's finding that the program is regionally specific is correct.
  - A program limited to users outside of a geographic region is regionally specific.<sup>137</sup>
  - The Department has previously rejected the GOK's argument that "if multiple regions are distributed throughout the country that are under the same program and receive the same benefits, specificity cannot be satisfied."<sup>138</sup>
- The Department's calculation of the benefit to SEC and SGEC in the Preliminary Determination is correct.
  - SEC and the GOK wrongly focus on what SEC would have paid in taxes in the absence of the program, that is, their otherwise applicable tax rate minus a three percent credit. This position incorrectly assumes that all businesses in Korea are eligible for an automatic three percent tax credit.
  - A three percent credit is not available to all businesses throughout Korea; it is geographically specific to the SMA.
  - The 10 percent credit is geographically specific to areas outside of the SMA.
  - Both the three percent and 10 percent tax credits are in turn limited to a specific list of industries, and are not available to any business or any industry that satisfies the required geographic specificity.
  - Article 23(1) of the Enforcement Decree limits tax credits to a specified set of industries, implying that there are companies that cannot receive a tax credit.
  - Information provided by the GOK indicates that tax credits under RSTA Article 26 are limited in availability.<sup>139</sup>
  - The tax credit provided for by RSTA Article 26 can only be applied three ways:
    - a company does not qualify, and obtains no credit;
    - a company is situated in the SMA, and qualifies for a three percent credit;
    - a company is not situated in the SMA and receives a 10 percent credit.
  - The Department must calculate a benefit equivalent to the full 10 percent credit that SEC received, because, in calculating a benefit for a company that qualifies for a 10 percent credit, the tax the firm would have paid in the absence of the program must be the amount of tax it would have paid had it not qualified for the credit at all.<sup>140</sup>
- SEC's argument that the Department has previously found RSTA Article 26 to be not countervailable is not relevant.
  - The Department's previous specificity determinations focused on past versions of RSTA Article 26 in the context of import substitution, rather than regional specificity.<sup>141</sup>

<sup>135</sup> See 19 CFR 351.525(b); see also section 771(5)(C) of the Act (the "determination of whether a subsidy exists shall be made... without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise.").

<sup>136</sup> See 19 CFR 351.525(b)(6)(iii). See also Preliminary Determination.

<sup>137</sup> See Hot-Rolled Steel from Thailand.

<sup>138</sup> See Piston Inserts from Korea.

<sup>139</sup> See SEC QNR 6/29 at Exhibit S-26.

<sup>140</sup> See 19 CFR 351.509.

<sup>141</sup> See DRAMS from Korea (Final Determination) and SSSS Coils from Korea (unchanged in the final results).

- Alternatively, the Department should apply FA under Article 776(a) of the Act to determine that RSTA Article 26 is de facto specific pursuant to section 771(5A)(D)(iii) of the Act.
  - Petitioner provided information indicating the program may be de facto specific.<sup>142</sup>
  - The GOK did not provide information requested by the Department regarding the total amount of assistance approved for the industry, or the total number of companies that applied for, but were denied assistance under this program.
  - Given that the GOK has not provided the necessary information, the Department should rely on information provided by Petitioner, indicating de facto specificity exists. The Department should find, based on FA, that the program is de facto specific because an enterprise or industry is a predominant user of the program or receives a disproportionately large amount of the benefit pursuant to sections 771(5A)(D)(iii)(I)-(III) of the Act.
- Because the GOK failed to provide information that the Department requested, AFA may be warranted in accordance with section 776(b) of the Act.<sup>143</sup>

**Department's Position:** For the purposes of the Preliminary Determination, we examined the version of RSTA Article 26 that was provided by the GOK in its questionnaire response, and found that the availability of a seven percent tax credit for facilities investment was limited to companies outside the "Overcrowding Control Region" of the SMA. Prior to the start of verification, as a minor correction, the GOK explained that the version of the RSTA that it previously provided was in effect for the 2010 tax year. Thus it was not the version of the law that was in effect during 2009, the tax year for which the respondent companies filed tax returns during the POI. The GOK provided the version of RSTA Article 26 in effect during the 2009 tax year, which governed the returns filed by the respondent companies in 2010. Unlike the version of RSTA Article 26 in effect in 2010, the 2009 version provides for tax credits for companies both inside and outside of the SMA; companies inside the SMA are eligible for a three percent tax credit, while companies outside the SMA are eligible for a 10 percent tax credit.

As is clearly demonstrated by information provided by the GOK, the 10 percent tax credit under this program is only available to companies located outside of the SMA. Therefore, this program is regionally specific, under section 771(5A)(D)(iv) of the Act. This determination is consistent with our previous precedent that a program that is limited to users outside of a geographic region is regionally specific.<sup>144</sup> Whether or not companies located in other regions of the country are eligible for three percent tax credits is irrelevant to our determination that the 10 percent tax credit is regionally specific since the 10 percent tax credit is only available to companies in a designated geographic region.

Although the GOK and SEC argue that we should adjust the benefit from the 10 percent tax credit to account for the fact that other companies in Korea can receive a three percent tax credit under this program, under 19 CFR 351.503(d), the Department may only account for the varying levels of financial contribution when there is a level that is not specific under the CVD law. Under 19 CFR 351.503(d), where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or more such levels is not specific

<sup>142</sup> See Preliminary Determination, 76 FR at 55050.

<sup>143</sup> See Hot-Rolled Steel from India.

<sup>144</sup> See, e.g., Hot-Rolled Steel from Thailand.



within the meaning of 19 CFR 351.502, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at a non-specific level under the program.

Although excerpts from the 2011 Statistical Yearbook, published by the National Tax Service and placed on the record of this investigation, do provide a great deal of detail about tax program usage, it does not break down information between companies which receive the three percent credit, and companies which receive the 10 percent credit.<sup>145</sup> Thus, the information on the record does not permit us to analyze whether the three percent tax credit is de facto specific.<sup>146</sup> Moreover, contrary to claims by the GOK and SEC, the information on the record does not demonstrate that all companies in Korea are eligible for, or receive, at least a three percent tax credit under this program. Because the information on the record does not demonstrate that the three percent level of tax credit under this program is non-specific, and that SEC would have been eligible for the three percent tax credit, 19 CFR 351.503(d), that addresses programs with varying financial contribution levels, is not applicable.

With regard to SEC's argument that that the Department cannot countervail tax credits received by SEC under RSTA Article 26 because they are not tied to production of subject merchandise, because SEC did not produce subject merchandise, this argument is not persuasive. 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 such a determination, the Department analyzes:

the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose we evince.<sup>147</sup>

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.<sup>148</sup> In this investigation, SEC has provided no information that would allow the Department to determine that tax credits received by SEC under RSTA Article 26 are tied to the production or sale of any product. Thus, in the Preliminary Determination, we used as a denominator SEC's total sales, attributing benefits received under the program to SEC's sales of all products. There is no additional information that would allow the Department to determine that the subsidy was intended to benefit any particular product, the intended use was known to the subsidy giver and was so acknowledged prior to or concurrent with the bestowal of the subsidy. As previously noted, SEC was responsible for the sale of the vast majority of subject merchandise produced by SGEC, as well as "all other refrigerator-related functions, including sales planning for the domestic and export markets; marketing, research and development; engineering and design; and finalization of

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<sup>145</sup> See GOK 2011 Tax Excerpt

<sup>146</sup> This may be because this information was not raised by the respondents until verification.

<sup>147</sup> See CVD Preamble, 63 at 65403.

<sup>148</sup> 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.

specifications of raw material inputs.”<sup>149</sup> The Korean tax authorities determined that SEC made eligible investments in 2009 that allowed the company to qualify for the tax credit in the returns filed in 2010. These untied tax credits benefit the company as a whole, and thus it is appropriate to attribute SEC’s receipt of tax credits under this program to the company’s total sales.

Moreover, as we found in the Preliminary Determination, and continue to do so here, SEC and SGEC are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because SEC was able to “use and direct the individual assets of” SGEC in “essentially the same ways it can use its own assets.” Thus, consistent with 19 CFR 351.525(b)(6)(iii), we would continue to attribute subsidies conferred on SEC to SEC’s consolidated sales, which include all of SGEC’s sales.<sup>150</sup>

Finally, SEC’s argument that, because the Department found this program neither de jure nor de facto specific in DRAMS from Korea (Final Determination) or SSSS Coils from Korea, we should continue to do so here is simply irrelevant. SEC ignores the fact that our findings in those investigations were based on determinations that the program no longer acted as an import substitution program, negating our previous basis for findings of specificity. The argument also ignores the Department’s long-standing practice to re-examine the de facto specificity of a previously investigated program when a petitioner provides information indicating that an enterprise or industry may receive benefits that are specific in fact.<sup>151</sup> As noted in the Preliminary Determination at 55050, Petitioner “provided new information in the petition to indicate that benefits under this tax (credit) program are de facto specific because recipients of the tax (credit) are limited in number on an enterprise or industry basis, or because an enterprise or industry is a predominant user of the program or receives a disproportionately large amount of the benefit.” This practice allows us to reexamine programs that have previously been determined to be not de facto specific. The information submitted by the GOK and SEC after we initiated a re-examination of this program clearly demonstrates that this program is regionally specific under section 771(5A)(D)(iv) of the Act.

#### **Comment 4: Whether RSTA Article 10(1)(3) is De Facto Specific**

##### *GOK’s Arguments*

- RSTA Article 10(1)(3) is available to all Korean companies and basically all industries.
- Respondents received above average tax credits because they are among the largest corporations in Korea. The Department’s de facto specificity determination is incorrect and the determination should be reversed in the final determination.

##### *SEC’s Arguments*

- The Department’s conclusion that SEC received a disproportionate amount of assistance ignores the fact that SEC received the same proportionate benefit as every other applicant and, a benefit that is calculated identically for all applicants cannot by law be deemed disproportionate.<sup>152</sup>

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<sup>149</sup> See Preliminary Determination, 63 FR at 55047.

<sup>150</sup> See Preliminary Determination, 63 FR at 55047.

<sup>151</sup> See, e.g., Hot-Rolled Steel from Brazil and accompanying IDM at 9.

<sup>152</sup> See Post-Preliminary Analysis (NSA) at 3.

- The Department’s conclusion unfairly penalizes large companies for their success. Large companies will typically invest more in research and human resources activities, and thus receive a greater benefit in absolute terms than smaller companies. However, to conclude that these companies receive a disproportionate share of the benefits simply because they qualify for more benefits is illogical, inconsistent with the plain language and purpose of the “disproportionality” provision, and unsupported by case law.
- Section 771(5A)(E) of the Act provides that generally available government programs are not countervailable when administered according to objective criteria and conditions. A program that is available to all but used by a limited number, or a program that is used by only one industry, or the granting of “disproportionately large” benefits may make a program de facto specific.<sup>153</sup> However, there is no evidence on the record to support finding SEC a dominant or disproportionate user of this program.
- The Department has not provided any evidence or explanation to show how SEC received anything but its authorized tax credit which varied in direct proportion to qualifying expenditures. The only fact demonstrated is that, in absolute terms, SEC’s tax credit was larger than the credit received by other beneficiaries.
- The Department has previously confirmed and the CIT has upheld, that the absolute size of the benefit does not control whether its use is “disproportionate.”<sup>154</sup> The CAFC has also held that there can be no disproportionality where all program participants receive the same proportion of benefits and concluded that the absolute size-driven methodology could produce an untenable result, *i.e.*, that a benefit conferred on a large company might be disproportionate merely because of the size of the company.<sup>155</sup>
- The Department’s analysis, determining disproportionality solely on the absolute amount of benefit received by SEC, is deficient because in prior cases the Department has also analyzed GDP.<sup>156</sup> In DRAMS from Korea AR (2011) at I, the Department analyzed the company’s size relative to all other companies. Such an analysis has not been undertaken here, and there is no information on the record that would permit such an analysis, therefore, the Department cannot find that SEC received disproportionate benefits.

#### *Petitioner’s Rebuttal Arguments*

- The Department correctly determined that RSTA Article 10(1)(3) is de facto specific; SEC and LGE each received a disproportionately large amount of the subsidy.
- The Department’s specificity analysis is consistent with case law.
  - The disproportionality analysis was applied correctly, and consistent with Department precedent.
  - 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.<sup>157</sup>

<sup>153</sup> See sections 771(5A)(D)(iii)(I), (II), and (III) of the Act.

<sup>154</sup> See Steel Products from Korea; see also British Steel.

<sup>155</sup> See AK Steel; see also CTL from Korea and Bethlehem Steel where the CIT supported the Department’s finding that a program was not de facto specific because discounts were provided to a large number of customers across a wide range of industries and, as a result steel producers were not dominant or disproportionate users of the program.

<sup>156</sup> See Steel Products from Korea.

<sup>157</sup> See, *e.g.*, Alloy Magnesium from Canada; see also Wire Rod from Italy and CORE from Korea AR Preliminary Results (Sept. 2010) (unchanged in CORE from Korea AR Final Results (Jan. 2011)).

- This analysis was upheld by a NAFTA binational panel.<sup>158</sup>
- The Department’s decision to decline a request to reconsider this methodology in an administrative review was upheld.<sup>159</sup>
- Case law does not support SEC’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.
  - “(i)t was not error for Commerce to rely on record evidence demonstrating no disproportionality based on the relative percentage benefit rather than on the absolute benefit conferred.”<sup>160</sup>
  - Not only does AK Steel caution against applying disproportionality methodology and analyses in a rigid fashion, but the methodology upheld in that case is the same as the Department has applied in this investigation.
  - Bethlehem Steel dealt with the unique circumstances of electricity subsidies and de facto specificity, and should not be generalized to all de facto specificity analyses.
- The GOK and SEC have conflated de jure and de facto specificity.
  - The GOK’s argument that the Department “ignores the universal availability of the program” is a de jure specificity argument.
  - SEC’s argument that SEC received the same proportionate benefit as every other applicant is a de jure specificity argument.
  - The objective nature of eligibility criteria simply indicates that a program is not de jure specific, and has no bearing on the Department’s de facto specificity analysis.
- The GOK’s and SEC’s argument that the size of the tax credit, based on the size of the company, cannot be de facto specific is erroneous.
  - 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.
  - 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 nothing in the Act that requires the Department to assess the impact of the de facto specificity provisions on small companies versus large companies.
  - 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.<sup>161</sup>

<sup>158</sup> See Alloy Magnesium from Canada (NAFTA).

<sup>159</sup> See Magnolia Metallurgy.

<sup>160</sup> See id.

<sup>161</sup> See Alloy Magnesium from Canada (NAFTA).

- The only criteria needed to assess disproportionality is the “amount of the subsidy” received by the industry or enterprise.<sup>162</sup>
- For the Department’s analysis to consider the size of the company would render the de facto specificity analysis meaningless and would allow governments to target subsidies to “large corporations” with impunity.
- Even if the Department limited its analysis to the largest 100 companies that received tax credits under RSTA Article 10(1)(3), SEC is still receives a disproportionate amount of the subsidies.
- LGE and SEC have reported the tax credits they received under this program, and the Department has verified that information.<sup>163</sup>
- The GOK has provided the values used to determine the number of companies that received benefits under the program, and the total amounts disbursed under the program.<sup>164</sup> This information was verified by the Department.<sup>165</sup>
- The Department’s specificity finding is justified by the record, and the analysis should be conducted on a case-specific basis in light of the facts and development of the record.<sup>166</sup>
- 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.
  - The GOK failed to provide the total amount of assistance by industry.
  - Given an alternative, the GOK failed to list the claim values for the largest 35 companies making claims under RSTA Article 10(1)(3).
  - Given another alternative, the GOK failed to provide the Department with the 10 largest amounts of tax credits taken under this program for each of the tax years 2006-2009, even though the Department allowed the GOK to provide that information without disclosing the names of recipients, in light of confidentiality laws in Korea.
  - The GOK instead provided information regarding usage of the program for the top 100 companies, which was not requested by the Department.
  - In light of the GOK’s refusal to provide requested data, the Department’s choices of de facto specificity methodology were limited, and it was appropriate to choose the methodology used in the Post-Preliminary Analysis (NSA).
- The Department does not need to analyze disproportionality on a GDP or “relative size” basis. SEC’s argument that Steel Products from Korea requires the Department to adopt a GDP analysis is misplaced.
  - The argument ignores the CIT’s ruling that de facto specificity analyses are to be conducted on a case-by-case basis and are not subject to rigid rules.<sup>167</sup>
  - The Department need not, when analyzing disproportionality, compare the industry’s benefit to some reasonable benchmark of a non-specific distribution of government

<sup>162</sup> See section 771(5A)(D)(iii)(III) of the Act.

<sup>163</sup> See SEC QNR 6/29 at Exhibit 4, SEC QNR 8/19 at Exhibit 27D, and LGE QNR 8/9 at Exhibits 28A and 28F. See also SEC Verification Report at 23 and LGE Verification Report at 25.

<sup>164</sup> See GOK QNR 9/19 at 16-17.

<sup>165</sup> See GOK Verification Report at 25.

<sup>166</sup> See AK Steel.

<sup>167</sup> See AK Steel.

benefits, such as by comparing an industry's share of benefits to its contribution to the GDP of the economy as a whole.<sup>168</sup>

- SEC's argument that DRAMS from Korea (Final Determination) requires the Department to examine the share received by a recipient relative to the size of that recipient is misplaced. The Department's analysis in DRAMS from Korea (Final Determination) was based on the fact that there was no information on the record to confirm actual use of the program. Therefore that case is not relevant.
- SEC's argument that there is no information on the record to conduct a GDP analysis is incorrect, and the Department could use information provided by Petitioner.<sup>169</sup>
- The Department could, in the alternative, find de facto specificity using AFA.
  - The GOK failed to provide requested information to the Department when it did not provide the names of, and the amount of benefits received by, the top 35 companies who received tax credits under RSTA Article 10(1)(3).
  - The GOK did not provide, when given the alternative, the 10 largest tax credits taken under the program.
  - The GOK's reference to confidentiality requirements, the GOK failed to cooperate to the best of its ability when it would not provide requested information to the Department that would not identify tax credit recipients.
  - A respondent government cannot elect not to provide information, given that the Act and Department's regulations protect business proprietary and confidential information requested by the Department.<sup>170</sup>
  - The GOK did not argue that there was a clear and compelling need to withhold that information.<sup>171</sup>

**Department's Position:** First, we acknowledge that this tax program is not specific on a de jure basis. However, the statute requires the Department to determine whether the program under examination is specific under section 771(5A)(D)(iii) of the Act whereby the Department must analyze the distribution of benefits among actual users to determine whether the benefits are provided on a de facto specific basis. These statutory criteria 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 will determine that a program is de facto specific if an "enterprise or industry receives a disproportionately large amount of the subsidy." The Department is instructed that under the statute, where the number of users of a subsidy is very large, the predominant use and disproportionality factors must be assessed. 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. 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.

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<sup>168</sup> See id. See also Alloy Magnesium from Canada.

<sup>169</sup> See New Subsidy Allegations, Exhibit PNSA-32.

<sup>170</sup> See Hot-Rolled Steel from Thailand.

<sup>171</sup> See id.

The GOK, SEC, and Petitioner 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 facts and circumstance 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."<sup>172</sup>

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 for analyzing whether disproportionate benefits are provided to the companies under investigation. In the Post-Preliminary Analysis (NSA), we compared the benefits received by SEC and LGE to the average amount of the benefit received by other companies in Korea that used the program, and found that both SEC and LGE received a disproportionately large percentage of all benefits granted under this program during the POI.

Our choice of methodology for analyzing disproportionality of benefit received is consistent with our statute and is supported by the information on the record. Our initial efforts to gather information necessary for our de facto analysis were unsuccessful. First, the GOK was unable to provide us with information necessary to analyze de facto specificity on an enterprise or industry basis.<sup>173</sup> Second, when we twice sought to collect information to compare the tax credits received by SEC and LGE to a limited number of other companies that received the tax credit, the GOK was unwilling to provide that information, citing to confidentiality laws. Thus, we were limited by the information in the record to examining the amount of the tax credits that SEC and LGE received during the POI, the number of total companies in Korea that received the tax credit during the POI (more than 11,000), and the total amount of benefits granted under this program.<sup>174</sup> Therefore, based on the information on the record, we properly compared the average amount of the tax credits provided to companies in Korea that used this program during the POI, to the actual amount of the tax credits received by SEC and LGE. Based upon this analysis, the Department still finds that SEC and LGE received a disproportionate amount of the benefits granted under this program thus mandating a determination that this programs is de facto specific under section 771(5A)(D)(iii)(III) of the Act.<sup>175</sup> This type of de facto analysis is fully consistent with prior administrative precedent.<sup>176</sup> Furthermore, we do not find SEC's argument

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<sup>172</sup> 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.").

<sup>173</sup> See Post-Preliminary Analysis (NSA) at 3.

<sup>174</sup> See GOK QNR 9/19 at 16-17.

<sup>175</sup> Although not relevant to an analysis of de facto specificity under the statute, the GOK placed usage of this tax program by the top 100 users, information that was not requested by the Department. We note that even using the GOK's self-selected usage data, SEC and LGE still received a disproportionate amount of the benefits provided under this program when compared to the other largest users.

<sup>176</sup> 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

regarding Bethlehem Steel to be persuasive. Our finding 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, one characteristic of which, we determined, is the large consumption of electricity.<sup>177</sup> The program and facts of Bethlehem Steel are not applicable to our analysis of this program and the facts in this investigation.

SEC’s argument that the Department should not find this program de facto specific, because this program is administered according to objective criteria and conditions, is legally incorrect because the objective criteria and conditions standard raised by SEC under section 771(5A)(D)(ii) of the Act are solely applicable to an analysis of de jure specificity and do not apply to de facto specificity. SEC also argues that the Department’s determination that SEC 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 SEC argues that companies that receive a disproportionate share of the benefits simply do so because they qualify for more benefits. We disagree with this statement by SEC. Indeed, this is the very purpose for the analysis of de facto specificity that is set forth in the statute: 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, SEC’s argument that large companies uniformly invest more in R&D than other companies is speculative because SEC has provided no factual support for this statement. Finally, SEC’s argument that, because the Department has not undertaken a GDP analysis it cannot find that SEC received a disproportionate share of benefits under this program, is incorrect. SEC cites to Steel Products from Korea to support its conclusion that a GDP analysis is necessary for an “appropriate measure of disproportionality.” However, SEC overlooks the important context of our analysis in that case, in which we stated that that measure of disproportionality is appropriate “(i)n this case” to the facts of that proceeding. In Steel Products from Korea, we were examining whether the GOK was directing credit to the steel industry through all financial institutions in the country, both public and private. Our evaluation of this issue necessitated a different approach to specificity because we were addressing the direction and entrustment of lending by private financial institutions across Korea’s domestic economy. The program we are currently investigating is a discrete, single government tax program for which the standard analysis of disproportionality is appropriate. SEC has provided no reason to depart from our normal disproportionality analysis.

We also do not find support for SEC’s argument regarding DRAMS from Korea AR (Jan. 2011), where we found that the respondent “received a disproportionately large share of the income tax benefits relative to its size among all companies in Korea.” We did not perform a GDP analysis

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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”).

<sup>177</sup> See Bethlehem Steel, 140 F. Supp. 2d at 1369.



in DRAMS from Korea AR (Jan. 2011), and indeed, the disproportionality analysis we performed in that case did not significantly differ from the analysis we have done in this case based on the available information, and where we declined to compare tax credits received by the respondents to the 100 largest recipients, based on information provided by the GOK.

**Comment 5: Whether the Gwangju Metropolitan City and Gyeongsangnam Province Production Facilities Tax Reductions/Tax Exemptions are Specific**

*GOK's Arguments*

- The tax programs under Article 276(1) of the Local Tax Act are available to any corporation that makes investment or conducts activities in the designated areas. The Local Tax Act is a national law.
- While the government designates industrial complexes on a case-by-case basis, Article 276(1) of the Local Tax Act is general in nature and applies to all industrial complexes of Korea. The Department's focus on complexes in Changwon and Gwangju is misplaced. The Department is incorrect in finding the programs regionally specific.

*SEC's Arguments*

- Assistance received under this program is generally available to all companies that establish or expand facilities within industrial complexes and these exemptions are not limited to Gwangju City but rather, are available throughout Korea to any company that relocated to, or is located in, a designated area.<sup>178</sup>
- The Department should grant SGEC an offset in the amount of the Special Rural Development Tax, as explained in footnote 11 of SEC's Case Brief at 26.

*Petitioner's Rebuttal Arguments*

- The Department's finding that the tax exemptions provided by Gwangju City and Changwon City are regionally specific is correct.
- The GOK's and SEC's argument that the universal availability of such tax programs to all companies in a designated area conflates de jure specificity with regional specificity.
- Regional specificity is only concerned with whether the program applies only in a designated geographical region such as the "designated areas" restriction that is a part of these programs.
- Neither the GOK nor SEC have provided any new information that would warrant reconsideration of the Department's decision in CFS Paper from Korea that local tax exemptions pursuant to Article 276(1) of the Local Tax Act are regionally specific.<sup>179</sup>
- The record shows that Article 276(1) of the Local Tax Act applies to industrial sites in less populated parts of the country (i.e., designated areas).<sup>180</sup>
- Neither the GOK or SEC have presented information suggesting Article 276(1) of the Local Tax Act or the local tax exemptions are no longer restricted to designated geographic areas in less populated parts of Korea.

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<sup>178</sup> See SEC QNR 6/29, Exhibit 11 and III-15.

<sup>179</sup> See also CORE AR Preliminary Results (Sept. 2010) (unchanged in CORE AR Final Results (Jan. 2011)).

<sup>180</sup> See GOK QNR 8/15 at 17 and 19. See also SEC QNR 6/29 at 6, 8, and Exhibit 11.

**Department's Position:** Both the GOK and SEC have argued that local tax programs under Article 276(1) of the Local Tax Act are not specific because they are available to any company that invests in facilities in designated areas (*i.e.*, industrial complexes). This argument, however, is misplaced and ignores the fact that the program is only available to companies located in designated areas. Section 771(5A)(D)(iv) of the Act states that “(w)here a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.” Clearly, Article 276(1) of the Local Tax Act limits the recipients of these tax benefits to enterprises located in the jurisdiction of the authority regardless of whether the GOK, the province, or the city is considered to be the authority. In this instance, this determination is consistent with our prior determinations regarding this program, where we stated that local tax programs allowing for the exemption or reduction of acquisition, registration, and property taxes under Article 276(1) of the Local Tax Act were regionally specific because the program was limited to an enterprise or industry located within a designated geographical region.<sup>181</sup>

Furthermore, as we stated in CORE from Korea AR Preliminary Results (Sept. 2010) at 55748, where “(n)o new information or evidence of changed circumstances from (respondent) or the GOK was presented... to warrant a reconsideration of the countervailability of this program,” we “continue to find this program countervailable.” As Petitioner correctly points out, neither the GOK nor the company respondents have placed information on the record indicating that tax reductions and exemptions under this program are not limited to companies within designated geographical regions. Indeed, Article 276(1) of the Local Tax Act in effect during the POI shows that the program is limited in application to persons or companies constructing or enlarging buildings in designated “industrial complexes,” the “industry inducement area,” the “industrial technology complex,” or designated areas for “collective location of new technology.”<sup>182</sup> The national law authorizing tax reductions and exemptions under these programs is limited geographically to companies within certain designated regions, and companies located outside these designated regions are not eligible for the tax reductions and exemptions. Thus, the programs are regionally specific under section 771(5A)(D)(iv) of the Act.

#### **Comment 6: Whether KDB/IBK Short-Term Discounted Loans for Export Receivables are Specific**

##### *GOK's Argument*

- KDB and IBK programs are available to any Korean company that undergoes the credit assessment of the banks. Thus, these programs are neither *de jure* nor *de facto* specific.

##### *Petitioner's Rebuttal Argument*

- The GOK's argument does not contradict the fact that these loans are export contingent, and thus specific, within the meaning of sections 771(5A)(A) and (B) of the Act.

**Department's Position:** The widespread availability of KDB and IBK financing to all exporters that the GOK describes is not relevant to our specificity analysis. The export financing provided

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<sup>181</sup> See CFS Paper from Korea and accompanying IDM at 12 and CORE AR Preliminary Results (Sept. 2010) (unchanged in CORE AR Final Results (Jan. 2011)).

<sup>182</sup> See GOK QNR 8/15 at Exhibit S-16.

by KDB and IBK is an export subsidy because the loans were contingent on export performance, and, as such, are deemed specific under sections 771(5A)(A) and (B) of the Act. There is no information on the record that contradicts this finding.

#### **Comment 7: Whether SEC Received KDB/IBK Short-Term Discounted Loans for Export Receivables**

##### *SEC's Arguments*

- SEC did not apply for or receive short-term loans to finance its export receivables; rather SEC paid negotiation fees for its export receivables which are fees that banks charge in the normal course of business to handle export factoring transactions.<sup>183</sup>
- The GOK erroneously classified the negotiation fees as discounted loans. However, the GOK explained that KDB's and IBK's O/A financing are purchases of payment receivables arising from sales on account transactions of exporters, and this practice allows the exporters to collect export proceeds early from the banks. The GOK has also stated that exporters who want to discount the receivables before settlement by the importer(s) can ask the bank to purchase the receivables and pay the bank fees or interest for the advance payment. Thus, even though the GOK incorrectly identified the fees as discounted interest on loans, it correctly described them as negotiation fees in return for export factoring.<sup>184</sup>
- At the SEC verification, the Department reviewed all short-term borrowing accounts and expressly noted that these accounts related only to export factoring.<sup>185</sup>

##### *Petitioner's Rebuttal Arguments*

- SEC's argument that it paid "negotiation fees," rather than interest, is without merit; the funds paid by SEC should be viewed as interest on loans.
- The GOK itself has "classified the negotiation fees that SEC paid as discounted loans."<sup>186</sup>
- The GOK itself continues to treat this program as a loan program.<sup>187</sup>
- The Department has previously determined that D/A financing should be treated as a countervailable loan.<sup>188</sup>
- The Department has previously determined that factoring of receivables constitutes short-term borrowings.<sup>189</sup>

**Department's Position:** Information collected from SEC prior to the Preliminary Determination indicated that it received funds from KDB and IBK in exchange for the sale of export receivables at a discount to these institutions.<sup>190</sup> This manner of funding matches the O/A discounted loans described by the GOK,<sup>191</sup> and was noted as such in the Preliminary Determination at 55049. SEC has indicated that this type of financing allows it to receive

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<sup>183</sup> See SEC QNR 6/29 at III-11-12 and SEC QNR 7/5 at Exhibit S2-4.

<sup>184</sup> See GOK QNR at 12-14 and 39.

<sup>185</sup> See SEC Verification Report at 32 and 34.

<sup>186</sup> See SEC Case Brief at 5. See also GOK QNR 6/29 at 12.

<sup>187</sup> See GOK Case Brief at 60.

<sup>188</sup> See DRAMS from Korea (Final Determination) at Comment 12.

<sup>189</sup> See, e.g., PET Film from India (Final Determination).

<sup>190</sup> See SEC QNR 8/9 at S2-4.

<sup>191</sup> See GOK QNR 6/29 at 12-13.

discounted early payments from KDB and IBK on the value of exports receivables sold to these two institutions nearly 40 days earlier, on average, than SEC would otherwise receive payment from its export customers.<sup>192</sup> Contrary to SEC’s argument, funds it pays to KDB and IBK do not represent “fees” for the sale of export receivables. Rather, these funds represent the interest, in the form of a discount, that SEC pays for the early receipt of payment on its export accounts receivable. 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 participating companies. 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.<sup>193</sup> Analogous to the O/A financing used by SEC, 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 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 available. As such, it would not be consistent to treat O/A financing received by SEC 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 provided by KDB and IBK to SEC constitutes the provision of short-term loans at a discount interest rate, because interest is paid up-front at the time the loan is received.

#### **Comment 8: Whether D/A and O/A Financing Were Provided in Accordance With Market Interest Rates**

##### *GOK’s Arguments*

- The D/A and O/A financing are provided by KDB and IBK on a commercial basis. The Department confirmed at verification that KDB and IBK use interest rates based on LIBOR plus a spread based on the bank’s internal criteria for each individual applicant. The Department’s finding of benefit simply by referring to the absence of comparable loans disregards the record.
- Section 771(5)(E)(ii) of the Act, which provides the cardinal rule for benchmarks, is to search for a “market-based” rate or whether a financial institution applied a market-based interest rate for a particular financing. Both KDB and IBK have explored and applied market-based rates.

##### *SEC’s Arguments*

- Should the Department continue to find the negotiation fees paid by SEC are countervailable benefits, it should use, as a benchmark, the rates offered by commercial banks in Korea during the POI; they more accurately reflect what SEC would have paid and are consistent with Department regulations.
- Interest rate information provided by SEC at verification demonstrates that private bank rates are competitive with KDB and IBK rates and that the higher rates KDB/IBK often charges

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<sup>192</sup> See SEC QNR 8/9 at S2-4.

<sup>193</sup> See PET Film from India (Final Determination) and accompanying IDM at “Analysis of Programs.” See also DRAMS from Korea (Final Determination) and accompanying IDM at Comment 12.

demonstrate the arm's length commercial nature of SEC's transactions.<sup>194</sup> Further, the GOK also supported this fact in its statement that the rates charged by KDB and IBK do not differ, in substance or form, from rates offered by other financial institutions.<sup>195</sup>

#### *Petitioner's Rebuttal Arguments*

- The benchmark utilized in the Preliminary Determination was correct given that SEC did not report comparable commercial loans.
- SEC's provision of a single table of loans rates with respect to the verification of the KEXIM Export Factoring program, with no additional context of the underlying collateral or provisions of the loans, is insufficient to warrant a change to the Department's Preliminary Determination.
- SEC's suggested benchmarks are not comparable to the loans received under this program within the meaning of 19 CFR 351.505(a)(2)(i) and (iv), or the CVD Preamble.
- The record does not provide sufficient information to determine whether the KEXIM loans are comparable to the KDB and IBK discounted loans with respect to the underlying collateral, risk factors, or any other factors identified in the initial questionnaire (e.g., loan amount, currency, length of the loan, interest rate, etc.).
- The cursory table of interest rates provided by SEC at verification for the KEXIM Export Factoring does not contain information necessary to determine that those loans are comparable to the KDB and IBK discounted loans.

**Department's Position:** It would be contrary to the statutory and regulatory provisions for the Department to determine that interest rates on loans provided by government policy banks are interest rates charged on "comparable commercial loans," within the meaning of section 771(5)(E)(iii) of the Act, based solely on the procedures used by those banks in establishing interest rates, as suggested by the GOK. For the purposes of determining the comparability of a loan, the Department "will place primary emphasis on similarities in the structure of the loans (e.g., fixed interest rate v. variable interest rate), the maturity of the loans (e.g., short-term v. long-term), and the currency in which the loans are denominated."<sup>196</sup> The GOK's argument that the Department verified that KDB and IBK applied market interest rates, in accordance with section 771(5)(E)(ii) of the Act, by using standard LIBOR rates, plus a spread, ignores the Department's regulations, which mandate a comparison between interest rates from the government banks that provide the loans under investigation and comparable commercial loans that respondents actually received.<sup>197</sup>

In the Preliminary Determination, we found that LGE had received short-term discounted loans from KDB and IBK. LGE also reported receiving commercial loans that were comparable to those received from KDB and IBK in accordance with 19 CFR 351.505(a)(2)(i). Thus, in establishing a benchmark, we were able to use LGE's actual commercial short-term loans to derive a benchmark for purposes of comparing the KDB/IBK loans to commercial loans actually obtained by LGE.<sup>198</sup> No interested parties objected to this analysis, and, for purposes of

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<sup>194</sup> See SEC Verification Report at page 10 of Verification Exhibit 17.

<sup>195</sup> See GOK QNR 8/15 at 8, 10.

<sup>196</sup> See 19 CFR 351.505(a)(2). See also section 771(5)(E)(ii) of the Act.

<sup>197</sup> See 19 CFR 351.505(a)(1) and 19 CFR 351.505(a)(3)(i).

<sup>198</sup> See 19 CFR 351.505(a)(3)(i).

determining whether these loans provide a countervailable benefit to LGE, we are continuing to analyze short-term discounted loans received by LGE in this manner.

SEC, on the other hand, did not report its receipt of financing from KDB and IBK, maintaining that these transactions did not constitute loans, and the interest merely amounted to “negotiation fees.” Contrary to the CIT’s findings in NSK Ltd. and Nippon Steel, SEC reached its own conclusion that it was not necessary for it to report information requested by the Department about the KDB and IBK financing or any comparable commercial loans it may have received.<sup>199</sup> Thus, pursuant to 19 CFR 351.505(a)(3)(ii), because SEC reported no comparable short-term commercial loans, we must use a national average interest rate, which we found published in public sources, and that we are treating as proprietary in order not to disclose the currencies in which SEC’s loans were denominated.

SEC did not provide information indicating that it had received short-term commercial loans during the POI. SEC did provide, at verification, information regarding interest rates from several banks.<sup>200</sup> However, this information cannot serve as the basis for a “comparable commercial loan” as required by the regulations; it merely shows the basis on which various lending institutions, including government special purpose banks and private lenders, established interest rates during the POI. While the Department would remove from its benchmark calculations any interest rate information on loans from government special purpose lending institutions, in this case, the remaining commercial bank interest rate information is still insufficient for purposes of deriving a benchmark. It does not represent actual interest paid by SEC, nor does it provide loan information that the Department could use to derive an interest rate benchmark. Similarly, the information that the GOK provided regarding the manner in which KDB and IBK develop interest rates (using LIBOR rates plus a spread), does not satisfy the Department’s requirements regarding a benchmark. As prescribed by the statute and the regulations, the Department must determine whether a government loan program provides a countervailable benefit by comparison with a comparable commercial loan.<sup>201</sup> Our regulations define a preference for using loans that the company actually received for short-term loan benchmark purposes.<sup>202</sup> In the absence of this information, we are using a national average interest rate for comparable commercial loans.<sup>203</sup> Therefore, as we did in the Preliminary Determination, we are continuing to rely on appropriate published sources for information regarding national average commercial short-term interest rates to select a benchmark for the loans received by SEC from KDB and IBK.

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<sup>199</sup> See NSK Ltd., 919 F. Supp. at 449 and Nippon Steel, 337 F.3d at 1382.

<sup>200</sup> See SEC Verification Report at Verification Exhibit 17.

<sup>201</sup> See 19 CFR 351.505(a)(1).

<sup>202</sup> See 19 CFR 351.505(a)(3)(i).

<sup>203</sup> See 19 CFR 351.505(a)(3)(ii).

## **Comment 9: Whether K-SURE Charged Adequate Premiums in a Way that Covers Its Long-Term Costs and Losses**

### *Petitioner's Arguments*

- K-SURE has charged insufficient premiums to cover long-term operating costs and losses.
  - By conceding the existence of a deficit in terms of long term operating costs and losses over both a four-year (2007-2010) and five-year (2006-2010) period, the GOK has conceded that the K-SURE export insurance program confers a benefit within the meaning of section 771(5)(E) of the Act and 19 CFR 351.520(a)(1).
  - Explanations by the GOK do not change both the fact that premiums charged by K-SURE in prior years were set at levels that were wholly insufficient to cover the 2009 performance of the program, and the fact that it is in those circumstances that the GOK steps in to prevent the failure of K-SURE by funding the operating shortfall.
  - Claims by the GOK at verification that K-SURE will be profitable based on 2011 data are irrelevant to the Department's analysis since they are based on facts occurring after the POI.
- The cost allocation performed by the GOK in the GOK QNR 6/29, wherein it used labor ratios alone in an attempt to present operating surpluses in the reference years other than 2009, should be discounted.

### *GOK's Arguments*

- The K-SURE short-term export insurance program has been administered and managed during the relevant period in a way that covers its long-term costs and losses.
- K-SURE has charged its customers sufficient premiums to cover its long-term costs and losses.
- Contrary to Petitioner's argument, the GOK has never "conceded" that K-SURE was losing money from the administration of the program.
- Information provided by the GOK in its questionnaire responses and during verification proves that K-SURE manages the export insurance program to cover its long-term costs and losses.
- The detailed, step-by-step explanations of K-SURE's calculation methodology provided by the GOK prove that K-SURE covers its long-term costs and losses in the course of operating this program.
- Petitioner has improperly disregarded information on the record, and only focuses on K-SURE's losses in 2009.
- In accordance with its regulations, the Department considers the entire picture of the program.
  - The Department's regulations are clear that the focus of the inquiry should be on the long-term operating costs and losses, as opposed to performance in a particular year.
  - The Department's regulations do not contemplate a massive global economic recession.
  - The Department should not lose sight of the long-term aspect of the program.
- Information from after the POI, as well as before the POI, is equally relevant in evaluating the long-term profitability of the program. This is particularly true where aberrant losses took place only in a single year, and were caused by broad, unexpected events such as the global financial crisis.

- Contrary to Petitioner’s contention that K-SURE recorded its 2009 performance as a “simple matter of fact” in its Annual Report, that report sets out in detail:
  - the aberrational situation of the 2009 performance arising from the 2008 financial crisis;
  - that the performance of K-SURE was making gradual improvement from the aberrational year as time goes by; and
  - that K-SURE’s performance in 2009 was largely caused by the mismatch between growth in claims paid-out and growth in premiums in that particular year, which also underscores the aberrational nature of 2009.
- Because K-SURE administers the export insurance program in a manner that covers its long-term costs and losses, there is no benefit and thus the program is not countervailable.

#### *SEC’s Arguments*

- The regulations at section 351.520(a)(1) state that an export insurance program provides a countervailable benefit only if the “premium rates charged are inadequate to cover the long-term operating costs and losses of the program.” The CVD Preamble also states that the Department will look to whether an export insurance program is structured in such a way that expected premiums can cover expected long-term operating costs and losses and relies on the finding in Potassium Chloride from Israel, at 36124. There the Department determined that a program was structured so as to be “self-balancing in the sense that it could reasonably be expected to break even over the long term” and did not find a countervailable subsidy despite losses in the early years of the program.<sup>204</sup>
  - The Department has traditionally analyzed a program’s profitability over a five-year period.<sup>205</sup>
  - The record shows that K-SURE has been profitable on a long-term basis. Further, the GOK has explained that K-SURE has “ensured that the insurance facilities it administers are formulated in a way to cover the operating costs and losses incurred in each year” and, the program is legally required to operate at a profit.<sup>206</sup>
  - Data provided by the GOK shows that in 2006, 2007, 2008 and 2010, the policy premiums plus other income generated by the program exceeded the insurance claims paid. The only deficit registered during the 2006-2010 period was in 2009 due to the global financial crisis which is an anomaly for a consistently profitable program.<sup>207</sup>
  - The Department found at verification that K-SURE will report 190 billion KRW in premiums and 142 billion KRW in profit for 2011. Also K-SURE’s financial statements make clear that the program is solvent.<sup>208</sup>

#### *Petitioner’s Rebuttal Arguments*

- SEC’s argument that K-SURE is legally required to operate at a profit is inaccurate. The Department has previously confirmed that the program has experienced consistent operating losses and that the GOK will cover such losses.<sup>209</sup>

<sup>204</sup> See CVD Preamble, 63 FR at 65385.

<sup>205</sup> See, e.g., Steel Pipe from Turkey and accompanying IDM at Comment III.A and Wire Rod from Turkey and accompanying IDM at Issue B.1.

<sup>206</sup> See GOK QNR 6/29 at 28 and Exhibit C-5.

<sup>207</sup> See GOK QNR 7/5 at 11 and GOK QNR 6/29 at page 31 of Exhibit C-1.

<sup>208</sup> See GOK Verification Report at 28 and GOK QNR 6/29 at pages 46-48 of Exhibit C-1.

<sup>209</sup> See DRAMS from Korea (Final Determination).



- The GOK's argument that K-SURE projects a 2011 surplus is irrelevant, as such data was never placed on the record, and the data relates to a period after the POI.
- During the period relevant to the Department's analysis, K-SURE operated at a loss.
- SEC's arguments wrongly attempt to negate the long-term profitability test called for by the Department's regulations.<sup>210</sup>

#### *GOK's Rebuttal Arguments*

- Because K-SURE administers the export insurance program in a manner that covers its long-term costs and losses, there is no benefit and thus the program is not countervailable. Thus, there is no reason to apply AFA.
- Petitioner has provided no reason why the GOK's calculation formula presented in GOK QNR is questionable. The formula provided by the GOK is a reasonable way to explain and prove the long-term profitability of the program.

#### *SEC's Rebuttal Arguments*

- Petitioner's argument that K-SURE's premiums are inadequate to cover its long-term operating costs and losses is focused solely on the loss experienced in 2009 and is not supported by the regulations. The regulations do not specify the period over which the Department should conduct its analysis; the Department conducts its analysis on a case by case basis. In Potassium Chloride from Israel (discussed in the CVD Preamble), the Department did not find a countervailable subsidy despite losses in the early years of the program, determining that the program was structured to be self-balancing and it could reasonably be expected to break even over the long term.
- The extraordinary loss that K-SURE experienced in 2009 is attributable to a global phenomenon, and not a failure on K-SURE's part to design a program that would remain solvent on a long term basis, and these reasons are highly relevant to the Department's analysis, contrary to Petitioner's argument.
- K-SURE earned a substantial profit from 2006 through 2008 and in 2010, demonstrating that its premiums were adequate to cover its operating costs and losses. The 2008 global economic crisis also caused the U.S. Export-Import Bank to sustain a 249 percent loss in 2009; this evidence strongly supports a conclusion that K-SURE's loss in 2009 was not attributable to a GOK effort to subsidize the companies that it insured.<sup>211</sup>
- K-SURE has been structured precisely as discussed in the CVD Preamble, so that "expected premiums can cover expected long-term operating costs and losses," as shown by its consistent operating profits from 2006 through 2008, as well as in 2010. There is no way that K-SURE or any other financial institution or insurer could have expected that the premium levels that it established for 2009 would be insufficient to cover claims in that year.
- Petitioner's argument that the premiums charged by K-SURE in prior years were set at levels that were wholly insufficient to cover the 2009 performance of the program is illogical and a non-sequitur; Petitioner cannot explain why or how premiums could have been set at even higher levels from 2006 through 2008 in order to anticipate an unforeseen global financial crisis.

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<sup>210</sup> See 19 CFR 351.520(a)(1).

<sup>211</sup> See GOK QNR 8/15 at 11, GOK QNR 6/29 at 29, GOK Verification Report at 38.

- Except for the extraordinary events of 2009, K-SURE has always set its premiums at levels that covered its operating costs and losses and, this evidence easily satisfies the test in section 351.520 of the regulations for not countervailing the benefit SEC received in 2010.
- K-SURE's information for 2011 is relevant because it demonstrates the long-term profitability and health of the program, which bears directly on the Department's analysis. The information is also on the record in the GOK Verification Report at 38.
- The Department has the discretion to consider information that pertains to post-POI facts. Petitioner does not identify any precedent that prohibits the Department from doing so.

**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.<sup>212</sup> In its 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 managing/operating expenses of the program. The GOK provided these data for the POI and the four preceding years.<sup>213</sup> As required by the Department's regulation and discussed in the CVD Preamble, we have analyzed the data over the long-term. These data demonstrate that over the five-year period ending with the POI, K-SURE's short term export insurance program experienced a significant net operating loss. In fact, when viewed over the long term, *i.e.*, a five year period, K-SURE's losses far surpass the gains it had in any of the given years. The very reason the Department takes a long-term approach is because variances or anomalies in individual years are likely to be balanced out over the long term. In this case, because of the overall net loss over the period of five years, we find that the premiums are inadequate to cover the long-term operating costs and losses of the program. Furthermore, K-SURE has had a history of losses in prior years: in a prior investigation, the Department found that KEIC, the predecessor to K-SURE, reported operating losses for all of the years under consideration.<sup>214</sup>

With respect to the GOK's and SEC's arguments that data for 2011 is relevant to the Department's analysis and on the record, we do not have final data for 2011. There is no documentation supporting the statements from the GOK at verification.<sup>215</sup> These statements were made before the close of 2011 and therefore, were in part based on assumptions regarding future events that had not yet occurred. K-SURE's financial statements for the full year 2011 are not on the record of this investigation. In addition, while we acknowledge that K-SURE's losses followed on the heels of a global economic collapse, the GOK did not explain the relevance of these losses with respect to the regulatory requirement that a government export insurance program charge premiums that are adequate to cover the long-term operating costs and losses of the program. Furthermore, the GOK export insurance program, as noted above, has a history of experiencing losses, and with this history, it should have a policy in place that would allow it charge premiums to cover these types of losses. Indeed, the very purpose of insurance programs is to cover losses due to unanticipated events.

<sup>212</sup> See 19 CFR 351.520(a)(1).

<sup>213</sup> See GOK QNR 6/29 at 28-29 and GOK QNR 8/15 at 11.

<sup>214</sup> See DRAMS from Korea (Final Determination).

<sup>215</sup> See GOK Verification Report at 38.

Therefore, we determine pursuant to 19 CFR 351.520(a)(1), that the premium rates that are being charged by K-SURE are inadequate to cover the long-term operating costs and losses of the program. Accordingly, pursuant to 19 CFR 351.520(a)(2), we will calculate the benefit as the net amount of compensation received less premium fees paid.

**Comment 10: Whether the Department Should Apply AFA to Calculate a Benefit to SEC from the K-SURE Export Insurance Program**

*Petitioner's Arguments*

- Where a party fails to provide requested information, significantly impedes the proceeding, or provides information that cannot be verified, the Department has discretion to ensure that the party is not rewarded for its failure to cooperate.<sup>216</sup>
- The “respondent bears the burden of creating a complete and adequate record.”<sup>217</sup> SEC failed to meet this burden.
  - The Department should use facts available pursuant to section 776(a) of the Act because SEC has withheld information requested by the Department.
  - SEC has failed to provide requested documentation that has been part of the Department’s inquiries since the initial questionnaire of May 9, 2011.
  - The Department highlighted the importance of SEC providing supporting documentation regarding its use of this program in its verification outline, but SEC did not provide the requested information.
  - At verification, SEC failed to provide the Department with documentation, such as basic shipping and order documentation, necessary to confirm that a payout it received during the POI involving exports to the United States did not relate to subject merchandise.
  - SEC failed to provide this information despite statements at verification that the documentation was essential to verifying the questionnaire response.
- As a result of SEC’s failure to supply documentation at verification confirming that the payout was not tied to exports of subject merchandise, the Department should treat the payout as a countervailable benefit tied to U.S. exports of subject merchandise.
- SEC has an obligation to cooperate to the best of its ability, as articulated in Nippon Steel and where it does not, the application of AFA is appropriate.
- The use of AFA is warranted because SEC failed to act to the best of its ability to provide information requested by the Department.
  - The payout received by SEC was the third and final installment made regarding a single order of merchandise to the United States; it is inconceivable that SEC had no purchase order(s), order confirmation(s), commercial invoice(s), packing list(s), bill(s) of lading, or customs entry documentation showing the products exported as part of the covered order.
  - As a reasonable and responsible exporter, SEC would have known that the requested information was required to be kept and maintained.<sup>218</sup>
  - SEC failed to undertake maximum efforts, over the course of at least four months prior to verification, to locate the basic sales and shipping documentation supporting the company’s non-use of the program.

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<sup>216</sup> See sections 776(a) and 776(b) of the Act.

<sup>217</sup> See NSK Ltd.

<sup>218</sup> See Nippon Steel.

- SEC's claimed trouble in locating the documentation on the basis that "the sales had occurred some years ago" lacks credibility, as the payout received by SEC was during the POI.
- Under the Nippon Steel standard, the Department had every reason to expect that SEC would provide requested information at verification given:
  - the importance of the supporting documentation required to verify use of the program;
  - the fact that SEC had at least four months prior to verification to locate and prepare the supporting documentation for an extremely limited number of payouts;
  - SEC had multiple opportunities in the supplemental questionnaire responses to notify the Department well ahead of verification that it was experiencing difficulty in locating essential documentation; and
  - the fact that the same documentation is required under K-SURE's own well-established procedures for insurance applications, premium calculations, and claims payouts.
- The Department has previously emphasized the importance of respondents providing supporting documentation.<sup>219</sup>
- SEC's claim that it was not possible to confirm that a given invoice was related to subject merchandise, because SEC allegedly did not receive insurance coverage for specific shipments or specific customers,<sup>220</sup> was contradicted at verification, when SEC stated that it, rather than its U.S. affiliate SEA, secured the insurance coverage for a single export order.<sup>221</sup> In addition, SEC claimed at verification that it, rather than SEA, paid the insurance premiums required to cover this sale.<sup>222</sup>
- SEC explained at verification "insurance premiums are based on an estimate of sales and when the final export figure is known at the end of the year, the final premium is calculated and the balance, if any, is paid at that time."<sup>223</sup> It would be impossible for SEC to secure insurance coverage for a single order or to otherwise finalize export figures for final premium payments without knowing, based on supporting documentation, the products that were sold and their prices.
- At the GOK verification, K-SURE officials confirmed that Korean exporters are required to provide documentation to substantiate their export insurance claims, including "the agreement between the exporter and the foreign buyer, the proof of shipment, (and) proof that the exporter has not been paid."<sup>224</sup>
- This standard would require SEC to retain purchase orders, commercial invoices, and other documents evidencing the actual sale of products.
- K-SURE was able to provide "as a supporting document the original claim request from SEC" regarding the order at issue.<sup>225</sup>
- K-SURE grants exporter- and customer-specific credit limits and that, for purposes of calculating premium amounts, "procedures require the exporter to report the amount and

<sup>219</sup> See Steel Grating from China and accompanying IDM at Comment 13.

<sup>220</sup> See SEC QNR 8/9 at S2-4 and Exhibit S2-11.

<sup>221</sup> See SEC Verification Exhibit 21.

<sup>222</sup> See SEC Verification Report at 34 and Verification Exhibit 21.

<sup>223</sup> See SEC Verification Report at 34.

<sup>224</sup> See GOK Verification Report at 39.

<sup>225</sup> See GOK Verification Report at 40.

value shipped by providing K-SURE with the shipping documents (invoice, bill of lading, customs documentation, etc.).”<sup>226</sup>

- SEC would be unable to receive a payout for an order without having a documentary basis evidencing the insurance coverage, the premium calculation and premium payment, and the payout itself in form of purchase orders, order confirmations, commercial invoices, and any other relevant shipping documentation – the very types of documentation that SEC did not provide at verification.
- The Department should conclude that the necessary supporting documents existed and that SEC chose not to provide them to the Department, or that SEC disregarded the Department’s numerous requests to substantiate non-use of the program and the Department’s recommendation to prepare supporting documentation at verification.
- Where no data for a specific program is provided to the Department at verification, the Department should, as AFA, calculate the highest benefit amount possible with respect to the program.<sup>227</sup>

#### *SEC’s Arguments*

- SEC did not claim that the K-Sure payments it received during the POI were not related to subject merchandise. In its questionnaire response SEC noted that its executed application and approval documents do not specify the merchandise.<sup>228</sup> SEC further explained that it was not possible to confirm whether a particular invoice relates to subject merchandise or not because SEC does not get insured for any specific merchandise at one time but rather gets insured for all merchandise for itself and its subsidiaries all over the world at one time.<sup>229</sup>
- SEC was unable to provide documentation identifying the merchandise, in response to the Department’s request at verification, for the reasons explained in its questionnaire responses. Therefore, the verification request for documentation reflected a misunderstanding of the nature of the K-SURE premium payments, because it is not SEC’s practice to itemize each piece of merchandise insured through K-SURE.
- The Department’s Preliminary Determination that SEC’s claims did not relate to subject merchandise is incorrect. SEC stated at verification that it is likely that some claims did include subject merchandise, but this clarification is not a basis for the Department to modify its Preliminary Determination that the program was not countervailable.

#### *Petitioner’s Rebuttal Arguments*

- The Department should reject SEC’s post facto justification for failing to cooperate at verification.
  - SEC’s statement in its case brief that “subject merchandise was likely part of its K-SURE claim” highlights the materiality of SEC’s failure to cooperate.
  - If subject merchandise was “likely part of” SEC’s K-SURE claim, the Department should have been allowed to verify invoices, shipping, and order documentation related to the claim to verify that the claim and payment were not tied to subject merchandise.
  - SEC’s claim that invoices or other documents would not have identified products sold in the underlying claim, such that it would be impossible for the Department to verify

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<sup>226</sup> See id.

<sup>227</sup> See Hot-Rolled Steel from India.

<sup>228</sup> See SEC QNR 6/29 at page 2 of Exhibit 4.

<sup>229</sup> See SEC QNR 8/9 at Exhibit 11.

whether the payment was made in relation to subject merchandise, should have been allowed to be verified by the Department.

- SEC failed to act to the best of its ability to cooperate with the Department by not providing critical documentation which appears to exist and which was requested with ample and repeated notice.
- The invoices requested from SEC existed.
- SEC officials indicated at verification that they were looking for the documents and would have them for examination by the Department.
- K-SURE officials confirmed to the Department at verification that Korean exporters are required to provide documentation to substantiate their export insurance claims, including the agreement between the exporter and the foreign buyer and the proof of shipment.
- K-SURE officials explained at verification that they have the right to examine whether the insured goods are defective or damaged.
- It is inconceivable that documents would not be retained for these purposes, particularly because the claim and payout were recent.
- The Department should apply AFA.
  - SEC's failure to provide the requested documentation should be regarded as a fundamental failure to cooperate, given that:
  - the verification outline two weeks prior to verification notified SEC that it must produce documents showing the claim was unrelated to subject merchandise;
  - during verification, the Department requested this documentation and noted for SEC officials the importance of the documentation no less than four separate times;
  - an examination of whether export insurance expressly relates to subject merchandise exported to the United States is part of the Department's standard investigation of export insurance programs.<sup>230</sup>
  - SEC's claim that its inability to produce documents at verification is a "misunderstanding" worthy of "clarification" is unfounded.
  - SEC's failure to produce documents at verification represents a failure by SEC to cooperate to the best of its ability, and warrants the application of an adverse inference under section 776(b) of the Act.<sup>231</sup>

#### *GOK's Rebuttal Arguments*

- The Department should disregard Petitioner's arguments that AFA should be applied to SEC's use of the K-SURE short-term export insurance program because the company did not cooperate with the Department to the "best of its ability."
- All necessary information requested by the Department has been provided through the questionnaire responses of the GOK, creating a "complete and adequate record."
  - This information confirms that the export insurance at issue was not tied to subject merchandise.
  - Because no impediment to the Department's investigation has taken place, there is no basis for applying AFA.

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<sup>230</sup> See Carbon Steel Fittings from Israel and DRAMS from Korea (Preliminary Determination).

<sup>231</sup> See Tissue Paper from China and accompanying IDM at Comment 1.

### *SEC's Rebuttal Arguments*

- Even if the Department finds that SEC should have been able to present documentation at verification, SEC's inability to do so does not rise to the level of conduct sufficient to apply AFA. In order to apply AFA, the statutory tests in section 771e(a) of the Act must be satisfied, which authorizes "facts otherwise available." Additionally, an adverse inference may be drawn, depending 1) on the necessity of using facts otherwise available, and 2) a respondent's behavior during the proceeding that led to such necessity.<sup>232</sup> There must first be a gap in the record that requires filling in order to justify the resort to facts otherwise available. Second, if the Department determines that an adverse inference is indicated, it must first "explain why the information is of significance to the progress of its investigation."<sup>233</sup> None of these requirements have been met.
- SEC never claimed that the benefit payment it received from K-SURE as a result of the customer's bankruptcy was not for sales of subject merchandise and Petitioner has not identified a single instance where SEC made this claim. Further, the amount of the benefit attributable to the loss of subject merchandise is irrelevant to the determination of whether a benefit is countervailable at all.
- SEC's contract with K-SURE is an umbrella insurance policy that covers all shipments falling under a designated period of time and, the GOK has confirmed that all shipments under the contract are covered without the requirement of individual applications for each transaction.<sup>234</sup>
- SEC is unable to provide documentation that lists each item of merchandise because it is not available. A respondent has no obligation to submit documents that it does not possess. Moreover, this documentation was not submitted with the K-SURE claim and nor has Petitioner shown that SEC had any obligation to maintain this documentation in the ordinary course of business either before or after being paid on its claim.
- SEC described its claim process previously with sample documents, none of which included the identification of the specific merchandise, as being a requirement.<sup>235</sup> The GOK also explained the required documentation for a claim as being the agreement between the exporter and foreign buyer, proof of shipment, proof that the exporter has not been paid, and an explanation of why the buyer has not paid.<sup>236</sup> Petitioner fails to identify any K-SURE policy or practice that required SEC to submit documentation such as purchase orders, order confirmations, commercial invoices, packing lists, bills of lading and customs entry documentation, and much less to retain it for years after filing its claim just so it would be available some day for an unforeseeable verification.
- SEC's claim documentation is on the record and does not include any of the documents that Petitioner contends SEC must have been required to file.<sup>237</sup> SEC's claim also does not identify the specific merchandise. However, this documentation met K-SURE's claim processing requirement and SEC was paid this claim.

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<sup>232</sup> See Agro Dutch.

<sup>233</sup> See Mannesmannrohren-Werke.

<sup>234</sup> See GOK QNR 8/15 at 13.

<sup>235</sup> See SEC QNR 8/9 at S2-5 and S2-13.

<sup>236</sup> See GOK Verification Report at 39.

<sup>237</sup> See GOK Verification Report Verification Exhibit 14 and SEC Verification Report Verification Exhibit 21.

**Department's Position:** The Department's original questionnaire requested SEC to report its use of the K-SURE short-term export insurance program. The questionnaire asked:

{a}ccording to the petitioner, K-SURE was established by the GOK (originally as the KEIC) to operate export and import insurance programs for the purpose of facilitating trade. In 2010, a statutory amendment increased the scope of K-SURE's ability to provide coverage for import, export, and overseas trade transactions. The petitioner alleges that K-SURE offers short-term export insurance to exporters against losses arising from default on export receivables. This insurance protects against prescribed political and commercial risks where goods are shipped pursuant to an export agreement with a payment period of less than two years. The petitioner states that claims are paid out of an Export Insurance Fund managed by K-SURE, which is funded through contributions from the GOK and the insurance premiums paid by the exporters.

- a. Please provide the information requested in Appendices 1 and 3 with respect to this program.

SEC responded:

SEC provides a response to the questions contained in Appendix 1 at attached Exhibit 7. However, SEC is not required to provide a response to the questions contained in Appendix 3 because that appendix applies only to loan benefits, not insurance benefits.<sup>238</sup>

- b. Please provide the amount of claims paid out to your company by K-SURE during the POI and the amount of premiums you paid during the POI.

SEC responded:

SEC and its subsidiaries enter into short-term export insurance agreement with K-SURE separately to cover each entity's potential loss from customer default.

SEC also reported the amount of premiums paid by SEA (SEC's wholly-owned U.S. subsidiary through which it sells subject merchandise) and the compensation K-SURE paid SEA during the POI for losses incurred on its U.S. sales.<sup>239</sup>

The Department's original questionnaire further requested SEC to:

{s}pecify the criteria your company met to receive the particular amount of assistance provided. Provide your company's executed application forms, any other application documents, and approval documents, with respect to this program. Did the application or approval specify the merchandise for which this assistance was to be provided? If so, provide details of which merchandise was specified in the application and/or approval documents.

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<sup>238</sup> See SEC QNR 6/29 at III-12.

<sup>239</sup> See SEC QNR 6/29 at III-13.



SEC responded:

SEC and its subsidiaries insure against default on payment of export receivables with K-SURE. SEA, SEC's only sales subsidiary in the United States dealing with subject merchandise, applied for insurance payments for Circuit City in 2008 and Visual Solution in 2010 due to the bankruptcy of its U.S. customers. After K-SURE's investigation of these claims, K-SURE and SEA agreed on the export receivable amount to be covered by the insurance. In Exhibit 8, SEA provides executed application documents submitted in 2010 and the related approval documents. The application or approval did not specify the merchandise for which this insurance payment was to be provided.

When asked, in the original questionnaire, "What records does your company keep regarding assistance received under this program?," SEC responded, "SEC keeps the notice of insurance payments."<sup>240</sup>

The Department subsequently requested, in a supplemental questionnaire, that SEC provide a table showing each of its claims and identifying the merchandise covered by these claims, and to identify whether the merchandise was subject or non-subject merchandise with a 'Yes' or 'No.' The Department asked in question 42, in relevant part, for SEC to "identify the claims, premiums and payouts by subject and non-subject merchandise in the format provided."

SEC provided the information in the format requested, but instead of providing a straightforward "Yes" or "No" answer requested by the Department, SEC provided an abbreviated response<sup>241</sup> that suggested that, as the record makes clear, the merchandise covered by these claims was non-subject merchandise; the Department understood this information to indicate that the payouts SEC received on U.S. claims did not cover subject merchandise.

In a separate questionnaire, the Department also requested the GOK to provide information on each of the claims K-SURE paid to the respondent companies. The GOK provided the information<sup>242</sup> in response, listing each claim and answered with "Yes" or "No" on whether each claim pertained to subject or non-subject merchandise. On the basis of the responses by SEC and the GOK, the Department preliminarily determined that SEC did not use the program because it received no claims for exports of subject merchandise to the United States. However, the Department made clear to all parties in its Preliminary Determination that it would verify the information submitted prior to making its final determination. The Department stated: "In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the GOK and the respondents prior to making our final determination."<sup>243</sup>

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<sup>240</sup> See SEC QR Part 2 at Exhibit 7.

<sup>241</sup> SEC bracketed this information as business proprietary. See SEC QNR 8/9 at Exhibit S2-11. At the end of this proprietary exhibit, SEC added as a footnote "It is not possible to confirm whether one invoice is concerned with subject merchandise or not because SEC does not get insured only any specific merchandises at one time but gets insured all the merchandises of SEC and its subsidiaries all over the world at one time. On the same reason, insured amount cannot be calculated." See *id.* See also SEC Verification Report at 34.

<sup>242</sup> For further details see GOK QNR 8/15 at 11 and Exhibit S-13.

<sup>243</sup> See Preliminary Determination, 76 FR at 55054.

During the three months between the issuance of the Preliminary Determination and its verification, SEC made no attempt to clarify its questionnaire response, to correct what SEC now characterizes as the Department's misunderstanding, or to inform the Department that the merchandise on which the claim was made may have included the subject merchandise.

Subsequently, in the verification outline for SEC, the Department stated with respect to K-SURE, “[b]e prepared to provide documentation (e.g., insurance contracts, claims documentation, purchase and sales orders, accounting documentation, etc.) showing that SEC’s receipt of assistance under this program is tied to products other than the subject merchandise.”<sup>244</sup> The Department proceeded to verification with the understanding that SEC’s receipt of insurance claims under the program did not cover subject merchandise; thus, the requirement at verification, as expressed in the outline, was to confirm SEC’s non-use of this program by reviewing documentation that would tie the claim to non-subject merchandise.

At verification, SEC provided documentation of its claims for exports to the United States. The documentation showed that SEC received payment in three installments as a result of the claim, and the last of these three payments occurred during the POI. However, the documents provided did not identify the specific merchandise covered by this claim, the information the Department was seeking, and thus, did not fulfill the only requirement specified in the verification outline. During verification, we requested SEC to provide the invoice for these sales, or any other documentation such as purchase orders or related documents, that would identify the merchandise in order to confirm that the claim was paid for non-subject merchandise. As we recounted in the verification report,

SEC responded that it would look for the documentation. SEC also added that they were not required to identify the merchandise in making claims with K-SURE. The following morning, the last day of verification, we asked SEC if they had the documents for us to review. SEC responded they were looking for them and should have them for us in the afternoon. We reminded SEC that it was our last day of verification and we would need to examine the documents in order to complete the verification of this program. Later in the afternoon we again inquired about the documents, and SEC responded that it did not have the documents.<sup>245</sup>

SEC further stated at verification that it could not locate the invoice as the sales had occurred some years ago through its wholly-owned affiliate, SEA. The verifiers again informed SEC of the need to confirm that subject merchandise was not part of the claim, and that SEC must provide the documentation to establish the products covered by these claims. However, SEC was unprepared and ultimately unable to provide the requested documentation. Thus, the verification team was unable to confirm that subject merchandise was not covered by the claim.<sup>246</sup>

The Department conducted similar verifications of the other respondents’ receipt of benefits under this program. We were able to confirm that LGE’s claims for insurance payouts under this

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<sup>244</sup> See SEC Verification Outline at 6.

<sup>245</sup> See SEC Verification Report at 35.

<sup>246</sup> See SEC Verification Report at 34-35 and Verification Exhibit 21.

program were for non-subject merchandise by reviewing the relevant invoice.<sup>247</sup> We were also able to confirm that DWE's claims for insurance payouts were for exports to countries other than the United States by reviewing its invoices.<sup>248</sup> Furthermore, K-SURE, explained at verification that companies making claims would have to provide the agreement between the exporter and the foreign buyer, the proof of shipment, proof that the exporter has not been paid, and an explanation of why the buyer has not paid, to substantiate their claim. K-SURE also examines the reason why the buyer failed to pay including whether the goods were defective or damaged in shipping.<sup>249</sup> Given the requirements to provide the supporting documentation to K-SURE for an insurance payout on a claim to occur, we find SEC's assertion that it does not keep such documents in its record-keeping system is not credible.

The Department issued its verification outline to SEC on November 28, 2011, one week before the scheduled start of verification. The outline explicitly stated "{b}e prepared to provide documentation (e.g., insurance contracts, claims documentation, purchase and sales orders, accounting documentation, etc. showing that SEC's receipt of assistance under this program tied to products other than the subject merchandise."<sup>250</sup> SEC had an opportunity to make minor error corrections prior to the start of verification and to clarify any misunderstanding by the Department of its responses. However, SEC did not request any corrections with respect to K-SURE claims. Subsequent to the verification, in its case brief, for the first time, SEC asserted that that the Department's request for documentation reflects a misunderstanding of the nature of the K-SURE premium payments and that SEC did not claim that the K-SURE payments it received during the POI were not related to subject merchandise. In the same case brief, SEC acknowledged that "{i}n fact, subject merchandise was likely part of its K-SURE claim." If SEC believed that the Department's Preliminary Determination reflected a misunderstanding of the information provided, SEC had an obligation to address this with the Department prior to or at the start of the verification. However, SEC made no attempt to clarify any alleged misunderstanding with the Department during the three months between the issuance of the Preliminary Determination and the verification or in its minor error corrections. SEC had ample opportunity prior to and at verification to correct the Department's understanding. If at the start of verification, or at any of the numerous points during verification at which this matter was discussed, SEC had made the Department aware that this claim likely covered subject merchandise, rather than continuing to try to substantiate what SEC now contends is an incorrect factual conclusion, the Department would have been able to consider whether it was appropriate to gather additional information to enable it to identify and measure the benefit without resorting to AFA. However, at the verification, SEC informed the Department that it was looking for the documents and SEC would have the supporting documents for review in the afternoon on the last day of verification.

Considering that SEC was explicitly informed of the Department's intent to verify the information and provided with opportunities to provide the necessary documentation, SEC's failure to provide any supporting documentation substantiating its claim that was necessary to complete the verification of this program constitutes a failure to cooperate to the best of SEC's

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<sup>247</sup> See LGE Verification Report at 29.

<sup>248</sup> See DWE Verification Report at 15.

<sup>249</sup> See GOK Verification Report at 39.

<sup>250</sup> See SEC Verification Outline at 6.

ability and SEC has impeded this proceeding within the meaning of sections 776(a)(1) and (2) of the Act. Therefore, for this final determination we find it is appropriate to apply facts otherwise available and to make an adverse inference pursuant to section 776(b) of the Act and 19 CFR 351.308(c)(1). In selecting among the facts available and applying an adverse inference, we considered the options available. To use as the denominator SEC's total exports satisfies neither the statutory requirement to make an inference that is adverse, nor the principle expressed in the SAA "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>251</sup> The value of SEC's exports to all countries is, under any circumstances, an inappropriate denominator for a numerator that represents K-SURE payouts on U.S. exports only. The use of that denominator dilutes the benefit to a nearly immeasurable countervailable subsidy rate, and provides SEC a more favorable result than if it had cooperated fully. Based on the sales and export information that is on the record of this investigation, the only value that is available to use as a denominator, that meets the statutory requirement of an inference that is adverse, is the value of exports of subject merchandise to the United States. Therefore, as an adverse inference required under 776(b) of the Act, we have allocated the benefit from insurance payouts on this claim received during the POI over SEC's exports of subject merchandise to the United States.

We disagree with SEC's interpretation of Agro Dutch. First, regarding the necessity of using facts available, SEC points to the CIT's emphasis on information being "necessary" to and "missing" from the proceeding before the Department can resort to AFA. It is true that in Agro Dutch, the Department merely implied that information was missing from the record, "without stating specifically *what* information was necessary to and missing from the record."<sup>252</sup> The CIT found that the Department did not ask for further information, effectively "punting" responsibility for the state of the record to the respondent. This is not the case here. SEC's mischaracterization that the Department did not pursue the requested information with sufficient vigor is contrary to the administrative record. In this proceeding, the Department made numerous attempts to obtain relevant information. First, the Department asked SEC to identify whether the insurance claim payout at issue was related to subject merchandise or non-subject merchandise by providing a simple "yes" or "no" answer. Second, the Department asked SEC to provide information to substantiate its claim regarding whether the insurance claim related to subject merchandise. In the outline provided to SEC prior to verification, we specifically highlighted the need for SEC to provide documentation indicating that its use of this program was tied to non-subject merchandise, because such information was still missing from the record. At verification itself, the Department pursued this information over two days, repeatedly requesting that SEC provide some documentation, whether it be an invoice, purchase order, packing list, etc., to substantiate its claim that the insurance payouts received during the POI were tied to non-subject merchandise. Throughout this process, we made it clear that the information requested, which was missing from the record, was necessary to substantiate SEC's supplemental questionnaire response regarding the claim. SEC's statement regarding whether its K-SURE claim included subject merchandise was a factual statement that we relied on for the purposes of our Preliminary Determination, and, per the Department's regulations, the Department attempted to verify that SEC's claim was accurate.<sup>253</sup> The Department emphasized

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<sup>251</sup> See SAA at 870.

<sup>252</sup> See Agro Dutch at 34-35.

<sup>253</sup> See 19 CFR 351.307(b)(1)(i).

the need numerous times for SEC to provide necessary information that was missing from the record, i.e., documents to substantiate SEC's claim regarding whether its K-SURE payout was for subject merchandise or not. Accordingly, the facts of Agro Dutch are inapposite. Because SEC withheld information that was requested numerous times, we were unable to verify factual statements made by SEC on the record, which significantly impeded the proceeding. Thus, the application of AFA under section 776(b) of the Act is appropriate.

SEC's reliance on Mannesmannrohren-Werke is also misplaced. In this case, the Department met the requirement "to articulate why it concluded that a party failed to act to the best of its ability, and explain why the absence of this information is of significance to the progress of its investigation."<sup>254</sup> First, the Department explained the significance of the requested information numerous times to SEC. In the Preliminary Determination, the Department relied on information provided in SEC's supplemental questionnaire response to conclude that SEC's use of this program was not applicable to subject merchandise. The Department sought to substantiate this information, by requesting SEC to provide documents showing the merchandise covered by this insurance claim. The Department specifically stated in the verification outline that SEC should "{b}e prepared to provide documentation (e.g., insurance contracts, claims documentation, purchase and sales orders, accounting documentation, etc.) showing that SEC's receipt of assistance under this program was tied to products other than the subject merchandise." At verification, the verification team stated that "we would need to examine the documents in order to complete the verification of this program" and that "we needed to confirm that the claim was not tied to subject merchandise or that subject merchandise was not part of the claim, and that (SEC) must provide us with documentation to establish the products covered by these claims."<sup>255</sup> The Department made it abundantly clear that the requested information was significant, as we are required by our regulations to verify factual information on the record, such as SEC's claim that its K-SURE insurance claim was not applicable to subject merchandise.<sup>256</sup> Second, the Department explained why it concluded that SEC has failed to act to the best of its ability in providing the requested information. SEC was put on notice in the verification outline that we would specifically be seeking documents to identify the products that were part of the claim. At verification, the verification team asked a number of times over a two-day period for SEC to provide any information that would identify the products that were part of the claim. SEC failed to provide a single invoice, packing list, shipping order, purchase or sale order, accounting document, etc. that would have identified the products covered by the insurance claim, despite the Department's attempts to gather this information. We do not find credible any claim by SEC that, despite all the evidence to the contrary, it had no notice of the need or purpose for gathering this information.

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<sup>254</sup> See Mannesmannrohren-Werke, 77 F. Supp. at 1313-14.

<sup>255</sup> See SEC Verification Report at 35.

<sup>256</sup> See 19 CFR 351.307(b)(1)(i).

## **Comment 11: Whether SEC's K-SURE Payouts Relate to Subject Merchandise**

### *Petitioner's Arguments*

- The benefit should be calculated by dividing the total payout by SEC's U.S. exports of subject merchandise.
- The Department should not subtract from the payout received by SEC any amount of premiums attributable to the insurance coverage for that shipment.
- Alternatively, the Department should allocate a portion of SEC's 2010 total premiums paid for K-SURE by the ratio of the total payout benefit amount reported by SEC and SEC's total FOB export sales for 2010.

### *SEC's Rebuttal Arguments*

- Petitioner's proposed calculation methodologies are flawed or illogical. Not subtracting premiums from the benefit as proposed is in violation of 19 CFR 351.520(a)(2).
- In the alternative proposed methodology, allocating the premium paid to the various payouts based on the ratio of the payout to the total FOB export value is illogical because there is no direct correlation between premiums paid in a given period to payouts received in the same period. This approach mixes apples and oranges, and compounds the error by using an understated denominator. Moreover, the fact that Petitioner arrives at the very same result as its first proposal demonstrates by itself that the calculation is flawed. For the allocation ratio to be appropriate and rational, the denominator and the numerator must derive from the same source, e.g., in allocating total expenses to export versus domestic sales, first the ratio of export sales to total sales must be calculated and then that ratio applied to total expenses. The test of whether the allocation is correctly performed is to sum the allocated amounts and ensure they match the original amount to be allocated. Petitioner's proposal of dividing the payout by the FOB export sales value (an unrelated amount) and using that ratio to allocate the premiums paid defies common sense and is irrational.
- SEC does not concede that the K-SURE benefit is countervailable, however, should the Department calculate a benefit, it should follow its regulation and deduct the premium that SEC paid from the payout SEC received.
- The information required to calculate an accurate countervailing duty rate consists of insurance payments received by SEC as well as the premiums it paid, and this information is on the record. Therefore, the documentation regarding the precise items of merchandise covered by the claim is not "necessary" for the Department to conduct its analysis.

**Department's Position:** We have determined the application of AFA is warranted with regard to the calculation of the countervailable subsidy rate. However, 19 CFR 351.520(a)(2) requires that we measure the benefit from an insurance program by deducting from the payout an amount for premiums paid. We have followed our regulations and we have relied on information provided by SEC to estimate the premiums applicable to the claim paid, and we have deducted that amount to calculate the benefit.

## **Comment 12: Whether K-SURE Benefits Granted to SEC's U.S. Affiliate Are Countervailable**

### *SEC's Arguments*

- SEC's receipt of K-SURE benefits is not countervailable because the payments did not benefit SEC, but instead, benefitted its U.S. affiliate, SEA. SEC only acts as an intermediary for SEA, paying the premiums for which it is reimbursed by SEA and transferring any claim amounts received from K-SURE to SEA.<sup>257</sup>
- An alternative basis exists to find that the benefits SEC received from K-SURE are not countervailable. According to 19 CFR 351.527, a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded by a government of a country other than the country in which the recipient firm is located and, this is precisely the situation because the recipient firm, SEA, is located in the United States.

### *Petitioner's Rebuttal Arguments*

- The Department should reject SEC's claim that because SEA was the beneficiary of the claim, there are no benefits from the payout to SEC; the record indicates that SEC was the company that made the claim and received the payout.
- Assuming, arguendo, that SEA was the recipient of the K-SURE payout, SEC has cited no precedent where the Department applied 19 CFR 351.527 so as to deny the countervailability of a clear export subsidy program by virtue of funds being transmitted to the U.S. importer.

**Department's Position:** SEA is a wholly-owned subsidiary of SEC. Moreover, SEC pays the premiums to elect coverage; the claims were filed by SEC; and, the payments made by K-SURE were received by SEC.<sup>258</sup> SEC's reliance on 19 CFR 351.527 is misplaced; regardless of who sells the merchandise or the location of the company selling the merchandise, the exportation of the merchandise produced by SEC/SGEC in Korea benefitted from the K-SURE export insurance program.

## **Comment 13: 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 countervailing duty 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, as the Department determined, because the 27 technologies cover almost all conceivable technologies relating to green growth, reduction of greenhouse gases, and/or renewable energy utilization.
- The Green Technology R&D program's purpose is to establish new general infrastructure, as evidenced by 10 GOK agencies' participation in the program. The SCM Agreement provides

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<sup>257</sup> See SEC Verification Report at 34, SEC QNR 7/5 at Exhibit S2-10 and SEC QNR 6/29 at III-13.

<sup>258</sup> See SEC Verification Report at 34.

an exception under Article 1.1(a)(1)(iii) for “financial contribution by the government” for general infrastructure.<sup>259</sup> The same exception is listed in section 771(5)(D)(iii) of the Act.

- The CVD Preamble defines general infrastructure as “created for the broad societal welfare of country, region, state, or municipality.” Further, “[a]ny infrastructure that satisfies this public welfare concept is general infrastructure and, therefore, is not countervailable. The Department’s decision in Hot-Rolled Steel from Thailand at 35 also states that general infrastructure programs are defined by whether they provide “broad societal welfare.”
- 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 and environmentally friendly business activities. Thus, the Department should reverse its finding for the final determination.

#### *Petitioner’s Arguments*

- The Department should continue to find the Green Technology R&D program to be de jure specific.
  - It 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” described in CORE from Korea AR Preliminary Results (Sept. 2010), in which the Department concluded that where the GOK expressly limits access to the subsidy to the research, development, and promotion of alternative energy in seven broad green technology areas, the subsidy is de jure specific within the meaning of section 771(5A)(D)(i).<sup>260</sup>
  - 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.
  - The GOK has indicated that the core technology programs were carefully selected from among the general technologies that may have been subject to the program.<sup>261</sup>
  - The Department’s finding is supported by substantial information on the record.
- The Department should continue to find that the Green Technology R&D program provides a financial contribution.
  - The GOK’s argument that the program aims to establish “general infrastructure,” and thus does not constitute a financial contribution is misplaced, as section 771(5)(D)(iii) of the Act applies only to financial contributions that involve the provision of goods or services. There is no corresponding provision in section 771(5)(D)(i) of the Act that applies to direct transfers of funds, such as grants.
  - Even if the general infrastructure exception did apply, the areas targeted by this program, such as “virtual reality technology” or technologies designed to maximize “the energy efficiency of LED lighting and IT devices,” are in no way similar to, or provide the same broad public use, as the goods and services that the Department has previously found to constitute general infrastructure, such as “schools, interstate highways, health care

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<sup>259</sup> See Softwood Lumber from Canada at para. 7.26.

<sup>260</sup> See CORE from Korea AR Preliminary Results (Sept. 2010), unchanged in CORE from Korea AR Final Results (Jan. 2011).

<sup>261</sup> See GOK QNR 9/19.



facilities and police protection.” The benefit must be for the general welfare of the public, not the benefit of a particular industry sector.<sup>262</sup>

**Department’s Position:** In the Post-Preliminary Analysis (NSA), we 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. This argument ignores 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. 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 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, 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, 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.

#### **Comment 14: Whether Green Technology R&D Grants are tied to Non-Subject Merchandise**

##### *SEC’s Arguments*

- The Department has verified that SEC’s Green Technology R&D projects are not related to subject merchandise. Therefore, as required by 19 CFR 351.525(b)(5), benefits from these grants should no longer be attributed to SEC’s total sales, but instead, only to the sales of the specific products that benefit from the R&D activities.<sup>263</sup>
- 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.<sup>264</sup> Therefore consistent with the regulation and past practice, the Department

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<sup>262</sup> See Hot-Rolled Steel from Thailand; see also Pure Magnesium from Israel and Hot-Rolled Steel from South Africa.

<sup>263</sup> See SEC QNR 9/19, GOK SNR 9/19, and SEC Verification Report at 24-29 and Verification Exhibits 15, 15A and 15B.

<sup>264</sup> See CORE from Korea AR Preliminary Results (Sept. 2010) (unchanged in CORE from Korea AR Final Results

should determine that these grants did not benefit SEC's production of subject merchandise during the POI.

**Department's Position:** At the time of the Post-Preliminary Analysis (NSA), we relied on SEC's statement that research projects conducted with the aid of grants under this program "concern theoretical or experimental research that is aimed at obtaining new knowledge, without any direct concern about benefits for specific applications, lines of business, or products." This led us to conclude that grants received by SEC under this program were not tied to any merchandise and the grants therefore benefited many product lines including subject merchandise. Therefore, we appropriately calculated the ad valorem subsidy rate of this program using the value of SEC's total sales.

At verification, we reviewed SEC's approval documents for each of the 10 projects for which the company received grants under this program.<sup>265</sup> The names of each of the 10 projects are proprietary; however, in the SEC Verification Report, we referred to them individually as Project 1 through Project 10. We continue to do so here. Although the details of Project 1 cannot be disclosed because of their proprietary nature, information in the verification report indicates that it is for the development of products that can be used in many applications, including subject merchandise. SEC's statements at verification bear out this conclusion, confirming that "the technology is broadly applicable to many industries and products." For Projects 2 through 10 however, the approval documents specify that they are tied to the development of a particular product, and that product is not subject merchandise or anything related to subject merchandise. As such, we find that at the point of bestowal, these R&D grants were tied to non-subject merchandise and the results of the R&D could not benefit subject merchandise. Furthermore, the products for which the grants are provided could not be any part of any possible production line for home appliances, let alone refrigerators, nor could the research be attributable to any input products into home appliances. Thus, as we did in the Post-Preliminary Analysis (NSA), we are continuing to countervail Project 1 because it is broadly applicable to many product lines, including subject merchandise. For Projects 2 through 10, however, we are finding that grants received for these projects are tied to non-subject merchandise, and have not included them in the calculated subsidy rate for this program.

#### **Comment 15: Whether AFA Should be Applied to Grants Received by LGE from the 21<sup>st</sup> Century Frontier R&D Program**

##### *Petitioner's Arguments*

- LGE and the GOK have an obligation to cooperate to the best of their ability, and where they do not, the application of AFA is appropriate.<sup>266</sup>
- The Department should use facts available pursuant to section 776(a) of the Act because:
  - LGE and the GOK withheld information requested by the Department;

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(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.

<sup>265</sup> See SEC Verification Report at Verification Exhibit 15A.

<sup>266</sup> See Nippon Steel.

- LGE did not provide any documentation to allow the Department to determine what proportion of funds under this program was provided for subject merchandise, as requested by the Department at verification; and
- the GOK also failed to provide documentation with respect to the application and approval of funding that was provided to LGE, stating that “those documents were not available for (the Department’s) review.”<sup>267</sup>
- The Department should apply AFA to determine that a financial contribution exists and that the program is specific.<sup>268</sup>
- Although “the Department will normally rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit,” LGE failed to provide the requested information to allow the Department to determine the proper denominator.<sup>269</sup>
- Because neither LGE nor the GOK provided sufficient information to the Department, the Department must apply AFA, in accordance with section 776(b) of the Act, in calculating a benefit.<sup>270</sup>
  - The GOK failed to comply to the “best of its ability” when the GOK admitted that the requested documents exist, but that they were not available for the Department’s review.
  - Where the respondent government does not cooperate to the best of its ability, the Department can apply AFA and determine that the program could apply to subject merchandise.<sup>271</sup>
  - AFA necessitates an inference that the program funding was tied to the production of subject merchandise.
  - The evidence on the record supports a finding that the grants under this program are tied to the production of subject merchandise.
  - Respondents have failed to otherwise demonstrate that the grants are not tied to subject merchandise due to their inability to put information on the record and their failure to act to the best of their ability.
  - Failure to apply AFA would be inconsistent with the Department’s established practice of ensuring “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,” and would reward both parties for their failure to provide the Department with the documentation requested.
- In calculating the ad valorem subsidy, the Department must determine if the grants received in each of the years 2002-2004 exceed the 0.5 percent threshold to determine whether benefits should be allocated over the AUL or expensed in the year of receipt.<sup>272</sup>
  - Because the total value of LGE’s subject merchandise is not on the record for the years 2002-2004, the Department should use a proxy for calculations to ensure that LGE is not rewarded for not putting such data on the record. As a proxy, the Department should use SEC’s subject merchandise sales values for the years 2002-2004.
  - Using the SEC proxy figures, if the 0.5 percent threshold is exceeded, the benefit amount should be allocated to the POI accordingly, using the 10-year AUL period.

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<sup>267</sup> See GOK Verification Report at 31.

<sup>268</sup> See Hot-Rolled Steel from India.

<sup>269</sup> See id.

<sup>270</sup> See Sacks from China.

<sup>271</sup> See id.

<sup>272</sup> See 19 CFR 351.524(b).

### *GOK's Arguments*

- The Department analyzed the 21<sup>st</sup> Century Frontier R&D program on a project-level basis and found the program to be de jure specific because it is explicitly limited to information display technology. Because no project covers a wide range of areas, a project will always be found to be specific in the Department's analysis. The Department should revise its analysis to consider that the program is widely available to corporations with the requisite technological capability, and is not specific.

### *LGE's Arguments*

- The Department should not apply AFA to LGE's receipt of funds under the 21<sup>st</sup> Century Frontier R&D program.
- The use of AFA requires a showing that a respondent has failed to act to the best of its abilities. There is no evidence that LGE maintained documents that are nearly a decade old, but refused to produce them.
- Petitioner's argument that LGE failed to provide documentation to identify the percentage of these funds that was used for subject merchandise is unfounded. LGE stated in its questionnaire response at verification that no funds from this program were used for refrigerators.<sup>273</sup>
- A review of the projects funded by the GOK under this program reveals that none of them are remotely applicable to refrigerators.<sup>274</sup>
- Petitioner cites no evidence for the assertion that grants from the program are tied to the production of subject merchandise.

### *SEC'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.<sup>275</sup> Further, the Department verified that Project 1 terminated in 2005; thus, this program is not countervailable. Project 2 is not related to subject merchandise.<sup>276</sup> Thus, the Department should determine the program is not countervailable because it is unrelated to subject merchandise.

### *Petitioner's Rebuttal Arguments*

- The Department correctly determined that the "Information Display R&D Center" project is de jure specific in the Post-Preliminary Analysis (NSA).
- The GOK's argument that "a project is always specific" is without merit.
  - The GOK has failed to provide any new information or evidence of changed circumstances to warrant a reconsideration of the Department's decision that "the project area is the appropriate level of analysis."<sup>277</sup> This was because "the project areas are administered separately, and have project specific regulations in addition to the common management regulations."<sup>278</sup>

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<sup>273</sup> See LGE QNR 9/9 at 4 and LGE Verification Report at 26. See also GOK QNR 9/19 at Exhibit 8.

<sup>274</sup> See GOK QNR 9/19 at Exhibit 59.

<sup>275</sup> See GOK QNR 9/19 and SEC QNR 9/19.

<sup>276</sup> See SEC Verification Report at 30-32.

<sup>277</sup> See DRAMS from Korea (Final Determination) and accompanying IDM at 27.

<sup>278</sup> See id. at 26 and Comment 27.

- The GOK has not provided any information to demonstrate that the Department’s finding in DRAMS from Korea (Final Determination) is no longer applicable.
- The record shows that the 21<sup>st</sup> Century Frontier R&D program continues to be administered by separate agencies by project area.
- The project-level analysis continues to be necessary due to the specific and targeted manner in which the GOK has developed the program.
- There is substantial evidence on the record supporting the Department’s finding.

#### *GOK’s Rebuttal Arguments*

- The GOK has provided all necessary information that the Department has requested in the present investigation regarding this program, and the Post-Preliminary Analysis (NSA) and verification report substantiate this claim.
- The Department viewed numerous underlying documents relating to LGE’s use of this program. The absence of additional documents submitted by LGE in the course of the application should not lead to the application of AFA.
- At verification, all the information and key documents relating to the program, and LGE’s participation, were verified and confirmed by the Department.
- The GOK should not be characterized as having failed to cooperate based on its inability to provide documents that were not requested prior to verification.
- The information provided by the GOK meets the standard set in Nippon Steel, thus there is no cause for finding that the GOK did not act to the best of its ability.
- The GOK should not be held liable for failure to place evidence on the record that does not include information that supports Petitioner’s rationale.
- Evidence on the record proves that the 21<sup>st</sup> Century Frontier R&D program was not tied to subject merchandise.
  - The GOK provided information at verification that research and development related to the “Information Display R&D” project focuses on high resolution large scale LCD and plasma display panels.<sup>279</sup>
  - The GOK provided sufficient evidence that LGE’s use of this program was related to 70 inch plasma displays for HDTVs.<sup>280</sup>

**Department’s Position:** Contrary to the GOK’s argument, we continue to hold, as we did in the Post-Preliminary Analysis (NSA), that the project level of the 21<sup>st</sup> Century Frontier R&D program, *i.e.*, the “Information Display R&D” project, is the appropriate basis for our specificity analysis. In DRAMS from Korea (Final Determination), we examined the 21<sup>st</sup> Century Frontier R&D program, and we determined that the “project area” is the appropriate level of analysis.”<sup>281</sup> This determination matched our analysis of the “Operation G-7/HAN” program that was analyzed in that investigation,. That program, like the 21<sup>st</sup> Century Frontier R&D program, served as an umbrella program covering several different project areas. Because project areas under both the 21<sup>st</sup> Century Frontier R&D program and the Operation G-7/HAN program were administered separately by different ministries and had project-specific regulations, we found that each of the project areas constituted a separate program. We also stated that, “(g)iven the

<sup>279</sup> See GOK Verification Report at 30.

<sup>280</sup> See *id.*

<sup>281</sup> See DRAMS from Korea (Final Determination) and accompanying IDM at 27.

nearly identical structure of the G-7/HAN and 21<sup>st</sup> Century Frontier R&D programs, we have determined that project area is the appropriate level of analysis.”<sup>282</sup> As we noted in CORE from Korea AR Preliminary Results (Sept. 2010) at 55748, where “(n)o new information or evidence of changed circumstances from (respondent) or the GOK was presented... to warrant a reconsideration of the countervailability of this program,” we “continue to find this program countervailable.” Information on the record does not indicate a change in the management or administration of the 21<sup>st</sup> Century Frontier R&D program since we last investigated it. Therefore, we continue to find, as we did in DRAMS from Korea (Final Determination), that the project area is the appropriate level of analysis for specificity.

We also disagree with SEC’s argument that this program applies to a broad range of business sectors. Because the project area, *i.e.*, Information Display R&D, is the appropriate level of analysis, we continue to find as we did in the Post-Preliminary Analysis (NSA) that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to the development of information display technologies. Moreover, no information has been provided by SEC or the GOK to indicate that SEC’s receipt of benefits under this program is tied at the point of approval to non-subject merchandise. Under the regulations, it is irrelevant whether the grants were used only for research into non-subject merchandise. Under 19 CFR 351.525(b)(5)(i), the only basis for not attributing a subsidy to subject merchandise is when it can be demonstrated that at the point of bestowal, the assistance was tied to the production of non-subject merchandise and could in no way benefit the production of subject merchandise. Information on the record indicates that the Information Display R&D Project 1 to which SEC refers included assistance for the development of LCDs, and that SEC received assistance under this part of the project.<sup>283</sup> Although this part of the project has since terminated, we note that in the Post-Preliminary Analysis (NSA) we allocated the benefits to the year in which they were received in accordance with 19 CFR 351.524(c). As for Project 2, SEC does not point to any information that establishes that this funding is not related to subject merchandise. As SEC itself has stated, “R&D activities under this program concern basic and source technologies.”<sup>284</sup> As has been established elsewhere on the record, the goal of this project is the development of display technology, and display technology is relevant to refrigerators.<sup>285</sup>

Furthermore, we have determined that the application of AFA under sections 776(a) or (b) of the Act is not warranted for LGE’s receipt of benefits under this program. LGE stated at verification that it received grants under this program to pursue the development of plasma display televisions 70 inches or greater in size.<sup>286</sup> Although LGE could not produce the approval documentation for the grant, the GOK had provided this approval documentation. Based on our review of documentation provided by the GOK we find that the approval of funding for this project was tied to the development of non-subject merchandise, which substantiates LGE’s claim.<sup>287</sup> Because we are finding LGE’s receipt of grants under this program to be tied to non-

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<sup>282</sup> See DRAMS from Korea (Final Determination) and accompanying IDM at 26-27.

<sup>283</sup> See GOK QNR 9/19 at 72 and SEC Verification Report at 30.

<sup>284</sup> See SEC QNR 9/19 at page 1 of Exhibit NS-7.

<sup>285</sup> See GOK QNR 9/19 at 72-73.

<sup>286</sup> See LGE Verification Report at 26.

<sup>287</sup> See GOK QNR 9/19 at Exhibit 8.

subject merchandise, there is no need to use a proxy for LGE's receipt of funds from 2002-04 to calculate a benefit, as suggested by Petitioner.

**Comment 16: Whether the Department Should Revise the Denominator Used to Calculate the Subsidy Rate for LGE's Use of the "Green Technology R&D" Program**

*LGE's Arguments*

- The Department's conclusion in the Post-Preliminary Analysis (Cross-Ownership) that this grant applied only to refrigerators was incorrect. As noted at verification, the technology at issue could be applied to virtually all home appliances.
- The Department erred in allocating this subsidy only over sales of subject merchandise, despite its conclusion in the Post-Preliminary Analysis (Cross-Ownership) that the grant applied to all refrigerator products.
- The most accurate denominator for this program would be LGE's sales of all home appliances. Because the record does not have a figure for LGE's sales of all home appliances, the Department should use as a more appropriate denominator the value of LGE's sales of all refrigerators (subject and non-subject), which was examined by the Department at verification.

**Department's Position:** We agree with LGE. In the Post-Preliminary Analysis (NSA), we found that LGE's receipt of grants for one project under this program was tied to the development of technology for refrigerators, including subject merchandise. However, at that time, we did not have an appropriate denominator on the record, and therefore, we used the closest figure available: LGE's sales of subject merchandise. We noted in Post-Preliminary Analysis (NSA) that our preferred denominator would be LGE's sales of all refrigerators. At verification, we found that this "Smart Grid" technology project was focused not only on side-by-side refrigerators, but was also applicable to home appliances such as refrigerators, washing machines, and air conditioners.<sup>288</sup> Given that the grant provided under this program is tied to the broader segment of home appliances rather than just refrigerators, it would be more appropriate to use as the denominator LGE's sales of all home appliances. However, this information is not on the record but at verification we were able to obtain information on LGE's sales of all refrigerators. Thus, the most accurate denominator for which we have information on the record, and that we can apply to LGE's use of this program, is the company's total sales of refrigerators. We have used this denominator for the purposes of this final determination, rather than LGE's figure for sales of subject merchandise that we used in the Post-Preliminary Analysis (NSA).

**Comment 17: Whether Grants Received by SGEC for Refrigerator Compressor R&D are Countervailable**

*Petitioner's Arguments*

- There is sufficient evidence on the record to conclude that this program is countervailable.
- The 2010 grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

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<sup>288</sup> See LGE Verification Report at 26.

- The 2010 grant confers a benefit within the meaning of 19 CFR 351.504 in the amount of the grant.
- The 2010 grant is de jure specific in accordance with section 771(5A)(D) of the Act.

#### *SEC's Rebuttal Arguments*

- Petitioner's argument erroneously assumes that the Department initiated an investigation on refrigerator inputs and, further assumes that the Department asked questions concerning the benefits received on those inputs.
- The Department never stated that it was investigating subsidies on inputs. Therefore, SEC followed the instructions and provided responses concerning benefits for the manufacture, production, sale, or exportation of bottom mount refrigerators.
- Compressors are not subject merchandise; they are input products within the meaning of 19 CFR 351.523(b) because they are used in the production of subject merchandise; at no time did the Department initiate an investigation on compressors or any other inputs used in the production of subject merchandise.

**Department's Position:** As noted above in the "Analysis of Programs" section, SEC reported in its questionnaire responses that SGEC was conducting research on compressors to be used in refrigerators, but failed to inform the Department that it received a grant from the GOK for purposes of such research. Additionally, the information examined at SEC/SGEC's verification is sufficient to conclude that SGEC's research on compressors is related to subject merchandise. As discussed above, the provision of these grants constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific to an enterprise or industry under section 771(5A)(D)(i) of the Act. Under 19 CFR 351.504, the grants confer a benefit in the amount of the grant. Accordingly, we find that the grants provided for compressor research confer a countervailable subsidy.

The Department is not prohibited from investigating and making a determination on a program that was unknown to it at the time of initiation. Under section 775(1) of the Act, the Department can investigate any subsidy that it discovers during the course of the investigation. Indeed, had SEC reported the grants received for this research in its questionnaire response, the Department would have had ample time prior to the Preliminary Determination to thoroughly examine the program under which the GOK provided these grants and to fully address the countervailability of the program. However, programs related to R&D are under investigation and it is reasonable to conclude that SEC/SGEC should have reported receipt of this R&D grant to the Department. Further, the discovery of a government provided grant at verification that is directly attributable to the production of subject merchandise provides sufficient information for the Department to determine that this grant is countervailable.

With respect to SEC's argument that compressors are not subject merchandise, but an input to subject merchandise within the meaning of 19 CFR 351.523(b), and further, that the Department has not initiated an investigation on inputs, we do not agree. SGEC is the producer of refrigerators including subject merchandise, and any of the components SGEC itself produces or researches are a part of its production process for refrigerators. SEC's reliance on 19 CFR 351.523 is misplaced, as it pertains to upstream subsidies, i.e., subsidies granted to a non-cross-



owned input supplier. In this case, the subsidies have been granted directly to SGEC, the producer of the subject merchandise.

**Comment 18: Whether the Department Should Apply AFA to Grants Received by SGEC for Refrigerator Compressor R&D**

*Petitioner's Arguments*

- SEC has an obligation to cooperate to the best of its ability, and where it does not, the application of AFA is appropriate.<sup>289</sup>
- The Department should use facts available pursuant to section 776(a) of the Act because SEC has withheld information requested by the Department.
  - SEC failed to disclose a grant received by SGEC, which is cross-owned with SEC, despite the Department requesting the company to report any forms of assistance from the GOK.
  - SEC responded to a Department question into compressor technology R&D, yet failed to include mention of the specific compressor R&D program discovered by the Department at verification.
  - Because SEC withheld necessary information on this program, thereby impeding the investigation, the Department should determine specificity on the basis of facts available.
  - SEC has failed to provide requested information in a timely fashion.
  - By failing to report assistance under this program in a timely fashion, SEC prevented the creation of a complete record necessary to allow the proper analysis of any subsidies provided. The Department has previously found this sufficient reason to apply section 775 of the Act.<sup>290</sup>
- The Department should use facts available pursuant to section 776(a) of the Act because SEC provided information under circumstances that would make effective verification impossible or that would otherwise impede the proceedings.
  - If SEC took issue with the way the Department phrased its questions regarding “other forms of support” generally, or compressor technology R&D specifically, it should have requested clarification in advance of verification.
- The Department should apply AFA where SEC has not cooperated to the best of its ability.
  - SEC’s claim that the information surrounding this program was not disclosed because “it did not realize that it had received a payment during the POI” is not credible. The failure to report the subsidy only demonstrates SEC’s failure to comply to the best of its ability.
  - The Department made a clear and direct request in its initial questionnaire for SEC to divulge any forms of assistance from the GOK. By not disclosing the grant program at that time, SEC failed to cooperate to the best of its ability.
  - Not applying AFA would be inconsistent with the Department’s established practice to ensure “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>291</sup>

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<sup>289</sup> See Nippon Steel.

<sup>290</sup> See Multilayered Flooring from China and accompanying IDM at Comment 3.

<sup>291</sup> See Kitchen Racks from China and accompanying IDM at 2.

- Because the recipient of the subsidy was SGEC, the appropriate denominator to be applied for the calculation of the ad valorem subsidy amount should be SGEC's sales of subject merchandise.

### *SEC's Rebuttal Arguments*

- The Department's initial questionnaire required responses only with respect to subject merchandise. SEC properly answered the "catch-all" question with respect to subject merchandise.
- If SEC was supposed to interpret the question to require an answer that discussed input products for which no mention is made in the Department's instructions, then SEC's omission can only be regarded as an oversight.
- The questionnaire was very detailed and comprehensive, and SEC provided comprehensive responses to each question, additionally volunteering information regarding the RSTA tax programs in response to the "catch-all" question because these programs did concern potential benefits to subject merchandise. The omission of a small R&D grant related to the production of an input product does not negate the significant effort and full cooperation SEC put forth in preparing its response.
- There is no basis for Petitioner's claim that SEC should have reported the grant in response to the Department's follow-up questions because the follow-up questions were fully answered. If the Department wanted to pursue the issue of benefits received in any of the locations that performed compressor R&D, it would surely have posed a follow-up question.
- The courts have consistently held that an inadvertent error or omission does not provide an adequate evidentiary basis for the Department to use adverse facts available in calculating a margin.<sup>292</sup> Clerical errors are by their nature not errors in judgment but merely inadvertencies and, in the present case, this inadvertent error, if it occurred at all, does not warrant the application of either AFA or facts available.
- If the Department determines that it did in fact ask for benefits on inputs into subject merchandise to be reported, the appropriate next step is to apply 19 CFR 351.311(b) which provides that the Department may examine the practice that appears to provide a countervailable subsidy in the course of the current investigation, if sufficient time remains before the final determination; if there is insufficient time, the Department will defer consideration of the practice until a subsequent administrative review, if there is one. 19 CFR 351.311(c).
- Under this regulation, the Department's consistent practice has been to defer its review of a program that has first been identified at verification or late in a proceeding.<sup>293</sup> In each of the above cases, the Department chose not to apply AFA and, instead, deferred examination of the program.
- The case for deferral is even stronger here since a subsidy was provided on an input and not on the subject merchandise itself.
- In Multilayered Flooring from China, the Department identified a practice that appeared to be a countervailable subsidy prior to verification, issued questionnaires, as well as a post-preliminary analysis, providing parties an opportunity to comment. The Department did not

<sup>292</sup> See Nippon Steel, Ferro Union Inc., NTN Bearing Corp.

<sup>293</sup> See, e.g., PET Film from India from India (AR 2007), where the Department deferred a program discovered at verification. See also DRAMS from Korea (Final Determination); SS Plate from Italy; Wire Rod from Italy.

mention, much less apply AFA; did not address the issue of whether its questionnaires had inquired about benefit programs related to input products; and did not discuss Department practice when it discovers a program late in a proceeding. Therefore, this case is not relevant.

- In Kitchen Racks from China, the Department applied AFA to non-cooperative companies that had not responded at all to the Department's quantity and value questionnaires issued in an administrative review, thereby impeding the Department's ability to select the most appropriate respondents in the proceeding; thus the application of AFA was justified. These facts are clearly distinguishable and, therefore, irrelevant here.
- The Department verified that this grant was received pursuant to a national program for which all companies are eligible to apply. There is no evidence that this program provided a countervailable subsidy, and none of the information required to determine countervailability is on the record. Accordingly, the statutory criteria for finding a subsidy countervailable have not been met.
- Under 19 CFR 351.525(a)(5)(ii), the denominator for an input subsidy equals the sales of both the input product and downstream products produced by the corporation. The record does not contain any evidence concerning the volume or value of the compressors that SGEC produced as inputs for subject merchandise or non-subject merchandise.
- Even if the Department ignores the regulation, and uses only the sales of SGEC as the denominator, the subsidy is only 0.01 percent.

**Department's Position:** We do not see a need to apply AFA with respect to this program. As Petitioner has previously stated, there is sufficient evidence on the record to conclude that this program is countervailable. Because these grants were provided for research on compressors to be used in refrigerators, we find the grants are specific to an enterprise or industry under section 771(5A)(D)(i) of the Act. At verification, the Department was able to confirm the amount of the grants received by SEC under this program and the Department was also able to obtain the appropriate sales denominator required to calculate the benefit conferred under this program.<sup>294</sup>

In Kitchen Shelving and Racks<sup>295</sup> the Department applied AFA because the respondent companies did not provide responses to the Department's quantity and value questionnaires. In this case SEC reported SGEC's research on refrigerator compressors, although it did not report the grants received to conduct the research. However, the Department has the necessary information to countervail these grants. SEC is correct that the Department's follow-up questions did not ask for funds received for the R&D on refrigerator compressors. Given that SEC had already informed the Department that SGEC conducts R&D on refrigerator compressors while also stating in the same questionnaire response that it did not receive, directly or indirectly, any other assistance from the government, with the exception of tax reductions under RSTA, the Department did not ask further questions with regard to the receipt of funds.

In Multilayered Flooring from China the Department included the subsidy programs discovered during the course of the investigation pursuant to section 775 of the Act and 19 CFR 351.311. Similarly, in this instance we have included the grants discovered during the course of investigation in this proceeding. SEC is incorrect that the decision on this program should be

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<sup>294</sup> See SEC Verification Report at 38-39.

<sup>295</sup> See Kitchen Racks from China and accompanying IDM at 2-4.

deferred to an administrative review. Under 19 CFR 351.311, if during the course of a countervailing duty investigation, the Department discovers a practice that appears to provide a subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, the Department will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination. If the Department concludes that insufficient time remains before the scheduled date for the final determination, it may defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any. The Department therefore has the discretion to examine the subsidy in an investigation if we conclude that there is sufficient time to do so. In the instant case, we determine that there is sufficient time; as such we have examined this subsidy in the current investigation. The information on the record demonstrates that this program confers a countervailable subsidy. Finally, the information on the record demonstrates that the grants provided under this program are tied to the production of refrigerators, therefore, we have allocated the benefit from this program over SGEC's sales of refrigerators.

With regard to SEC's argument that the grants were related to an input, and not subject merchandise, we asked about any other benefits to the company or its cross-owned companies, not about assistance only to subject merchandise. While one might consider it inadvertent, we find it troubling that the only grants directly tied to the production of subject merchandise went unreported. Furthermore, even if it could be construed as an input, all subsidies provided to the production of inputs produced in a vertically integrated company are attributable to the product produced with the input.<sup>296</sup>

Thus, the appropriate denominator is SGEC's sales of refrigerators and the value of compressors is not required to calculate the countervailable subsidy rate.<sup>297</sup>

### **Comment 19: Whether the Department Should Revise Sales Denominators to Reflect Changes From Verification**

#### *Petitioner's Arguments*

- Changes to DWE's "total sales of subject merchandise" and "domestic sales of subject merchandise," reported at verification, are not "minor corrections" but rather wholesale changes to DWE's questionnaire responses.
- Given the scope of the information that has been corrected and the magnitude of the corrections, the Department must re-calculate the sales denominator used in calculating the total estimated countervailable subsidy when the total FOB sales value was used as the denominator in calculations, and correspondingly re-calculate ad valorem subsidy amounts for DWE.
- SEC's incorrect reporting of the SEC and SGEC domestic sales values resulted in an incorrect denominator for the Department's calculation of the total estimated countervailable subsidy when the total FOB sales value was used as the denominator for calculation purposes. The Department should recalculate the total ad valorem subsidy amounts for SEC and SGEC.

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<sup>296</sup> See 19 CFR 351.525(b)(5)(ii) and CVD Preamble, 63 FR at 65401.

<sup>297</sup> See Comment 21.

**Department's Position:** Sales figures presented at the start of verification by DWE and SEC as minor corrections were accepted by the Department as minor corrections and were verified.<sup>298</sup> In addition, during verification the Department identified an additional error in DWE's corrected sales figures which included services. At verification, we identified the value for sales of services,<sup>299</sup> and for this final determination, we have deducted the sales of services from the sales denominators. For SEC we are using the relevant sales values, as corrected by SEC in the minor corrections, as the denominators where appropriate.<sup>300</sup>

## **Comment 20: Whether there is Cross Ownership Among All of the Companies in the Samsung Group**

### *Petitioner's Arguments*

- All Samsung Group companies identified in Exhibit 36 of SEC QNR 6/29 are cross-owned by virtue of being reported as affiliates within a business group to the KFTC.
- The criteria applied to determine an entity's status as being in a business group are tantamount to the Department's criteria for determining cross-ownership.
  - The Enforcement Decree states that companies will be identified as belonging to a business group if:
    - The same person or their relatives own 30 percent or more of a company's shares;
    - If the company can select more than half the members of the board of directors of another company; or
    - If a company can have influence on the financial structure of another company.<sup>301</sup>
  - In addition, companies can be considered part of a business group if:
    - less than 30 percent of shares are owned, but there is de facto dominance, the businesses are affiliated.
    - one company dominates another through the ability to control financial transactions or to select management.<sup>302</sup>
- SEC should not be allowed to benefit from the conclusion that there is no cross-ownership within the Samsung Group when the GOK treats the Samsung Group companies as cross-owned under a standard that is very similar to the cross-ownership standard in the Act.

### *GOK's Arguments*

- Petitioner has mischaracterized the statements of KFTC officials at verification.
  - The context of gathering information and disclosing it to the public is completely different from the context of the Department's cross-ownership analysis.<sup>303</sup>
  - The KFTC's annual reports are designed to regulate competition, not cross-ownership.
- The GOK does not, as Petitioner states, treat "the Samsung Group companies as cross-owned."<sup>304</sup> On the contrary, Korean regulations prohibit cross-shareholding for companies in certain "business groups," such as the Samsung Group.

<sup>298</sup> See DWE Verification Report at 1 and SEC Verification Report at 1.

<sup>299</sup> See DWE Verification Report at 6.

<sup>300</sup> See SEC Verification Report at 1.

<sup>301</sup> See GOK Verification Report at 34-35.

<sup>302</sup> See *id.*

<sup>303</sup> See GOK Verification Report at 34.

<sup>304</sup> See Petitioner Case Brief at 34.

### *SEC's Arguments*

- Whether LGE is cross-owned with other LG Group companies has absolutely no bearing on the analysis of whether SEC is cross-owned with other Samsung Group companies. The Department's regulations are clear with respect to finding cross ownership, and the Post-Preliminary Analysis (Cross-Ownership) undertook a thorough analysis of SEC's relationships before making its determination. The Department also thoroughly reviewed and confirmed the information at verification.
- The manner in which KFTC determines which companies are or are not part of a business group under Korean law has absolutely no bearing on this analysis. The KFTC information cited by Petitioner does not demonstrate that there is any basis for the Department to change its post-preliminary analysis.
- The KFTC information was placed on the record four months before the post-preliminary analysis, and the Department still chose to apply U.S. law.
- Petitioner discusses additional criteria that must be met for subsidies of cross-owned companies to be attributed in calculating a CVD rate. However, Petitioner fails to provide any analysis of whether these criteria have been met.

**Department's Position:** In the Preliminary Determination, we found cross-ownership to exist between SEC and SGEC, because of SEC's 94.25 percent ownership of SGEC. Because both companies are involved in the production and export of subject merchandise, we referred to the combined companies as SEC/SGEC. In the Post-Preliminary Analysis (Cross-Ownership), we found that SEL is cross-owned with SEC as its wholly-owned subsidiary. The balance of our cross-ownership analysis in the Post-Preliminary Analysis (Cross-Ownership) was restricted to companies identified on the record as input suppliers. These companies were identified by SEC to fall into two groups: affiliated input suppliers, and unaffiliated input suppliers.

For the input supplier companies identified by SEC as affiliated, our task was to determine whether cross-ownership existed, and, if it did, whether inputs provided by those suppliers were primarily dedicated to the production of the downstream product, in accordance with 19 CFR 351.525(b)(6)(iv), such that subsidies provided to those input suppliers could be attributed to SEC. One company identified by SEC as affiliated, the name of which is proprietary, was found to be cross-owned with SEC. However, we determined in the Post-Preliminary Analysis (Cross-Ownership) that inputs supplied by that company to SEC were not primarily dedicated to the downstream product. Another company identified by SEC as affiliated, the name of which is also proprietary, we found to not be cross-owned with SEC; therefore, we did not address the question of whether the input supplied was primarily dedicated to the downstream product. Finally, we found that none of SEC's other input suppliers were cross-owned with SEC, because there was no evidence on the record that SEC had the ability to use or direct the assets of these suppliers as if they were its own.<sup>305</sup>

Now, at this late stage of the proceeding, Petitioner argues for the first time that all companies within the Samsung Group should be considered by the Department to be cross-owned because the KFTC treats them as such. In considering whether SEC's affiliates met the definition of cross-ownership, we limited our analysis to those affiliates that provided inputs or services to

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<sup>305</sup> See Post-Preliminary Analysis (Cross-Ownership) at 11. See also 19 CFR 351.525(b)(6)(vi).

SEC, consistent with our regulations. At this point in the proceeding, there is no information on the record that other companies within the Samsung Group received subsidies or transferred those subsidies to SEC/SGEC. Even if the Department were to find cross-ownership to exist among every company within the Samsung Group, there would be no basis for attributing any subsidies received by other Samsung Group companies to SEC/SGEC under the Department's regulations. There is no information on the record that would lead us to conclude that attribution would be possible through other subsections of 19 CFR 351.525(b)(6).

Furthermore, we do not reach the same conclusion as Petitioner that the KFTC reporting requirements are equivalent to the Department's cross-ownership regulations. It is true that, at verification, the GOK indicated that the KFTC considers factors such as share ownership, the ability to select board members, and the ability to influence the financial structure of another company as indicative of companies being part of the same business group. However, this does not rise to the detail, nor match the purpose, of the Department's cross-ownership analysis, which requires that one company be able to use or direct the assets of another in essentially the same manner as it can use its own.<sup>306</sup> Moreover, while our cross-ownership analysis is necessary for attribution purposes, the GOK has stated that the goal of the KFTC reporting requirements is to actually limit cross-shareholdings between companies in a business group, and to make information available to the public.<sup>307</sup> Thus, it does not follow that KFTC reporting requirements that lead to a company's inclusion in a business group would automatically lead to the conclusion that the company is cross-owned with other companies in the business group within the meaning of the Department's regulations, and vice-versa.

In rejecting Petitioner's argument, it is also necessary to highlight the Department's reasoning for requesting the KFTC reports from SEC and LGE. As part of Petitioner's allegations in the Petition that the SEC and LGE *chaebols* had effective control over their unaffiliated suppliers that rose to the level of control necessary for cross-ownership, as contemplated in 19 CFR 351.525(b)(6)(vi), and that this control allowed SEC and LGE to benefit from subsidies provided to their input suppliers, the Department gathered a large volume of information to conduct its analysis. That collection of information included supplier agreements between the *chaebols* and their suppliers, suppliers' sales to the *chaebol* companies as a portion of their total sales, financial support from *chaebols* to their suppliers, the provision of raw materials by *chaebols* to their suppliers, shared directorships and other senior management, positions held in supplier companies by members of the founding families of the *chaebols*, and the information in the KFTC report for each company. To be clear, the information in the KFTC report, which can include information on shareholdings, family relationships among shareholders, and the names and positions of company executives, was collected to supplement our cross-ownership analysis, not displace it. We reviewed information in the voluminous data collected and find no basis to conclude that SEC was cross-owned with every company in the Samsung Group. Indeed, in the Post-Preliminary Analysis (Cross-Ownership), we found that one supplier company that SEC self-identified as part of the Samsung Group was not cross-owned because there was no information on the record indicating that SEC could control the assets of that company as though they were its own. SGEC, SEL, and the remaining affiliated company were all found to be cross-owned because of SEC's substantial shareholdings in each company, in accordance with

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<sup>306</sup> See 19 CFR 351.525(b)(6)(vi).

<sup>307</sup> See GOK Verification Report at 34-35.

19 CFR 351.525(b)(6)(vi), and because subsidy benefits received by these cross-owned companies could properly be attributed to the production and export of subject merchandise under 19 CFR 351.525(b)(6). Therefore, we affirm our findings in the Preliminary Determination and the Post-Preliminary Analysis (Cross-Ownership), and reject Petitioner's argument that we should find cross-ownership between SEC and every company within the Samsung Group.

**Comment 21: Whether the Attribution Rules Were Correctly Applied to the Calculation of Benefits to SGEC, SEL and SEC**

*SEC's Arguments*

- In the Preliminary Determination and Post-Preliminary Analysis (NSA), the Department calculated a separate countervailable subsidy rate for SGEC based on SGEC's sales value, and then added this rate to SEC's rate to arrive at a total subsidy rate. This methodology is flawed in two respects:
  - according to 19 CFR 351.525(b)(5) if a subsidy is tied to the production of a particular product, the subsidy should be attributed only to that product. Therefore, only SGEC's tax benefits under Article 26 are appropriately included in the calculation of benefits for subject merchandise; all other tax benefits earned by SEC associated under this program are unrelated to subject merchandise; and
  - according to 19 CFR 351.525(a), the sales value is determined on an FOB port basis for exports and on an FOB factory basis for domestic sales, based on the goal of ensuring that the Customs Service collects the correct amount of duties at the time of entry, which are assessed on an FOB export basis.<sup>308</sup> The Department has not taken this into account in its calculations for SGEC.
- Since SGEC's intercompany sales are sold by SEC at a mark-up, SGEC's FOB values do not correspond to the values on which the Customs Service would collect duties at the time of entry. Thus, the Department has used the wrong denominator for SGEC which, if uncorrected, will result in an impermissible over-collection of duties, if any.
- Distortions caused by inter-company sales in similar circumstances have been recognized by the Department previously.<sup>309</sup> To avoid the distortions, the Department should simply include the portion of benefits separately received by SGEC that is appropriately attributable to SEC, as measured by SEC's equity interest in SGEC, and include this amount in the numerator along with SEC's own direct benefits, then divide the result by SEC's sales. Alternatively, at a minimum, SGEC's FOB sales value must be adjusted to account for SEC's markup.
- The Department has also erred in including the tax benefit earned by SEL in the numerator for SEC's calculation, as the methodology attributes all of SEL's benefit solely to SEC. Record evidence shows that SEL did not provide services solely to SEC, but rather provided logistics services to a number of companies. Therefore, SEL's tax benefit should only be the amount attributable to SEC.

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<sup>308</sup> See CVD Preamble.

<sup>309</sup> See, e.g., CFS Paper from China and accompanying IDM at Comment 21, Uranium from France, and Ball Bearings from Thailand.



### *Petitioner's Rebuttal Arguments*

- SEC's reliance on CFS Paper from China is misplaced.
  - Although there are "unique circumstances under which (the Department) will consider making an adjustment..." the Department expects that "the criteria for such an adjustment will rarely be met."<sup>310</sup>
  - SEC has not satisfied the Department's six-part test to make such an adjustment, which requires the respondent to establish that:
    - the price on which the alleged subsidy is based differs from the U.S. invoiced price;
    - the exporter and the party that invoiced the customer are affiliated
    - the U.S. invoice establishes the customs value to which CVD duties are applied;
    - there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment;
    - the merchandise is shipped directly to the United States; and
    - the invoices can be tracked as back-to-back invoices that are identical except for price.
  - Such adjustments are only applied with respect to an "affiliated, third-country exporter of the merchandise to the United States."<sup>311</sup>
  - The record demonstrates that SEC sells directly to SEA, its U.S.-based importer.
- SEC's argument has previously been refuted by the Department.<sup>312</sup>
  - There is no affiliated, third-party reseller who marks up the price.
  - Under the standard set forth in Woven Ribbons from China, the adjustment would be to adjust "the subsidies calculated by the ratio of the sales value of exports from the country under investigation and the sales value to the United States."<sup>313</sup> In SEC's case, that ratio is one to one.
- SEC's reliance on Uranium from France is also misplaced.
  - The Department's decision to adjust the subsidy calculation in that case bears no factual resemblance to the arguments made by SEC, or to the factual record of the present proceedings.
- Even if SEC's requested adjustments were supported by the Department's precedent, SEC has not provided the necessary information for the Department to make an adjustment.
  - The Department should not determine that an adjustment is appropriate absent "specific verifiable information" provided by the respondent.<sup>314</sup>
  - The Department should not determine that an adjustment is appropriate unless the verified information provided by respondent satisfies the six-part test laid out in CFS Paper from China, enumerated above. SEC has not provided information that would allow the Department to assess whether the six-part test was satisfied.
- SEC's proposed calculation methodologies disregard the Department's attribution rules and the fact that SGEC is the producer of the subject merchandise. Therefore, the Department correctly calculated separate benefit rates for SGEC and SEC, and in the case of SEC, correctly attributed subsidies received by SEC to the consolidated sales of SEC (which include SGEC's sales).

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<sup>310</sup> See CFS Paper from China and accompanying IDM at Comment 21.

<sup>311</sup> See id.

<sup>312</sup> See, e.g., Woven Ribbons from China and accompanying IDM at Comment 4.

<sup>313</sup> See id.

<sup>314</sup> See Woven Ribbons from China and accompanying IDM at Comment 4.

**Department's Position:** In the Preliminary Determination, the Department explained the rationale for its attribution methodology. Based on the information provided by SEC, the Department concluded that SGEC and SEC are cross-owned within the definition provided in 19 CFR 351.525(b)(6)(vi). SGEC was virtually wholly-owned by SEC during the POI, and therefore SEC was able to "use and direct the individual assets of" SGEC in "essentially the same ways it can use its own assets." Furthermore, SEC was intrinsically involved with the production, sales, and marketing of the subject merchandise. As such, the Department examined subsidies to both SGEC, the producer of subject merchandise, and to SEC, its parent company. Consistent with 19 CFR 351.525(b)(6)(i), the Department attributed the subsidies to the products produced by the corporation that received the subsidy. Therefore, subsidies provided directly to SGEC are attributable to SGEC's total sales. In addition, consistent with 19 CFR 351.525(b)(6)(iii), the Department attributed the subsidies conferred on SEC to SEC's consolidated sales, which include all of SGEC's sales and are net of intercompany sales between cross-owned companies.<sup>315</sup>

In the Post-Preliminary Analysis (Cross-Ownership), the Department found that SEL, a wholly-owned subsidiary of SEC that provides domestic transportation services, is cross-owned with SEC in accordance with 19 CFR 351.525(b)(6)(vi). As such, countervailable subsidies that were identified and measured as conferred on SEL were treated as a subsidy to SEC. This approach is 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 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). See CVD Preamble, 63 FR at 65402.

The Department further explained that with regard to holding companies, the regulations permit the attribution of subsidies conferred on a holding company to the consolidated sales of the holding company (that includes the respondent producer).<sup>316</sup> Similarly, the regulations permit the attribution of subsidies to a cross-owned, non-producing subsidiary, like SEL. SEL is a service provider that arranges domestic transportation for subject merchandise and it is a wholly-owned subsidiary of SEC.<sup>317</sup> Accordingly, the subsidies received by SEL have been appropriately attributed to SEC's total sales.<sup>318</sup>

Neither the regulations nor the CVD Preamble identify all situations in which it is appropriate to attribute subsidies. The examples provided therein are illustrative, not exhaustive. Therefore, the Department correctly calculated SGEC's and SEC's rates separately and added them together, as permitted by the regulations and explained above.

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<sup>315</sup> See CVD Preamble, 63 FR at 65402.

<sup>316</sup> See 19 CFR 351.525(b)(6)(iii).

<sup>317</sup> See SEC QNR 5/23 at 4.

<sup>318</sup> See Post-Preliminary Analysis (Cross-Ownership) at 10.

With respect to SEC's argument that if a subsidy is tied to the production of a particular product, the subsidy should be attributed only to that product and, hence because all tax benefits earned by SEC under RSTA Article 26 are unrelated to subject merchandise, they should not be included in the benefit, we disagree. The information on the record demonstrates that this is an untied tax credit that benefits the aggregate operations of a company. There is no basis to find that the benefits are tied to a particular product, and that, in this case the product is non-subject merchandise. Moreover, SEC is the parent company of SGEC and performs all refrigerator-related functions other than physical assembly, including sales, planning, marketing, research and development, engineering and design, and finalization of specifications for raw material inputs. SGEC performed assembly operations, and it executed production plans in accordance with the sales plans provided by SEC without retaining any inventory.<sup>319</sup>

With respect to SEC's argument concerning the over collection of duties by Customs Service and SEC's suggestions to correct the situation by either attributing SGEC's benefits by SEC's equity interest in SGEC, or alternatively, to adjust SGEC's sales value for SEC's mark-up on intercompany sales, we disagree. First, the sales values reported for SEC include SGEC's sales on a consolidated basis; thus the countervailable subsidy rate calculated for any subsidy to SEC incorporates the mark-up applied by SEC. Subsidies provided directly to SGEC are appropriately allocated to SGEC's sales without a mark-up. SEC is fulfilling a role much broader than that of a trading company. Second, SGEC did make a small number of domestic sales of non-subject merchandise.<sup>320</sup> More importantly, with respect to this late argument, the unique circumstances satisfied in CFS Paper from China and Ball Bearings from Thailand have not been met in this case. SEC did not provide the required information addressing the criteria for this adjustment in its responses and did not raise this issue in its responses to the Department in order to allow for examination and verification of this claim; in fact, SEC did not even raise this issue at verification (although even raising the issue at verification would have been too late for consideration because of the amount of information and analyses necessary to establish that the six criteria have been met). The burden to establish entitlement to an adjustment rests with the party seeking the adjustment because that party has access to the necessary information. The concept of a mark-up was not raised by SEC previously or at verification.<sup>321</sup>

## **Comment 22: Whether the Department Should Attribute Any Subsidies Received by ServeOne to LGE**

### *Petitioner's Arguments:*

- The Department should find that 19 CFR 351.525(b)(6)(iii) allows for the attribution of subsidies received by non-producing cross-owned service providers such as ServeOne, in a manner consistent with the approach contemplated in the CVD Preamble.

### *LGE's Arguments*

- The Department erred in attributing subsidies received by ServeOne, a cross-owned supplier,

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<sup>319</sup> See SEC QNR 5/23 at 1.

<sup>320</sup> See SEC QNR 5/23 at footnote 1.

<sup>321</sup> See SAA at 829; Woven Ribbons from China and accompanying IDM at Comment 4; Lawn Groomers from China (Preliminary Determination), 73 FR at 70974, unchanged in the Lawn Groomers from China (Final Determination).

to LGE.

- Contrary to the Department’s decision in the Post-Preliminary Analysis (Cross-Ownership), subsidies received by a cross-owned company should not automatically be attributed to a respondent.
- Subsidies are normally attributed to the products produced by the company that receives the subsidy in accordance with 19 CFR 351.525(b)(6)(i).
- ServeOne satisfies none of the four specific circumstances in the Department’s regulations that allow attribution of subsidies from a cross-owned company to a producer.
  - ServeOne is not a cross-owned company producing the same product (19 CFR 351.525(b)(6)(ii)).
  - ServeOne did not transfer any subsidy to LGE (19 CFR 351.525(b)(6)(v)).
  - ServeOne only provides off-the-shelf parts, usable in a wide variety of appliances and other merchandise, that are not primarily dedicated to the production of the downstream product (19 CFR 351.525(b)(6)(iv)).
  - ServeOne is not LGE’s holding company (19 CFR 351.525(b)(6)(iii)).
- The Department erred in reading the CVD Preamble to permit the attribution of subsidies from a cross-owned, non-producing subsidiary, such as ServeOne, to a producer.
- 19 CFR 351.525(b)(6)(iii) does not permit the attribution of subsidies to any cross-owned company other than a holding company.
- Even if the CVD Preamble had legal force, and the Department was applying it correctly, its conditions are not satisfied.
- It would be legal error for the Department to interpret an unambiguous phrase in the CVD Preamble, like “holding company,” to include a company like ServeOne that is clearly not a holding company.
  - The CVD Preamble “is not part of the governing regulations set forth in the CFR. Rather, it is described by Commerce as ‘supplementary information’, published contemporaneously with the regulations.”<sup>322</sup>
  - “It must be remembered that a preamble is not the law, is ‘not officially promulgated,’ and does not take precedence over the express words of the regulation.”<sup>323</sup>
  - Preambles “generally... are loosely and carelessly inserted, and are not safe expositors of the law.”<sup>324</sup>
- The CVD Preamble should be interpreted as being designed to address situations where a subsidy is granted to a shell company that has no business operations of its own and which could not itself use the subsidy.
  - This interpretation is supported by the fact that the Department identified “financial subsidiary” as a specific example.
  - The phrase “non-producing” should only be interpreted to mean a non-operational company, which would not apply to ServeOne.
  - It is contrary to the intent of the CVD Preamble and the regulations to attribute benefits received by an operating company, such as ServeOne, as a result of its own operations, to the operations of another company, with no evidence of any transfer of subsidies between the companies.

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<sup>322</sup> See Tung Mung.

<sup>323</sup> See Gouverneur Talc.

<sup>324</sup> See Commentaries on American Law.

- The Department’s interpretation of the CVD Preamble should not apply to ServeOne, because the CVD Preamble specifically states 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 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 LGE, sourcing certain inputs from suppliers and selling them to LGE. This is a service which ServeOne provides to LGE. Such a service (buying inputs for LGE) is appropriately attributable to the products produced by LGE. 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 LGE to produce products makes it appropriate to attribute these subsidies to LGE, by using a denominator that reflects LGE’s sales consolidated 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 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 LGE.

### **Comment 23: Whether the Department Should Continue to Find that SEC did not Use Other Programs**

#### *SEC’s Argument*

- The Department should reach a final determination that neither SEC, SGEC, nor any Samsung affiliate received benefits under the following programs:
  - IBK Preferential Loans to Green Enterprises
  - Gwangju Photonics Industry Promotion Project Development Support
  - KEXIM Short-Term Export Credit, Loan Guarantees, Trade Bill Rediscounting
  - KEXIM Export Factoring
  - K-SURE Export Credit Guarantees
  - Gwangju Metropolitan City Programs
  - Targeted Facilities Subsidies through KoFC, KDB, IBK (New Growth Engines Industry Fund) GOK Green Fund Subsidies

**Department’s Position:** In the Preliminary Determination and Post-Preliminary Analysis (NSA) the Department determined that SEC, SGEC and cross-owned affiliates meeting the attribution rules did not apply for or receive benefits during the POI for the above programs, and

this was confirmed at verification. For this final determination, the Department continues to find that respondents did not use the above programs.

#### **Comment 24: Whether Government Ownership Alone Transforms a Financial Institution Into a Government Authority**

##### *GOK's Arguments*

- The Department has not gathered information showing that financial institutions with a certain level of GOK shareholding were directed or controlled by the GOK. By nature, private commercial banks do have policy objectives and should not be treated as a government agency due to GOK ownership. Further, the Department has not explained its use of the arbitrary 25 percent threshold for GOK ownership.
- Unlike a preliminary determination, for a final determination the law requires substantial evidence of government action directing or controlling members in the context of the DWJ/DWE debt restructurings for there to be a countervailable subsidy.
- This methodology is inconsistent with the U.S. obligation under the SCM Agreement, U.S. statutes, and the Department's regulations.

##### *DWE's Arguments*

- In both DRAMS from Korea (Final Determination) and CFS Paper from Korea, in analyzing directed credit, the Department differentiated between government authority banks and banks the GOK had invested in as a result of the Asian Financial Crisis, for analyzing specificity with respect to the loans provided.
- In CORE from Korea AR Final Results (Jan. 2009), the Department eliminated this distinction, treating government invested banks and loans provided on the same basis as government policy banks. However, in CFS Paper from Korea, these government-invested commercial banks were treated as "government" in the Department's analysis of entrustment and direction of private creditors.

##### *Petitioner's Rebuttal Arguments*

- In calculating the GOK supermajority on the Creditors' Council the Department relied on the methodology used in DRAMS 1<sup>st</sup> Administrative Review, CFS Paper from Korea, and CORE from Korea AR Final Results (Jan. 2009), examining whether creditors with at least 25 percent GOK ownership accounted for 75 percent or more of the voting rights in a Creditors' Council under the CRPA. Neither the GOK nor DWE presented new information to invalidate the Department's methodology. In addition, their arguments were rejected in DRAMS 1<sup>st</sup> Administrative Review and CFS Paper from Korea. Finally, the GOK did not contest the Department's position in CORE from Korea AR Final Results (Jan. 2009) that a government-owned bank is a public entity or authority under CVD law.

**Department's Position:** DWE is correct when it states that in DRAMS from Korea (Final Determination), the Department made a distinction between government-owned policy banks and government-owned commercial banks. This distinction was made with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. In DRAMS from Korea (Final Determination), the Department essentially stated that the GOK had to "entrust or direct" government-owned commercial banks in order for the Department to find a financial

contribution. Under our statute, at section 771(5)(B)(iii) of the Act, entrustment or direction with respect to the provision of a financial contribution is only applicable to private entities. Subsequent to DRAMS from Korea (Final Determination), in CORE from Korea AR Final Results (Jan. 2009), we explicitly determined that a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.<sup>325</sup> Therefore, consistent with the statute, a loan provided by a government-owned or controlled bank or the provision of equity into a company by a government-owned bank constitutes the provision of a financial contribution under section 771(5)(D) of the Act. As such, the only relevance of CORE from Korea AR Final Results (Jan. 2009) with respect to this investigation is that the conversion of debt to equity, whether by a GOK policy bank or by a government-owned commercial bank, is considered a financial contribution under the Act. As such, there is no need to examine whether the government “entrusted or directed” a government-owned commercial bank to make a financial contribution.

Furthermore, the decision in CORE from Korea AR Final Results (Jan. 2009) did not address or change the 25 percent government ownership threshold used in the DRAMS 1<sup>st</sup> Administrative Review and CFS Paper from Korea in determining whether the GOK controlled 75 percent of the votes in the Creditors’ Council. While the GOK has questioned the use of this established methodology, the facts on the record of this investigation, i.e., 25 percent or more government ownership of the banks, support the Department’s finding that the GOK did own and control the relevant banks. Moreover, there is no information on the record that would cause us to reconsider the methodology developed in DRAMS 1<sup>st</sup> Administrative Review and CFS Paper from Korea.

#### **Comment 25: Whether the Department Properly Analyzed DWJ’s Restructuring and Debt Adjustment under CRPA**

##### *GOK’s Arguments*

- The workout and restructuring of DWJ/DWE occurred under the framework of CRA/CRPA, which was and still is available to all companies and industries in Korea.
- CRPA provided a general statutory framework to facilitate corporate restructurings in Korea by various creditor financial institutions in a nationwide effort to overcome the 1997-1998 financial crisis.

##### *DWE’s Arguments*

- The CRPA is an out-of-court legal alternative to bankruptcy. The Department has focused on two aspects: Article 27, the requirement for decisions to be made by a 75 percent supermajority and Article 29, the provision allowing opposing creditors to request their claims be purchased by the Creditors’ Council.
- The Creditors’ Council consisted of 45-50 creditors who had different legal requirements. The underlying analysis and major recommendations of the independent due diligence reports was the basis of all Creditors’ Council decisions; these reports reflected both the needs of the company and the likely recovery ratios for creditors.

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<sup>325</sup> See CORE from Korea AR Final Results (Jan. 2009) and accompanying IDM at 12.

- The decisions of both the 22<sup>nd</sup> and 33<sup>rd</sup> Creditors' Council to pursue restructuring were presented in the due diligence reports as providing a higher probable return than the liquidation rates. The Department has not taken this into consideration for its analysis of DWJ's debt restructuring.
- Article 29 and the actions of KFB show that creditors had a choice to opt out from the restructuring. Most creditors chose to pursue restructuring to achieve higher returns than through liquidation, a decision based on rational commercial choice.

#### *Petitioner's Rebuttal Arguments*

- Neither the GOK nor DWE challenged the Department's de facto specificity or financial contribution finding, only whether a benefit was conferred. Instead, respondents argued that private investors voluntarily participated and that DWJ/DWE was equityworthy because the infusions were based on recommendations by outside expert consultants.
- DWE's argument that CRPA Article 29 creates a valid private investor benchmark under 19 CFR 351.507(a)(2)(i) was rejected in DRAMS 1<sup>st</sup> Administrative Review. The Department found that the single use of the option was "insufficient to support Hynix's contentions" and that "the GOK-dominated Creditors' Council dictated the appraisal terms to be extremely unattractive for creditors and tremendously beneficial to Hynix because they called for forgiving a high percentage of debt."<sup>326</sup> KFB is a nearly identical situation and DWE has not provided any new evidence. The Department should maintain its position from DRAMS 1<sup>st</sup> Administrative Review.

**Department's Position:** The Department has analyzed the CRPA restructuring process consistent with our past precedent. In CFS Paper from Korea, the Department found that through its participation in the workout plan of the respondent under CRPA, the GOK provided that respondent with direct financial assistance from GOK-owned public lending institutions.<sup>327</sup> In DRAMS 1<sup>st</sup> Administrative Review, we also found that the GOK's ability to influence the Creditors' Council, through its dominant share of Creditors' Council votes, gave the GOK the means to save Hynix.<sup>328</sup> Similarly, in this investigation, the GOK held a supermajority of at least 75 percent in DWJ's Creditors' Council at the time the final terms of the 2001 and 2002 debt-to-equity swaps were approved.<sup>329</sup> This government-controlled supermajority of creditors exercised control as a public authority in providing preferential treatment in the restructuring of DWJ and DWE through these debt-to-equity conversions.

The GOK and DWE both argue that the creditors were motivated by commercial reasons to maximize the repayments of their outstanding debt by following the major recommendations of the independent due diligence reports to avoid substantial losses and write-offs. This argument, however, is contrary to the regulatory requirements for making an equityworthiness determination, under 19 CFR 351.507(a)(4), where the Department normally finds a firm to be equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time and thus could attract a "reasonable private

<sup>326</sup> See DRAMS 1<sup>st</sup> Administrative Review and accompanying IDM at Comment 1C.

<sup>327</sup> See CFS Paper from Korea and accompanying IDM at 22.

<sup>328</sup> See DRAMS 1<sup>st</sup> Administrative Review and accompanying IDM at 43.

<sup>329</sup> See Comment 27.



investor.” The context under which the due diligence reports were prepared, was not the perspective of an outside investor seeking a reasonable rate of return, but from the perspective of existing creditors seeking to salvage their outstanding assets, the NPLs, at a fraction of their face value.<sup>330</sup> Under these circumstances, the creditors’ considerations were quite different than those of the reasonable private investor contemplated by the regulations.<sup>331</sup> These creditors were already in a position where there was no chance of recovering the full amount of DWJ’s and DWE’s debt, much less contemplating any return above the amount that was already “sunk” in DWJ/DWE.

The Deloitte Report supports the explanation provided by DWE that the stated goal of DWJ’s Creditors’ Council for the debt-to-equity conversions was to “conduct the restructuring efforts that were needed to minimize the loss by creditors resulting from DWJ’s weakened financial condition.”<sup>332</sup> The record evidence demonstrates that the restructuring was undertaken to reduce the debt burden of the company to improve the condition of the company and attract a future buyer.<sup>333</sup> Therefore, and as further discussed in Comment 28, we continue to find that a reasonable private investor would neither invest in an existing entity that held no value, nor accept the potential risks associated with the prospects of spinning-off a new entity that could not, in the foreseeable future and under the best of circumstances, meet its debt obligations.

Finally, DWE notes that under Article 29 of the CRPA, opposing creditors may request to opt out from the “workout.” However, in determining equityworthiness, the issue is not how the existing creditors may attempt to minimize their losses in the bad debt they already hold by converting non-performing loans to equity, but rather whether a company has demonstrated an ability to generate a reasonable rate of return within reasonable time sufficient to attract a reasonable private investor. Moreover, a creditor opting out can only expect to receive the liquidation value of their debt which, in such circumstances, represents a significant loss to the creditor. The Department has previously addressed a creditor’s option under CRPA to opt out in DRAMS 1<sup>st</sup> Administrative Review, where we found that the existence of an opportunity for creditors to refuse the terms of the Creditors’ Council resolution does not negate the GOK’s actions taken to provide financial contributions, as defined in section 771(5)(B)(iii) of the Act.<sup>334</sup> In that case, as in this investigation, only one creditor holding a negligible percentage of debt exercised this option. Similarly, we do not consider it to be a realistic option for the overwhelming majority of private creditors in this investigation, the vast majority of whose debt was unsecured, and was estimated by E&Y to have a liquidation value of zero.<sup>335</sup> Therefore, we

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<sup>330</sup> See DWE QNR 9/29 at Exhibit 17, E&Y Report; Chapter 3.5.5 “Reflecting Financial Structure Improvement Plan and Review of Collection Rate by Creditor.”

<sup>331</sup> See, e.g., Steel Products from Austria, 58 FR at 37250, where the Department stated: “Although we agree that we have found that creditors may have special reasons for investing in firms which are indebted to them, this has no bearing on the Department’s ‘reasonable investor’ standard.” “A determination of equityworthiness cannot be measured, nor equated with, the decision of a creditor exchanging its debt for an equity position in a company in order to improve its chances for recouping money already loaned to that enterprise.”

<sup>332</sup> See DWE QNR 9/29 at 14 and Exhibit 6.

<sup>333</sup> See DWE Verification Report at 19, 25, 26, and 35

<sup>334</sup> See DRAMS 1<sup>st</sup> Administrative Review and accompanying IDM at 43, where the right of one creditor to seek better terms through mediation did not erase actions of the GOK to save Hynix from bankruptcy.

<sup>335</sup> See DWE Case Brief at 14; see also DWE Verification Report at 21; see also DWE Final Calculations.

cannot conclude that the decision of the creditors not to opt out qualifies their actions as the “usual investment practice of a private investor” as required by section 771(5)(E)(i) of the Act.

## **Comment 26: Whether Private Investor Participation on DWJ/DWE’s Creditors’ Council Provides A Benchmark**

### *GOK’s Arguments*

- The Post-Preliminary Analysis (Daewoo Restructuring) stated “private creditors holding a small percentage of DWJ’s debt participated in these debt to equity swaps on the same terms as the GOK-owned or controlled financial institutions...”<sup>336</sup>
- The CIT has ruled that “[T]he equityworthiness test is a substitute for the market price benchmark and is only employed where no market price exists or where such benchmark is deficient tainted or distorted...”<sup>337</sup> If a valid private investor share price exists, it must be used as the market price benchmark and the equityworthiness of the company becomes irrelevant. Under this standard, the private financial institutions participating provide a viable benchmark for all financial institutions, including those with government shareholding.

### *DWE’s Arguments*

- Debt to equity conversions are considered a type of credit/debt adjustment as defined in the CRPA. The debt converted had a liquidation value of zero.
- The Department has incorrectly evaluated that a government invested supermajority in the Creditors’ Council renders the participation of private investors insignificant. In CFS Paper from Korea the Department used a private investor level of less than 25 percent for Shinho Paper.
- The 75 percent GOK control of the Creditors’ Council is the first step of the analysis used in DRAMS from Korea (Final Determination) and CFS Paper from Korea. In CFS Paper from Korea at 43, the Department found that GOK ownership of over 75 percent of the voting rights “does not by itself constitute sufficient evidence that the GOK entrusted or directed the actions of Shinho’s {private} creditors...”
- In both DRAMS from Korea (Final Determination) and CFS Paper from Korea, the Department followed the 75 percent analysis by examining whether the GOK had a policy or pattern of practices to provide financial assistance to the respondent. DRAMS from Korea (Final Determination) was remanded to the Department for not taking into consideration “counterevidence indicating that the transactions making up the alleged program were formulated by an independent commercial actor (not a government) and motivated by commercial considerations.”<sup>338</sup>
- The methodology of the Department’s analysis in CFS Paper from Korea of Shinho Paper has not been applied. The Department must still make a separate finding based on evidence on the record of direct GOK influence that entrusted or directed the actions of DWJ/ DWE private creditors. The record does not show that the GOK entrusted or directed DWJ’s/DWE’s private creditors to provide a financial contribution to DWJ/DWE.

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<sup>336</sup> See Post-Preliminary Analysis (Daewoo Restructuring) at 10.

<sup>337</sup> See Geneva Steel.

<sup>338</sup> See Hynix Semiconductor.

- Contrary to the Department’s claim that private creditors on the Creditors’ Council had no choice but to accept the terms imposed on them, they had the alternative option of being bought out under Article 29 of the CRPA.

#### *Petitioner’s Rebuttal Arguments*

- Information provided by the petitioner shows direct and indirect GOK involvement in the DWJ/DWE restructuring and an explicit GOK policy to support the financial restructuring of Daewoo companies.<sup>339</sup> Petitioner identified over a dozen specific pieces of evidence on the record as proof of GOK involvement in the DWJ/DWE restructuring.
- In DRAMS 1<sup>st</sup> Administrative Review, the Department found the GOK controlled the Hynix Creditors’ Council through financial institutions with a “high level of ownership by the government,” i.e., ownership above 25 percent, which “gave the GOK the ability to exercise the substantial influence over the activities of {financial institutions}...”<sup>340</sup> The Department also found that the “smaller yet still significant ownership of less than 25 percent” contributed to this ability to control the Creditors’ Council.<sup>341</sup>
- The GOK’s argument that the Department’s methodology does not demonstrate GOK intervention reached the level of the Creditors’ Council was rejected in DRAMS 1<sup>st</sup> Administrative Review. The GOK reported to the Department that it exercised its shareholder rights “through its government entity banks (e.g., KDIC)” and the Department concluded that “the GOK exercised substantial influence over those banks in which it retained ownership during the POR.”<sup>342</sup>
- The Department should reject DWE’s argument that private investor participation in the DWJ/DWE equity infusions was “significant.” Unlike in Seamless Pipe From Italy, in the instant case private investment was distorted by the supermajority requirement of the CRPA.
- CFS Paper from Korea does state that “GOK ownership ratios exceeding 75 percent in 2000 does not, by itself, constitute sufficient evidence...” and that private investor participation was “significant;” however it was based on “the absence of evidence of GOK influence over the decision-making ability of the Creditors’ Council.” The Department stated in the Post-Preliminary Analysis (Daewoo Restructuring) at 8-9 that the “GOK directly controlled the actions of DWJ’s Creditors’ Council,” making CFS Paper from Korea inapplicable.
- The GOK’s reliance on Geneva Steel is misplaced: “The equityworthiness test is ... only employed where no market price exists or where such benchmark is deficient tainted or distorted.” DWE is incorrect in suggesting that the Department has not made a finding of direct influence over private investors by the GOK.

**Department’s Position:** The Department continues to find that the GOK held a supermajority of at least 75 percent in DWJ’s Creditors’ Council at the time the final terms of the 2001 and 2002 debt-to-equity conversions were approved at the meetings of the 22<sup>nd</sup> and 33<sup>rd</sup> Creditors’ Council, respectively.<sup>343</sup> Based on information obtained during verification, and having considered the comments of the interested parties, we have made minor revisions to the calculation of percentage of representation held by the private creditors who voted at these

<sup>339</sup> See New Subsidy Allegations, NSA October Letter, and NSA November Letter.

<sup>340</sup> See DRAMS 1<sup>st</sup> Administrative Review and accompanying IDM at Comment 1C p.41.

<sup>341</sup> See id.

<sup>342</sup> See id.

<sup>343</sup> See Comment 27.

meetings.<sup>344</sup> However, this adjustment has not altered our conclusion that the GOK held a supermajority of 75 percent in DWJ's Creditors' Council.

DWE states that the Department's normal practice for contemplating a lower threshold of significance of private investor participation at less than 25 percent, is outlined in the CVD Preamble to 19 CFR 351.507(a)(2)(iii), which cites to the finding in Seamless Pipe from Italy: "{ . . . } because 18.3 percent of the equity infusion was purchased by private shareholders, the sale of these shares provides the market-determined price for Dalmine's equity."<sup>345</sup> While the CVD Preamble cites to Seamless Pipe from Italy as an example, the CVD Preamble does not establish a bright line numerical threshold for all cases.

In determining whether participation by private investors is significant, the Department has an obligation to evaluate these inherently company- and fact-specific situations on a case-by-case basis. The analysis of whether private investor participation is significant can only be based on the facts present in each investigation or administrative review. The facts on the record of this investigation differ from the facts in Seamless Pipe from Italy. The facts on the record of this investigation do not support a decision that participation of private banks or their provision of equity into DWE is significant under 19 CFR 351.507(a)(2)(iii). There were no new equity infusions into the company and the shares of DWE were not publicly traded. DWE was placed into a government-led restructuring program. The procedures and regulations established for the debt workout of DWE were set forth by the GOK. The GOK controlled the decisions of the Creditors' Council, and was therefore able to impose its decisions on the private creditors, because the private creditors' representation and participation in the Creditors' Council was not significant enough to prevent the government-controlled supermajority from imposing the terms of the 2001 and 2002 debt-to-equity conversions. Therefore, based on the record of this investigation, private investor participation is not significant.

The instant case is factually different from the finding made in CFS Paper from Korea which DWE cited in its argument as a precedent for using a private investor participation level of less than 25 percent as the basis for a benchmark. In that case, all creditors agreed to the debt to equity conversion rates.<sup>346</sup> In this case, fewer than half of the private creditors voted in favor of the 2002 debt to equity conversions.

Further, in this investigation the Department is not evaluating whether, pursuant to section 771(5)(B)(ii) of the Act, the private creditors were entrusted or directed by the GOK such that the actions of the private creditors could also be found to be a financial contribution by the government. Rather, the Department is evaluating whether the debt-to-equity conversions by GOK-owned and -controlled members of the Creditors' Council directly provided a financial contribution to DWE under the CRPA workout. As such, unlike in DRAMS from Korea (Final Determination) and CFS Paper from Korea, our analysis entails neither an examination of whether the GOK entrusted or directed the private sector members of the Creditors' Council, nor whether the GOK had a policy for the home appliances industry. Instead, our analysis focuses on whether DWE was equityworthy in 2001 and 2002, and whether the debt-to-equity

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<sup>344</sup> See DWE Final Calculations.

<sup>345</sup> See Seamless Pipe from Italy, 60 FR at 31944.

<sup>346</sup> See CFS Paper from Korea and accompanying IDM at 43.

conversions by the government banks, directly, constitute a benefit. As required by 19 CFR 351.507(a)(2)(iii), we have evaluated whether the participation of private creditors establishes the equityworthiness of the company and whether it provides an appropriate benchmark for measuring the benefit. Finally, DWE's argument regarding Article 29 of the CRPA has been addressed in Comment 25.

### **Comment 27: Whether The Department's Analysis of the 2001 and 2002 Debt Restructuring Was Correct**

#### *DWE's Arguments*

##### 2001 Debt Restructuring

- The January 2000 MOU contains the records of the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings where the debt-to-equity swap was proposed based on the recommendations of the 1999 Deloitte due diligence report. The Department should use the voting record of the 11<sup>th</sup> Creditors' Council meeting rather than the 22<sup>nd</sup> Creditors' Council meeting to analyze the 2001 DWJ debt-to-equity conversion. At the time of the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meeting, GOK-invested creditors did not represent a supermajority, and the Department cannot conclude that GOK-invested creditors controlled the results of the voting in the 22<sup>nd</sup> Creditors' Council because they simply affirmed the results of the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meeting.
- The revised proposal approved at the 22<sup>nd</sup> Creditors' Council meeting addressed the same amount of debt, but increased the portion allocated to debt-to-equity conversions in order to resolve issues with minority shareholders blocking the debt adjustment.
- KAMCO's Management Supervisory Committee approved the proposal in the 22<sup>nd</sup> Creditors' Council meeting in order to overcome the minority shareholders who were blocking control of the company and to maximize debt collection through the sale of DWJ as recommended by Deloitte. The reasons for approving the debt restructuring in the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings remain the same in the 22<sup>nd</sup> Creditors' Council and show that GOK-invested and private creditors worked together.

##### 2002 Debt Restructuring

- The Department's calculation of the voting rights controlled by the GOK at the 33<sup>rd</sup> Creditors' Council meeting is incorrect: the Department should deduct the votes of those who were absent because they were counted as negative votes. Thus, there is no GOK supermajority at the 33<sup>rd</sup> Creditors' Council meeting.
- Private investment was significant and creditors chose whether to participate in the restructuring. The GOK-invested KFB chose not to participate and was bought out under Article 29. Private creditors all chose to participate to maximize their returns.

#### *GOK's Arguments*

- There is no evidence other than government ownership to indicate GOK directed or controlled any member of the Creditors' Council in the 2001 or 2002 debt restructurings
- The 2001 and 2002 restructurings were conducted in line with the CRPA, which only requires the FSC to receive notification of the first Creditors' Council meeting. Government-owned banks participate with the same rights as ordinary creditors.

- There is no evidence that the GOK directed, controlled or otherwise attempted to influence the 2002 DWJ/DWE debt restructuring. No GOK officials attended any meetings with the FSC, FSS, or Woori Bank, the lead creditor as confirmed at verification.
- Creditors acted on sound business judgment on an individual basis. The Department is inferring government direction or control from the fact that creditors decided to exchange debt for equity. This implies that, in the Department's view, the only rational economic decision was to liquidate the company. This is not supported by the record.
- Creditors exchanged debt for equity because of the chance to obtain a higher return on their investment than the liquidation value. The creditors' decision was guided by the independent due diligence reports, which provided sound commercial rationale and reason to believe DWJ would improve in the near future.
- The Department has focused solely on GOK-ownership of the Creditors' Council members and has not taken into consideration counter-evidence on the record. In Hynix Semiconductor, the CIT ruled that "Commerce must consider counterevidence indicating that the transactions making up the alleged program were formulated by an independent commercial actor (not a government) and motivated by commercial considerations."

#### *Petitioner's Rebuttal Arguments*

- The GOK verification report contradicts DWE's claim that the GOK did not have ownership interests in certain members of the Creditors' Council. Neither DWE nor the GOK has provided information to contradict the verified fact that KAMCO purchased ABS. Business proprietary information confirms the GOK ownership and supermajority at the 33<sup>rd</sup> Creditors' Council meeting.
- In DRAMs 1<sup>st</sup> Administrative Review, the Department rejected a similar argument, explaining that the GOK owned or controlled creditors with "over 72 percent" of the vote and "owned over 60 percent of Hynix" such that "through these creditors, the GOK was indeed the dominating force on the Creditors' Council."

**Department's Response:** As discussed above, the Department is not evaluating, pursuant to section 771(5)(B)(ii) of the Act, whether the private creditors were entrusted or directed by the GOK such that the actions of the private creditors could also be found to be a financial contribution by the government. Rather, the Department is evaluating whether the debt-to-equity conversions by GOK-owned and -controlled members of the Creditors' Council directly provided a financial contribution to DWE under the CRPA workout. As such, unlike in DRAMs from Korea (Final Determination) and CFS Paper from Korea, our analysis entails neither an examination of whether the GOK entrusted or directed the private sector members of the Creditors' Council, nor whether the GOK had a policy for the home appliances industry. Instead, our analysis focuses on whether DWE was equityworthy in 2001 and 2002, and whether the debt-to-equity conversions by the government banks only constitute a benefit. As required by 19 CFR 351.507(a)(2)(iii), we have evaluated whether the participation of private creditors establishes the equityworthiness of the company or whether it provides an appropriate benchmark for measuring the benefit.

## 2001 Debt Restructuring

The 2001 debt-to-equity conversions were approved by the 22<sup>nd</sup> Creditors' Council meeting in August 2001. The Department properly analyzed the voting record of the 22<sup>nd</sup> Creditors' Council meeting to determine the significance of private investor participation and the impact of that participation on our analysis of equityworthiness and benefit. Even if the agenda items in the 22<sup>nd</sup> Creditors' Council meeting were identical to the agenda items approved in the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings, the resolutions approved in the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meeting did not effectuate equity conversions, due to the resistance of the shareholders. The restructuring plan was subsequently revised. The proposals considered in the 22<sup>nd</sup> Creditors' Council meeting contained materially different terms from the resolutions approved at the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council Meetings. The vote in the 22<sup>nd</sup> Creditors' Council meeting was the vote that approved the resolution and made effective the decision to convert the debt to equity. The voting record of the 22<sup>nd</sup> Creditors' Council meeting shows that approval of the debt-to-equity conversions was dominated by the GOK, either through GOK entities, GOK special purpose banks or financial institutions, or GOK-controlled banks. No party contends that the Department incorrectly determined that the GOK constituted a supermajority at the time of the vote of the 22<sup>nd</sup> Creditors' Council meeting.

In addition, an examination of the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings shows that many significant changes were made to the restructuring plan between the 11<sup>th</sup> and 22<sup>nd</sup> Creditors' Council meetings. These changes, the details of which are proprietary, are discussed in the DWE Final Calculations, dated concurrently with this final determination. As confirmed at verification, the 11<sup>th</sup> Creditors' Council meeting adjusted and finalized the restructuring plan created at the 8<sup>th</sup> Creditors' Council meeting. DWJ, its major shareholders (who held three percent of all shares), the lead creditor bank (Hanbit Bank, now Woori Bank), and the Creditors' Council agreed in the January 2000 MOU to pursue restructuring according to the plan outlined in the minutes of the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings. However, the Department found at verification that:

{T}he remaining shareholders (approximately 40,000 individuals who together held 94 percent of the shares) were not party to the MOU.

On March 30, 2000, DWJ's minor shareholders sued to cancel the decisions of the March 21, 2000 annual shareholders meeting, which changed the corporate articles. Because an agreement could not be reached, DWJ was unable to issue convertible bonds or conduct the debt to equity conversions in 2000 as envisioned by the Deloitte report and planned by the Creditors' Council.<sup>347</sup>

Due to the resistance of shareholders, the restructuring plan of the January 2000 MOU and 11<sup>th</sup> Creditors' Council meeting was revised. The original plan called for enacting a capital reduction before the debt-to-equity conversions.<sup>348</sup> The 13<sup>th</sup> Creditors' Council proposed first to conduct a debt-to-equity conversion at KRW 1000 per share, and then to implement a capital reduction and additional debt-to-equity conversion.<sup>349</sup> In order to satisfy the shareholders, the Creditors'

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<sup>347</sup> See DWE Verification Report at 18.

<sup>348</sup> See DWE Verification Report at 24-25.

<sup>349</sup> See DWE Verification Report at 26.

Council changed their plan and approved the conversion of debt to equity at KRW 5000 per share, after which the Creditors' Council could guarantee a capital reduction would be passed at the October 2001 general shareholders meeting. This was followed by an additional round of debt-to-equity conversions on December 5, 2001.

DWE is incorrect in arguing that the 22<sup>nd</sup> Creditors' Council simply voted to implement the decisions already approved at the 8<sup>th</sup> and 11<sup>th</sup> Creditors' Council meetings regarding the restructuring plan. The record shows that the restructuring plan evolved and changed significantly between December 1999 and August 2001 with a significant re-allocation of the amount of debt to be converted to equity.<sup>350</sup> Thus, for this final determination, we are continuing to rely on the voting record of the 22<sup>nd</sup> Creditors' Council to analyze the significance of private investor participation in the 2001 debt-to-equity conversions.

### 2002 Debt Restructuring

In light of DWE's arguments, we have re-evaluated the participation of private creditors in the 33<sup>rd</sup> Creditors' Council meeting approval of the resolution regarding the 2002 debt-to-equity conversions. DWE used business proprietary information to argue that the Department incorrectly evaluated the participation of private creditors. We have addressed this argument and revised our evaluation using business proprietary information.<sup>351</sup> In evaluating which creditors comprised the supermajority approval, we have revised our calculations to reflect the negative votes of some creditors and the absence of other creditors which was counted as a negative vote.<sup>352</sup>

However, after making our adjustments, we continue to find that the GOK held a controlling supermajority at the 33<sup>rd</sup> Creditors' Council, because even with these adjustments, the GOK's ownership of the members of the creditors' council was above the supermajority threshold. Because the private creditors' representation and participation in the Creditors' Council was not significant enough to prevent the government-controlled supermajority from imposing the terms of the 2001 and 2002 debt-to-equity conversions, we do not find the share price paid by these private creditors to be reliable for purposes of determining a benchmark share price under 19 CFR 351.507(a)(2)(i).

### **Comment 28: Equityworthiness of DWJ/DWE at the Time of the 2001 and 2002 Debt-to-Equity Conversions**

#### *GOK's Arguments*

- The Department's equityworthiness analysis was flawed since it was based on DWJ/DWE's financial performance from 1997 to 2002. These financial indicators are of limited utility due to the financial restructuring and they provide only a snapshot of the historical performance of the firm. The Department indicated in Steel Products from Austria that the relative weight given to such factors should be adjusted.
- The Department's regulations also place weight on objective analyses of the future financial prospects of the firm and investment by actual private investors. Several studies were

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<sup>350</sup> See DWE Final Calculations.

<sup>351</sup> See id.

<sup>352</sup> See id.



prepared to assess the financial condition of DWJ/DWE and the potential benefits of the restructuring plan. The proposed plan was developed consistent with Korean law and commercial practice, and private investors, several of which were wholly private banks, accepted the debt to equity conversion.

- The Act states that the Department should follow a “descriptive approach,” (actual practice) rather than a normative approach (what practice should be).
- The legal standard of equityworthiness shows the importance of actual private investor practice. According to 19 CFR 351.505(a)(4)(D), even when no private investor can provide a benchmark, the Department considers the equity investment in the firm by private investors. Even if the private investors cannot be used as a benchmark, their participation still provides significant evidence that DWJ/DWE was equityworthy at the time of the 2001 and 2002 restructurings.
- Based on the above, the Department should find that the restructuring was consistent with the “usual investment practice of private creditors” and find the 2001 and 2002 restructurings not countervailable.

#### *Petitioner’s Rebuttal Arguments*

- Based on DWE’s statement that the Creditors’ Council hired the consultants to conduct due diligence and “develop plans for the company’s normalization, which was the goal of the workout program,” the consultants were specifically contracted to focus on how to restructure DWJ, not on the broader question of whether an investment was appropriate.
- Each report contains proprietary discussions which show that liquidation of the company was not an option analyzed by the consultants. Instead, the reports were created based on the premise that DWJ would restructure.
- The GOK is incorrect in arguing that the Department failed to consider the “studies and DWJ/DWE’s future prospects following restructuring...” and “focused on DWJ/DWE’s past financial performance.” The record does not support the argument that DWJ’s financial condition in 2001 would improve by 2002. The 2002 E&Y report suggests that DWJ’s financial condition had deteriorated.
- The GOK’s argument that the reliance on historical financial ratios is inappropriate does not take into consideration the Department’s regulations and neither the GOK nor DWE commented on the analysis of rates of return on DWJ/DWE equity.
- The Department has given the proper consideration to the financial ratios in its analysis of DWJ/DWE’s current and past financial health as required by 19 CFR 351.507(a)(4)(B). The Department is correct in finding no new equity investments occurred from 1999 until the debt-to-equity conversion in 2001. In addition, the Department correctly found the price paid by private creditors unreliable in the 2001 and 2002 debt-to-equity conversions on the grounds that these private creditors had no alternative but to accept the terms imposed by the GOK-controlled Creditors’ Council.
- The DWE Verification Report discusses the KPMG Action Plan report, which recommended selling the “white home appliances” division rather than maintaining it. This recommendation reflects the poor financial prospects faced by DWJ at the time of the report.
- This was supported by the SWOT analysis of each division done by the 2000 BAH Report. The BAH Report recommended selling the main groups including the “white household goods” unit. This recommendation reflects the poor financial prospects faced by DWJ at the time of the report.

**Department's Position:** The Department's requirement for making an equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), is to determine whether a reasonable private investor, at the time the government-provided equity infusion was made, would invest in a firm based on the firm's ability to generate a reasonable rate of return within a reasonable time. As explained in Comment 25, the due diligence reports and the proposed restructuring plan under which the 2001 and 2002 debt-to-equity conversions were undertaken, indicate that they were primarily aimed at helping creditors recover a fraction of the NPLs outstanding to DWJ/DWE. The important distinction that DWE and the GOK fail to recognize in their arguments is that the pool of "investors" that participated in the debt-to-equity conversions was composed of *existing* DWJ/DWE creditors attempting to mitigate their losses from the NPLs; they are not outside private investors considering whether or not to purchase shares, based on the projected rates of return. The creditors were already holding DWJ non-performing debt. Therefore, they were not evaluating the reasonableness of the rate of return on any equity they were considering investing in the company. Rather, they were considering how best to limit their losses and maximize the recovery rate on their funds that were already at considerable risk, a risk that was not anticipated at the time the loans were made.

We agree with the GOK's characterization of the Department's approach to analyzing equity infusions as a "descriptive approach," in its focus on the actions of reasonable private investors. We disagree, however, with the GOK's conclusion that the private creditors who converted their debt to equity on the same terms constitute reasonable private investors. The standard is not whether a private investor who already has invested in the firm would continue to invest, but whether an outside private investor would make an equity investment.<sup>353</sup> Accordingly, our analysis has met our statutory and regulatory requirements.<sup>354</sup>

Contrary to the GOK's argument that our equityworthiness analysis is flawed because it relies on past financial ratios and historical performance data, we have carefully followed our regulatory requirements under 19 CFR 351.507(a)(4)(A-D) and examined all four of the following factors to determine whether DWJ/DWE was equityworthy: (1) objective analyses of the future financial prospects of the recipient firm; (2) current and past indicators of the firm's financial health; (3) rates of return on equity in the three years prior to the government equity infusion; and (4) equity investment in the firm by private investors.<sup>355</sup> Accordingly, we have properly given each factor equal weight in finding DWJ and DWE unequityworthy in 2001 and 2002, because a reasonable private investor would not accept the potential risks associated with the uncertainty surrounding DWJ's restructuring plan. Both the Deloitte report and BAH report identified many obstacles to the success of DWJ's restructuring.<sup>356</sup> Similarly, the business evaluation done by E&Y in 2002 indicates that DWJ's financial condition had further deteriorated.<sup>357</sup> DWJ's financial ratios reflected the condition of DWJ from 1999-2001 and demonstrates that DWJ/DWE did not meet the Department's equityworthy standard:

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<sup>353</sup> See Comment 25.

<sup>354</sup> See GOK Case Brief at 32, regarding the GOK's descriptive approach for analyzing investor behavior.

<sup>355</sup> See Post-Preliminary Analysis (Daewoo Restructuring) at 11-16.

<sup>356</sup> See *id.* at 11-14.

<sup>357</sup> See DWE QNR 9/29 at Exhibit 17.

DWJ's stability ratios continued to reflect severe liquidity problems from 1999 through 2001, with its current and quick ratios both below one or 100% every year. By 1999, DWJ no longer held any positive shareholder equity and was posting negative equity of KRW 1,859.78 billion, eventually falling to KRW 3,088 billion by 2001. Similarly, DWJ's profitability ratios declined dramatically during this period with its net income to sales ratio at negative 76.76% and negative 91.69% in 1999 and 2000, respectively, recovering in 2001 to negative 24.90%. This improvement was likely due to the debt-to-equity conversions that occurred in 2001 and provided some relief as reflected in the reduced net income loss of KRW 754.7 billion versus the previous year's loss of KRW 2,928 billion.<sup>358</sup>

The GOK and DWE provided no evidence to dispute the fact that DWJ/DWE had negative equity worth, was unprofitable, and could not generate enough cash flow to cover its debt. Therefore, we continue to find DWJ/DWE unequityworthy in 2001 and 2002. A reasonable private investor would not invest in the company as a going concern. The DWJ creditors already had substantial funds at risk, a fact that renders their considerations wholly distinct from the "reasonable private investor" whose actions can inform the Department's analysis under 19 CFR 351.507(a)(4). Thus, the involvement of private creditors in the debt-to-equity conversions cannot form the basis of an equityworthy finding.

#### **Comment 29: Whether the GOK and FSS Used KAMCO to Gain Control of DWJ/DWE's Creditors' Council**

##### *GOK's Arguments*

- While KAMCO is a government agency, its daily operations and commercial transactions, including debt restructurings, are made independently. KAMCO purchased NPLs from various institutions after the Asian Financial Crisis and thus became a creditor of DWJ/DWE.
- In SSSSC from Korea 2001 Review, the Department found that KAMCO's actions did not constitute countervailable subsidies. The Department has not presented any new evidence in the Post-Preliminary Analysis (Daewoo Restructuring) that warrants its position.
- The KDIC invested in banks with its own funds. It differed from KAMCO in that it purchased equity rather than NPLs. However, as confirmed at verification, both agencies have the mandate to recover taxpayer money by reselling the assets purchased.
- FSC and KAMCO officials confirmed at verification that, although the Chairman of the FSC is a member of KAMCO's management supervisory committee, the "FSC/FSS has no direct involvement with KAMCO" and does not intervene in its "day-to-day operation."
- The Department has shown no evidence that KAMCO has intervened on behalf of the GOK and has not taken into consideration counterevidence on the record.

##### *DWE's Arguments*

- KAMCO's purchase of the DWJ debt held by investment trusts was aimed at stabilizing the Korean financial system after the Asian Financial Crisis.
- The GOK Verification report shows that GOK officials had no active role at the FSS/FSC, KAMCO, KDIC, and Woori Bank in approving the debt restructurings of DWJ/DWE. There

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<sup>358</sup> See Post-Preliminary Analysis (Daewoo Restructuring) at 15.

is no evidence from the verified record to show KAMCO was used by the GOK to gain control of DWJ/DWE.

- While approval ratios were very high, there were votes against the restructurings by both GOK-owned and private investors.

#### *Petitioner's Rebuttal Arguments*

- In Post-Preliminary Analysis (Daewoo Restructuring), the Department correctly relies on DRAMS 1<sup>st</sup> Administrative Review in finding that the GOK interfered in internal DWJ/DWE creditor banks affairs and controlled the Creditors' Council through KAMCO's large debt and share holdings.
- Petitioner placed voluminous information on the record showing direct and indirect GOK involvement in the DWJ/DWE restructuring, which includes direct references to GOK policy direction.

**Department's Position:** The underlying events that led to KAMCO becoming the largest creditor on DWJ/DWE's Creditors' Council, while informative in describing how government-owned or controlled banks gained a supermajority on DWJ/DWE's Creditors' Council, do not alter the fact that KAMCO held such a position. This guaranteed that KAMCO, the largest creditor, would play a major role in influencing the government-controlled supermajority at the time of the 2001 and 2002 debt-to-equity conversions. As discussed in Comment 27, the Department continues to find that the GOK held a supermajority of at least 75 percent in DWJ's Creditors' Council at the time the final terms of the 2001 and 2002 debt-to-equity conversions were approved at the meetings of the 22<sup>nd</sup> and 33<sup>rd</sup> Creditors' Council, respectively. This government-controlled supermajority of creditors, of which KAMCO accounted for over half of the representation, exercised control as a public authority in providing a financial contribution in the restructuring of DWJ and DWE through these debt-to-equity conversions.<sup>359</sup>

Although we continue to find this GOK-controlled supermajority in the Creditors' Council to be the focus of our analysis, we still find it informative and relevant to discuss the role that the GOK played in proactively putting KAMCO in a position to become the largest holder of DWJ/DWE debt through its purchases of NPLs from creditors who opposed the restructuring. The GOK's argument that we have not adequately analyzed how the GOK, through KAMCO, played a key role in directing and controlling DWJ/DWE's Creditors' Council, fails to recognize two critical points: that because KAMCO is a government special purpose institution, it is a government authority carrying out GOK functions; and even if it was not a government authority, the record provides ample evidence to show that the GOK was working through KAMCO to gain control of Daewoo's debt. Without KAMCO's growing representation on DWJ/DWE's Creditors' Council, a government-controlled supermajority would not have been possible. Therefore, the actions taken by the GOK to acquire large amounts of DWJ/DWE debt just prior to the approval of its debt-to-equity conversions were instrumental in ensuring the approval of the restructuring. As we noted in the Post-Preliminary Analysis (Daewoo Restructuring), information on the record shows that some DWJ creditors initially were unable to support the restructuring "as a result of a revolt from investment trust companies."<sup>360</sup> In

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<sup>359</sup> See DWE Final Calculations.

<sup>360</sup> See New Subsidy Allegations at Exhibit 7; Yeonhap News (September 4, 1999), "Daewoo restructuring: a dividing line in stock market."

addition, the record also shows that “KAMCO was directed by the government to purchase Daewoo bonds held by foreign creditors and by the investment trust companies... at inflated prices {...}”<sup>361</sup> Other examples of the GOK and KAMCO involvement in the restructuring and workout for DWJ/DWE are provided in the documents attached to the October 27, 2011 Memorandum on Independent Research and in the NSA October Letter and NSA November Letter.

Neither the GOK nor DWE have provided sufficient evidence to refute that these were company-specific actions taken by the GOK to gain control of DWJ/DWE’s Creditors’ Council, by utilizing KAMCO to acquire debt held by the investment trust companies and the foreign creditors at the precise point in time when these companies were opposed to and impeding the restructuring.

### **Comment 30: Whether the Department Should Establish a Zero Cash Deposit Rate for DWE**

#### *DWE’s Arguments*

- If the Department does find countervailable subsidies from the 2001 and 2002 debt to equity conversions, the 10-year allocation period for non-recurring subsidies expires in 2011, prior to suspension of liquidation that would occur in the final affirmative countervailing duty determination in March 2012.
- In SSSSC from France, the Department explained its two-part test for setting the cash deposit rate to zero: “1) the allocated benefit from the non-recurring subsidy has expired and the information needed to make the adjustment is derived entirely from the POR; and 2) the expiration of the subsidy means that the expected countervailing duty rate on entries subject to the cash deposit rate set in the review is de minimis.”
- Excluding the debt to equity conversions, DWE received a de minimis rate. In addition, the allocation period for the 2002 debt to equity conversion subsidy benefit expires in 2011; therefore any subsidy found as the result of the first administrative review would be based on entries suspended after March 2012, and that subsidy rate would be de minimis. Unlike an administrative review, no entries have been suspended.
- In Pure Magnesium from Canada and DRAMS 3<sup>rd</sup> Administrative Review, the Department described its decisions in SSSSC from France and Uranium as a “narrowly circumscribed exception” where “allocation of benefits for the subsidies in question ended during the POR...” further stating that “the allocation period does not end until the subsequent period and, therefore, we cannot rely exclusively on POR data to calculate the future subsidy rate.”

#### *Petitioner’s Rebuttal Arguments*

- Section 705(c)(1)(B)(ii) of the Act states that Commerce “shall order the posting of a cash deposit...for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate.” Unlike section 751(a)(1) of the Act, which pertains to the cash deposit rate in administrative reviews, the Department must set the cash deposit rate based on the estimated individual subsidy rate found in an investigation.

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<sup>361</sup> See id. at 15.

- In addition, DWE does not satisfy the requirements of the two-part test for a zero cash deposit rate established in SSSSC from France, Uranium, Pure Magnesium from Canada, and DRAMs 3<sup>rd</sup> Administrative Review: the allocated benefit from a non-recurring subsidy has expired and the expected countervailing duty rate on entries subject to the cash deposit rate set in the review is de minimis.
- In an investigation, the Department cannot find a zero rate since an administrative review has not been completed and additional countervailable programs could be found in the first administrative review. DWE's workout continues beyond the POI and evidence suggests that additional investigation of the terms of ongoing debt forgiveness and interest capitalization will be required as long as the workout continues.

**Department's Position:** Under 19 CFR 351.526, the Department may take into account program-wide changes in establishing the estimated countervailing duty deposit rate. DWE has not made a request for a program-wide change for its CRPA workout, nor would DWE qualify for a program-wide change under 19 CFR 351.526 because the workout has not ended. Instead, DWE argues that the Department should establish a zero cash deposit rate based upon the test that was developed in SSSSC from France. In narrowly circumscribed exceptions, the Department has adjusted the cash deposit rate to zero. These exceptions are set forth in SSSSC from France: (1) the allocated benefit from the non-recurring subsidy has expired by the end of the period of review and the information to make the adjustment is derived entirely from the POR; and (2) the expiration of the subsidy means that the cash deposit rate on entries subject to the cash deposit rate is de minimis. This narrowly-drawn set of facts is not present in this investigation of DWE; therefore, DWE does not qualify for the type of adjustment to the cash deposit rate that was granted in SSSSC from France.

The allocation period for all of the debt-to-equity conversions does not expire by the end of the period of investigation. In SSSC from France, the Department stated "it is only in those cases where the allocated benefit goes to zero in the POR that we can rely exclusively on POR data to calculate the future rate."<sup>362</sup> These facts do not apply to DWE, because the benefit from the 2002 debt to equity conversions is not fully allocated by the end of POI. In Pure Magnesium from Canada, as is the case here, the allocation period did not end until after the period under examination, and the Department did not set the cash deposit rate to zero for future entries.<sup>363</sup>

Furthermore, these debt-to-equity conversions were part of a government-led restructuring and debt workout program that is still ongoing for DWE. DWE remains under a GOK established workout program pursuant to which the GOK is not prohibited from continuing to provide DWE with financial contributions. In DRAMs 3<sup>rd</sup> Administrative Review, the Department declined to adjust Hynix's cash deposit rate because "there is no evidence on the record that the GOK is prohibited from providing additional financial contributions . . . in the future."<sup>364</sup> The ongoing nature of the workout, and the possibility that additional subsidies may be provided to DWE after the POI, further supports our decision not to set the cash deposit rate to zero, and further distinguishes the facts of this investigation from the facts that were present in SSSSC from France. It is not appropriate to adjust the cash deposit rate to zero for the debt-to-equity

<sup>362</sup> See SSSC from France and accompanying IDM at Comment 3.

<sup>363</sup> See Pure Magnesium from Canada and accompanying IDM at 7.

<sup>364</sup> See DRAMs 3<sup>rd</sup> Administrative Review and accompanying IDM at 30.

conversions because the Department may find, in future administrative reviews if this investigation results in a CVD order, additional countervailable subsidies arising from the DWE workout.

Finally, the establishment of a zero cash deposit rate for the debt-to-equity conversions, as argued by DWE, would not result in an overall de minimis subsidy rate for DWE. Therefore, based on any one of the above-enumerated facts, DWE does not qualify for the type of adjustment to the cash deposit rate that was granted in SSSSC from France.

Because we have determined that there is no basis in either the regulations or in case precedent for adjusting DWE's cash deposit rate, we need not address Petitioner's argument that we are prohibited by statute from adjusting the cash deposit rate in investigations.

**Comment 31: Whether the GOK-owned Creditors Held A Supermajority in DWE's 29<sup>th</sup> Creditors' Council Meeting.**

*DWE's Arguments*

- At the 29<sup>th</sup> Creditors' Council Meeting, the GOK had less than the 75 supermajority required.
- Five of the GOK-owned creditors were absent from the meeting and thus their votes were treated as votes of disapproval. These votes should not be included in the Department's analysis of a GOK supermajority at the 29<sup>th</sup> Creditors' Council Meeting.
- The Department has incorrectly included several of the ABS creditors as GOK-owned, even when they do not meet the 25 percent ownership threshold.
- Private creditors that voted their approval were essential to Creditors' Council authorization of the 2009 restructuring.
- In the Post-Preliminary Analysis (Preferential Lending), the Department has not offered any evidence of a GOK policy towards DWE, instead adopting that GOK ownership surpassing the 75 percent threshold is enough and that the actions of private creditors can be ignored. In CFS Paper from Korea at 34, the Department stated that "GOK ownership ratios exceeded 75 percent...does not by itself constitute sufficient evidence that the GOK entrusted or directed the actions of Shinho's {private} creditors during the company's 2000 restructuring." <sup>365</sup>

*Petitioner's Rebuttal Arguments*

- The GOK's argument that it was not involved in the daily business operations of KAMCO does not address the fact that KAMCO, a GOK-owned special purpose agency, provided lending to DWE, which is a financial contribution under the Act.
- In the DRAMs 1<sup>st</sup> Administrative Review, respondents made similar arguments. The Department explained that "creditors in which the GOK was the majority or single largest shareholder (i.e., the GOK-owned or -controlled banks) held over 72 percent of the Creditors' Council vote and owned over 60 percent of Hynix. As such, we find that, through these creditors, the GOK was indeed the dominating force on the Creditors' Council."<sup>366</sup>
- Using the standard of "smaller yet still significant {GOK} ownership of less than 25 percent," established in DRAMs 1<sup>st</sup> Administrative Review, there are several creditors the

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<sup>365</sup> See also Hynix Semiconductor and DRAMs from Korea (Final Determination)

<sup>366</sup> See DRAMs 1<sup>st</sup> Administrative Review and accompanying IDM at Comment 1C.

Department should include as part of the GOK supermajority at the 29<sup>th</sup> Creditors' Council Meeting. DWE is incorrect that the Department has erred in its calculation of a GOK supermajority at the 29<sup>th</sup> Creditors' Council Meeting.

- The verification reports show the GOK's influence through the actions of the FSC, KAMCO and its Management Framework, and the Creditors' Council. This is further supported by the domination of DWE's Creditors' Council by GOK agencies.
- DWE is incorrect in arguing that there is no evidence on the record of GOK involvement. Petitioner provided information showing direct and indirect GOK involvement in the DWJ/DWE restructuring and an explicit GOK policy for supporting the financial restructuring of Daewoo companies.<sup>367</sup> There are numerous specific pieces of evidence on the record that prove GOK involvement in the DWJ/DWE restructuring.
- DWE's reliance on CFS Paper from Korea is misplaced. Unlike CFS Paper from Korea, the record here shows evidence of a GOK policy supporting the restructuring of DWE, making inapplicable the Department's findings regarding the 2000 Shinho restructuring.

**Department's Position:** As an initial matter, the Department is not evaluating whether the participation of private creditors was entrusted or directed by the GOK such that it could be found to be a financial contribution by the government. Rather, the Department is evaluating whether KAMCO directly provided a financial contribution through preferential lending to DWE under the CRPA workout and whether that financial contribution results in a benefit, when compared with a benchmark that meets the requirement, under 19 CFR 351.505(a)(2), of a comparable commercial loan. The provision of lending to a company by the government or a public entity is a financial contribution under section 771(5)(D)(i) of the Act. Furthermore, unlike in DRAMS from Korea (Final Determination) and CFS Paper from Korea, our analysis entails neither an examination of whether the GOK entrusted or directed the private sector members of the Creditors' Council to provide a financial contribution, nor whether the GOK had a policy for DWJ. In addition, our evaluation of preferential lending is based upon the standard established by the statute for determining a benefit: "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."<sup>368</sup>

Petitioner argued that the Department should evaluate the GOK supermajority using the standard of "smaller yet still significant {GOK} ownership of less than 25 percent," established in DRAMS 1<sup>st</sup> Administrative Review. Petitioner has taken this standard out of context. In DRAMS 1<sup>st</sup> Administrative Review, the Department was evaluating whether the GOK entrusted or directed private financial institutions such that the actions of those institutions constituted financial contributions within the meaning of section 771(5)(D) of the Act. In that case, the distinction between GOK-controlled institutions and non-GOK controlled institutions was the necessary prerequisite to evaluating whether there was a direct financial contribution by the GOK (through a GOK-controlled financial institution) or whether there was a GOK financial contribution by a private investor that was entrusted by the GOK.

In this case, we are examining instead whether the GOK provided a direct financial contribution to DWE through the provision of loans by KAMCO, a GOK entity. Because we find that this

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<sup>367</sup> See New Subsidy Allegations, NSA October Letter, and NSA November Letter.

<sup>368</sup> See section 771(5)(E)(ii) of the Act.



constitutes a financial contribution, we must then evaluate whether there is a benefit. DWE maintains that the participation of the private creditors on the same terms constitutes comparable commercial loans, which establish a benchmark. However we must evaluate whether the private creditors' loans satisfy the regulatory requirements for comparability expressed in 19 CFR 351.505(a)(2) and (3) and whether they establish the company's creditworthiness in accordance with 19 CFR 351.505(a)(4)(ii).

It is at this point in our analysis that the Department must examine whether the long-term loans are significant.<sup>369</sup> The Department found in DRAMs 1<sup>st</sup> Administrative Review that the GOK had control over the Creditors' Council because "creditors in which the GOK held at least a 25 percent ownership controlled over 75 percent of the votes in the Creditors' Council and that these creditors owned nearly two-thirds of Hynix in December 2002. We also note that creditors in which the GOK was the majority or single largest shareholder (i.e., GOK-owned or -controlled banks) held over 72 percent of the Creditors' Council vote and owned over 60 percent of Hynix."<sup>370</sup> The Department further explained that "{a}lthough government ownership by itself may not be sufficient to find a financial institution is a government entity, the high level of ownership in most of Hynix's financial creditors, and its smaller yet still significant ownership of less than 25 percent in other Hynix creditors, gave the GOK the ability to exercise substantial influence over the activities of these entities..."<sup>371</sup>

Contrary to petitioner's contention, in DRAMs 1<sup>st</sup> Administrative Review, the Department did not establish a standard of "smaller yet still significant {GOK} ownership of less than 25 percent," in analyzing GOK control over the Creditors' Council. Rather the Department's analysis went beyond the 75 percent threshold in examining the influence of the GOK's control over the actions of other members of the Creditors' Council. In this case, we are not examining whether private creditors were entrusted or directed by the GOK such that they can be deemed to have provided a financial contribution. In analyzing a GOK supermajority on the DWE 29<sup>th</sup> Creditors' Council, we continue to use as a test for significant private investment whether members of the Creditors' Council with at least 25 percent GOK ownership accounted for 75 percent or more of the voting rights on the Creditors' Council.

In light of DWE's arguments, we have re-evaluated the participation of private creditors in the 29<sup>th</sup> Creditors' Council meeting during which the 2009 debt restructuring was approved. In evaluating which creditors comprised the supermajority approval, and which of those creditors were at least 25 percent GOK-owned, we have revised our calculations to reflect the negative votes of some creditors and the absence of other creditors which was counted as a negative vote.<sup>372</sup> After making these adjustments, we do not find that the GOK held a controlling supermajority at the 29<sup>th</sup> Creditors' Council meeting. Consequently, we have reconsidered the countervailability of the restructuring of KAMCO liabilities, both those that were converted from expired debentures to long-term loans and those pre-existing long-term loans that had their terms adjusted.

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<sup>369</sup> See 19 CFR 351.505(a)(4)(ii)

<sup>370</sup> See DRAMs 1<sup>st</sup> Administrative Review and accompanying IDM at 41.

<sup>371</sup> See id.

<sup>372</sup> See DWE Final Calculations.

Regarding DWE's statement that the Department has not offered any evidence of a GOK "policy" towards DWE, we note that the Department did not examine this issue because it is not relevant to the issue of whether the GOK provided a financial contribution to DWE. This issue might be relevant if we were examining whether private parties were entrusted or directed by the GOK to provide a financial contribution to DWE. As we made clear, above, we are not examining this issue in this investigation. We would also note that on October 27, 2011, the Department placed on the record information pertaining to the financial restructuring of Daewoo with numerous references to the active role played by the GOK. Petitioner has also placed on the record additional research in the New Subsidy Allegations, as well as the NSA October Letter and NSA November Letter.

**Comment 32: Whether the Reclassification of the KAMCO-Held Debentures to Long-Term Loans Results in a Countervailable Benefit**

*DWE's Arguments*

- The transfer agreement in 2002 between DWJ, DEMI/DWE, and the Creditors' Council, demonstrates that "all debt would be treated in the same way." Thus the decision at the 29<sup>th</sup> Creditors' Council meeting to "treat all corporate bonds and debentures as long-term loans, subject to the same terms established by the creditors with regard to all long-term loans," is following the Creditors' Council prior practice.<sup>373</sup>
- DWE's accountants had recorded the liabilities as debentures from 2003 through 2008 because they had been recorded that way at DWJ. After the 29<sup>th</sup> Creditors' Council Meeting, the debentures were included in the long-term loans in the financial statements. Internally, however there was no change, as evidenced by the use of the same account code in 2008 and 2009 for the amount both as debentures and as long-term loan as shown in Exhibit 33 of the September 29, 2011 response and DWE Verification Exhibit 26. The interest rate, principal amount, and all other terms remained the same. Accordingly, there is no basis to treat the debentures reclassified as loans for accounting purposes as new loans that should be countervailed.
- The debentures were not "new," they were only relabeled as long-term loans. In Steel Products from France, while loans were consolidated, the terms of the loan did not change and the Department did not consider the consolidation to be a new loan. In comparison, the Department treated consolidated loans with new term and conditions as new loans in Bismuth Carbon Steel Products from France.

*GOK's Arguments*

- Evidence on the record shows that the 2009 transaction was not a new loan; it was a modification of the existing terms of the debt restructuring applied to all debt.
- DWE's reclassification of the debentures was only an accounting change in their books. DWE had always treated the debentures and other long-term KAMCO loans on the same terms. The Department's treatment of the 2009 reclassification as the provision of a new loan is not supported by the record.

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<sup>373</sup> See DWE Verification Report at 37.

### *Petitioners' Rebuttal Arguments*

- Respondent's argument that the reclassification in 2009 of the KAMCO debt from a debenture to a long-term loan "was simply a change in accounting treatment" is inaccurate. KAMCO issued long-term loans because the debenture had expired and DWE could not issue debentures. After the debentures had expired, the creditors agreed to treat the debt as a long-term loan and applied the terms decided at the 29<sup>th</sup> Creditors' Council Meeting.
- As shown in DWE Verification Exhibit 29, the single debenture was replaced by two separate new long-term loans by decision of the 29<sup>th</sup> Creditors' Council Meeting. In addition, accrued interest was capitalized, the maturity extended, and the interest rate changed retroactively.
- In Steel Products from France, the Department found that the "consolidations of the FDES loans resulted in a different structure for the loan and a different interest rate," and "determined that these consolidations amount to new loans..." The facts are the same in this case: the structure of the debt was different and the debenture was divided into two separate amounts bearing different interest rates, applied retroactively.
- In Bismuth Carbon Steel Products from France, the Department found that "consolidated loans carried new terms and conditions. Therefore we are treating these consolidations as new loans..."
- DWE's reliance on Steel Products from France and Bismuth Carbon Steel Products from France is misplaced. DWE's argument that the KAMCO debt terms were revised in the same manner as other older debt does not account for the transformation of an expired debenture into a long-term loan.
- DWE's argument that the Department has erred in relying on Verification Exhibit 26 instead of DWE QNR 9/29 Exhibit 33 is irrelevant. DWE's case brief admits that the two exhibits contain identical data.

**Department's Position:** As discussed above, we no longer find that the GOK exercised a supermajority in the 29<sup>th</sup> Creditors' Council meeting. Thus, based on CFS Paper from Korea, the actions of private creditors represent comparable commercial loans, within the meaning of 19 CFR 351.505(a)(2)(i) for purposes of evaluating the portion of KAMCO-held liabilities that were not converted from debentures to long-term loans. When we compare the restructured terms of this portion of the KAMCO liabilities to the restructured loans held by private creditors as a benchmark, we find no benefit. Based upon information in DWE's financial statement, this program was originally alleged as the provision of new loans by KAMCO. It was not until verification that the exact nature of the increase in KAMCO loans was confirmed. Under these circumstances, we have relied upon the decision in CFS Paper from Korea to guide our selection of a benchmark. If this investigation results in a countervailing duty order, in any subsequent administrative review we plan to further examine this restructuring of DWE's long-term loans to ascertain whether the facts support the application of the CFS Paper from Korea precedent.

However, we continue to find that it is not appropriate to measure the benefit, if any, from the KAMCO loans that were formerly expired debentures by comparison with the restructured terms of DWE's long-term loans held by private creditors. The regulations define a comparable commercial loan as one the borrower "could actually obtain on the market." We cannot conclude that the restructuring of the loans held by private creditors provides an appropriate benchmark for measuring a benefit with regard to the conversion of expired debentures into

long-term loans. In addition, the loans restructured by private creditors are not loans that DWE could actually obtain on the market, as contemplated by 19 CFR 351.505(a)(3)(i), because DWE did not obtain those loans on the market and because they do not represent the considerations of a commercial lender evaluating a borrower seeking new financing. DWE did not obtain any comparable commercial loans.<sup>374</sup> Therefore we selected a benchmark in accordance with 19 CFR 351.505(a)(3)(ii). We also included a risk premium in accordance with 19 CFR 351.505(a)(3)(iii) because DWE was uncreditworthy through at least 2009.

### **Comment 33: Whether Private Creditors Restructured Their Loans On the Same Basis and On the Same Terms**

#### *DWE's Arguments*

- The 2009 E&Y Report recommended that DWE discontinue non-competitive business divisions and that for unsecured loans associated with the discontinued divisions the interest rate should be reduced to zero. This restructuring would lead to earlier business normalization and improve the loan collection rate.
- The 29<sup>th</sup> Creditors' Council Meeting decided to implement these recommendations in three parts: 1) capitalizing interest accrued from January 1, 2007 to March 31, 2009; 2) keeping unchanged, at five percent interest rates, for loans associated with continuing operations; 3) reducing the interest rate to zero on unsecured loans associated with discontinued operations. These terms applied to all of DWE's creditors and the decision does not provide a countervailable benefit.
- The five percent interest rate represents no change in the terms of the long-term loans and therefore is not countervailable.
- Under the Department's regulations and precedent, because the GOK-owned creditors do not have a supermajority on the Creditors' Council, the loans restructured by private creditors should be used as comparable commercial loans for these "new loans." These loans are identical in structure in that they consist of capitalized interest and zero interest rate unsecured loans and are "commercial" because private creditors agreed to the restructuring. Using these loans as a benchmark demonstrates that DWE did not receive any benefit from the 2009 restructuring.
- In CFS Paper from Korea, Shinho's Creditors' Council, operating under the same CRA and CRPA framework and with a GOK supermajority, agreed to restructure Shinho's loans in 2000. The Department determined that absent evidence of the GOK influence, "loans extended or restructured by Shinho Paper's commercial lenders constitute comparable commercial loans within the meaning of 19 CFR 351.505(a)(2) that may serve as benchmarks for the government contributions. Further, record evidence indicates that the restructuring plans imposed no distinction in the treatment of debt held by GOK lending institutions and Shinho's other creditors."<sup>375</sup> This 2009 DWE restructuring is identical to Shinho Paper and the Department should reverse its position at the final determination.

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<sup>374</sup> DWE's 2009 Financial Statements at 27 show that Hana Bank had KRW three million in debentures in 2008 and zero in 2009, indicating that in 2009 these debentures underwent the same transformation as the KAMCO debentures (the KAMCO debentures were valued at approximately KRW 101,000 million). However, these debentures amount to less than \$3,000. Based on its negligible size, this transaction is not meaningful to our selection of a benchmark. See DWE QNR 7/7 at Exhibit 2.

<sup>375</sup> See CFS Paper from Korea and accompanying IDM at 43.

### *GOK's Arguments*

- KAMCO agreed to the 2009 restructuring because it made commercial sense. KAMCO was not treated any differently than other financial institutions in the debt restructuring.
- The 2009 restructuring was decided and implemented under the CRPA by decision of the Creditors' Council. While KAMCO is a government-owned entity, its daily business operation is not controlled by the GOK. As a creditor, KAMCO had the right to participate in the 2009 restructuring. KAMCO made decisions at the Creditors' Council meeting based on its own judgment of risk, in the same manner as any other financial institution.
- Under the Department's regulations, KAMCO's transaction must be compared to the viable private benchmark. The 2009 restructuring included comparable private transactions because the same terms and conditions applied to all members of the Creditors' Council. The Department should reverse its decision at the final determination and find no benefit was provided by KAMCO to DWE.

### *Petitioner's Rebuttal Arguments*

- DWE's argument that there is no evidence indicating government control of DWE Creditors' Council or of government policy toward DWE ignores record evidence.
- Neither the GOK nor DWE contested the Department's preliminary finding that the new KAMCO preferential loans provided in 2009 were de facto specific to DWE under section 771(5A)(D)(iii)(III) of the Act.
- The Department has been consistent and explicit in previous decisions: it is the "Department's practice to treat the extension of maturities as new loans."<sup>376</sup> The 29<sup>th</sup> Creditors' Council Meeting decided to "extend the maturity of the loans, to apply the newly agreed upon interest rates, and to capitalize interest."<sup>377</sup>
- The 29<sup>th</sup> Creditors' Council Meeting decision resulted in the reduction of the interest rate to zero for long-term loans affiliated with discontinued operations. In prior administrative determinations "{t}he Department has consistently treated any material change to an outstanding loan as a new loan in its analysis."<sup>378</sup>
- The Department is correct to find that DWE received no comparable commercial loans in 2009. As a government-owned company, the CVD Preamble states that the presence of commercial loans is insufficient to determine whether a government-owned firm could have obtained long-term financing from commercial sources because "a bank is likely to consider that the government will repay the loan in the event of a default."<sup>379</sup>
- In DRAMS from Korea (Final Determination) at 10, the Department found that the continuing involvement of the GOK in the Hynix restructuring resulted in a "widely shared perception in the ROK financial community that the GOK's policy commitment to Hynix's survival continued to be significant." Any comparable-commercial loans DWE had in 2009 carry an implicit government guarantee and should be disregarded in the creditworthiness analysis.

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<sup>376</sup> See CFS Paper from Korea; DRAMS from Korea (Final Determination); and Hot-Rolled Steel from South Africa.

<sup>377</sup> See DWE Verification Report

<sup>378</sup> See Carbon Steel Plate from Mexico.

<sup>379</sup> See also Hot Rolled Steel from Indonesia.

**Department's Position:** As discussed above, we have revised our calculation of GOK representation at the 29<sup>th</sup> Creditors' Council meeting. We no longer find that a GOK supermajority approved the resolutions of the 29<sup>th</sup> Creditors' Council meeting. Thus, when examining the KAMCO liabilities that did not originate as debentures, we find that private creditors restructured the debt on the same terms as the GOK-owned creditors, including KAMCO.

In CFS Paper from Korea, the Department determined that “{b}ecause the terms and rate structure decreed by the Creditors' Council were applied equally to these long-term capital leases and to those provided by GOK lending institutions, we find that these were comparable to the government provided loans within the meaning of 19 CFR 351.505(a)(2)(i).”

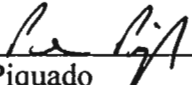
We find the same standard applies to the 29<sup>th</sup> Creditors' Council meeting with regard to the restructuring of the non-debenture liabilities. Because there is no supermajority of GOK-owned creditors, the actions of private creditors provide an appropriate benchmark against which to measure the non-debenture liabilities. Thus, there is no benefit from the restructuring by KAMCO of the non-debenture liabilities. However we continue to find that the conversion of the expired debentures into long-term loans confers countervailable benefits to DWE during the POI.<sup>380</sup>

## VI. Recommendation

We recommend that you accept the positions described above.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

16 MARCH 2012  
\_\_\_\_\_  
Date

<sup>380</sup> See “GOK Preferential Lending Under the Daewoo Workout,” above, and Comments in 31-33.

## APPENDIX

### ***I. ACRONYM AND ABBREVIATION TABLE***

<b>Acronym/Abbreviation</b>	<b>Full Name or Term</b>
ABS	Asset Backed Security
The Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
AUL	Average useful life
BAH	Booz Allen Hamilton
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIT	Court of International Trade
CRA	Corporate Restructuring Agreement
CRPA	Corporate Restructuring Promotion Act
CVD	Countervailing Duty
D/A	Documents Against Acceptance
Department	Department of Commerce
DEMI	Daewoo Electronic Motor Industries; Daewoo Electric Motor Co., Ltd.
DWE	Daewoo Electronics Corporation
DWJ	Daewoo Jeonja Company
E&Y	Ernst & Young
FSC	Financial Services Commission
FSS	Financial Supervisory Services
GDP	Gross Domestic Product
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
KAMCO	Korea Asset Management Corporation
KDB	Korea Development Bank
KDIC	Korea Deposit Insurance Corporation
KEIC	Korea Export Insurance Corporation
KEXIM	Korean Export Import Bank
KFB	Korea First Bank
KFTC	Korea Fair Trade Commission
KIAT	Korea Institute for Advancement of Technology
KoFC	Korea Finance Corporation
Kum Ah Steel	Kum Ah Steel Co., Ltd.
K-SURE	Korea Trade Insurance Corporation
L/C	Letter of Credit
LG Chemical	LG Chemical, Ltd.
LGE	LG Electronics, Inc.
LG Hausys	LG Hausys, Ltd.
LGI	LG International Corp.

LIBOR	London Interbank Offered Rate
MEST	Ministry of Education, Science, and Technology
MKE	Ministry of Knowledge Economy
MOU	Memorandum of Understanding
NPA's	Non-performing assets
NPL's	Non-performing loans
O/A	Open Account Export Transaction
PIPP	Photonics Industry Promotion Project
POI	Period of Investigation
R&D	Research and Development
SEA	Samsung Electronics America, Inc.
SEC	Samsung Electronics Co., Ltd.
SEL	Samsung Electronics Logitech
ServeOne	ServeOne Co., Ltd.
SGEC	Samsung Gwangju Electronics Co., Ltd.
SMA	Seoul Metropolitan Area
SWOT	Strength Weakness Opportunity Threat



## II. LITIGATION TABLE

<b>Short Cite</b>	<b>Cases</b>
<u>Agro Dutch</u>	<u>Agro Dutch Industries Limited v. United States</u> , Case No. 02-499, Slip Op. 07-185 (CIT Dec. 26, 2007)
<u>AK Steel</u>	<u>AK Steel Corp. v. United States</u> , 192 F.3d 1367 (Fed. Cir. 1999)
<u>Alloy Magnesium from Canada (NAFTA)</u>	<u>Re: Alloy Magnesium from Canada, Final Results of US Department of Commerce Countervailing Duty New Shipper Review (2003)</u> , USA-CDA-2003-1904-02 (Ch. 19 Panel)
<u>Bethlehem Steel</u>	<u>Bethlehem Steel Corp. v. United States</u> , 140 F. Supp. 2d 1354 (CIT 2001)
<u>Fabrique</u>	<u>Fabrique de Fer de Charleroi, SA v. United States</u> , 166 F. Supp. 2d 593 (CIT 2001)
<u>Ferro Union Inc.</u>	<u>Ferro Union, Inc. v. United States</u> , 44 F. Supp. 2d 1310 (CIT 1999)
<u>Geneva Steel</u>	<u>Geneva Steel v. United States</u> , 20 C.I.T. 7; 914 F. Supp. 563 (January 3, 1996)
<u>Gouverneur Talc</u>	<u>Sec. of Labor v. Gouverneur Talc Co.</u> , 20 FMSHRC 129 (1998)
<u>Hynix Semiconductor</u>	<u>Hynix Semiconductor, Inc. v. United States</u> , 29 C.I.T. 995 Slip Op. 05-106 (August 25, 2005)
<u>Magnola Metallurgy</u>	<u>Magnola Metallurgy Inc. v. United States</u> , U.S. Magnesium LLC, 464 F. Supp. 2d 1376 (CIT 2006); <u>Magnola Metallurgy Inc. v. United States</u> , U.S. Magnesium LLC, 508 F.3d 1349 (CAFC 2007)
<u>Mannesmannrohren-Werke</u>	<u>Mannesmannrohren-Werke AG v. United States</u> , 77 F. Supp. 2d 1302 (CIT 1999)
<u>Nippon Steel</u>	<u>Nippon Steel Corporation v. United States</u> , 337 F.3d 1373 (Fed. Cir. 2003)
<u>NSK Ltd.</u>	<u>NSK Ltd. v. United States</u> , 919 F. Supp. 442 (CIT 1996)
<u>NTN Bearing Corp.</u>	<u>NTN Bearing Corp. v. United States</u> , 74 F.3d 1204 (Fed. Cir. 1995)
<u>Rhone Poulenc</u>	<u>Rhone Poulenc, Inc. v. United States</u> , 899 F.2d 1185 (Fed. Cir. 1990).
<u>Tung Mung</u>	<u>Tung Mung Development Co. v. United States</u> , 25 CIT 752 (2001)

### **III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE**

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

<b>Short Cite</b>	<b>Administrative Case Determinations</b>
	<b><i>Ball Bearings and Parts Thereof - Thailand</i></b>
<u>Ball Bearings from Thailand</u>	<u>Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Duty Administrative Review</u> , 57 FR 26646 (June 15, 1992)
	<b><i>Bottom Mount Combination Refrigerators – Korea</i></b>
<u>Preliminary Determination</u>	<u>Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination</u> , 76 FR 55044 (September 6, 2011)
	<b><i>Carbon and Alloy Steel Wire Rod - Turkey</i></b>
<u>Wire Rod from Turkey</u>	<u>Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey</u> , 67 FR 55815 (August 30, 2002)
	<b><i>Carbon Steel - Belgium</i></b>
<u>Carbon Steel from Belgium</u>	<u>Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium</u> , 47 FR 39304 (September 7, 1982)
	<b><i>Carbon Steel Butt-Weld Pipe Fittings – Israel</i></b>
<u>Carbon Steel Fittings from Israel</u>	<u>Carbon Steel Butt-Weld Pipe Fittings from Israel: Final Affirmative Countervailing Duty Determination</u> , 60 FR 10569 (February 27, 1995)
	<b><i>Coated Free Sheet Paper – China</i></b>
<u>CFS Paper from China</u>	<u>Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China</u> , 72 FR 60645 (October 25, 2007)
	<b><i>Coated Free Sheet Paper - Korea</i></b>
<u>CFS Paper from Korea</u>	<u>Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination</u> , 72 FR 60639 (October 25, 2007)
	<b><i>Cold-Rolled Steel - Brazil</i></b>
<u>Cold Rolled Steel from Brazil</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil</u> , 65 FR 5536 (February 4, 2000)
	<b><i>Corrosion-Resistant Carbon Steel Flat Products - Korea</i></b>
<u>CORE from Korea AR Final Results (Jan. 2009)</u>	<u>Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review</u> , 74 FR 2512 (January 15, 2009)
<u>CORE from Korea AR Preliminary Results (Sept. 2010)</u>	<u>Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review</u> , 75 FR 55745 (September 14, 2010)
<u>CORE from Korea AR Final Results (Jan. 2011)</u>	<u>Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review</u> , 75 FR 3613 (January 20, 2011)

	<b><i>Cut-to-Length Carbon-Quality Steel Plate – Korea</i></b>
<u>CTL from Korea</u>	<u>Cut-to-Length Carbon-Quality Steel Plate from Korea</u> , 64 FR 73176 (December 29, 1999)
	<b><i>Cut-to-Length Carbon Steel Plate – Mexico</i></b>
<u>Carbon Steel Plate from Mexico</u>	<u>Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review</u> , 69 FR 1972 (January 13, 2004)
	<b><i>Dynamic Random Access Memory Semiconductors – Korea</i></b>
<u>DRAMS from Korea (Preliminary Determination)</u>	<u>Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination</u> , 68 FR 16766 (April 17, 2003)
<u>DRAMS from Korea (Final Determination)</u>	<u>Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea</u> , 68 FR 37122 (June 23, 2003)
<u>DRAMS 1<sup>st</sup> Administrative Review</u>	<u>Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review</u> , 71 FR 14174 (March 21, 2006)
<u>DRAMS 3<sup>rd</sup> Administrative Review</u>	<u>Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review</u> , 73 FR 14218 (March 17, 2008)
<u>DRAMS from Korea AR (Jan. 2011)</u>	<u>Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Countervailing Duty Administrative Review</u> , 76 FR 2336 (January 13, 2011)
	<b><i>Hot-Rolled Carbon Steel Flat Products – India</i></b>
<u>Hot-Rolled Steel from India</u>	<u>Hot Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review</u> , 74 FR 20923 (May 6, 2009)
	<b><i>Hot-Rolled Carbon Steel Flat Products – Indonesia</i></b>
<u>Hot Rolled Steel from Indonesia.</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia</u> , 66 FR 49635 (September 28, 2001)
	<b><i>Hot-Rolled Carbon Steel Flat Products – South Africa</i></b>
<u>Hot-Rolled Steel from South Africa</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from South Africa</u> , 66 FR 40512 (October 3, 2001)
	<b><i>Hot-Rolled Carbon Steel Flat Products – Thailand</i></b>
<u>Hot-Rolled Steel from Thailand</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand</u> , 66 FR 50410 (October 3, 2001)
	<b><i>Hot Rolled Lead and Bismuth Carbon Steel Products - France</i></b>
<u>Bismuth Carbon Steel Products from France</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France</u> , 58 FR 6221 (January 27, 1993)
	<b><i>Hot-Rolled Steel - Brazil</i></b>

<u>Hot-Rolled Steel from Brazil</u>	<u>Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review</u> , 76 FR 22868 (April 25, 2011)
	<b><i>Kitchen Shelving and Racks – China</i></b>
<u>Kitchen Racks from China</u>	<u>Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 37012 (July 27, 2009)
	<b><i>Laminated Woven Sacks – China</i></b>
<u>Sacks from China</u>	<u>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</u> , 73 FR 35639 (June 24, 2008)
	<b><i>Lawn Groomers – China</i></b>
<u>Lawn Groomers from China (Preliminary Determination)</u>	<u>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</u> , 73 FR 70971 (November 24, 2008)
<u>Lawn Groomers from China (Final Determination)</u>	<u>Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 29180 (June 19, 2009)
	<b><i>Magnesium – Canada</i></b>
<u>Alloy Magnesium from Canada</u>	<u>Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review</u> , 68 FR 22359 (April 28, 2003)
<u>Pure Magnesium from Canada</u>	<u>Pure Magnesium and Alloy Magnesium from Canada: Final Results of 2003 Countervailing Duty Administrative Review</u> , 73 FR 14218 (September 14, 2005)
	<b><i>Magnesium – Israel</i></b>
<u>Pure Magnesium from Israel</u>	<u>Final Affirmative Countervailing Duty Determination: Pure Magnesium from Israel</u> , 66 FR 49351 (September 27, 2001)

	<b><i>Multilayered Wood Flooring – China</i></b>
<u>Multilayered Flooring from China</u>	<u>Multilayered Wood Flooring from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 76 FR 64313 (October 18, 2011)
	<b><i>PET Film - India</i></b>
<u>PET Film from India (Final Determination)</u>	<u>Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India</u> , 67 FR 34905 (May 16, 2002)
<u>PET Film from India (AR 2004)</u>	<u>Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India</u> , 69 FR 51063 (August 17, 2004)
<u>PET Film from India (AR 2010)</u>	<u>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review</u> , 75 FR 6634 (February 10, 2010)
	<b><i>Phosphoric Acid - Israel</i></b>
<u>Phosphoric Acid from Israel</u>	<u>Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review</u> , 63 FR 13626 (March 20, 1998)
	<b><i>Piston Inserts – Korea</i></b>
<u>Piston Inserts from Korea</u>	<u>Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination</u> , 74 FR 48059 (Sept. 21, 2009)
	<b><i>Potassium Chloride – Israel</i></b>
<u>Potassium Chloride from Israel</u>	<u>Potassium Chloride From Israel: Final Affirmative Countervailing Duty Determination</u> , 49 FR 36122 (September 14, 1984)
	<b><i>Seamless Pipe - Italy</i></b>
<u>Seamless Pipe from Italy</u>	<u>Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Italy</u> , 60 FR 31992 (June 19, 1995)
	<b><i>Static Random Access Memory Semiconductors - Taiwan</i></b>
<u>Semiconductors from Taiwan</u>	<u>Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan</u> , 63 FR 8909 (February 23, 1998)
	<b><i>Stainless Steel Plate - Italy</i></b>
<u>SS Plate from Italy</u>	<u>Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy</u> , 64 FR 15508 (March 31, 1999)
	<b><i>Stainless Steel Sheet &amp; Strip in Coils – France</i></b>
<u>SSSSC from France</u>	<u>Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review</u> , 68 FR 53963 (September 15, 2003)
	<b><i>Stainless Steel Sheet &amp; Strip in Coils – Korea</i></b>
<u>SSSSC from Korea 2001 Review</u>	<u>Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea</u> , 69 FR 2113 (January 14, 2004)

<u>SSSS Coils from Korea</u>	<u>Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea</u> , 71 FR 50886 (Aug. 28, 2006)
	<b><i>Steel Grating– China</i></b>
<u>Steel Grating from China</u>	<u>Steel Grating from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 75 FR 32362 (June 8, 2010)
	<b><i>Steel Products – Austria</i></b>
<u>Steel Products from Austria</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria</u> , 58 FR 37217 (July 9, 1993)
	<b><i>Steel Products – France</i></b>
<u>Steel Products from France</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Steel Products from France</u> , 58 FR 37304 (July 9, 1993).
	<b><i>Steel Products - Korea</i></b>
<u>Steel Products from Korea</u>	<u>Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea</u> , 57 FR 57761 (December 7, 1992); <u>Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea</u> , 57 FR 37338 (July 9, 1993)
	<b><i>Tissue Paper - China</i></b>
<u>Tissue Paper from China</u>	<u>Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order</u> , 76 FR 47551 (Aug. 1, 2011)
	<b><i>Uranium – France</i></b>
<u>Uranium from France</u>	<u>Low Enriched Uranium from France</u> , 66 FR 65901 (December 21, 2001)
	<b><i>Uranium – Germany, Netherlands, and the United Kingdom</i></b>
<u>Uranium</u>	<u>Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom</u> , 69 FR 40869 (July 7, 2004)
	<b><i>Welded Carbon Alloy Steel Standard Pipe - Turkey</i></b>
<u>Steel Pipe from Turkey</u>	<u>Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey</u> , 71 FR 43111 (July 31, 2006)
	<b><i>Wire Rod - Italy</i></b>
<u>Wire Rod from Italy</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy</u> , 63 FR 40474 (July 29, 1998)
	<b><i>Woven Ribbons - China</i></b>
<u>Woven Ribbons from China</u>	<u>Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 75 FR 41801 (July 19, 2010)

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

<b>Short Cite</b>	<b>Full Name</b>
Petition	Petitions for the Imposition of Antidumping and Countervailing Duties, Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (March 30, 2011)
New Subsidy Allegations	Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: New Subsidy Allegations (July 15, 2011)
Post-Preliminary Analysis (NSA)	Countervailing Duty Investigation: Bottom Mount Combination Refrigerator-Freezers (Refrigerators) from the Republic of Korea: Post-Preliminary Analysis of New Subsidy Allegations (December 21, 2011)
Post-Preliminary Analysis (Cross-Ownership)	Countervailing Duty Investigation: Bottom Mount Combination Refrigerator-Freezers (Refrigerators) from the Republic of Korea: Post-Preliminary Analysis of Cross-Ownership (December 21, 2011)
Post-Preliminary Analysis (Daewoo Restructuring)	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Post-Preliminary Analysis Regarding Restructuring of Daewoo Electronics Corporation (December 21, 2011)
Post-Preliminary Analysis (Preferential Lending)	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea Post-Preliminary Analysis: GOK Preferential Lending Under the Daewoo Workout (February 21, 2012)
DWE Case Brief	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea; DWE Case Brief (February 14, 2012)
DWE Verification Report	DWE Verification Report dated February 3, 2012
DWE QNR 7/7	DWE questionnaire response of July 7, 2011.
DWE QNR 9/29	DWE New Subsidy Allegations questionnaire response of September 29, 2011
DWE QNR 11/8	DWE New Subsidy Allegations questionnaire of November 8, 2011
GOK Case Brief	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea; GOK Case Brief (February 14, 2012)
GOK Verification Report	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Verification of the Questionnaire Response Submitted by the Government of the Republic of Korea (February 3, 2012)
GOK QNR 6/29	GOK questionnaire response dated June 29, 2011
GOK QNR 8/15	GOK supplemental questionnaire response dated August 15, 2011
GOK Clerical Mistakes	GOK Letter regarding Clerical Mistakes dated December 14, 2011
GOK 2011 Tax Excerpt	Government of Korea submission - Excerpts of 2011 Statistical Yearbook of National Tax dated January 5, 2012

LGE Verification Report	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea; Verification of the Questionnaire Responses Submitted by LG Electronics, Inc. (LGE), LG International Corp., (LGI), and Serveone, Inc. (Serveone) (February 2, 2012)
LGE QNR 8/9	LGE supplemental questionnaire response dated August 9, 2011
LGE QNR 9/9	LGE NSA questionnaire response dated September 9, 2011
LGE QNR 12/1	LGE supplemental questionnaire response dated December 21, 2011
SEC Case Brief	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea; SEC Case Brief (February 14, 2012)
SEC Verification Outline	Verification of Samsung Electronics Co., Ltd.'s Responses in the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (November 28, 2011)
SEC Verification Report	Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea; Verification of the Questionnaire Responses Submitted by Samsung Electronics Co., Ltd. (SEC) (February 2, 2012)
SEC QNR 5/23	SEC questionnaire response dated May 23, 2011
SEC QNR 6/29	SEC questionnaire response dated June 29, 2011
SEC QNR 7/5	SEC supplemental questionnaire response dated July 5, 2011
SEC QNR 8/9	SEC supplemental questionnaire response dated August 9, 2011
SEC QNR 8/19	SEC supplemental questionnaire response dated August 19, 2011
SEC QNR 9/19	SEC NSA questionnaire response dated September 19, 2011
DWE Preliminary Calculations (Daewoo Restructuring)	Memorandum to the File by Milton I. Koch through Dana S. Mermelstein: Calculations for Post-Preliminary Determination Regarding the Restructuring of Daewoo Electronics Corporation (DWE) (December 21, 2011)
DWE Preliminary Calculations (Preferential Lending)	Memorandum to the File by Milton I. Koch through Dana S. Mermelstein: Calculations for the Post-Preliminary Analysis on the GOK Preferential Lending Under the Daewoo Workout (February 21, 2012)
DWE Final Calculations	Final Countervailing Duty Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea; Calculations for Daewoo Electronics Corp. (March 16, 2012)
LGE Final Calculations	Final Countervailing Duty Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea; Calculations for LG Electronics Inc. (March 16, 2012)
SEC Preliminary Calculations	Memorandum to the File by Milton I. Koch through Dana S. Mermelstein: Calculations for Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd. (August 29, 2011)
SEC Final Calculations	Final Countervailing Duty Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea; Calculations for Samsung Electronics Co., Ltd. (March 16, 2012)



NSA October Letter	Letter from Cassidy, Levy, Kent to the Secretary of Commerce, re: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Comments in Reply to the Supplemental Responses on New Subsidy Allegations, dated October 4, 2011
NSA November Letter	Letter from Cassidy, Levy, Kent to the Secretary of Commerce, re: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Comments on Government of Korea and Daewoo Electronics Corporation Responses to Department's Supplemental Questionnaires on Daewoo Restructuring and Other Subsidy Programs, dated November 14, 2011.
Petitioner Case Brief	Bottom Mount Combination-Refrigerator-Freezers the Republic of Korea; Petitioner Case Brief (February 14, 2012)

**MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)**

<b>Short Cite</b>	<b>Full Name</b>
<u>CVD Preamble</u>	<u>Countervailing Duties; Final Rule</u> , 63 FR 65348 (November 25, 1998)
<u>Canada-Aircraft</u>	Panel Report, Canada – Measures Affecting the Export of Civilian Aircraft, WT/DS70/R, adopted August 20, 1999
<u>Commentaries on American Law</u>	James Kent, 1 <u>Commentaries on American Law</u> 516 (9 <sup>th</sup> ed. 1858).
<u>Proposed Regulations</u>	<u>Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties)</u> , 54 FR 23366 (May 31, 1989)
<u>SAA</u>	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<u>SCM Agreement</u>	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)
<u>Softwood Lumber from Canada</u>	Panel Report, United States – Preliminary Determination with Respect to Certain Softwood Lumber from Canada, WT/DS236/R, adopted April 14, 1999