



C-580-873

Investigation


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AD/CVD Office I

March 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of
Countervailing Duty Investigation: Non-Oriented Electrical Steel
from the Republic of Korea

I. SUMMARY

The U.S. Department of Commerce (the Department) preliminarily determines that *de minimis* countervailable subsidies are being provided to producers and exporters of non-oriented electrical steel (NOES) in the Republic of Korea (Korea), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On September 30, 2013, AK Steel Corporation (hereinafter, Petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on NOES from, *inter alia*, Korea.¹ Supplements to the petition and our consultations with the Government of Korea (GOK) are described in the Initiation Checklist.² On November 6, 2013, the Department initiated a CVD investigation on NOES from Korea.³

¹ See Letter from Petitioner, "Petitions For The Imposition Of Antidumping And Countervailing Duties Against Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan" (September 30, 2013) (Petition).

² See "Initiation Checklist: Non-Oriented Electrical Steel from the Republic of Korea" (November 6, 2013) (Initiation Checklist).

³ See *Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 78 FR 68412 (November 14, 2013) (CVD Initiation). As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).



The Department stated in the *CVD Initiation* its intent to select respondents based on data obtained from U.S. Customs and Border Protection (CBP).⁴ On November 7, 2013, we released the CBP entry data under administrative protective order (APO) for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings included in the scope of the *CVD Initiation*.⁵ We invited comments on these data and received submissions from POSCO on November 20, 2013,⁶ and Petitioner on November 21, 2013.⁷ On December 19, 2013, we selected Daewoo International Corporation (DWI) and POSCO as the two mandatory company respondents.⁸

On December 18, 2013, the Department extended the deadline to file new subsidy allegations to February 5, 2014,⁹ and on December 19, 2013, in accordance with section 703(c)(1)(A) of the Act, published a notice postponing the due date for this preliminary determination.¹⁰

On December 20, 2013, the Department issued initial CVD questionnaires to DWI, the GOK, and POSCO. The Government of Korea (the GOK)¹¹ and POSCO¹² submitted their responses to the Department's initial CVD questionnaire on February 3, 2014. In the PQR, POSCO submitted that as of the end of the period of investigation (POI), POSCO owned 60.31 percent of DWI, making the two companies affiliated under section 771(33) of the Act.¹³ Further, because DWI was involved in the export of POSCO's subject merchandise to the United States during the POI,¹⁴ it submitted a combined response for these companies.

On February 12, 2014, the Department issued supplemental questionnaires to both the GOK and POSCO. Also on February 12, 2014, Petitioner timely submitted four new subsidy allegations.¹⁵ On February 24, 2014, we initiated an investigation on all four of these newly alleged

⁴ See *CVD Initiation* at 68415.

⁵ See Memorandum to the File, "Release of Customs and Border Protection ("CBP") Data" (November 7, 2013).

⁶ See Letter from POSCO, "Non-Oriented Electrical Steel from South Korea, Case No. C-580-873: Comments on CBP Data" (November 20, 2013).

⁷ See Letter from Petitioner, "Non-Oriented Electrical Steel From The Republic Of Korea: Petitioner's Comments On CBP Data And Respondent Selection" (November 21, 2013).

⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea: Respondent Selection Memorandum" (December 19, 2013) (Respondent Selection Memo).

⁹ See Memorandum to the File, "New Subsidy Allegation Deadline: Non-Oriented Electrical Steel from the People's Republic of China and the Republic of Korea" (December 18, 2013).

¹⁰ See *Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 76815 (December 19, 2013).

¹¹ See Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Response to the Questionnaire for the Government of Korea" (February 3, 2014) (GQR).

¹² See Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Initial Questionnaire Response" (February 3, 2014) (PQR).

¹³ See PQR at 2.

¹⁴ *Id.*, at 4.

¹⁵ See Letter from Petitioner, "Non-Oriented Electrical Steel From Korea: Petitioner's New Subsidy Allegations" (February 12, 2014).

subsidies,¹⁶ and issued new subsidy allegation questionnaires to the GOK and POSCO. On March 13, 2014, the GOK and POSCO filed their respective new subsidy allegations questionnaire responses.¹⁷ On February 25, 2014, Petitioner alleged that critical circumstances exist regarding imports of NOES from Korea,¹⁸ which led us to issue POSCO a critical circumstances questionnaire on February 26, 2014. POSCO submitted its response to the Department's critical circumstances questionnaire on March 5, 2014.¹⁹

The GOK submitted its response to the Department's supplemental questionnaire on March 5,²⁰ and POSCO submitted its response on March 6, 2014.²¹ On March 7, the Department issued a second supplemental questionnaire to POSCO, to which it submitted its response on March 11, 2014.²²

On March 11, 2014, alignment of the final CVD determination with the final antidumping duty determination of NOES from Korea was requested by Petitioner.

The deadline for the preliminary determination of this investigation was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.*, March 18, 2014).²³

B. Period of Investigation

The period of investigation (POI) is January 1, 2012, through December 31, 2012.

III. CRITICAL CIRCUMSTANCES

As noted above, on February 25, 2014, Petitioner alleged critical circumstances exist with respect to imports of NOES from Korea. In accordance with 19 CFR 351.206(c)(2)(i), because Petitioner submitted a critical circumstances allegation more than 20 days before the scheduled

¹⁶ See Memorandum to Thomas Gilgunn, Director, AD/CVD Operations, Office I, "New Subsidy Allegations" (February 24, 2014) (NSA Memorandum).

¹⁷ See Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation: GOK's Response to the Department's New Subsidy Allegations Questionnaire for Government of the Republic of Korea" (March 13, 2014) (GNSAQR); *see also* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: New Subsidy Allegations Questionnaire Response" (March 13, 2014) (PNSAQR).

¹⁸ See Letter from Petitioner, "Non-Oriented Electrical Steel From Korea: Petitioner's Critical Circumstances Allegations" (February 25, 2014).

¹⁹ See Letter from POSCO, "Non-Oriented Electrical Steel from the Republic of Korea. Case No. C-580-873: Response to Q&V Questionnaire Pertaining to Critical Circumstances Allegation" (March 5, 2014) (PCCQR).

²⁰ See Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation: GOK's Response to Department's First Supplemental Questionnaire for Government of the Republic of Korea" (March 5, 2014) (GSQR).

²¹ See Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Supplemental Questionnaire Response" (March 6, 2014) (P1SR).

²² See Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Second Supplemental Questionnaire Response" (March 11, 2014) (P2SR).

²³ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

date of this preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.²⁴

Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect that: (A) {t}he alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), and (B) there have been massive imports of the subject merchandise over a relatively short period.

The SCM Agreement prohibits “subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.”²⁵

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.²⁶ Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.²⁷ In addition, the Department expands the periods as more data are available.

For this preliminary determination, however, since we do not find that POSCO benefitted from any subsidies inconsistent with the SCM Agreement,²⁸ we do not find that critical circumstances exist with regard to imports of NOES from Korea. Because POSCO did not benefit from any subsidies inconsistent with the SCM Agreement, there was no need to analyze whether there were massive imports of the subject merchandise over a relatively short period. Finally, we note that a finding of critical circumstances is only relevant if, as a result of an affirmative preliminary or affirmative final CVD determination, there is a suspension of liquidation. For this preliminary determination, we find that the calculated subsidy rate for POSCO is *de minimis*. Thus, our preliminary determination for this investigation is negative. We intend to revisit this preliminary finding concerning critical circumstances when we make the final subsidy determination, currently scheduled for July 29, 2014.

²⁴ See, e.g., *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

²⁵ See SCM Agreement, Article 3.1(a).

²⁶ See 19 CFR 351.206(i). Since the Department typically uses monthly import/shipment data in its analysis, if a petition is filed in the first half of the month, the Department’s practice has been to consider the month in which the petition was filed as part of the comparison period.

²⁷ *Id.*

²⁸ See, *infra*, “Programs Preliminarily Determined To Be Countervailable.”

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *CVD Initiation* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.²⁹

We received numerous comments concerning the scope of the antidumping duty (AD) and CVD investigations of NOES from, *inter alia*, Korea. Because of the timing of these scope comments, we have not had adequate time to analyze the issues raised by parties prior to this preliminary determination. Therefore, we plan on addressing scope issues raised by interested parties in the preliminary determination of the corresponding AD investigations.

V. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" in the prior sentence means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight at least 1.25 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum.

NOES is subject to this investigation whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.*, with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

²⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *CVD Initiation*.

VI. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

As noted above, on December 19, 2013, the Department determined that it was not practicable to examine more than two respondents in the instant investigation.³⁰ Therefore, the Department selected, based on data from CBP, the two exporters/producers accounting for the largest volume of NOES exported from Korea during the POI: DWI and POSCO.³¹

VII. INJURY TEST

Because Korea is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On December 6, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of NOES from, *inter alia*, Korea.³²

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.³³ No party to this proceeding objected to the Department’s use of this AUL.³⁴

B. Loan Benchmarks and Interest Rates

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

³⁰ See Respondent Selection Memo.

³¹ *Id.*

³² See *Investigation Nos. 701–TA–506–508 and 731–TA–1238–1243 (Preliminary) Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations*, 78 FR 73562 (December 6, 2013).

³³ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

³⁴ See GQR at I-2 and PQR at 12.

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).

During the POI, POSCO had outstanding countervailable long-term U.S. Dollar (USD)-denominated and Korean Won (KRW)-denominated loans from GOK-owned banks and financial institutions.³⁵ Furthermore, POSCO maintained long-term foreign currency loans guaranteed by GOK-owned banks.³⁶ As noted above, as benchmarks for countervailable subsidies in the form of long-term loans, we typically use, where available, the company-specific interest rates on the company’s comparable commercial loans.³⁷ However, POSCO reported that it did not have any long-term loans from a commercial bank that were comparable to the countervailable loans at issue.³⁸ In cases where such loans are not available, we use, where available, the company-specific corporate bond rate based on the company’s public and private bonds.³⁹ As such, POSCO provided its company-specific corporate bond rate on its foreign currency denominated public and private bonds for the USD-denominated loans,⁴⁰ and its company-specific corporate bond rate on its KRW-denominated public bonds for the KRW-denominated loans.⁴¹ The use of a corporate bond rate as a long-term benchmark interest rate is consistent with the approach the Department has taken in several prior Korean CVD proceedings.⁴²

For the long-term foreign currency loans guaranteed by GOK-owned banks, POSCO was unable to provide application or approval documents for these loans, stating that because the loans were executed between 1984 and 1986, records have not been maintained.⁴³ The GOK, however, was able to identify the original lending bank as being “a French financial institution.”⁴⁴ Because POSCO was not able to provide any information as to the terms of the original French loans, we have no information from which to derive a company-specific benchmark. Because no such data were available, we relied on data from the International Monetary Fund’s *International*

³⁵ See, *infra*, “Programs Preliminarily Determined To Be Countervailable” – “Korea Export Import Bank’s (KEXIM) Support for Acquisitions of Foreign Mines” and “Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC).”

³⁶ *Id.*, at “KDB Loan Guarantees for POSCO Loans from Foreign Financial Institutions.”

³⁷ See 19 CFR 351.505(a)(3).

³⁸ See PQR at 20.

³⁹ 19 CFR 351.102(b)(31) defines a loan to be “a loan or other form of debt financing, *such as a bond*,” (emphasis added).

⁴⁰ *Id.*, at 20 and Exhibit B-10.

⁴¹ See PNSAQR at Exhibit NSA-7.

⁴² See, e.g., *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) and “Analysis Memorandum on the Korean Domestic Bond Market” (March 9, 1999); *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum (IDM) at “Benchmark Interest Rates and Discount Rates;” *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at “Discount Rates and Benchmark for Loans;” and *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR at 37328, 37345-37346 (July 9, 1993).

⁴³ See PNSAQR at 5-6.

⁴⁴ See GNSAQR at “Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions – Standard Questions.”

Financial Statistics for the years in which the terms of the loans were agreed upon (*i.e.*, 1984 and 1986) to identify bond interest rates representing yields to maturity of bonds that would indicate longer term rates.⁴⁵ This is consistent with the approach the Department took in *Large Residential Washers*.⁴⁶

As discussed further below, we are preliminarily determining that under its debt workout, the restructured debt from the Korea Export Insurance Corporation (K-SURE) is being provided to DWI interest free.⁴⁷ Because the workout program for DWI was terminated on December 30, 2003,⁴⁸ we have relied on 2003 as the year of agreement between DWI and K-SURE for its restructured debt. Accordingly, this requires a long-term KRW-denominated benchmark from this time period to calculate a benefit from this countervailable loan. As facts available under section 776(a) of the Act, we have relied on data from the International Monetary Fund's *International Financial Statistics* for 2003 to identify bond interest rates representing yields to maturity of bonds that would indicate longer term rates.⁴⁹

C. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by the respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the

⁴⁵ See Memorandum to the File, "External Benchmarking Source Data" (March 18, 2014) at Attachment 1 – *IFS Yearbook 1995*. Absent a corporate bond rate, for this time period, we have relied on the "Government Bond Yield."

⁴⁶ See *Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers*), and accompanying IDM at 6.

⁴⁷ See, *infra*, "Programs Preliminarily Determined To Be Countervailable" – "DWI's Debt Workout."

⁴⁸ See PISR at 20.

⁴⁹ See Memorandum to the File, "External Benchmarking Source Data" (March 18, 2014) at Attachment 2 – *IFS Yearbook 2008*. For this time period, we have relied on the "Corporate Bond Rate."

other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.⁵⁰

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (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.⁵¹

POSCO and DWI

POSCO was founded in 1968 by the GOK, and began being privatized in 1988 through its listing on the Korea Stock Exchange, before becoming completely private in 2000.⁵² During the POI, it operated two integrated steel mills in Korea, producing various steel products, including, *inter alia*, NOES.⁵³ By the end of the POI, POSCO maintained ownership of 60.31 percent of DWI’s outstanding shares.⁵⁴ DWI was created as a result of a spinoff from Daewoo Corporation in 2000, was listed for public trading on the Korea Stock Exchange in 2001,⁵⁵ and became a majority-owned subsidiary of POSCO in 2010.⁵⁶ During the POI, DWI engaged in export and import activities of industrial grade steel, metals, chemicals, transportation equipment, machinery, ships, plants, electronics, textiles and other specialty goods to numerous markets, including the United States, as well as providing export services, export agent services, intermediary trading, manufacturing, distribution, and natural resource development.

POSCO responded to the Department’s questionnaires on behalf of itself and DWI, the trading company that exported POSCO-produced subject merchandise to the United States during the POI.⁵⁷ As such, we preliminarily determine that POSCO and DWI are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through common ownership.⁵⁸ For POSCO, we are preliminarily attributing subsidies received by POSCO to its own sales in accordance with 19

⁵⁰ *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

⁵¹ *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁵² *See* PQR at 6.

⁵³ *Id.*

⁵⁴ *Id.*, at 2.

⁵⁵ *Id.*, at 7.

⁵⁶ *Id.*, at Exhibit 4, page 35.

⁵⁷ *Id.*, at 1.

⁵⁸ This determination is consistent with the Department’s previous findings regarding POSCO and DWI. *See, e.g., Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 55241 (September 10, 2013), and accompanying Preliminary Decision Memorandum at 3; unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 5378 (January 31, 2014).

CFR 351.525(b)(6)(i). For DWI, pursuant to 19 CFR 351.525(c), the Department cumulates benefits from subsidies to a trading company that exports subject merchandise with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company. Therefore, pursuant to 19 CFR 351.525(c), we are preliminarily attributing the benefit from subsidies to DWI to the combined sales of DWI and POSCO (less inter-company sales).⁵⁹

D. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "POSCO Preliminary Calculation Memorandum" prepared for this investigation.⁶⁰

IX. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined To Be Countervailable

1. GOK Facilities Investment Support: Article 26 of the Restriction of Special Taxation Act (RSTA)

First introduced in 1982 to encourage companies to make investments "out of the overconcentration control region of the Seoul Metropolitan Area"⁶¹ in their respective field of business by providing tax relief. Article 26 of the RSTA enables companies to claim a tax credit of seven percent *or* five percent of eligible investments in facilities.⁶² Eligibility criteria for benefits under Article 26 of the RSTA had been set forth through Article 23 of the Enforcement Decree of the RSTA.⁶³ However, the GOK modified Article 26 on December 27, 2010, through the "Tax Credit for Employment-Creating Investments," amendment to the RSTA,⁶⁴ to add job creation as a requirement for companies to qualify for tax deductions for facilities investments. The GOK provided a transitional period of one year during which companies could continue to receive tax credits without meeting the job creation requirement.⁶⁵

⁵⁹ *Id.* See also, *e.g.*, *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 5.

⁶⁰ See Memorandum to the File, "Preliminary Determination Calculation Memorandum for POSCO and Daewoo International Corporation (DWI)" (March 18, 2014) (POSCO Preliminary Calculation Memorandum).

⁶¹ See PQR at Exhibit C-1.

⁶² See GQR at Appendices Volume, pages 92 and 98.

⁶³ *Id.*, at Appendices Volume, page 92.

⁶⁴ *Id.*

⁶⁵ *Id.*

Despite this change to the program, POSCO submits that during the POI, it only claimed “tax credits for investments” under Article 26 as prescribed prior to the December 27, 2010 amendment that had been carried forward from prior years into 2011.⁶⁶ POSCO asserts that the tax credits earned under the 2011 criterion for employment-creating investments were not claimed on the tax return filed during the POI, rather they will be carried forward to future years.⁶⁷ Accordingly, for the 2011 tax return filed during the POI, POSCO received a tax credit for investments it made prescribed by Article 23(1) of the Enforcement Decree.⁶⁸

The GOK submits that under Article 23 of the Enforcement Decree of the RSTA, an applicant is required to submit (i) Applications for the tax deduction, (ii) Corporate Tax Base and Taxable Income Settlement Invoice, and (iii) Corporate Tax Base and Taxable Amount Reports to the National Tax Service (NTS), who then reviews the materials submitted to determine the eligibility of the application in accordance with relevant laws, regulations, and the merit of each individual application.⁶⁹ The deductible rate decreased from seven percent in 2010 to five percent in 2011 due to the December 27, 2010 amendment to Article 26.⁷⁰

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, limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy. Accordingly, the Department preliminarily determines that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act. This finding is consistent with our determination in *Large Residential Washers*.⁷¹ The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

On this basis, we preliminarily calculate a subsidy rate of 0.39 percent *ad valorem* for POSCO.

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

The purpose of this program is to facilitate the enhancement of energy efficiency in business sectors through a deduction from taxes payable.⁷² 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.⁷³ The eligible types of facilities investment are identified in Article 22(2) of the RSTA, while Appendix 8-3 of Article 13(2) of the Enforcement Regulation of the RSTA lists energy related facilities which are eligible for this program, and

⁶⁶ *Id.*

⁶⁷ See PQR at Exhibit C-1.

⁶⁸ *Id.*

⁶⁹ See GQR at Appendices Volume, page 105.

⁷⁰ *Id.*, at Appendices Volume, page 92.

⁷¹ See *Large Residential Washers*, and accompanying IDM at 14.

⁷² See GQR at Appendices Volume, pages 113 and 130.

⁷³ *Id.*, at Appendices Volume, pages 115-122.

Appendix 8-4 lists the facilities that are treated as manufacturing facilities for renewable energy production.⁷⁴

The GOK agency that administers this program is the NTS, under the direction of the Ministry of Strategy and Finance (MOSF).⁷⁵ In order to obtain the tax deduction, the GOK notes that an applicant is required to submit (i) an application for the tax deduction and (ii) the report of the taxation scale to the NTS which then reviews the materials submitted to determine the eligibility pursuant to the relevant laws and regulations.⁷⁶ Article 25(2) of the RSTA stipulates that ten percent of the eligible investment can be deductible from the taxes payable by a corporation or an individual taxpayer; this rate is to be reduced to three percent as of January 1, 2014.⁷⁷ POSCO submits that it claimed a deduction under this program on its tax return filed during the POI.⁷⁸

Information provided by the GOK demonstrates that only a limited number of companies claimed this tax credit in 2012.⁷⁹ Accordingly, we preliminarily determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This finding is consistent with *Large Residential Washers*, in which we relied on information that is comparable to that which the GOK provided in the current investigation.⁸⁰ This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed.

On this basis, we preliminarily calculate a subsidy rate of 0.08 percent *ad valorem* for POSCO.

3. RSTA Article 7(2): Tax Credit for Improving Enterprise's Bill System

In their respective supplemental questionnaire responses to the Department, both the GOK and POSCO submit that the Department previously found this program to not be countervailable in *CORE from Korea 2004 Review Prelim*.⁸¹ In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions because it argued that the Department has previously found this program to not be countervailable.⁸² We must first note that the Department determines the parameters of our investigations, not the respondent. While the GOK did not respond to our questions with respect

⁷⁴ *Id.*

⁷⁵ *Id.*, at Appendices Volume, page 114.

⁷⁶ *Id.*, at Appendices Volume, page 124.

⁷⁷ *Id.*, at Appendices Volume, page 124-125, 129.

⁷⁸ See PQR at Exhibit C-3.

⁷⁹ See GQR at Appendices Volume, page 129.

⁸⁰ See *Large Residential Washers*, and accompanying IDM at 13-14.

⁸¹ See *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413 (September 11, 2006) (*CORE from Korea 2004 Review Prelim*), unchanged in *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007); see also GSQR at 12 and P1SR at 17.

⁸² See *CORE from Korea 2004 Review Prelim*, 71 FR 53413, 53420.

to this program, it did provide information that we could use to analyze whether this program is countervailable. The *Statistical Yearbook of National Tax for 2012* published by the NTS was provided in the GSQR.⁸³ The type of information contained in the *Statistical Yearbook 2012* was not on the record of the *CORE from Korea 2004 Review Prelim*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns, as well as the number of companies that claimed each type of RSTA tax credit and exemption, in addition to the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 7(2) tax credit is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Congress, in the SAA, explained how the Department's specificity analysis should be conducted.⁸⁴ The SAA states that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."⁸⁵ Therefore, in analyzing whether this tax credit is specific, we must apply the specificity analysis set forth in the SAA. We examined the number of companies that used this program and the number of corporations that filed tax returns as listed in the *Statistical Yearbook 2012*. According to this NTS document, only 2,619 companies (*i.e.*, 0.57 percent of companies filing corporate tax returns in 2011) received benefits under this program.⁸⁶ A corporate tax program that is used by less than one percent of corporate tax filers is not one that is widely used throughout an economy, the legal standard set forth in the SAA. Therefore, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number. Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.⁸⁷ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.⁸⁸

⁸³ See GSQR at Exhibit GEN-8 entitled "*Statistical Yearbook of National Tax for 2012*" (*Statistical Yearbook 2012*).

⁸⁴ See Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, Vol., 103d Cong., 2d Sess. 911-955 (1994).

⁸⁵ See SAA at 929.

⁸⁶ See GSQR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 2,619 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.57 percent of all corporate tax filers.

⁸⁷ See 19 CFR 351.524(a).

⁸⁸ See, *e.g.*, *Large Residential Washers*, and accompanying IDM at 10.

4. RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development

Introduced in 1982 under the Tax Exemption and Reduction Control Law, this program aims to facilitate Korean corporate investment in research and development activities through a reduction of taxes payable for eligible expenditures.⁸⁹ The tax reduction is administered by the NTS,⁹⁰ under the direction of the MOSF, and manifests itself 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.⁹¹ Article 10(1)(3) of the RSTA is the law authorizing the reduction, which is implemented through Article 9(3) of the Enforcement Decree of the RSTA.⁹²

As explained in *Large Residential Washers*,⁹³ and referenced by the GOK,⁹⁴ the language of the law for this program, as well as the language of the implementing provisions for this tax program, do not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. Therefore, consistent with *Large Residential Washers*, we have examined whether, based on the information on the record of this investigation, 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. In *Large Residential Washers*, we determined that this program was specific under section 771(5A)(D)(iii)(III) of the Act because the respondent companies in that investigation, Samsung and LG, were provided with a disproportionate share of tax credits under this program.⁹⁵

While the GOK reported that it “does not compile data concerning recipients of tax credits . . . in terms of sectors or industries,”⁹⁶ the record does contain information on the total amount of tax reductions received pursuant to Article 10(1)(3) of the RSTA during 2011.⁹⁷ The most recently published version of Korea’s “Statistical Yearbook of National Tax” shows that there were 460,614 corporate tax returns filed in 2011.⁹⁸ The GOK submits that the number of companies that used this program during the last three years (*i.e.*, 2010 through 2012) was 1,333 in 2010; 803 in 2011; and 895 in 2012. (We would note that the 803 companies which benefitted from this program equates to only 0.17 percent of all 2011 corporate tax filers.⁹⁹ The number of corporate tax filers for 2012 is not on the record.)

Therefore, we find this program *de facto* specific under 771(5A)(D)(iii)(I) because the actual number of recipients is limited in number. (We would also note that we based our specificity determination on disproportionate use in *Large Residential Washers* rather than limited number of actual recipients because the number of companies actually using this program for the years

⁸⁹ See GSQR at Appendices Volume, pages 2 and 16.

⁹⁰ *Id.*, at Appendices Volume, page 3.

⁹¹ *Id.*, at Appendices Volume, pages 5 and 17.

⁹² *Id.*, at Appendices Volume, pages 4-6.

⁹³ See *Large Residential Washers*, and accompanying IDM at 11-13.

⁹⁴ See GSQR at 12.

⁹⁵ See *Large Residential Washers*, and accompanying IDM at 12.

⁹⁶ See GQR at Appendices Volume, page 14.

⁹⁷ See GSQR at Exhibit GEN-8.

⁹⁸ *Id.*, at Exhibit GEN-8, Table 8-1-1.

⁹⁹ *Id.*, at Exhibit GEN-8, Tables 8-1-1 and 8-3-2.

2010 and 2011 that was provided for the record by the GOK in this instant investigation was not on the record in *Large Residential Washers*). Further, the tax reductions 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).

POSCO claimed benefits under this program during the POI,¹⁰⁰ from which we preliminarily calculate a subsidy rate of 0.04 percent *ad valorem*.

5. RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development

Under RSTA Article 22, a domestic corporation whose income for each business year ending before December 31, 2012, includes dividend income from its investment in overseas resource development projects as prescribed by the Enforcement Decree of the RSTA, is exempt from corporate tax.¹⁰¹ Article 19 of the Enforcement Decree of the RSTA prescribes the following investment projects as being eligible for this tax exemption: Agricultural products, Animal products, Fishery products, Forest products, and Mineral products.¹⁰²

POSCO reported that it had investments in overseas resource development projects as prescribed by the Enforcement Decree of the RSTA, and received tax exemptions for these investments.¹⁰³ The tax exemptions were reflected in the tax return that POSCO filed during the POI.¹⁰⁴

We preliminarily determine that the tax exemption POSCO received under Article 22 of the RSTA constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confers a benefit as pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). Furthermore, consistent with *CORE from Korea 2010 Review*,¹⁰⁵ we preliminarily determine that the tax exemption POSCO received under Article 22 of the RSTA is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because Article 19 of the Enforcement Decree of the RSTA expressly limits access to the subsidy to firms with overseas investment projects in agricultural, animal, fishery, forest, or mineral products.

Under this program, the benefit is equal to the amount of additional income taxes that POSCO would have paid absent the program, which preliminary calculates to a subsidy rate of 0.01 percent *ad valorem* for POSCO.

¹⁰⁰ See PISR at Exhibit C-7.

¹⁰¹ *Id.*, at Exhibit C-8.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See PQR at Exhibit 10.

¹⁰⁵ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 19210 (March 29, 2013) (*CORE from Korea 2010 Review*), and accompanying IDM at 22.

6. RSTA Article 24: Tax Credit for Investment for Productivity Increase Facilities

In their respective supplemental questionnaire responses to the Department, both the GOK and POSCO submit that the Department previously found this program to not be countervailable in *Carbon Steel from Korea*.¹⁰⁶ In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions because it argued that the Department has previously found this program to not be countervailable.¹⁰⁷ We must first note that the Department determines the parameters of our investigations, not the respondent. While the GOK did not respond to our questions with respect to this program, it did provide information that we could use to analyze whether this program is countervailable. As mentioned above, the *Statistical Yearbook 2012* published by the NTS was provided in the GSQR.¹⁰⁸ The type of information contained in the *Statistical Yearbook 2012* was not on the record of *Carbon Steel from Korea*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns as well as the number of companies that claimed each type of RSTA tax credit and exemption and the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 24 tax credit is *de facto* specific under section 771(5A)(D)(iii).

Based upon the information provided by the GOK in the *Statistical Yearbook 2012*, in this proceeding, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because, in contrast to the information available in *Carbon Steel from Korea*, record evidence demonstrates that the actual number of recipients is limited in number, as only 565 companies received benefits under this program.¹⁰⁹ Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.¹¹⁰ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.¹¹¹

¹⁰⁶ See Notice of Final Affirmative Countervailing Duty Determination: *Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Carbon Steel from Korea*), and accompanying IDM. See also GSQR at 12, and PISR at 18.

¹⁰⁷ See GSQR at 12.

¹⁰⁸ *Id.*, at Exhibit GEN-8.

¹⁰⁹ See GSQR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 565 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.12 percent of all corporate tax filers.

¹¹⁰ See 19 CFR 351.524(a).

¹¹¹ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

7. RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety

In their respective supplemental questionnaire responses to the Department, both the GOK and POSCO submit that the Department previously found this program to not be countervailable in *Carbon Steel from Korea*.¹¹² In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions because it argued that the Department has previously found this program to not be countervailable.¹¹³ We must first note that the Department determines the parameters of our investigations, not the respondent. While the GOK did not respond to our questions with respect to this program, it did provide information that we could use to analyze whether this program is countervailable. As noted above, the *Statistical Yearbook 2012* published by the NTS was provided in the GSQR.¹¹⁴ The type of information contained in the *Statistical Yearbook 2012* was not on the record of *Carbon Steel from Korea*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns as well as the number of companies that claimed each type of RSTA tax credit and exemption and the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 25 tax credit is *de facto* specific under section 771(5A)(D)(iii).

Based upon the information provided by the GOK in the *Statistical Yearbook 2012*, in this proceeding, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number, as only 180 companies received benefits under this program.¹¹⁵ Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.¹¹⁶ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.¹¹⁷

¹¹² See GSQR at 12, and PISR at 18.

¹¹³ *Id.*, at 12.

¹¹⁴ *Id.*, at Exhibit GEN-8.

¹¹⁵ See GSQR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 180 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.04 percent of all corporate tax filers.

¹¹⁶ See 19 CFR 351.524(a).

¹¹⁷ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

8. RSTA Article 25(3): Tax Deduction for Investment in Environmental and Safety Facilities

Introduced in 2007, RSTA Article 25(3) aims to motivate investments in facilities that are constructed for the purpose of preserving the environment.¹¹⁸ The GOK submits that any entity making an investment in facilities under this motivation may apply for a ten percent tax deduction.¹¹⁹ Administered by the NTS, under the direction of the MOSF, Article 25(3) of the RSTA is the law authorizing the deduction, which is implemented through Article 22(3) of the Enforcement Decree of the RSTA.¹²⁰ POSCO submits that it made investments in its environmental conservation production facilities (*e.g.*, waste water and sludge disposal facilities, waste oil treatment facilities, coke dust collector facilities, *etc.*), and claimed the tax deduction based on its assessment that these investments were among those prescribed by Article 22(3) of the Enforcement Decree of the RSTA.¹²¹

According to the *Statistical Yearbook 2012*, there were 460,614 corporate tax returns filed in 2011, 182 of which claimed the Article 25(3) tax deduction.¹²² Additionally, the GOK submits that there were 163 users in 2010 and 220 users in 2012.¹²³ Because only 220 companies benefitted from this program in 2012, as well as only the 182 companies in 2011, we preliminarily determine that this program is *de facto* specific under 771(5A)(D)(iii)(I) because actual number of recipients is limited.

This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. On this basis, we preliminarily calculate a subsidy rate of 0.01 percent *ad valorem* for POSCO.

9. RSTA Article 104(14): Tax Program for Third Party Logistics Operations

This tax credit was introduced in 2007, with the purpose of motivating manufacturing companies to outsource logistics business operations to third parties that specialize in logistics by offering a tax incentive for doing so.¹²⁴ Administered by the NTS, under the direction of the MOSF, Article 104(14) is the law authorizing the tax incentive, which is implemented through Article 104(14) of the Enforcement Decree of the RSTA.¹²⁵

POSCO submits that under this program, where a company used third party distribution companies (*e.g.*, unaffiliated outside trucking company, ocean-shipping company, or loading/unloading company) and paid for distribution expenses, the company may apply for this tax credit if the company meets two requirements prescribed by Article 104(14) of the

¹¹⁸ See GSQR at 13 and Appendices Volume, page 20.

¹¹⁹ *Id.*, at Appendices Volume, page 20.

¹²⁰ *Id.*, at Appendices Volume, pages 20 and 22.

¹²¹ See P1SR at Exhibit C-9.

¹²² See GSQR at Exhibit GEN-8 at Tables 8-1-1 and 8-3-2.

¹²³ *Id.*, at Appendices Volume page 31.

¹²⁴ *Id.*, at Appendices Volume, page 37.

¹²⁵ *Id.*, at Appendices Volume, page 39.

Enforcement Decree of the RSTA: 1) the third party distribution expense spent for the tax year (*e.g.*, fiscal year 2011) shall be at least fifty percent or more of the total distribution expense spent by the company for the tax year (*e.g.*, fiscal year 2011); and 2) the ratio (*i.e.*, third party distribution expense divided by total distribution expense) for the tax year (*e.g.*, fiscal year 2011) shall not be lower than that ratio for the previous year (*e.g.*, fiscal year 2010).¹²⁶ POSCO submits that if the company meets these two requirements, it can apply for a tax credit based on three percent of the increased amount of third party distribution expenses (*i.e.*, the third party expenses spent for tax year minus the third party expenses spent for the previous year, *e.g.*, 2010).¹²⁷ POSCO states that the limit of the tax credit under this program is ten percent of corporate income tax.¹²⁸

The Department has not previously investigated Article 104(14) tax credits. As such, we must examine the countervailability of this tax credit. The language of the law, *i.e.*, Article 104(14) of the RSTA, as well as the language of the implementing provisions, *i.e.*, Article 104(14) of the Enforcement Decree of the RSTA, do not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. Next, we examine whether, based on the information on the record of this investigation, 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.

The *Statistical Yearbook 2012* indicates that there were 460,614 corporate tax returns filed in 2011, of which, 291 companies claimed benefits pursuant to Article 104(14) of the RSTA.¹²⁹ Moreover, the GOK submits that in 2012 there were only 283 companies that benefitted from this tax credit, and only 191 companies in 2010.¹³⁰ Because only 283 companies used this program in 2012, and 291 companies used this program in 2011, we find this program *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because actual number of recipients is limited. Additionally, we preliminarily determine that this program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the difference between the amount of taxes the company 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. On this basis, we preliminarily calculate a subsidy rate of 0.06 percent *ad valorem* for POSCO.

10. Korea Export Import Bank's (KEXIM) Support for Acquisitions of Foreign Mines¹³¹

Beginning in 1976, this program provides financial assistance from KEXIM to Korean companies through capital contributions, as well as through the acquisition of stocks and

¹²⁶ See PISR at Exhibit C-10.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See GSQR at Exhibit GEN-8, at Tables 8-1-1 and 8-3-2.

¹³⁰ *Id.*, at Appendices Volume, page 49.

¹³¹ We note that in the Initiation Checklist and InitQ, this program was entitled "KEXIM's Support for Acquisitions of Foreign Mines." The GOK submitted that the actual program name is "KEXIM's Overseas Investment Credit Program." See GQR at I-9. However, for this proceeding, we will continue to reflect the name as stated in the Initiation Checklist.

provision of long-term funds, thus enabling Korean companies to make foreign investments.¹³² Under the program, KEXIM extends loans to Korean companies in order to purchase foreign assets on the condition that the company has been doing business for more than three years in the same field as the targeted foreign asset.¹³³ The GOK submits that KEXIM calculates the borrowing enterprise's interest rate by amending a base rate to reflect factors such as the delivery cost, administrative fees, credit rates of the lendee, and the expected profit.¹³⁴ The GOK notes that in addition to KEXIM, other commercial banks also provide comparable financial services for the acquisition of assets abroad, and that this program has previously been called the "Overseas Investment Credit."¹³⁵ As of the end of 2010, KEXIM was a government-owned entity, through 74.4 percent ownership by the GOK.¹³⁶

The GOK submits that this program is administered by KEXIM, pursuant to Article 18(1)(5) of the KEXIM Act, Article 15(1) of its Enforcement Decree, and Articles 67 through 69 of KEXIM's Regulation Governing Financing Operations.¹³⁷ Through this statutory and regulatory framework, when an applicant submits an application and the supporting documents for financing, the KEXIM loan officer reviews the materials to determine the eligibility based on the merits of the application, after which, if the application meets all the requirements and completes the internal credit extension evaluations process successfully, approval is granted.¹³⁸ Both POSCO and DWI utilized this program prior to, and during the POI, maintaining outstanding loans from KEXIM for the acquisition of foreign mines.¹³⁹

Of the loans outstanding during the POI, POSCO maintains that certain of these borrowings relate to the excavation of elements not used in the production of NOES, and thus, any benefit derived therefrom is not attributable to subject merchandise under 19 CFR 351.525(b)(5).¹⁴⁰ In the PQR, POSCO did not provide necessary information to support its claim, thus, the Department sought further information in a supplemental questionnaire. In response to the Department's further questions, however, POSCO submitted application and approval documents which indicate that at the point of bestowal, the purpose of the loan was specific to the excavation of certain elements tied to products not related to the productions of subject merchandise.¹⁴¹ As such, only certain of these loans from KEXIM for the acquisition of foreign mines are countervailable. We intend to verify POSCO's statements and evidence thereof for the final determination.

We preliminarily determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because this program is limited to companies that are investing in foreign mines. The Department has also previously determined that loans from KEXIM also

¹³² See GQR at Appendices Volume, page 46.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*, at Appendices Volume, page 50.

¹³⁷ *Id.*, at Appendices Volume, page 49-50.

¹³⁸ *Id.*, at Appendices Volume, page 52.

¹³⁹ *Id.*, at I-10; see also PQR at 19-21 and Exhibits B-2 through B-12.

¹⁴⁰ *Id.*, at 19-21.

¹⁴¹ See P1SR at Exhibits B-18 and B-20.

constitute a financial contribution.¹⁴² Information submitted in the instant investigation by the GOK confirms the decision reached on the KEXIM in *CORE from Korea 2006 Review*.¹⁴³ In the Registration Statement filed on March 22, 2012 with the U.S. Securities and Exchange Commission, KEXIM and the GOK state: “We {KEXIM} were established, as stated in the KEXIM Act, to ‘promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment, and the development of natural resources abroad.’ As an instrument in serving the Government’s public policy objectives, we do not seek to maximize our profits.”¹⁴⁴ Therefore, we preliminarily determine that because KEXIM is an authority under section 771(5)(B) of the Act, this program results in a financial contribution in the form of a direct transfer of funds through loans under section 771(5)(D)(i) of the Act, which confers a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amount of interest POSCO paid on the KEXIM loan and the amount the recipient would pay on a comparable commercial loan.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO’s overall subsidy rate.¹⁴⁵ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.¹⁴⁶

11. DWI’s Debt Workout

Background of DWI’s Debt Workout

The Daewoo Group was dissolved in 1999 as a result of an unsustainable debt load and 12 companies of the Daewoo Group, including Daewoo Corporation, were placed into separate workout programs under the Corporate Restructuring Act (CRA).¹⁴⁷ Daewoo Corporation, along with all the Daewoo Group companies, entered into workout programs on August 26, 1999.¹⁴⁸ On March 15, 2000, the Creditors’ Council of the Daewoo Corporation established under the CRA made an agreement to transfer certain of Daewoo Corporations’ liabilities by spinning them off to DWI, formerly the international trading division of Daewoo Corporation, and to Daewoo Engineering & Construction Co. (Daewoo E&C), formerly the construction division of Daewoo Corporation, which resulted in DWI becoming a primary debtor, or guarantor, for those

¹⁴² See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review (CORE from Korea 2006 Review)*, and accompanying IDM at 17.

¹⁴³ See, e.g., GQR At Appendices Volume, page 25 – “KEXIM is a financial institution incorporated under the KEXIM Act of Korea. The GOK owns 74.4%, Bank of Korea owns 22.6% and the Korea Finance Corporation owns 3.0% of KEXIM.”

¹⁴⁴ See GQR at Exhibit B-3, page 5.

¹⁴⁵ See 19 CFR 351.524(a). See also POSCO Preliminary Calculation Memorandum.

¹⁴⁶ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

¹⁴⁷ See P1SR at 20 and Exhibit D-1.

¹⁴⁸ *Id.*, at 20.

carried-over liabilities.¹⁴⁹ As a result of this agreement, DWI was incorporated on December 27, 2000.¹⁵⁰

Under the workout program, DWI's Creditors' Council determined to restructure the liabilities transferred to DWI in three separate debt restructurings using the following methods: (1) debt-for-equity swaps by the creditors on December 31, 2000; (2) debt transferred to equity through the issuance of convertible bonds on December 29, 2001, which were to be exchanged for shares; and (3) extensions of debt maturities and the revision of interest rates.¹⁵¹ There was no debt forgiveness.¹⁵² This workout program for DWI was terminated on December 30, 2003.¹⁵³

POSCO submits that all of the debt restructured by the creditors that participated in the workout program was repaid by 2009.¹⁵⁴ However, other outstanding liabilities resulting from the debt workout remained on DWI's books through the POI.¹⁵⁵ When the Daewoo Corporation defaulted on loans from various banks that were guaranteed by the Korea Export Insurance Corporation (K-SURE), K-SURE made payments to these creditors on Daewoo Corporation's behalf.¹⁵⁶ As a result, K-SURE became a creditor of Daewoo Corporation and a portion of the liability to K-SURE was transferred to DWI as part of the spin-off agreed by the Creditors' Council. DWI agreed to pay off this liability in quarterly payments to K-SURE over 12 years with the first installment beginning on March 31, 2004.¹⁵⁷ According to DWI's 2012 audited financial statements, the balance of this liability at the beginning of the POI was 41,463 million KRW.¹⁵⁸ According to this financial statement, no interest is paid on this debt.¹⁵⁹

In addition, the financial statement references a line item "debt-for-equity swap."¹⁶⁰ The amount of this at the beginning of 2012 is 376 million KRW.¹⁶¹ POSCO states that this relates to an amount of debt that was agreed to be converted into equity as part of the workout agreement but was never converted into equity by the creditors.¹⁶² It remained as a liability in DWI's balance sheet until December 31, 2012, when it went to zero.¹⁶³

DWI's debt workout was controlled by the Creditors' Council that was first formed under the Corporate Restructuring Act (CRA) and its replacement act, the Corporate Restructuring Promotion Act (CRPA).¹⁶⁴ As we stated in *Refrigerators from Korea*, decisions of a company's Creditors' Council are made by vote, with a super-majority of 75 percent, based on the

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*, at 20-21 and Exhibit D-2; *see also* P2SR at 5.

¹⁵⁵ *See* P1SR at 21.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *See* PQR at Exhibit 10, Note 15 – "Borrowings".

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *See* P1SR at 22.

¹⁶³ *See* P2SR at 9.

¹⁶⁴ *See* GSQR at 15.

percentage of debt held, required for any resolution to pass.¹⁶⁵ In that investigation, we found that government-controlled entities held the super-majority of 75 percent, which allowed the government to control the Creditor's Council.¹⁶⁶

In our supplemental questionnaire to the GOK, we requested information on DWI's Creditors' Council, including the identification of the members of the Creditors' Council and the ownership stake of the GOK in each of the members. In response to each of our questions regarding the Creditors' Council, the GOK stated that it is not in a position to know the details of the debt workout program for DWI.¹⁶⁷ We requested this information, in part, to be able to determine whether government-controlled entities accounted for 75 percent of the votes of the Creditors' Council in order to determine whether the GOK could control the decision of DWI Creditors' Council.

Financial Contribution of DWI's Debt Workout

Because the GOK did not provide this information, we are relying on the facts available under section 776(a) of the Act to preliminarily determine that GOK-owned and controlled entities controlled the decision of the Creditor's Council. Pursuant to section 776(a) of the Act, the Department may rely on facts otherwise available when necessary information is not on the record or when a party withholds request information, fails to provide requested information by the applicable deadline, significantly impedes a proceeding, or provides information that may not be verified. In this case, the Department determines that necessary information is not on the record with respect to this issue. Thus, based on the facts available on the record, we preliminarily determine that GOK controlled-entities held the super-majority 75 percent of votes within the DWI's Creditors' Council. This decision is based on the fact that all the identifiable creditors of DWI that participated in the debt restructuring of the company are GOK entities or authorities under section 771(5)(B) of the Act. We would note that this preliminary decision is consistent with the determination made in *Refrigerators from Korea*.¹⁶⁸ In *Refrigerators from Korea*, the Department was also investigating the debt workout for another company within the Daewoo Group, Daewoo Electronics (DWE), which entered its workout program on the same date as DWI, August 26, 1999. In *Refrigerators from Korea*, the Department determined that the GOK controlled the 75 percent super-majority of DWE's Creditors' Council.¹⁶⁹

Information provided in the PISR shows that DWI was bailed out by "KAMCO, The Export-Import Bank of Korea, Korea Development Bank and others."¹⁷⁰ KAMCO, KEXIM, and the KDB have each been previously determined to be government-controlled entities by the Department.¹⁷¹ In *Refrigerators from Korea*, the Department stated that "KAMCO is a

¹⁶⁵ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at 11.

¹⁶⁶ *Id.*

¹⁶⁷ See GSQR at 16-18.

¹⁶⁸ See *Refrigerators from Korea*, and accompanying IDM at 10-12.

¹⁶⁹ *Id.*, at 10-11.

¹⁷⁰ *Id.*, at Exhibit D-4.

¹⁷¹ See, e.g., *Refrigerators from Korea* and *Large Residential Washers*.

government special purpose institution” and that “it is a government authority carrying out GOK functions.”¹⁷²

In *Large Residential Washers*, the Department determined that loans from the KDB constitute financial contributions because the KDB is a government-owned policy bank.¹⁷³ Information submitted in the instant investigation by the GOK confirms the decision reached on the KDB in *Large Residential Washers*.¹⁷⁴ In the Registration Statement filed on April 19, 2012, with the U.S. Securities and Exchange Commission, the KDB and the GOK state: “Under the KDB Act, the KDB Decree and our Articles of Incorporation, our {KDB} primary purpose is to ‘furnish funds for the expansion of the national economy.’ Since we serve the public policy objectives of the Government, we do not seek to maximize profits.”¹⁷⁵

The Department has also previously determined that loans from KEXIM also constitute a financial contribution.¹⁷⁶ Information submitted in the instant investigation by the GOK confirms the decision reached on the KEXIM in *CORE from Korea 2006 Review*.¹⁷⁷ In the Registration Statement filed on March 22, 2012 with the U.S. Securities and Exchange Commission, KEXIM and the GOK state: “We {KEXIM} were established, as stated in the KEXIM Act, to ‘promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment, and the development of natural resources abroad.’ As an instrument in serving the Government’s public policy objectives, we do not seek to maximize our profits.”¹⁷⁸

Finally, K-SURE is another government entity that played a major role in the debt workout of DWI.¹⁷⁹ The Department previously determined in *Refrigerators from Korea* that assistance provided to Korean companies by K-SURE constitutes a financial contribution under the Act.¹⁸⁰ In the GQR, the GOK argues that K-SURE is neither a GOK agency nor authority.¹⁸¹ However, the information provided in the GOK questionnaire response supports the Department’s determination in *Refrigerators from Korea*. The GOK states that K-SURE is an incorporated special entity funded by the GOK and that it was established by a specific law enacted by the Government of Korea, the Trade Insurance Act.¹⁸² Under the Trade Insurance Act and K-SURE Articles of Association, K-SURE is supervised by the Government of Korea, and the scope of its operations and its budget are approved and/or set by the Government of Korea.¹⁸³ In addition,

¹⁷² See, *Refrigerators from Korea*, and accompanying IDM at 108.

¹⁷³ See *Large Residential Washers*, and accompanying IDM at 8.

¹⁷⁴ See, e.g., GQR at I-16 through I-21.

¹⁷⁵ See GQR at Exhibit B-54, page 7.

¹⁷⁶ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review (CORE from Korea 2006 Review)*, and accompanying IDM at 17.

¹⁷⁷ See, e.g., GQR At Appendices Volume, page 25 – “KEXIM is a financial institution incorporated under the KEXIM Act of Korea. The GOK owns 74.4%, Bank of Korea owns 22.6% and the Korea Finance Corporation owns 3.0% of KEXIM.”

¹⁷⁸ See GQR at Exhibit B-3, page 5.

¹⁷⁹ See P1SR at 21 and P2SR at 8.

¹⁸⁰ See *Refrigerators from Korea*, and accompanying IDM at 16.

¹⁸¹ See GQR at Appendices Volume, page 74.

¹⁸² *Id.*, at Appendices Volume, page 75-76.

¹⁸³ *Id.*, at Exhibits B-64, B-68, and B-71.

under Article 52 of the Trade Insurance Act and Article 32 of the Articles of Association, officers and employees of K-SURE who are not already government employees will be treated as government employees.¹⁸⁴ Therefore, we confirm our prior determination that K-SURE is an authority under section 771(5)(B) of the Act that is capable of providing a financial contribution under section 771(5)(D) of the Act.

All of the identified creditors of DWI that participated in the company's debt workout are government entities or authorities under section 771(5)(B) of the Act.¹⁸⁵ These authorities are the Korea Asset Management Company (KAMCO), the Export-Import Bank of Korea, the Korea Development Bank, and K-SURE.¹⁸⁶ As such, we further preliminarily determine that the assistance provided to DWI under the debt workout program constitutes a financial contribution under section 771(5)(D)(i) of the Act.

Specificity of DWI's Debt Workout

Because we have preliminarily determined that a financial contribution has been provided under DWI's debt workout, we must analyze whether this program is specific under the Act. DWI was placed into a separate workout program under the Corporate Restructuring Act (CRA). The CRA was replaced by the Corporate Restructuring Promotion Act (CRPA). Neither of these laws are *de jure* specific under section 771(5A)(D)(i) of the Act. The Department has only found the debt workout program to be *de facto* specific on the basis of predominant or disproportionate use under section 771(5A)(D)(iii).¹⁸⁷ With respect to debt-to-equity conversions that are provided under the debt workout program, we determined in *Refrigerators from Korea* that the Daewoo Group, which would include DWI, received a predominant or disproportionate share of the debt-to-equity conversions provided to all companies undergoing workout programs under the CRPA.¹⁸⁸ Therefore, the debt-to-equity conversions provided to DWI under its debt workout program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

In the GSQR, the GOK states that it is not in a position to know the details of the debt workout program for DWI including the amount of debt that was addressed in the DWI workout.¹⁸⁹ While we have not had the opportunity to follow-up with the GOK on this statement, there is public information that was on the record in *Refrigerators from Korea* that we have placed on the record of this investigation in order to analyze whether DWI received a predominant or disproportionate share of the debt restructuring that was provided under Korea's debt workout programs.¹⁹⁰ Information from the Korea Development Institute (KDI), a GOK-affiliated entity,

¹⁸⁴ *Id.*, at Exhibits B-64 and B-71.

¹⁸⁵ Certain German banks have also been identified; however, these banks opposed the spinoff of DWI and Daewoo E&C from Daewoo Corporation and entered into a separate debt restructuring agreement with Daewoo Corporation outside of the parameters of the Creditors' Council. See PISR at 21. Because this action was taken outside the direction of DWI's Creditors' Council, this action is not part of the investigated DWI Debt Workout Program.

¹⁸⁶ See PISR at 22.

¹⁸⁷ See, e.g., *Refrigerators from Korea* and *Large Residential Washers*.

¹⁸⁸ See *Refrigerators from Korea*, and accompanying IDM at 11.

¹⁸⁹ See GSQR at 16-18.

¹⁹⁰ See Memorandum to the File, "Independent Research on the Financial Restructuring of Daewoo" (March 18, 2014) (Daewoo Workout Memo).

reveals that 66.74 percent of the debt restructuring that was done under the workout program was provided to the Daewoo Group.¹⁹¹ The source of the data used by the KDI was the GOK's Financial Supervisory Commission.¹⁹² Because the information on the record shows that the Daewoo Group, which includes DWI, received 66.74 percent of the debt restructurings under the workout program, we preliminarily determine this program is *de facto* specific due to predominant use under section 771(5A)(D)(iii)(II) of the Act with respect to the Daewoo Group including DWI.

Benefit Conferred Under DWI's Debt Workout

A) DWI's Debt-to-Equity Swaps

Under the workout program for DWI, the company had 751,304 million KRW in debt that was restructured; 127,440 million KRW of debt swapped into equity; and 254,835 million KRW in debt converted into convertible bonds which could be exchanged into equity.¹⁹³ In addition, DWI had restructured debt with K-SURE that bore no interest¹⁹⁴ and a liability of 374 million KRW of debt that could be converted into equity but never was by the creditors.¹⁹⁵ DWI reported that all of the restructured debt under the debt workout program except for the K-SURE restructured debt was repaid by 2009.¹⁹⁶

With respect to the debt-to-equity conversion, a benefit would only be conferred if DWI was unequityworthy. If a company is determined to be unequityworthy under 19 CFR 351.507 then the amount of the debt-to-equity conversion would be treated as a grant. Because we discovered this program during the course of the investigation, we have not had the opportunity to solicit the information required to undertake an unequityworthy analysis of DWI in the years in which it had debt converted into equity. Accordingly, we will solicit additional information required to complete the unequityworthy analysis.

Therefore, for this preliminary determination, absent a finding that DWI was unequityworthy in the years that debt was converted into equity, no benefit can be found with respect to the debt-to-equity provisions under the DWI workout program.¹⁹⁷ Furthermore, because this restructured debt was repaid prior to be POI, we preliminarily determine that DWI received no benefit from this debt restructuring.

B) DWI's Debt Forgiveness

As noted above, DWI had 374 million KRW in debt workout liabilities that went to zero during the POI;¹⁹⁸ therefore, we treated this 374 million as debt forgiveness under 19 CFR 351.508

¹⁹¹ See Daewoo Workout Memo at Attachments 1 through 11.

¹⁹² *Id.*, at Attachment 11.

¹⁹³ See P2SR at 5-6.

¹⁹⁴ See P1SR at 21.

¹⁹⁵ *Id.*, at 9.

¹⁹⁶ *Id.*, at 20-21.

¹⁹⁷ If DWI had been found unequityworthy, the calculated benefit would have been less than 0.10 percent. We note that this benefit would not make this preliminary negative determination affirmative.

¹⁹⁸ See P2SR at 9.

during the POI. We divided this amount by the sales denominators prescribed above to determine the amount of the benefit provided by this debt forgiveness. Using this methodology, we preliminarily calculate an *ad valorem* subsidy benefit of less than 0.005 percent. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.¹⁹⁹

C) DWI's Interest Free Loans from K-SURE

Finally, we treated the outstanding balance of the K-SURE restructured debt as an interest free loan because, based on the facts available, it does not appear that interest is being charged on this restructured debt. Because no interest is being charged on this debt, a benefit is being conferred under section 771(5)(E)(i) of the Act. To determine the benefit provided by the debt restructured by K-SURE, we calculated the amount of interest that would have been paid on the outstanding debt during the POI using a benchmark as described above. We then divided the interest savings during the POI and divided that amount by the sales denominators prescribed above. Using this methodology, we preliminarily calculate an *ad valorem* subsidy benefit of less than 0.005 percent. Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.²⁰⁰

12. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector.²⁰¹ Through the provision of financial support, the GOK seeks to increase rail and vessel transport, while decreasing motorized vehicle freight, in the hope that this will promote a shift towards a greater use of environment-friendly means of transportation and rebalance the method of transport in the logistics sector.²⁰² Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport to administering agencies for truck-to-rail “modal shift” entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight “modal shift” entities.²⁰³ The legal framework for this program is Article 21 of the Sustainable Transportation Logistics Development Act (STLDA), Article 24 of its Enforcement Decree, and Articles 14 through 17 of the Regulation on Modal Shift Agreement as promulgated by the MOF.²⁰⁴

POSCO submits that it received financial support under this program prior to and during the POI.²⁰⁵ In order to receive this support, POSCO states that it submitted an application to an administering agency, Korean Rail (KORAIL), with its proposal to shift some of its existing transportation by truck to transportation by train, and to another administering agency, the Korea Shipping Association (KSA), related to shifting some of its existing truck transportation to

¹⁹⁹ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

²⁰⁰ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

²⁰¹ See GNSAQR at “Section II – Support for Freight Modal Shift Program Standard Questions Appendix,” page 2.

²⁰² *Id.*

²⁰³ *Id.*, at “Section II – Support for Freight Modal Shift Program Standard Questions Appendix,” pages 2-3.

²⁰⁴ *Id.*, at “Section II – Support for Freight Modal Shift Program Standard Questions Appendix,” pages 3-4.

²⁰⁵ See PNSAQR at 1.

transportation by vessel.²⁰⁶ Subsequently, KORAIL and the KSA approved the application and entered into a modal shift agreement with POSCO.²⁰⁷

Based upon the information provided by the GOK in the GNSAQR, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number.²⁰⁸ Furthermore, a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

To calculate the benefit to POSCO from the grants under this program, the grants received under this program during the POI are divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.²⁰⁹ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.²¹⁰

We note that since POSCO also received funds under this program prior to the POI, any non-recurring benefits would normally be allocated over the AUL.²¹¹ However, in this instance, the benefits POSCO received prior to the POI fall within the exception pursuant to 19 CFR 351.524(b)(2), and have therefore been expensed in the year of receipt.

13. Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)

This program was introduced in 1982, with the purpose of enhancing and stabilizing the supply of energy resources in Korea.²¹² The GOK submits that multiple levels of governance implement the program, beginning with the Ministry of Trade, Industry and Energy (MOTIE) as the agency in charge, whom administers the program with assistance from the Energy and Mineral Resource Development Association of Korea (EMRD).²¹³ The Financing Review Committee (FRC) reviews applications and decides whether the business plan of the applicant is adequate for the assistance provided, taking into account elements such as the credit rating of the applicant, the technical feasibility of the business, the terms and conditions of the contract.²¹⁴ Once the FRC recommends approval of the application to MOTIE and the EMRD, KNOC and KORES are the entities that execute the program through the disbursement of funds in the form of long-term loans.²¹⁵ The GOK submits that KNOC is responsible for the development of oil, while KORES is responsible for the development of other natural resources.²¹⁶

²⁰⁶ *Id.*, at Exhibit NSA-1.

²⁰⁷ *Id.*

²⁰⁸ See GNSAQR at "Section II – Support for Freight Modal Shift Program Standard Questions Appendix," page 11.

²⁰⁹ See 19 CFR 351.524(a).

²¹⁰ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

²¹¹ See 19 CFR 351.524(b)(1).

²¹² See GNSAQR at "Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix," page 17.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

The laws and regulations relating to this program are Articles 12 and 14 of the Submarine Mineral Resources Development Act; Articles 5 and 11 (clause 1 and 2) of the Overseas Resources Development Business Act; Article 11 (clause 1) of its Enforcement Decree; Article 3 (paragraph 1) of its Ministerial Decree; and Articles 5, 6 (clause 1), 7 (clause 1), 20 (clause 1 and 2), 20-2, and 22-2 (clause 1, 2, and 4) as well as Appendices 1 and 2 of the Ministerial Notice promulgated by MOTIE on the Criteria for Overseas Resources Development Business Fund.²¹⁷

During the POI, both POSCO and DWI maintained outstanding long-term loans from KNOC and KORES under this program.²¹⁸ However, information on the record sufficiently demonstrates that the loans from KNOC to DWI or POSCO are tied to non-subject merchandise.²¹⁹ As such, our analysis solely pertains to loans from KORES.

Both DWI and POSCO maintained loans outstanding from KORES during the POI.²²⁰ However, the GOK and POSCO submitted conflicting information as to the resource being extracted at one of these mines.²²¹ POSCO submits that the mine at issue on which it had a loan outstanding from KORES during the POI is for a nickel mine in the French colony of New Caledonia, which it argues is tied to the production of non-subject merchandise.²²² However, the GOK submitted information indicating that the mine is extracting a resource that can be tied to the production of products including subject merchandise.²²³ Instead of submitting the application and approval documents relating to the long term loan on this mine, which would allow the Department to ascertain whether the loan is tied to the production of non-subject merchandise at the point of government bestowal, POSCO submitted that since the Department reached a non-countervailable finding in the *CORE from Korea 2006 Review*, we should do so again here.²²⁴ Specifically, POSCO stated that in the instant investigation, since “the KORES loans are for resource development projects tied to non-subject merchandise ... that POSCO’s KORES loans with respect to the investment in the nickel mine was tied to an input not used in the production of subject merchandise and ... thus not countervailable.”²²⁵

We first note that the Department determines the parameters of our investigations, not the respondent.²²⁶ POSCO chose not to submit the application and approval documents relating to the long-term loan from KORES for this mine, thereby negating the Department the opportunity to ascertain the purpose of the mine. Moreover, the GOK provided conflicting information from that which POSCO provided, indicating that this mine in New Caledonia does extract an element

²¹⁷ *Id.*, at “Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix,” page 18.

²¹⁸ See PNSAQR at 2.

²¹⁹ *Id.* See also GNSAQR at Exhibits NSA 16 and 17.

²²⁰ See PNSAQR at 3.

²²¹ *Id.* See also GNSAQR at “Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix,” page 20.

²²² See PNSAQR at 3.

²²³ See GNSAQR at “Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix,” page 20.

²²⁴ See PNSAQR at 2-3.

²²⁵ *Id.*

²²⁶ See, e.g., *Mannesmannrohren-Werke AG v. United States*, 120 F. Supp. 2d 1075, 1086-87 (CIT 2000); *Mitsubishi Heavy Indus. Ltd. v. United States*, 833 F. Supp. 919, 921-22, 924-25 (CIT 1993).

which can be used in the production of subject merchandise. The burden to demonstrate that a subsidy is tied to non-subject merchandise rests upon the party making the claim. As the Department has stated: “we are extremely sensitive to potential circumvention of the {CVD} law. We intend to examine all tying claims closely to ensure that the attribution rules are not manipulated to reduce countervailing duties.”²²⁷ Accordingly, POSCO has not sufficiently demonstrated that this loan is tied to the production of non-subject merchandise; therefore, we have included the loan relating to this mine in New Caledonia in our preliminary subsidy rate calculations, as described below.

We preliminarily determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because this program is limited to companies that are investing in foreign resource extraction. According to the GOK, MOTIE is the government agency responsible for this program; 100 percent of the capital of KORES is funded by the GOK pursuant to the MOTIE Ministerial Notice; and under this Ministerial Decree, MOTIE has delegated the authority to execute the loans provided under this program to KORES.²²⁸ Therefore, we preliminarily determine that loans provided under this program are from an authority under section 771(5)(B) of the Act that results in a financial contribution in the form of a direct transfer of funds through loans under section 771(5)(D)(i) of the Act. Furthermore, a benefit is conferred under section 771(5)(E)(ii) of the Act in the amount of the difference between the amount of interest POSCO and DWI paid on the KORES loans and the amount the recipient would pay on a comparable commercial loan.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO’s overall subsidy rate.²²⁹ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.²³⁰

14. KDB Loan Guarantees for POSCO Loans from Foreign Financial Institutions

We initiated on this subsidy program in the NSA Memorandum, wherein Petitioner alleged that the KDB provided guarantees for loans from foreign financial institutions during the years 1984 and 1986 which, according to POSCO’s 2012 financial statements, were still outstanding during the POI.²³¹ We noted that during the period from 1984 through 1986, the GOK controlled access to loans from foreign institutions and the Department has found access to foreign loans to be countervailable in prior Korean CVD proceedings.²³²

²²⁷ See *Preamble to Countervailing Duties: Final Rule*, 63 FR 65348, 65400 (November 25, 1998).

²²⁸ See GNSAQR at “Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix,” pages 17, 22, and 24.

²²⁹ See 19 CFR 351.524(a); see also POSCO Preliminary Calculation Memorandum.

²³⁰ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

²³¹ See PQR at Exhibit 8.

²³² See, e.g., *Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*Steel Beams from Korea*), and accompanying Issues and Decision Memorandum under “Analysis of Programs” at I.A.1. “The GOK’s Credit Policies through 1991.”

The GOK submits that the purpose of this program was to assist companies procure capital from foreign financial institutions,²³³ and that under this program, POSCO received loans from a French financial institution which were guaranteed by the KDB.²³⁴ The GOK submits that at the time POSCO received these loans, the KDB was subject to the Foreign Capital Inducement Act, under which the program was administered pursuant to Article 29, Clause 1.²³⁵ During the POI, the GOK submits that the KDB was wholly-owned by the GOK.²³⁶

Because the GOK restricted access to loans from foreign financial institutions when these loans were approved, and access to these foreign financing was disproportionately provided to the steel industry at that time,²³⁷ consistent with *Steel Beams from Korea*, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Furthermore, we preliminarily determine that because the KDB is an authority under section 771(5)(B) of the Act, this program results in a financial contribution in the form of a potential direct transfer of funds through loans guarantees under section 771(5)(D)(i) of the Act, which confers a benefit under section 771(5)(E)(iii) of the Act between the amount POSCO paid on the guaranteed loan and the amount POSCO would have paid for a comparable commercial loan absent the KDB guarantee.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy from these loan guarantees results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.²³⁸ Consistent with our past practice, we therefore have not included this program in our net subsidy rate calculations for POSCO.²³⁹

B. Programs Preliminarily Determined To Be Not Used During the POI

We preliminarily determine that POSCO and DWI did not apply for or did not receive any countervailable benefits during the POI under the following programs:

1. Grants to POSCO
2. Korea Export Import Bank (KEXIM)
 - a. Shared Growth Program

²³³ See GNSAQR at 4 and “Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions,” at A.

²³⁴ *Id.*, at “Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions,” at A.

²³⁵ *Id.*, at “Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions,” at D. and G.

²³⁶ *Id.*, at “Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions,” at J. 6.

²³⁷ See *Steel Beams from Korea*, and accompanying IDM under “Analysis of Programs” at I.A.1. “The GOK’s Credit Policies through 1991.”

²³⁸ See 19 CFR 351.524(a). See also POSCO Preliminary Calculation Memorandum.

²³⁹ See, e.g., *Large Residential Washers*, and accompanying IDM at 10.

- b. Short-Term Export Credits
 - c. Export Factoring
 - d. Export Loan Guarantees²⁴⁰
 - e. Trade Bill Rediscounting Program
 - f. Long-Term Loans other than those for the Acquisition of Foreign Mines
3. Korea Trade Insurance Corporation (K-SURE)
 - a. Short-Term Export Credit Insurance
 - b. Export Credit Guarantees
 4. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables
 5. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
 6. Subsidies to Companies Located in Free Economic Zones (FEZs)
 - a. Tax Reductions and Exemptions
 - b. Exemptions and Reductions of Lease Fees
 - c. Grants and Financial Support

C. Programs Preliminarily Determined To Not Exist During the POI

1. Green-Steel Industry Support

In the Initiation Checklist, we initiated an investigation into this program, under which Petitioner alleged that the GOK created a Green-Steel Industry Support program to develop CO₂-free steel manufacturing, with subsidies set for distribution beginning in 2013.²⁴¹ However, in the GQR, the GOK submitted that the Green-Steel Industry Support program as alleged by Petitioner has never come into effect.²⁴² The GOK stated that while it had initially included a program that would have provided financial support to companies with plans to develop CO₂-free steel

²⁴⁰ We note that in the Initiation Checklist and InitQ, this program was entitled “Export Loan Guarantees {from KEXIM}.” The GOK submitted that the actual program name is “Financial Guarantees from KEXIM.” See GQR at I-8. However, for this proceeding, we will continue to reflect the name as stated in the Initiation Checklist.

²⁴¹ See Initiation Checklist at 18-19.

²⁴² See GQR at I-4 and I-5.

manufacturing technologies in the proposed draft of the 2013 National Budget bill, the final version of the bill failed to include the program.²⁴³ Accordingly, the GOK maintains that no such program has ever been introduced in Korea.²⁴⁴ Therefore, we preliminarily determine that this program did not exist during the POI.

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁴⁵ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²⁴⁶

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²⁴⁷ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.²⁴⁸ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ See 19 CFR 351.224(b).

²⁴⁶ See 19 CFR 351.309.

²⁴⁷ See 19 CFR 351.309(c)(2) and (d)(2).

²⁴⁸ See 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the IA ACCESS.²⁴⁹ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²⁵⁰ on the due dates established above.

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.


XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.




Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



(Date)

²⁴⁹ See 19 CFR 351.303(b)(2)(i).

²⁵⁰ See 19 CFR 351.03(b)(1).