



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-580-869
Administrative Review
POR: 6/5/2012-12/31/2013
Public Document
E&C Office VII: JMN

DATE: March 2, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman *ST*
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review: Large Residential
Washers from the Republic of Korea

I. Summary

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on large residential washers from the Republic of Korea (Korea). The period of review (POR) is June 5, 2012, through December 31, 2013. The mandatory company respondents are Samsung Electronics Co., Ltd. (Samsung) and Daewoo Electronics Corporation (Daewoo). We preliminarily find that Samsung and Daewoo received countervailable subsidies during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results of this review no later than 120 days from the date of publication of the notice of these preliminary results.

II. Background

On February 15, 2013, we published a CVD order on large residential washers from Korea.¹ On March 3, 2014, we published a notice of "Opportunity to Request Administrative Review" of the

¹ See *Large Residential Washers From the Republic of Korea: Countervailing Duty Order*, 78 FR 11154 (February 15, 2013).



CVD order for the period June 5, 2012, through December 31, 2013.² On February 24, 2014, we received a request to conduct an administrative review with respect to Samsung and Daewoo from the petitioner, Whirlpool Corporation (Whirlpool, or Petitioner).³ In accordance with 19 CFR 351.221(c)(1)(i), we published a notice initiating this administrative review of the CVD order with respect to Samsung and Daewoo on April 30, 2014.⁴ We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Act.

On May 9, 2014, Samsung filed a letter stating that it would not participate in this administrative review.⁵ On June 3, 2014, we issued the initial questionnaire to the Government of Korea (GOK).⁶ The GOK submitted its response to the initial questionnaire on July 17, 2014.⁷ Neither Samsung nor Daewoo submitted a response to this questionnaire.

On August 6, 2014, Petitioner submitted new subsidy allegations.⁸ On October 17, 2014, the Department initiated on 13 of the newly alleged subsidy programs.⁹ A questionnaire regarding these programs was issued to the GOK on November 25, 2014.¹⁰ On January 8, 2015, the Department placed a memorandum on the record reflecting the GOK's decision not to respond to the Department's NSA Questionnaire.¹¹ On February 6, 2015, the Department issued a supplemental questionnaire to the GOK.¹² No response to that questionnaire was provided. Petitioner filed comments regarding these preliminary results on February 18, 2015.¹³

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 6159 (February 3, 2014).

³ See Letter from Whirlpool, "Large Residential Washers from Korea: Request for Administrative Review of Countervailing Duty Order" (February 24, 2014).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 18262 (April 1, 2014). This initiation notice misstated the POR as beginning on June 2, 2012 rather than June 5, 2012. As such, a correction was issued to reflect the correct POR. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014).

⁵ See Letter from Samsung, "Samsung Decision Not to Participate in First Administrative Review of Large Residential Washers from the Republic of Korea" (May 9, 2014).

⁶ See Letter from the Department, "Administrative Review of the Countervailing Duty Order of Large Residential Washers from the Republic of Korea: Countervailing Duty Questionnaire" (June 3, 2014).

⁷ See Letter from the GOK, "Administrative Review of the Countervailing Duty Order of Large Residential Washers from the Republic of Korea: Response to June 3, 2014 Questionnaire" (July 17, 2014).

⁸ See Letter from Petitioner, "Large Residential Washers from South Korea; New Subsidy Allegations" (August 6, 2014).

⁹ See Department Memorandum, "Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea: August 6, 2014 New Subsidy Allegations" (October 17, 2014).

¹⁰ See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea" (November 25, 2014) (NSA Questionnaire).

¹¹ See Department Memorandum, "Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea; Email Communication from the Korean Embassy" (January 8, 2015).

¹² See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea - Supplemental Questionnaire" (February 6, 2015).

¹³ See Letter from Whirlpool, "Countervailing Duty Administrative Review of Large Residential Washers from the Republic of Korea: Petitioner's Comments in Advance of the Department's Preliminary Determination" (February 18, 2015).

III. Scope of the Order

The products covered by this order are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this order, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs¹⁴ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets¹⁵ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;¹⁶ (b) a base; and (c) a drive hub;¹⁷ and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;¹⁸ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;¹⁹ or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,²⁰ the unit cannot begin a wash cycle without first receiving a

¹⁴ A “tub” is the part of the washer designed to hold water.

¹⁵ A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

¹⁶ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

¹⁷ A “drive hub” is the hub at the center of the base that bears the load from the motor.

¹⁸ “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

¹⁹ A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

²⁰ “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this order are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.²¹

IV. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available,” subject to section 782(d) of the Act, if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the {AFA} rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”²² The Department’s practice also ensures “that the

²¹ On January 6, 2015, the Department adjusted the HTSUS numbers in CBP’s Automated Commercial Enterprise Case Reference File for the countervailing duty order on large residential washers from Korea. CBP informed us that HTSUS number 8450.20.0090 had been discontinued, and that the numbers 8450.20.0040 and 8450.20.0080 had been added. See Department Memorandum, “Administrative Review of the Countervailing Duty Order on Large Residential Washers from Korea; Changes to the HTS Numbers in the ACE Case Reference Files for the Countervailing Duty Order” (January 6, 2015).

²² See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²⁴ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²⁵

In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.²⁶ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.²⁷

In applying AFA to Samsung and Daewoo, our recent approaches in other CVD investigations and reviews guide us.²⁸ Under this practice, we compute the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant case, or calculated in prior CVD cases involving the country under review (in this case, the Korea).²⁹

For each subsidy program being reviewed, we first apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we apply, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, under our AFA approach, we apply the highest above *de minimis* calculated subsidy rate for the identical program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the

²³ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

²⁴ See, e.g., *id.*

²⁵ *Id.*

²⁶ See, e.g., SAA at 869.

²⁷ *Id.* at 869-870.

²⁸ See *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum at “Non-Cooperative Companies” section; see also *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 14, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies” section; *Galvanized Steel Wire From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at “Non-Cooperative Companies” section.

²⁹ *Id.*

industry to which it belongs could have used the program for which the rates were calculated.³⁰ Absent such a rate, we apply, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated. Absent an above *de minimis* rate for the same or similar program from any CVD proceeding involving the same country, we apply the highest calculated rate from any program in any CVD proceeding for that country.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit.³¹ As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent from another investigation or administrative review. Alternatively, the Department seeks to identify similar program rates calculated in any proceeding covering imports from Korea. Actual rates calculated based on actual usage by Korea companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³² Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.³³

In the absence of record evidence concerning certain programs due to the GOK's and the respondent companies' failure to provide requested information, we reviewed the information concerning subsidy programs in Korea from other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any program in Korea, from which the non-cooperative respondent could conceivably receive a benefit, to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for subsidy programs in Korea, from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the

³⁰ See *Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies” section.

³¹ See, *e.g.*, *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying Issues and Decision Memorandum at Comment 10.

³² SAA at 870.

³³ See, *e.g.*, *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Department corroborated the rates it selected to use as AFA to the extent practicable for the preliminary results of this administrative review.³⁴

As discussed below, due to the failure of the GOK and respondent companies, in part, to respond to the Department's questionnaires concerning the programs at issue, the Department relied on information concerning subsidy programs from the investigation and other proceedings. In light of the above, the Department corroborated the rates it selected to use as AFA to the extent practicable for these preliminary results.³⁵ Because these rates reflect the actual behavior of the GOK with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOK and the respondent companies demonstrating otherwise, the rates calculated for cooperative respondents provide a reasonable AFA rate.

Application of AFA: The failure of Samsung and Daewoo to respond to the Department's requests for information

As noted above, neither Daewoo nor Samsung responded to the Department's questionnaire. As such, for those programs found to be countervailable in the original investigation,³⁶ we preliminarily find, based on AFA, that those programs were used by Samsung and Daewoo (with one exception discussed below, which the Department is finding not used by Samsung). In addition, based on the non-participation of Samsung and Daewoo, we are also finding, based on AFA, that each of the new subsidy allegation programs is used by at least one of the respondents.³⁷ For each program, we established an *ad valorem* subsidy rate using our CVD AFA methodology, as described above.³⁸ A complete listing of the programs used is provided below.

Application of AFA: The GOK's failure to respond to the Department's NSA Questionnaire and February 6, 2015 Supplemental Questionnaire

Based on the GOK's decision not to submit information regarding the 13 new subsidy programs the Department determined to include in this administrative review, we are finding, as AFA, that each of these programs meets the criteria for a subsidy, *i.e.*, financial contribution, benefit, and specificity. Also, the GOK provided no response to a supplemental questionnaire concerning the

³⁴ See, e.g., *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014) and accompanying Issues and Decision Memorandum at 7-8.

³⁵ *Id.*

³⁶ See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers Investigation*) and accompanying Issues and Decision Memorandum at 8.

³⁷ Some of the newly alleged subsidy programs are specific to Samsung. For these programs, we are only applying our AFA methodology to establish a subsidy rate for Samsung.

³⁸ For a complete listing of the AFA rates applied to each program, see the AFA Memorandum, dated concurrently with these preliminary results and attached to this decision memorandum.

GOK Supplier Support Fund Tax Exemption program.³⁹ Thus, we are finding, as AFA, that this program also meets the criteria for a subsidy and is used by both respondents.

V. Analysis of Programs

Based on our analysis and the responses to our questionnaires, we preliminarily determine the following:

Programs Preliminarily Determined To Be Countervailable

For the following programs, the GOK indicated that there were no significant changes since the original investigation. As such, we continue to find that these programs are countervailable, and based on AFA, that they were used by the respondents:

- Korea Development Bank and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables
- Research, Supply, or Workforce Development Investment Tax Deductions for “New Growth Engines” under Restriction of Special Taxation Act (RSTA) Article 10(1)(1)
- Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
- Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)
- RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities
- RSTA Article 26 Tax Deduction for Facilities Investment
- Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act
- GOK Subsidies for “Green Technology R&D” and its Commercialization
- GOK 21st Century Frontier R&D Program / Information Display R&D Center Program

The Department determined in the investigation that all grants received by Samsung under this terminated program were expensed before the beginning of the POR of this review.⁴⁰ However, because no findings have been made regarding the receipt of grants by Daewoo, the Department is finding as AFA that Daewoo continued to benefit from grants received before the POR under the Department’s allocation methodology for non-recurring benefits.⁴¹

- Support for SME “Green Partnerships”
- Grants Discovered at Verification
- IBK Preferential Loans to Green Enterprises

³⁹ Because the Department determined that this program was not used in the investigation, it did not determine whether the program provided a financial contribution or whether it was specific. *See Washers Investigation* and accompanying IDM at 24. Therefore, the Department requested additional information in this review, which the GOK did not provide.

⁴⁰ *See Washers Investigation*, and accompanying Issues and Decision Memorandum at 20.

⁴¹ 19 CFR 351.524(b).

The GOK reported that “this is a program that extends loan to a corporation with a Green Certificate” and is only for small and medium size enterprises.⁴² Because assistance under this program only extends to corporations holding a green certificate, we preliminarily determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Loans provided under this program from the Industrial Bank of Korea (IBK) constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act.⁴³

- Korea Export-Import Bank Export Factoring

The GOK reported that the Korea Export-Import Bank (KEXIM) either directly or indirectly helps to finance exports by purchasing receivables owed by foreign customers of Korean exporters.⁴⁴ Because financing provided under this program contingent on export performance, we preliminarily determine that this program is specific within the meaning of section 771(5A)(A) and (B) of the Act. Financing provided under this program from KEXIM constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act.⁴⁵

- GOK Supplier Support Fund Tax Deduction

The Department determined in the investigation that this program was not used. We also determined that any benefits from this program would not be realized until the tax returns for 2011 are filed in 2012.⁴⁶ In response to the Department’s initial questionnaire in this review, the GOK stated only that there had been no changes to the program since the investigation. The GOK provided no response to a supplemental questionnaire issued in this review concerning this program. Therefore, we are finding, based on AFA, that this program is countervailable.

- Daewoo Restructuring⁴⁷
 - GOK-Directed Equity Infusions under the Daewoo Workout
 - GOK-Directed Ongoing Preferential Lending under the Daewoo Workout

The Department initiated an investigation into the new subsidy programs listed below, determining that Petitioner had provided information reasonably available supporting the three

⁴² See GOK July 17, 2014 questionnaire response at 9.

⁴³ The Department determined that loans from the IBK constitute a direct financial contribution from the GOK; *e.g.*, KDB and IBK Short-Term Discounted Loans for Export Receivables. See *Washers Investigation*, and accompanying Issues and Decision Memorandum at 8.

⁴⁴ See GOK July 17, 2014 questionnaire response at 10.

⁴⁵ The Department determined that export financing from KEXIM constitutes a financial contribution. See, *e.g.*, *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007), and accompanying Issues and Decision memorandum at “Export and Import Credit Financing from KEXIM.”

⁴⁶ See *Washers Investigation*, and accompanying Issues and Decision Memorandum at 24.

⁴⁷ The subsidy programs listed as part of the Daewoo workout are specific to Daewoo and were countervailed in the final determination. See Department Memorandum, “Large Residential Washers from the Republic of Korea: Affirmative Countervailing Duty Determination: Application of Adverse Facts Available to Daewoo Electronics Corporation” (December 18, 2012) (placed on the record of this review on March 2, 2015).

elements of a subsidy under sections 771(5)(B) and 771(5A) of the Act.⁴⁸ These programs are found to be countervailable based on AFA, because of the GOK's failure to respond to the Department's NSA Questionnaire:

- Subsidies for Investment in Gyeonggi Province⁴⁹
 - Infrastructure Funding under Article 29 of the Special Law
 - Financial Support under Article 19 of the Special Law
 - Exemption of Dues under Article 20 of the Special Law
 - Provision of Land for Less than Adequate Remuneration
- Subsidies for Investments in Hwaseong Dongtan Semiconductor Factory⁵⁰
 - Provision of Land for Less than Adequate Remuneration
 - Loan Forgiveness on Land Contract
 - Provision of Preferential Water Supply Infrastructure for Free
- Korea Electric Power Corporation Provision of Electricity for LTAR⁵¹
- RSTA Article 7-2 Tax Credit for Improving Enterprise's Bill System⁵²
- RSTA Article 22 Tax Exemption from Corporate Tax on Dividend Income from Investment in Overseas Resources Development⁵³
- RSTA Article 24 Tax Credit for Investment, etc. in Productivity Increasing Facility⁵⁴
- RSTA Article 25-3 Tax Credit for Investment in Facilities for Environmental Conservation⁵⁵
- RSTA Article 104-14 Tax Credit for Third Party Distribution Expense⁵⁶

⁴⁸ See Memorandum to Edward C. Yang from Justin M. Neuman, "Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea: August 6, 2014 New Subsidy Allegations," October 17, 2014 (NSA Initiation Memorandum).

⁴⁹ The subsidy programs listed under this new subsidy allegation are specific to Samsung. According to information provided by Petitioner in its new subsidy allegations – the only information on the record of this review concerning the programs – Samsung made extensive investments in the Go-deok Industrial Complex, located in Gyeonggi Province, facilitated by GOK subsidies at the national, provincial, and local level. See NSA Initiation Memorandum at 2-5.

⁵⁰ The subsidy programs listed under this new subsidy allegation are specific to Samsung. According to information provided by Petitioner in its new subsidy allegations, the GOK subsidized several aspects of Samsung's land acquisition and facility construction for its eight production facilities at Hwaseong City, Gyeonggi Province. See NSA Initiation Memorandum at 5-7.

⁵¹ According to information provided in the new subsidy allegations, the Korea Electric Power Corporation maintains a policy of providing discounted electricity to the manufacturing industry in order to obtain export competitiveness. See NSA Initiation Memorandum at 8.

⁵² According to Petitioner, RSTA Article 7-2 provides a tax credit on certain eligible payments made to small- and medium-sized enterprise suppliers. *Id.* at 9.

⁵³ Petitioner alleged that the GOK allows for exemptions from corporate taxes for companies with dividend income from investments in overseas resource development projects that is also exempted from taxes in the host country. According to Petitioner, Article 19 of the Enforcement Decree of the RSTA limits such investments to projects involving agricultural, animal, fishery, forest, or mineral products. *Id.* at 10.

⁵⁴ Petitioner claimed that the GOK provides a three percent tax credit for eligible expenses, including investments in facilities designed to improve production processes, automation of facilities, and informatization; as well as designated "high-technology equipment," computers and peripherals, and software. *Id.* at 11.

⁵⁵ Petitioner alleges that this program provides a tax credit in the amount of 10 percent of the eligible investments in facilities for environmental conservation, including sewage treatment facilities and water pollution prevention facilities, among others. *Id.* at 11.

⁵⁶ According to Petitioner, RSTA Article 104-14 provides for a tax credit for certain expenses paid to third-party distributors. *Id.* at 12.

VI. Conclusion

We recommend applying the above methodology for these preliminary results.

Agree ✓ Disagree

 Re P
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

 2 March 2015
(Date)

ATTACHMENT



C-580-869

POR: 6/5/2012-12/31/2013

Public Document

E&C Office VII: JMN

March 2, 2015

MEMORANDUM TO: The File

FROM: Justin M. Neuman 
International Trade Analyst
AD/CVD Operations, Office VII

SUBJECT: Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea

RE: Application of Adverse Facts Available

Summary

As a result of this administrative review, we find preliminary net countervailable subsidy rates of 34.77 percent *ad valorem* for Samsung Electronics Co., Ltd. (Samsung) and 81.91 percent *ad valorem* for Daewoo Electronics Corporation (Daewoo).

Background

As explained in the “Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review: Large Residential Washers from the Republic of Korea,” dated March 2, 2015, neither Samsung nor Daewoo have participated in this administrative review of the countervailing duty order on large residential washers from the Republic of Korea. As such, we are applying our methodology for selecting countervailing duty (CVD) rates on an adverse facts available (AFA) basis.

Selection of the Adverse Facts Available Rate

It is the Department’s practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant proceeding, or, if not available, rates calculated in prior CVD cases involving the same country.¹ Specifically, the Department applies the highest

¹ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and



calculated rate for the identical program in the proceeding if a responding company used the identical program, and the rate is not zero.² If there is no identical program match within the proceeding, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.³

Programs under Review

Daewoo Restructuring

- GOK and GOK-Directed Equity Infusions under the Daewoo Workout
- GOK and GOK-Directed Ongoing Preferential Lending under the Daewoo Workout

In the investigation, the Department analyzed financial restructuring, including Government of Korea (GOK) and GOK-directed equity infusions and GOK and GOK-directed provision of credit, as one program. Thus, for the purpose of applying an appropriate AFA rate, we are continuing to treat the workout as one program.

We have selected, as the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another Korean CVD proceeding, 58.09 percent *ad valorem*. This rate was calculated for Hynix under the “Entrustment or Direction and Other Financial Assistance” program in an administrative review of the CVD order on Dynamic Random Access Memory Semiconductors from the Republic of Korea,⁴ and was also used in the original investigation of large residential washers from Korea. In *DRAMS from Korea*, the Department found that under the Corporate Restructuring Promotion Act (CRPA), the GOK entrusted or directed the restructuring of Hynix through control of the Creditors’ Council. In the investigation, the Department also found that the Daewoo Restructuring was accomplished under the CRPA. Therefore, we find, as we did in the investigation, that the financial assistance provided for the Daewoo restructuring both by the GOK and at the entrustment or direction of the GOK, under both the provisions of the CRPA and the GOK’s control of the Creditors’

Decision Memorandum at “Application of Facts Available, Including the Application of Adverse Inferences”). See also *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and the accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies.”

² There is an exception to this approach for income tax exemption and reduction programs; because there are no such programs in this investigation, the exception is not applicable here.

³ See *Aluminum Extrusions from the PRC Decision Memorandum* at “Application of Adverse Inferences: Non-Cooperative Companies”; see also, e.g., *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at “Selection of the Adverse Facts Available Rate.”

⁴ See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006) (*DRAMS from Korea*), and accompanying Issues and Decision Memorandum, at “I. Programs Determined to Confer Direction and Other Financial Assistance”.

Council, is most similar in structure to that of Hynix for the “Entrustment or Direction and Other Financial Assistance” program.

Tax Programs

As stated above, the Department applies the highest calculated rate for the identical program in a review if a mandatory respondent used the identical program, and the rate is not zero. In the investigation, a rate of 0.72 percent was calculated for Samsung’s use of the “Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)” program, and that is rate is applied to both of the companies in this review.⁵ For the other tax programs, the only calculated CVD rate for a tax program in Korea that rises above the *de minimis* standard is that calculated for Samsung under the “GOK Facilities Investment Support: RSTA Article 26” (“RSTA Article 26”) program in the original investigation. The rate calculated for the RSTA Article 26 program was 1.05 percent *ad valorem*.⁶ We are therefore applying this rate to all of the tax programs found to have been used during the POR by the two respondents, including all income tax programs, the “Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act” property tax program, and the “Exemption of Dues under Article 20 of the Special Law” exemption program.

Other Programs

As part of this administrative review, the Department is also examining loan programs, grant programs, and the provision by the Government of Korea of land and electricity for less than adequate remuneration (LTAR). In a prior Korea CVD proceeding, the Department calculated a rate of 1.65 percent *ad valorem* for Daewoo’s use of the “GOK Preferential Lending” program as an aspect of the company’s workout.⁷ This rate was subsequently applied as the AFA rate for Daewoo’s use of other loan programs in the final determination. We continue to apply this calculated rate to all of the loan programs now under review. As no calculated rate above the *de minimis* threshold exists for the grant or LTAR programs under examination, we are also applying the 1.65 percent *ad valorem* rate to the other programs as well.

AFA Chart: Programs under Review

		Samsung	Daewoo
Daewoo Restructuring			
a)GOK and GOK-Directed Equity Infusions under the Daewoo Workout	GOK Directed Equity Infusions and Preferential Lending	N/A	58.09%
b)GOK and GOK-Directed Ongoing Preferential Lending under the Daewoo Workout			

⁵ See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*) and the accompanying Issues and Decision Memorandum at 13.

⁶ See *Washers from Korea* and the accompanying Issues and Decision Memorandum at 15.

⁷ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) and the accompanying Issues and Decision Memorandum at 12.

Tax Programs

GOK Facilities Investment Support: RSTA Article 26	Tax Program	1.05%	1.05%
Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)	Tax Program	0.72%	0.72%
Research, Supply, or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Art. 10(1)(1)	Tax Program	1.05%	1.05%
Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" Under RSTA Art. 10(1)(2)	Tax Program	1.05%	1.05%
RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities	Tax Program	1.05%	1.05%
GOK Supplier Support Fund Tax Deduction	Tax Program	1.05%	1.05%
RSTA Article 7-2 Tax Credit for Improving Enterprise's Bill System	Tax Program	1.05%	1.05%
RSTA Article 22 Tax Exemption from Corporate Tax on Dividend Income from Investment in Overseas Resources Development	Tax Program	1.05%	1.05%
RSTA Article 24 Tax Credit for Investment, etc. in Productivity Increasing Facility	Tax Program	1.05%	1.05%
RSTA Article 25-3 Tax Credit for Investment in Facilities for Environmental Conservation	Tax Program	1.05%	1.05%
RSTA Article 104-14 Tax Credit for Third Party Distribution Expense	Tax Program	1.05%	1.05%
Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act	Tax Program	1.05%	1.05%

Electricity

Korea Electric Power Corporation Provision of Electricity for LTAR	Electricity for LTAR	1.65%	1.65%
--	----------------------	-------	-------

Grants

GOK Subsidies for "Green Technology R&D" and its Commercialization	Grant	1.65%	1.65%
Support for SME "Green Partnerships"	Grant	1.65%	1.65%
GOK 21st Century Frontier and Other R&D Programs	Grant	N/A	1.65%
Grants Discovered at Verification	Grant	1.65%	N/A

Loans

Industrial Bank of Korea (IBK) Preferential Loans to Green Enterprises	Loan	1.65%	1.65%
Korean Export-Import Bank (KEXIM) Export Factoring	Loan	1.65%	1.65%
Korea Development Bank (KDB) and IBK Short-Term Discounted Loans for Export Receivables	Loan	1.65%	1.65%

Subsidies for Investment in Gyeonggi Province

Infrastructure Funding under Article 29 of the Special Law	Grant	1.65%	N/A
Financial Support under Article 19 of the Special Law	Grant	1.65%	N/A
Exemption of Dues under Article 20 of the Special Law	Tax Program	1.05%	N/A
Provision of Land for LTAR	Land	1.65%	N/A

Subsidies for Investments in Hwaseoung Dongtan
Semiconductor Factory

Provision of Land for LTAR	Land	1.65%	N/A
Loan Forgiveness on Land Contract	Grant	1.65%	N/A
Provision of Preferential Water Supply Infrastructure for Free	LTAR	1.65%	N/A

Total AFA Rates:	34.77%	81.91%
------------------	--------	--------