




C-580-877
Investigation
POI: 01/01/2013-12/31/2013
Public Document
ADCVD Ops.II/RT/RK

DATE: March 16, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Welded Line Pipe from the
Republic of Korea: Decision Memorandum for the Preliminary
Negative Determination

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of welded line pipe from the Republic of Korea (Korea), as provided for in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Case History

On October 16, 2014, the Department received a countervailing duty (CVD) petition concerning imports of welded line pipe from Korea, filed on behalf of American Cast Iron Pipe Company, Energex (a division of JMC Steel Group), Maverick Tube Corporation (Maverick), Northwest Pipe Company, Stupp Corporation (a division of Stupp Bros., Inc.), Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA (collectively, the petitioners).¹ On November 5, 2014, the Department initiated a CVD investigation of welded line pipe from Korea.² Supplements to the petition and our consultations with the Government of Korea (GOK) are described in the Initiation Checklist.

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Welded API Line Pipe from South Korea and Turkey, dated October 16, 2014 (the petition).

² See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Initiation of Countervailing Duty Investigations, 79 FR 67419 (November 13, 2014) (Initiation Notice).



In the “Respondent Selection” section of the Initiation Notice, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data.³ Accordingly, on November 7, 2014, the Department released the CBP data to all interested parties under an administrative protective order (APO), and requested comments regarding the data and respondent selection.⁴ We received comments on the CBP data from Husteel Co. Ltd. (Husteel), SeAH Steel Corporation (SeAH), Hyundai HYSCO (HYSCO), and Maverick on November 18, 2014. In their comments, SeAH, Husteel and HYSCO requested to either be selected as mandatory respondents or be allowed to participate as voluntary respondents.⁵ On November 26, 2014, we selected NEXTEEL Co., Ltd. (NEXTEEL) and SeAH as mandatory respondents, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2).⁶

We issued the Initial CVD Questionnaire to the GOK and mandatory respondents on December 1, 2014.⁷ On December 11, 2014, the petitioners requested that the Department postpone the deadline for the preliminary determination. On December 24, 2014, the Department fully postponed the date of the preliminary determination to March 16, 2015.⁸ NEXTEEL and SeAH submitted initial questionnaire responses on December 15, 2014 (Section III of the questionnaire) and January 21 and 23, 2015 (remaining sections of questionnaire).⁹ NEXTEEL reported that it exported sales through Daewoo International Corporation (DWI), an unaffiliated trading company. Accordingly, DWI also responded separately to the Department’s questionnaire.¹⁰ The GOK submitted its initial questionnaire response on January 21, 2015.¹¹

On December 15, 2014, Husteel and HYSCO submitted unsolicited responses to Section III of the CVD questionnaire, and on January 21, 2015, Husteel submitted an unsolicited response to the remainder of the CVD questionnaire.¹² On February 27, 2015, the Department issued its

³ Id., 79 FR at 67421.

⁴ See Letter from Irene Darzenta Tzafolias, Program Manager, to All Interested Parties (November 7, 2014) (Letter to Parties).

⁵ See Letter from Husteel, “Welded Line Pipe from Korea, Case No. C-580-877: Comments Regarding CBP Data and Respondent Selection” (November 18, 2014); Letter from HYSCO, “Welded Line Pipe From the Republic of Korea: Respondent Selection Comments” (November 18, 2014); and Letter from SeAH, “Countervailing Duty Investigation of Welded Line Pipe from Korea — Comments on Respondent Selection” (November 18, 2014).

⁶ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, “Respondent Selection for the Countervailing Duty Investigation of Welded Line Pipe from the Republic of Korea” (November 26, 2014) (Respondent Selection Memorandum).

⁷ Letter from Nancy M. Decker, Acting Program Manager, AD/CVD Operations Office II, “Countervailing Duty Investigation of Welded Line Pipe from the Republic of Korea: Countervailing Duty Questionnaire” (December 1, 2014) (Initial CVD Questionnaire).

⁸ See Welded Line Pipe from Republic of Korea and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations, 79 FR 77454 (December 24, 2014).

⁹ See NEXTEEL December 15, 2014, submission (NIQR1), January 21, 2015, submission (NIQR2), and January 23, 2015, submission (NIQR3), and SeAH’s December 15, 2014, submission (SIQR1) and January 21, 2015, submission (SIQR2).

¹⁰ See DWI’s December 15, 2014, submission (DIQR1) and January 21, 2015, submission (DIQR2).

¹¹ See GOK Initial CVD Questionnaire Response, dated January 21, 2015 (GIQR).

¹² See Letter from Husteel, “Welded Line Pipe from Korea, Case No. C-580-877: Response to the Affiliated-Company Questions in Section III of the Initial Countervailing Duty Questionnaire; Voluntary Respondent” (December 15, 2014); Letter from HYSCO, “Welded Line Pipe from the Republic of Korea: Questionnaire Response Identifying Affiliated Companies” (December 15, 2014); and Letter from Husteel, “Welded Line Pipe from Korea, Case No. C-580-877:

determination regarding the selection of additional mandatory and voluntary respondents in this investigation. The Department determined that it was not practicable to select an additional mandatory respondent and that it would be unduly burdensome and inhibit the timely completion of the investigation to select a voluntary respondent.¹³

In January and February 2015, the Department issued supplemental questionnaires to the GOK, NEXTEEL, DWI and SeAH. Responses to these questionnaires were received between January 13, 2015, and March 9, 2015.

On January 30, 2015, one of the petitioners, Maverick, filed a new subsidy allegation. On February 9, 2015, NEXTEEL and SeAH filed rebuttal comments. The Department determined not to initiate an investigation on Maverick's new subsidy allegation.¹⁴

On February 27, 2015, the petitioners filed a request that the Department align the final determination of this CVD investigation with the companion antidumping (AD) investigation of welded line pipe from Korea.

On March 9, 2015, the petitioners filed comments in advance of the preliminary determination.

B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

III. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and we stated that all such comments must be filed within 20 calendar days of publication of the Initiation Notice.¹⁵ On November 25, 2014, we received comments from Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret (collectively Borusan) and HYSCO, asking the Department to clarify whether the scope includes longitudinally submerged arc welded (LSAW) and helically submerged arc welded (HSAW) steel pipe.¹⁶ Both Borusan and HYSCO argue that LSAW and HSAW pipe differ from electric resistance welded (ERW) line pipe in raw materials, production process, and end uses. Borusan further argues that LSAW and HSAW pipe are a distinct class or kind of merchandise from ERW pipe, and it claims that: 1) the AD

Response to the Questions in Sections II and III of the Initial Countervailing Duty Questionnaire; Voluntary Respondent" (January 21, 2015).

¹³ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for AD/CVD Operations, from Irene Darzenta Tzafolias, Acting Director, AD/CVD Operation, Office II, "Countervailing Duty Investigation of Welded Line Pipe from the Republic of Korea: Selection of Voluntary and Mandatory Respondents" (February 27, 2015) at 3-4.

¹⁴ See Memorandum to Irene Darzenta Tzafolias from Terre Keaton Stefanova, "Countervailing Duty Investigation: Welded Line Pipe from the Republic of Korea—New Subsidy Allegation" (March 16, 2015).

¹⁵ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice.

¹⁶ See Letter from Borusan, "Welded Line Pipe from Korea and Turkey, Case Nos. A-580-876, C-580-877, A-489-822, and C-489-823: Comments on Scope of Investigations," dated November 25, 2014; and Letter from HYSCO, "Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Scope Clarification Request," dated November 25, 2014.

petition makes clear that these investigations are not directed at LSAW and HSAW pipe; and 2) the petitioners have testified before the U.S. International Trade Commission (ITC) that there is no U.S. production of LSAW/HSAW pipe of 24 inches or less in outside diameter.

On December 2, 2014, the petitioners submitted rebuttal comments, stating that the scope as currently written covers all welded line pipe of not more than 24 inches nominal outside diameter, without regard to the process by which the line pipe was welded.¹⁷ The petitioners assert that they did not intend to limit the scope to line pipe produced by the ERW process, and they note that the scope language adopted by the Department includes HTSUS headings for line pipe produced by submerged arc welding. The petitioners assert further that, to the extent that any clarification is needed, the Department should clarify that the scope includes welded line pipe not exceeding 24 inches nominal outer diameter produced by the submerged arc welding process, whether the pipe is longitudinally or helically welded. On December 5, 2014, Maverick also submitted rebuttal comments in which it further disagrees that LSAW and HSAW line pipe less than or equal to 24 inches in nominal outside diameter are a separate class or kind of merchandise from ERW line pipe, as they are made from similar raw materials (often by the same companies) via similar production processes, and are used for the same end-use of transporting oil and gas.

We have considered the requests noted above, as well as the petitioners' responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition, and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition.¹⁸ Thus, absent an overarching reason to modify the scope in the petition, the Department accepts the scope as it is currently written.¹⁹ Consequently, we have made no change to the scope with respect to LSAW and HSAW pipe because: 1) these products are clearly within the scope; and 2) the petitioners intended that these products be covered. We further note that this determination is consistent with the definition of the domestic like product for the welded line pipe industry, which includes ERW, HSAW, and LSAW line pipe.²⁰

¹⁷ See Letter from American, Energex, Northwest, Stupp, Tex-Tube, TMK IPSCO, and Welspun, "Welded Line Pipe from the Republic of Korea and Turkey: Rebuttal Comments on Scope," dated December 2, 2014; and Letter from Maverick, "Welded Line Pipe from Korea and Turkey: Rebuttal Scope Comments," dated December 5, 2014.

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum (IDM) under Scope Issues (after Comment 49).

¹⁹ Id. See also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788, 51789 (September 5 2008), unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009); Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying IDM at Comment 12; and Mitsubishi Heavy Industries, Ltd. v. U.S., 986 F. Supp. 1428 (CIT 1997).

²⁰ See Certain Welded Line Pipe from Korea and Turkey: Inv. No. 701-TA-524-525 and 731-TA-1260-1261 (Preliminary) (December 2014) (ITC Preliminary Report) at 7 (finding a single domestic like product for welded line pipe) and I-13 (discussing the manufacturing process for welded line pipe, which includes ERW, HSAW, and LSAW).

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. INJURY TEST

Because Korea is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the 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 5, 2014, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded line pipe from Korea.²¹

VI. USE OF FACTS OTHERWISE AVAILABLE

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

As discussed below, the GOK did not provide complete information with respect to its provision of electricity for less than adequate remuneration (LTAR), making it necessary to rely on facts otherwise available under section 776(a) of the Act in our preliminary electricity for LTAR analysis. See “KEPCO’s Provision of Electricity for LTAR” below.

²¹ See ITC Preliminary Report; see also Certain Welded Line Pipe from Korea and Turkey, 79 FR 72202 (December 5, 2014).

VII. 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.²² 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.²³ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly.

DWI argued that, as a trading company, it should be subject to a 9-year AUL period based on the IRS Table for asset class 57.0—Distributive Trades and Services.²⁴ In our February 9, 2015, supplemental questionnaire, we informed DWI that it may calculate a company-specific AUL by responding to the AUL Appendix contained in the original questionnaire. DWI did not provide the data necessary to perform an AUL calculation in its supplemental questionnaire response, however, stating that such data is not applicable, as the AUL Appendix is for companies that wish to argue that the IRS Tables do not reasonably reflect the company-specific AUL. To the contrary, DWI argues, it concurs with the use of an AUL period derived from the IRS Tables that is applicable to a trading company.²⁵ DWI's argument is based upon an incorrect reading of the CVD regulations. 19 CFR 351.524(d)(2) is clear that the IRS Table for assets used by the Department for the AUL is the table selected for the "industry under investigation," which is welded line pipe. Therefore, if DWI believed that the IRS Table for this industry's assets does not reasonably reflect its company-specific AUL, then DWI is required to provide its company-specific AUL. Because DWI did not provide a calculated company-specific AUL, the 15-year AUL period is applicable to DWI.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the

²² See 19 CFR 351.524(b).

²³ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

²⁴ See DIQR2 at 9; DWI's March 2, 2015 Supplemental Questionnaire Response (DSQR) at 1.

²⁵ See DSQR at 1 and Exhibit 10.

production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The 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.²⁶

SeAH

SeAH reported that it was not a majority-owned subsidiary of any other company during the AUL, and that during the POI, none of its affiliates produced subject merchandise, supplied an input product to SeAH for production of a downstream product, or received a subsidy and transferred it to SeAH during the AUL. Accordingly, SeAH responded to the Initial Questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by SeAH to the sales of SeAH.

In March 2012, SeAH Steel acquired the plants and facilities of the Korean pipe producer SPP Steel Pipe. As a result of this transaction, SPP Steel Pipe no longer exists as an ongoing entity. SeAH reported that SPP Steel Pipe did not receive benefits from any of the alleged subsidies in this investigation during the POI or AUL period.

NEXTEEL

NEXTEEL reported that it was not a majority-owned subsidiary of any other company during the AUL, and that during the POI and the AUL period, none of its affiliates produced subject merchandise, supplied an input product to NEXTEEL for production of a downstream product, or received a subsidy and transferred it to NEXTEEL.

NEXTEEL reported that it made some export sales of welded line pipe to the United States through an unaffiliated trading company, DWI, during the POI. In accordance with the Department's questionnaire, DWI submitted a complete questionnaire response and responded to a supplemental questionnaire.

Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are cumulating the benefits from subsidies received by DWI with the benefits from subsidies received by NEXTEEL based on the ratio of DWI's exports to the United States of subject merchandise produced by NEXTEEL during the POI to DWI's total sales during the POI (based on value).

²⁶ See Fabrique de Fer de Charleroi SA v. United States, 66 F. Supp. 2d 593, 603 (CIT 2001).

C. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

D. 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 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).

Short-Term Korean Won-Denominated Loans

NEXTEEL reported receiving Korea Trade Insurance Corporation (K-SURE) export credit guarantees for loans that were outstanding during the POI.²⁷ NEXTEEL provided information about short-term loans from commercial banks for consideration as comparable commercial loans for purposes of identifying an interest rate benchmark. We preliminarily determine that some of the loans NEXTEEL identified constitute comparable commercial loans, and it is appropriate to use these loans to calculate a weighted-average benchmark interest rate.

Long-Term Korean Won-Denominated Loans

As discussed further below, we preliminarily determine that under DWI's debt workout program, the restructured debt from K-SURE is being provided to DWI interest free. Because the workout program for DWI was terminated on December 30, 2003,²⁸ we relied on 2004 as the year of agreement between DWI and K-SURE for its restructured debt. Under the terms of the loan agreement, DWI makes quarterly installments to repay this debt over a period of 12 years.²⁹ Accordingly, a long-term Korean Won (KRW)-denominated benchmark from this time period is required to calculate the benefit from this countervailable liability. Because DWI was not able to provide any information as to the terms of the original loan, we relied on data from the International Monetary Fund's (IMF) International Financial Statistics for the year in which the terms of the loan

²⁷ See DIQR2 at 6-8.

²⁸ See DIQR2 at 5.

²⁹ See DSQR at 7-8.

were agreed upon.³⁰ This is consistent with the approach we took most recently in NOES from Korea.³¹

Additionally, as described further below, we find that the Research and Development (R&D) Grant, under the Industrial Technology Innovation Promotion Act (ITIPA), results in a loan that is being provided to SeAH interest free. Because SeAH did not provide loan information to be used for benchmark purposes, we relied on data from the IMF's International Financial Statistics for the year in which the funds were approved.³²

VIII. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. R&D Grants under ITIPA

This program, administered by the Ministry of Trade, Industry and Energy (MOTIE) and the Korea Evaluation Institute of Industrial Technology (KEIT), was designed to promote new industries and enhance the competitiveness of Korea's national economy through the development of industrial technologies. Under the ITIPA program, the GOK provides grants to support technological development in certain industries, including industrial materials.³³

The program is operated pursuant to Article 11 of the ITIPA. To implement the program, KEIT prepares and publicly announces the basic plan which may encompass multiple projects that the KEIT forecasts will support the development of the Korean national economy. According to the GOK, any party wishing to participate in the program prepares a business plan that meets the requirements set forth in the basic plan and then submits the application to the MOTIE Review Committee, which then evaluates the application to determine if it conforms to the terms and conditions set forth in the basic plan. If the application is approved, the company enters into an R&D agreement with KEIT, and KEIT announces the amount of the grant to be provided.³⁴

The costs of the R&D projects under this program are shared by the company (or research institution) and KEIT. Specifically, the grant ratio for project costs are as follows: (1) for projects with one small/medium-sized enterprise (SME), KEIT provides grants of up to 75 percent of total project costs; (2) for other companies, KEIT grants 50 percent of total project costs; (3) for projects with

³⁰ See Memorandum from Terre Keaton Stefanova to the File, "External Benchmarking Source Data" (March 16, 2015).

³¹ See Non-Oriented Electrical Steel From the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 79 FR 61605 (October 14, 2014) (NOES from Korea) and accompanying IDM at 4-6; see also Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012) (Large Residential Washers), and accompanying IDM at 6.

³² See SIQR2 at Exhibit 7-D.

³³ See GIQR at I-4.

³⁴ Id. and Appendices Volume at 5-6.

more than one participant, KEIT grants 75 percent of the total project cost if two thirds of the participants are SMEs; (4) otherwise, KEIT provides 50 percent of project costs.³⁵

When the project is evaluated as “successful” upon completion, the participating companies typically must repay 40 percent of the R&D grant to the GOK over five years. However, when the project is evaluated as “not successful,” the company does not have to repay the GOK any of the grant amount.³⁶

The GOK and SeAH reported that SeAH received grants under the ITIPA program prior to, and during the POI. SeAH claimed that two of the four grants it received were bestowed specifically in connection with the production of non-subject merchandise.³⁷ Therefore, consistent with 19 CFR 351.525(b)(5), we preliminarily determine that these two grants are tied to non-subject merchandise. Thus, we have not included these grants in our subsidy calculations.

Regarding the remaining grants, we are treating the portions of the subsidy that do not have to be repaid as grants, and the remaining portion of the subsidy that may have to be repaid as a long-term, interest-free contingent liability loan. This approach is consistent with the Department’s regulations and practice.³⁸

We preliminarily determine this program to be de jure specific under section 771(5A)(D)(i) of the Act because it is limited to projects in the basic plan that KEIT forecasts will support the development of the Korean national economy. For the portion of the subsidy that does not have to be repaid, we preliminarily find that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK’s payments constitute a direct transfer of funds, and a benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a). For the portion of the subsidy that may have to be repaid, we preliminarily find that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK’s payments constitute a direct transfer of funds through loans, and a benefit exists under section 771(5)(E)(ii) of the Act in the amount of the interest the recipient would have paid on a comparable commercial loan.

With respect to the portion of the subsidy that we are treating as a long-term, interest-free contingent liability loan, pursuant to 19 CFR 351.505(d)(1) for the reasons described above, we find the benefit to be equal to the interest that SeAH would have paid during the POI had it borrowed the full amount of the contingent liability loan during the POI. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of the contingent liability interest-free loan because the event upon which repayment of the duties depends (*i.e.*, the completion of the R&D project) occurs at a point in time more than one year after the date in which the funds were

³⁵ Id. and Appendices Volume at 3-5.

³⁶ See SIQR2 at Appendix 7-B.

³⁷ See SIQR2 at Appendix 7-D.

³⁸ See 19 CFR 351.505(d)(1); see also Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008), and accompanying IDM at “Export Promotion Capital Goods Scheme (EPCGS);” and Preliminary Results of 2011 Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 79 FR 55241 (September 3, 2013), and accompanying Preliminary Decision Memorandum at 6.

received. Specifically, we used the long-term benchmark interest rates as described in the “Subsidies Valuation” section of this preliminary determination.

We determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies. For the portion of this subsidy we are treating as a grant, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over a 15-year AUL by dividing the GOK-approved grant amount by the company’s total sales in the year of approval. Because the approved amount was less than 0.5 percent of the company’s total sales, we expensed the amounts received under the grants in the year received. To calculate the total net subsidy amount for this program, we divided the portion of SeAH’s benefit expensed in the POI by SeAH’s total sales. On this basis, we preliminarily determine that SeAH received a countervailable subsidy rate of 0.01 percent ad valorem under this program.³⁹

2. Sharing of Working Opportunities/Employment Creating Incentives

The purpose of this program is to increase job opportunities for people through innovations and improvements. This program is part of the employment promotion policy of the Ministry of Employment and Labor and is managed by the Korea Labor Foundation (KLF).⁴⁰ It grants incentives in the form of support for labor costs for companies that create new employment opportunities.⁴¹ Article 20 of the Employment Insurance Act, and Articles 12 and 17 of its Enforcement Decree form the legal basis of this program. The Implementation Guideline for the Employment Creation Assistance Program also applies.⁴² NEXTEEL received benefits under this program in 2013. The language of the implementing provisions for this program does not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. However, the GOK submits that 61 companies were approved for the assistance under this program in 2012, and 69 companies were approved for assistance in 2013.⁴³ As such, 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 a direct transfer of funds under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a).

Worker assistance is treated as a recurring subsidy under 19 CFR 351.524(c). To calculate the benefit, we divided the amount of the benefit received by NEXTEEL by its total sales during the POI. On this basis, we preliminarily determine that NEXTEEL received a countervailable subsidy rate of 0.05 percent ad valorem under this program.⁴⁴

³⁹ See SeAH Preliminary Calculation Memorandum.

⁴⁰ See GOK’s March 4, 2015 Supplemental Questionnaire Response (GSQR) at Exhibit GR2S-5.

⁴¹ See NEXTEEL’s February 26, 2015 Supplemental Questionnaire Response (NSQR) at Exhibit O-6.

⁴² See GSQR at Exhibit GR2S-SWO-1.

⁴³ See GSQR at Exhibit GR2S-5.

⁴⁴ See NEXTEEL Preliminary Calculation Memorandum.

3. RSTA Article 26: GOK Facilities Investment Support

Article 26 was first introduced through the RSTA in 1982 to encourage companies to make investments “out of the overcrowding control region of the Seoul Metropolitan Area” in their respective fields of business by providing them with tax incentives.⁴⁵ Eligible companies are able to claim a tax credit of up to five percent in eligible investments in facilities.⁴⁶ The GOK states that Article 26 was revised on December 27, 2010, adding job creation as a requirement for companies to qualify for tax deductions for facilities investments, and that the article has been renamed “tax credit for employment creating investments.”⁴⁷ NEXTEEL, DWI, and SeAH reported receiving tax benefits through RSTA Article 26.

The relevant law authorizing the credit, RSTA Article 26, and the implementing law, Article 23 of the Enforcement Decree of the RSTA, limit 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.⁴⁸ 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).

To calculate the benefit received by NEXTEEL in connection with its own use of this program, we divided the amount of the benefit by NEXTEEL’s total sales during the POI. In addition, we divided the amount of the benefit received by DWI by its total sales during the POI. Then, consistent with the methodology described with respect to trading companies in the “Attribution of Subsidies” section above, we cumulated the subsidies DWI received under this program with subsidies received by NEXTEEL under this program in accordance with 19 CFR 351.525(c). On this basis, we preliminarily determine that NEXTEEL received a countervailable subsidy rate of 0.23 percent ad valorem under this program.⁴⁹

To calculate the benefit received by SeAH in connection with this program, we divided the amount of the benefit by SeAH’s total sales during the POI. On this basis, we preliminarily determine that SeAH received a countervailable subsidy rate of 0.11 percent ad valorem under this program.⁵⁰

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

⁴⁵ See GIQR Appendices Volume at 79.

⁴⁶ Id. at 89.

⁴⁷ Id. at 77.

⁴⁸ See Large Residential Washers, and accompanying IDM at 14; upheld in Samsung Electronics Co., Ltd. v. United States, 973 F. Supp. 2d 1321, 1329 (CIT 2014).

Court No. 13-00099, Slip Op. 14-39 (April 11, 2014) (CIT).

⁴⁹ See NEXTEEL Preliminary Calculation Memorandum and DWI Preliminary Calculation Memorandum.

⁵⁰ See SeAH Preliminary Calculation Memorandum.

facilitate Korean corporate investment in research and development activities through a reduction of taxes payable for eligible expenditures.⁵¹ The tax reduction is administered by the National Tax Service, under the direction of the Ministry of Strategy and Finance (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.⁵² 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.⁵³ DWI and SeAH reported receiving tax benefits through RSTA Article 10(1)(3).

The tax credits provided under this program constitute financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and this program provides 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). Based on the information provided by the GOK in this investigation, consistent with our determination in NOES from Korea,⁵⁴ we continue to find this program de facto specific under 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number as only 3.26 percent of corporate tax payers used this program.⁵⁵ Therefore, we preliminarily find this program countervailable.

To calculate the benefit, we divided the amount of the benefit received by SeAH by its total sales during the POI. On this basis, we preliminarily determine that SeAH received a countervailable subsidy rate of 0.02 percent ad valorem under this program.⁵⁶

We divided the amount of the benefit by NEXTEEL's total sales during the POI. Then, consistent with the methodology described with respect to trading companies in the "Attribution of Subsidies" section above, we cumulated the subsidies DWI received under this program with subsidies, if any, received by NEXTEEL under this program in accordance with 19 CFR 351.525(c). On this basis, the calculation of the subsidy from this tax program results in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁵⁷ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.⁵⁸

5. RSTA Article 120: Exemption of the Acquisition Tax

SeAH reported an exemption from local acquisition taxes under paragraph (2) of RSTA Article 120.⁵⁹ The purpose of this program is to promote the national economy through strong and sound

⁵¹ See GIQR Appendices Volume at 117.

⁵² Id. at 121-122.

⁵³ Id. at 119.

⁵⁴ In NOES from Korea, where only 3.01 percent of Korean corporate tax filers used this program, we found the program de facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. See NOES from Korea, and accompanying IDM at 13.

⁵⁵ The GOK reported that 15,714 companies received benefits under this program. See GIQR Appendices Volume at 98. Table 8.1.1 of Exhibit GR2S 3 indicates that 482,657 corporate tax returns were filed.

⁵⁶ See SeAH Preliminary Calculation Memorandum.

⁵⁷ See DWI Preliminary Calculation Memorandum.

⁵⁸ See e.g., Large Residential Washers, and accompanying IDM at 11.

⁵⁹ See SeAH's February 25, 2015 Supplemental Questionnaire Response (SSQR) at Exhibit S-6-A.

companies taking over insolvent companies. Paragraph (2) of RSTA Article 120 provides a partial exemption from local acquisition taxes for property acquired through a merger through December 31, 2014.⁶⁰ The program is administered by local governments. Article 116 of the Enforcement Decree of the RSTA states that “merger prescribed by the Enforcement Decree” means a merger between corporations that have continued running a business for at least one year except for the consumptive service business. In such cases, where a corporation that has continued running the consumptive service business for at least one year has been extinguished by a merger, and the merging corporation does not run the consumptive service business, such merger shall be included.⁶¹ The GOK claims that this program has been terminated as of December 31, 2014, that tax benefits under this program are not available after 2016, and that there are no replacement programs.⁶²

The language of the implementing provisions for this program does not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. The GOK submits that 265 companies were approved for the assistance under this program in 2012, and 325 in 2013.⁶³ As such, 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, the tax exemption constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, and provides a benefit to the recipient equal to the amount of additional taxes the recipient would have paid in the absence of the program, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a).

To calculate the benefit, we divided the amount of the benefit received by SeAH by its total sales during the POI. On this basis, we preliminarily determine that SeAH received a countervailable subsidy rate of 0.13 percent ad valorem under this program.⁶⁴

6. Restriction of Special Local Taxation Act (RSLTA) Article 78: Reduction and Exemption for Industrial Complexes

SeAH reported receiving a partial exemption from local acquisition taxes and local property taxes under paragraph (4) of RSLTA Article 78.⁶⁵ Article 78 provides that any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax. In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 50 percent on the real estate for five years from the date the tax liability becomes effective. The tax exemption is increased to 100 percent if the relevant land, buildings, or facilities are located in an industrial complex outside of the Seoul metropolitan area. The program is administered by the local governments in Korea. The purpose of the program is to promote the development of the underdeveloped areas in Korea and to appropriately allocate the industries nationwide.⁶⁶

⁶⁰ Id. See also GOK’s March 9, 2015 Supplemental Questionnaire Response (GSQR2), Appendices Volume at 17 to 21.

⁶¹ See GSQR2, Appendices Volume at 19 to 21.

⁶² Id. at 25.

⁶³ Id. at 24.

⁶⁴ See SeAH Preliminary Calculation Memorandum.

⁶⁵ See SSQR at Exhibit S-6-B.

⁶⁶ See GSQR2, Appendices Volume at 1-7.

During the POI, pursuant to Article 78 of the RSTLA, SeAH received exemptions from the local acquisition tax and local property tax from the Pohang, Gunsan, and Suncheon tax authorities.⁶⁷ We preliminarily determine that the tax reductions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act because benefits are limited to enterprises located within designated geographical regions. Our findings in this regard are consistent with the Department's practice.⁶⁸

To calculate the benefit, we divided the amount of the benefit received by SeAH by its total sales during the POI. On this basis, we preliminarily determine that SeAH received a countervailable subsidy rate of 0.12 percent ad valorem under this program.⁶⁹

7. Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR

The petitioners alleged that KEPCO, a state-owned entity, provides electricity to the Korean steel industry, including producers of the subject merchandise, for LTAR. KEPCO was established under the Korea Electric Power Corporation Act and its Enforcement Decree.⁷⁰ KEPCO is an integrated electric utility company engaged in the transmission and distribution of substantially all of the electricity in Korea. In addition, through its six wholly-owned generation subsidiaries, KEPCO generates the substantial majority of electricity produced in Korea.⁷¹ KEPCO is under the general supervision of MOTIE.⁷² MOTIE also has the authority to regulate and supervise the electricity business in Korea.⁷³ Under Korean law, the Government of Korea is required to own, directly or indirectly, at least 51 percent of KEPCO's capital which allows the GOK to control the approval of corporate matters relating to KEPCO.⁷⁴

The GOK has traditionally maintained low electricity tariffs for industry. While the retail rates of electricity in Korea are set by the standard principle of rate of return regulation, it is generally accepted that the rates for agricultural and industrial users are set below cost, while those for other users are above cost. This rate structure generated cross-subsidization where residential and commercial consumers paid higher electricity tariffs in order to subsidize agricultural and industrial consumers. Industrial consumers represent up to half of Korea's total power consumption. This cross-subsidization provided incentives to Korean industry to rely heavily upon high electricity consumption. This is a legacy of an export-driven policy which provided manufacturers with a wide

⁶⁷ See GSQR2, Appendices Volume at 1 and SSQR at Exhibit S-6-B.

⁶⁸ See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012, 79 FR 16283 (March 25, 2014) and accompanying Preliminary Decision Memorandum at 6-7 (unchanged in Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 46770 (August 11, 2014) and accompanying IDM).

⁶⁹ See SeAH Preliminary Calculation Memorandum.

⁷⁰ See GIQR at 30.

⁷¹ See KEPCO Form 20-F Filing with the U.S. Securities and Exchange Commission (SEC) at 23, provided as Exhibit E-1 to the GIQR.

⁷² *Id.* at 22.

⁷³ See GIQR at 31.

⁷⁴ See KEPCO Form 20-F Filing with the SEC at 22, provided as Exhibit E-1 to the GIQR.

range of subsidies. Cheap power significantly helped the export-led growth of the Korean economy, while nurturing an industry structure which consumes too much power and which cannot survive with a price that would recover costs.⁷⁵

As the CEO of KEPCO stated during a 2013 interview, KEPCO has been supporting industries with cheap power in order to make them a growth engine for the economy. The KEPCO CEO also stated that the electricity rates have not been determined solely by the market and that the current rates are too low.⁷⁶ In its latest report on the Energy Policies of Korea released in 2012, the International Energy Agency (IEA) stated that in 2009, the GOK announced plans to introduce a new electricity pricing system that moves in line with global energy commodity prices and would allow KEPCO to pass fuel costs on to consumers; however, the new tariff system was suspended by the government before its application to customers.⁷⁷ Despite increasing electricity sales, KEPCO has continued to incur losses mainly owing to government policy and a lower level of tariffs compared to the costs of producing electricity.⁷⁸ The IEA concluded that a significant problem is that the mechanisms for calculating wholesale and retail electricity prices do not reflect the full cost of electricity production, nor do they reflect its market value; in other words, there is a direct subsidy in place in the form of the sale of electricity at prices below costs.⁷⁹ The recovery rate of electricity price which is the unit price as a share of the total unit cost is lower for the industrial sectors compared to KEPCO's provision of electricity for general use and residential use.⁸⁰

Korea's National Assembly issued a report in 2013 on KEPCO and concluded that there is a need to review the electricity tariffs charged to the industrial sector. The National Assembly Report stated that KEPCO has incurred huge losses because of discounted tariff charges to Korea's largest corporations on industrial electricity usage. While these companies are currently consuming up to 49 percent of Korea's electricity, the tariffs charged to these companies are lower than the lowest rates for electricity amongst the OECD nations.⁸¹ The National Assembly concluded that currently the government subsidizes and charges less-than normal electricity tariffs to the steel industry for their exceeding use of electricity.⁸²

There were three different electricity tariff schedules in effect during the POI. The first tariff schedule was applicable through January 13, 2013; the second tariff schedule was in effect from January 14 through November 20, 2013; and the third tariff schedule became effective on November 21, 2013.⁸³ In order to change (increase or decrease) electricity tariffs, KEPCO first makes an application to MOTIE. When MOTIE receives the application, it consults with the Ministry of Strategy and Finance (MOSF) to discuss how the change will affect the national consumer price

⁷⁵ See Electricity in Korea – Paper submitted by Seoul National University to the May 16, 2011, Symposium on APEC's New Strategy for Structural Reform at 15.2.3, provided as Exhibit IV-45 of the petition.

⁷⁶ See Interview with Cho Hwan-eik, CEO of KEPCO, with Korea Joongang Daily, dated September 4, 2013, provided as Exhibit IV-48 of the petition.

⁷⁷ See Energy Policies of IEA Countries The Republic of Korea 2012 from the IEA at 86, provided as Exhibit IV-43 of the petition.

⁷⁸ *Id.*

⁷⁹ *Id.* at 90.

⁸⁰ *Id.* at 87.

⁸¹ See 2013 National Assembly Report, provided as Exhibit E-4 to the GIQR.

⁸² *Id.*

⁸³ See GOK March 6, 2015 Supplemental Questionnaire Response on Electricity (GSQRE) at 2.

index and to make adjustments as necessary. After the consultations with MOSF, MOTIE makes a request to the Electricity Regulatory Commission for a review of KEPCO's application which reflects the results of the consultation with MOSF. After the Commission's review, MOTIE will determine whether to issue an approval for KEPCO's application.⁸⁴

The electricity tariffs that are charged by KEPCO are regulated and approved by the GOK. In addition, the GOK exercises significant control over KEPCO through its majority ownership and, as described above, pursues government policy objectives through KEPCO's business and operations.⁸⁵ Accordingly, we find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act is being provided to producers of the subject merchandise. We also preliminarily determine that the provision of electricity is specific to the steel industry under section 771(5A)(D)(iii)(III) because the steel industry is the largest industrial consumer of electricity and the National Assembly of Korea has concluded that the GOK is subsidizing the steel industry for its exceeding use of electricity.⁸⁶

Under 19 CFR 351.511(a)(2), the Department determines whether electricity is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country such as electricity tariffs from private parties (referred to as a Tier 1 Benchmark); (ii) comparing the government price to a world market price where it would be reasonable to conclude that such a world market price is available to electricity consumers in the country in question (referred to as a Tier 2 Benchmark); or (iii) if no world market price is available then the Department will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles (referred to as a Tier 3 Benchmark).

With respect to a Tier 1 Benchmark, KEPCO is the primary utility company in Korea providing electricity to Korean consumers and the GOK regulates the rates that KEPCO charges for electricity; therefore, we preliminary determine that a Tier 1 Benchmark (a price within the country) is not available. KEPCO's Form 20-F Filing with the U.S. Securities and Exchange Commission (SEC) does state that a minimal amount of electricity is supplied directly to consumers on a localized basis by independent power producers.⁸⁷ However, if the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market, as in this case, the Department determines that prices within the country are distorted and cannot be used for benchmark purposes.⁸⁸

The next alternative in the benchmark hierarchy is to use world market prices. The petitioners argue that we should use electricity tariffs in Japan as a Tier 2 world market benchmark. However, under

⁸⁴ See GIQR at 31.

⁸⁵ See, e.g., KEPCO Form 20-F Filing with the SEC at 7, provided as Exhibit E-1 to the GIQR.

⁸⁶ See GIQR at 151.

⁸⁷ See KEPCO Form 20-F Filing with the SEC at 11, provided as Exhibit E-1 to the GIQR.

⁸⁸ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (CVD Preamble): We normally do not intend to adjust such prices to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.

19 CFR 351.511(a)(2)(ii), the Department will only use world market prices if the good or service is actually available to the purchaser in the country under investigation. With respect to electricity, the Department has stated that electricity prices from countries in the world market are normally not available to purchasers in the country under investigation.⁸⁹ The GOK has stated that there is no cross-border transmission or distribution of electricity in Korea;⁹⁰ therefore, we preliminarily determine that we cannot rely on world market prices to determine whether electricity is provided for LTAR.

The final alternative in the benchmark hierarchy set forth under 19 CFR 351.511(a)(2)(iii) is to determine whether the government price is consistent with market principles.⁹¹ Therefore, we preliminarily determine to use a Tier 3 Benchmark to determine whether the KEPCO electricity tariffs are set for LTAR. Under a Tier 3 Benchmark analysis, the Department will assess whether the prices charged by KEPCO are set in accordance with market principles through an analysis of such factors as KEPCO's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. A Tier 3 Benchmark is the most complicated under the benchmark hierarchy because the Department is no longer solely examining prices, but assessing how the government sets its prices and whether the mechanism by which it determines its prices is consistent with market principles.⁹²

⁸⁹ See CVD Preamble at 65377: Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America.

⁹⁰ See GIQR at 33.

⁹¹ See CVD Preamble at 65378:

Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992) and Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod, 62 FR 55014, 55021-22 (October 22, 1997).

⁹² In Magnesium from Canada, the Department was analyzing electricity contracts that were provided to 14 companies which purchased such large amounts of electricity that the rates set in the tariff schedule were not applicable. We stated in Magnesium from Canada:

As a general matter, the first step the Department takes in analyzing the potential preferential provision of electricity – assuming a finding of specificity – is to compare the price charged with the applicable rate on the power company's non-specific rate schedule. If the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism applicable to such companies. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, we would probably not find a countervailable subsidy.

As previously noted, there were three different electricity tariff schedules in effect during the POI. KEPCO submits to MOTIE financial statements and supporting data for its suggestions on the increase and decrease of electricity tariffs.⁹³ The costs for providing electricity service to each applicable KEPCO tariff class is also submitted to MOTIE in order to discuss and set the electricity rates for each class of customer.⁹⁴ In order to undertake a possible Tier 3 Benchmark analysis, the Department requested the GOK to provide all documents that are provided by KEPCO to the GOK regulator to support and justify its proposed electricity rates for all of the tariffs that were in effect during the POI. The GOK did not provide this information in its original questionnaire response filed on January 21, 2015. Only after the Department's second request did the GOK provide some of this information, in a submission on March 6, 2015.⁹⁵

The cost and tariff justification data submitted by the GOK on March 6, 2015, only covered one of the tariff schedules that was in effect during the POI; this was the tariff schedule that became effective on November 21, 2013. To determine whether the electricity rates established in this tariff schedule and paid by the respondents were for LTAR, we relied on the cost information provided in the March 6 supplemental questionnaire response.

Under our Tier 3 Benchmark analysis, we assessed whether the prices charged by KEPCO are set in accordance with market principles through an analysis of such factors as KEPCO's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. To develop the electricity tariff schedule that was applicable as of November 21, 2013, KEPCO first calculated its overall cost including an amount for investment return. This cost includes the operational cost for generating and supplying electricity to the consumers as well as taxes. The cost for each electricity classification was calculated by (1) distributing the overall cost according to the stages of providing electricity (generation, transmission, distribution, and sales); (2) dividing each cost into fixed cost, variable cost, and the consumer management fee; and (3) then calculating the cost by applying the electricity load level, peak level, and the patterns of consuming electricity. Each cost was then distributed into the fixed charge and the variable charge. KEPCO then divided each cost taking into consideration the electricity load level, the usage pattern of electricity, and the volume of the electricity consumed. Costs were then distributed according to the number of consumers for each classification of electricity.⁹⁶

Therefore, the Department will examine the standard pricing mechanism used by the utility company to establish the electricity rates set forth in the tariff schedule. If the rate charged to our respondent is lower than the rates charged to other users but the rates set for the other users as well as the rate charged to our respondent are set using the same "standard pricing mechanism," then the lower rate charged to our respondent would not normally be found countervailable. The principle of the standard pricing mechanism recognizes the commercial and market practices and conditions for the provision of electricity; *i.e.*, that it may be cheaper to provide electricity to very large consumers, therefore, the rates established for those large consumers may be cheaper than the rates established for other electricity consumers. While the rates may be lower for one type of consumer compared to other types of consumers, if the rates are established using the same standard pricing mechanism, then the lower rate does not necessarily provide a countervailable subsidy.

⁹³ See GIOR at 31.

⁹⁴ *Id.* at 34.

⁹⁵ See GOK's March 6, 2015 Supplemental Questionnaire Response (GSQRE).

⁹⁶ See GSQRE at 3-7.

Based upon our examination of this information, we found that KEPCO applied the same price-setting philosophy or standard pricing mechanism to determine the electricity tariffs for each classification of customer. We also examined the coverage rate (which is KEPCO's ratio of sales profit to overall costs) for each classification of customer (residential, educational, general, agricultural, and industrial) as well as the total coverage rate for KEPCO, and found that with respect to electricity tariffs, industrial consumers, which include our respondents, were treated in a manner consistent or even less favorable than other consumers with respect to the tariff schedule that was implemented on November 21, 2013. Based upon this examination, we preliminarily determine that the electricity rates paid by the respondents from November 21 through December 31, 2013, did not provide a benefit because these rates were not for LTAR.

Because the GOK did not submit the cost and tariff justification information for the electricity tariffs that were in effect prior to November 21, 2013, we relied on facts otherwise available on the record, pursuant to section 776(a)(1) of the Act, to determine whether the electricity rates paid by our respondents from January 1 through November 20, 2013, were for LTAR. Under a Tier 3 analysis, in accordance 19 CFR 351.511(a)(2)(iii), the Department can assess whether government prices are consistent with market principles through an analysis of such factors as cost including rates of return to ensure future operations.

In 2013, Korea's Board of Audit and Inspection (BAI) released an audit report on nine state-run corporations including KEPCO. According to the BAI, KEPCO sold electricity used by Korea's large industrial conglomerates at rates that only covered about 85.8 percent of KEPCO's production cost.⁹⁷ This finding by the BAI is consistent with the 2013 National Assembly Report which concluded that the GOK currently subsidizes and charges less-than-normal electricity rates to the steel industry for its exceeding use of electricity.⁹⁸ Therefore, we preliminarily determine that the electricity rates paid by our respondents during the period January 1 through November 20 of the 2013 POI were for LTAR because these rates covered only 85.8 percent of KEPCO's production cost. As a result, we preliminarily determine that a benefit was provided to NEXTEEL and SeAH under section 771(5)(E)(iv) of the Act.

Because KEPCO's tariffs for industrial use covered only 85.8 percent of its production costs, the published tariff rates would have to be increased by 14.2 percent in order for them to cover KEPCO's production costs. Therefore, to calculate the benefit to NEXTEEL and SeAH, we increased the tariff rates that they paid during January 1 through November 20 of the POI by 14.2 percent to reflect the rates they would have paid if KEPCO's electricity rates were established in accordance with market principles. We then calculated the amount of electricity payments that would have been made to KEPCO at the increased tariff rates, and compared that amount to the actual amount paid for electricity to KEPCO during this period. We then divided this difference by the respective total sales of NEXTEEL and SeAH to calculate a countervailable subsidy rate of 0.19 percent ad valorem for NEXTEEL, and a countervailable subsidy rate of 0.13 percent ad valorem for SeAH.⁹⁹ DWI did not use this program because it is not an industrial user of electricity.

⁹⁷ See Exhibit IV-49 of the petition.

⁹⁸ See 2013 National Assembly Report provided as Exhibit E-4 to the GIQR.

⁹⁹ See NEXTEEL Preliminary Calculation Memorandum and SeAH Preliminary Calculation Memorandum.

B. Programs Preliminarily Determined Not to Have Conferred a Benefit

1. K-SURE Export Credit Guarantees

NEXTEEL reported that it received loan guarantees under this program during the POI.¹⁰⁰ However, the calculation of the benefits from this loan results in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

2. K-SURE Interest-Free Loan to DWI

DWI reported that during the POI it had an outstanding balance on a loan from K-SURE that was related to a restructuring of debt that took place in 2003.¹⁰¹ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent ad valorem, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰² Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

3. Energy Savings Program: Demand Adjustment Program of Designated Period

NEXTEEL and SeAH reported that they utilized this program. However, the calculation of the benefits for each respondent resulted in rates that are less than 0.005 percent. As such, this program does not have an impact on SeAH's and NEXTEEL's overall subsidy rates. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL or SeAH.

4. Energy Savings Program: Demand Adjustment Program of Emergency Load Reduction

SeAH reported that it utilized this program. However, the calculation of the benefits resulted in a rate that is less than 0.005 percent. As such, this program does not have an impact on SeAH's overall subsidy rate.¹⁰³ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for SeAH.

5. RSTA Article 22: Investments for Overseas Resource Development

DWI reported receiving tax benefits through RSTA Article 22.¹⁰⁴ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰⁵ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

¹⁰⁰ See NIQR3 at 4.

¹⁰¹ See DSQR at 6-8 and Exhibit B-12.

¹⁰² See DWI Preliminary Calculation Memorandum.

¹⁰³ See SeAH Preliminary Calculation Memorandum.

¹⁰⁴ See DIQR2 at Exhibits G-5 and G-6.

¹⁰⁵ See DWI Preliminary Calculation Memorandum.

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

SeAH reported receiving tax benefits through RSTA Article 24.¹⁰⁶ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent and, as such, does not have an impact on SeAH's overall subsidy rate.¹⁰⁷ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for SeAH.

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

DWI reported receiving tax benefits through RSTA Article 25.¹⁰⁸ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰⁹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

8. RSTA Article 25(3): Investments in Facilities for Environmental Conservation

DWI reported receiving tax benefits through RSTA Article 25(3).¹¹⁰ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹¹¹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

9. RSTA Article 104(14): Tax Credits for Logistical Cost of Third Party

DWI reported receiving tax benefits through RSTA Article 104(14).¹¹² However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹¹³ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

C. Programs Preliminarily Determined To Be Not Used

1. K-SURE Short-Term Export Credit Insurance

The GOK, SeAH, NEXTEEL and DWI reported that the three companies purchased export credit insurance from K-SURE during the POI; however, none of them made any insurance claims or received payments on insurance claims with respect to exports of the subject merchandise.¹¹⁴

¹⁰⁶ See SIQR2 at 35 and Appendices 13-A and 13-B

¹⁰⁷ See SeAH Preliminary Calculation Memorandum.

¹⁰⁸ Id.

¹⁰⁹ See DWI Preliminary Calculation Memorandum.

¹¹⁰ Id.

¹¹¹ See DWI Preliminary Calculation Memorandum.

¹¹² See DSQR at Exhibit G-11.

¹¹³ See DWI Preliminary Calculation Memorandum.

¹¹⁴ See GIOR Appendices Volume at 58; NIQR3 at 1; SIQR2 at 26; DIQR2 at 19.

Therefore, we preliminarily determine that the respondents' use of this program during the POI was tied to non-subject merchandise.

2. Korean Export-Import Bank (KEXIM) Export Factoring

DWI reported that it used export factoring that was tied to the export of non-subject merchandise to third countries, and provided sample transaction documents in support of this assertion.¹¹⁵ On this basis, we preliminarily determine that DWI's use of this program during the POI was tied to non-subject merchandise

3. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables

DWI reported that it received short-term discounted loans for export receivables (e.g., documents against acceptance (D/A) loans) from the KDB related to the export of non-subject merchandise. DWI provided documentation relevant to these loans, including sample loan contracts and a list of transactions to which it applied this financing during the POI.¹¹⁶ On this basis, we preliminarily determine that DWI's use of this program during the POI was tied to non-subject merchandise.

4. Promotion of Regional Specialized Industry

NEXTEEL reported that it received benefits under this program for non-subject merchandise only, and provided copies of the R&D reports it filed with the Korea Institute for the Advancement of Technology, which administers this program.¹¹⁷ On this basis, we preliminarily determine that NEXTEEL's use of this program was tied to non-subject merchandise.

5. Korea National Oil Corporation (KNOC) and Korean Resources Corporation (KORS) Loans

DWI reported that it received loans pursuant to the Overseas Resources Development Act. However, these loans are tied to non-subject merchandise.¹¹⁸ On this basis, we preliminarily determine that DWI's use of this program during the POI was tied to non-subject merchandise.

6. KEXIM Guarantee Obligations

DWI reported that it had certain guarantee obligations related to KEXIM loans for which it served as a co-signer/guarantor for other companies.¹¹⁹ DWI provided a listing of the projects for which these companies received the loans to show that they are tied to non-subject merchandise. On this basis, we preliminarily determine that DWI's use of this program during the POI was tied to non-subject merchandise.

¹¹⁵ See DIQR2 at 11-13 and Exhibits B-1 and B-2.

¹¹⁶ See DIQR2 at 14 and Exhibits B-4 through B-7.

¹¹⁷ See NSQR at 2-3 and Exhibits O-9 and O-10.

¹¹⁸ See DSQR at 2-3.

¹¹⁹ See DSQR at 2 and Exhibit B-11.

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

- KEXIM Short-Term Export Credits
- KEXIM's Trade Bill Rediscounting Program
- KEXIM Export Loan Guarantees
- KEXIM Import Financing
- KEXIM Shared Growth Program
- Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
- RSTA Article 25(2) Tax Deductions for Investments in Energy-Economizing Facilities
- Subsidies to Companies Located in Free Economic Zones (FEZs):
 - Tax Reductions and Exemptions
 - Exemptions and Reductions of Lease Fees
 - Grants and Financial Support
- Modal Shift Program
- Grants to HYSCO and Husteel
- Power Business Law

D. Programs for Which More Information is Needed

We intend to request that NEXTEEL and DWI provide information regarding the items listed below. If appropriate, we will address these items in a post-preliminary analysis.

- DWI's debt-to-equity conversions that occurred within the AUL¹²⁰
- Certain loans identified in NEXTEEL's financial statements

IX. 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 APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after we make our final determination.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection

¹²⁰ See DIQR at 25-26. The Department examined DWI's debt workout program and found it countervailable in NOES from Korea.

with this preliminary determination within five days of its public announcement.¹²¹ Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (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 the case briefs, may be submitted no later than five days after the deadline for case briefs.¹²²

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.¹²³ 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.¹²⁴ 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.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²⁵ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.¹²⁶

¹²¹ See 19 CFR 351.224(b).

¹²² See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

¹²³ See 19 CFR 351.309(c)(2) and (d)(2).

¹²⁴ See 19 CFR 351.310(c).

¹²⁵ See 19 CFR 351.303(b)(2)(i).

¹²⁶ See 19 CFR 351.303(b)(1).

XI. VERIFICATION

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

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Re H
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

16 MARCH 2015
Date