



C-580-869

Administrative Review

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September 8, 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: Issues and Decision Memorandum for the Final Results of the
Countervailing Duty Administrative Review: Large Residential
Washers from the Republic of Korea

I. Summary

The Department of Commerce (the Department) analyzed the case brief submitted by Whirlpool Corporation (Petitioner), the only interested party to submit comments in the 2012-2013 administrative review of the countervailing duty (CVD) order on large residential washers (washers) from the Republic of Korea (Korea). As a result of this analysis, we have not made changes to the preliminary results. We recommend that you approve the positions described below.

II. Background

On March 11, 2015, the Department published the preliminary results of the administrative review of the CVD order on washers from Korea.¹ Petitioner submitted a timely filed brief on April 10, 2015. Daewoo, Samsung, and the Government of Korea (GOK) did not submit case briefs or rebuttal briefs with respect to the *Preliminary Results*.

The Department held a public hearing limited to issues raised in Petitioner's case brief on May 28, 2015. On June 11, 2015, the Department extended the deadline for the final results of review to September 8, 2015.²

¹ See *Large Residential Washers From the Republic of Korea: Preliminary Results of the Countervailing Duty Administrative Review; 2012–2013*, 80 FR 12803 and accompanying Preliminary Decision Memorandum (PDM) (March 11, 2015) (*Preliminary Results*).

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Large Residential Washers from the Republic of Korea: Extension of Deadline for Final Results of the Countervailing Duty Administrative Review; 2012-2013" (June 11, 2015).



We have analyzed the comments submitted by Petitioner in its case brief in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in the brief. We have not modified our *Preliminary Results* based on those comments.

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 tubs³ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets⁴ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;⁵ (b) a base; and (c) a drive hub;⁶ 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;⁷ (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;⁸ 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)

³ A “tub” is the part of the washer designed to hold water.

⁴ A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

⁵ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

⁶ A “drive hub” is the hub at the center of the base that bears the load from the motor.

⁷ “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.

⁸ 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.

such that, in normal operation,⁹ the unit cannot begin a wash cycle without first receiving a 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.¹⁰

IV. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” 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.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹¹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.¹²

⁹ “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).

¹⁰ 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).

¹¹ *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

¹² *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

Section 776(b) of the Act 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

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, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as 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 of the Act concerning the subject merchandise. Further, and under the TPEA, the Department is not required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. The TPEA also makes clear that when selecting an AFA rate, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.

As discussed in the *Preliminary Results*, neither Daewoo nor Samsung responded to the Department’s initial questionnaire.¹³ The GOK responded to the initial questionnaire; however, the GOK did not respond to the Department’s subsequent new subsidy allegation (NSA) questionnaire or to a supplemental questionnaire concerning the GOK Supplier Support Fund Tax Exemption program.¹⁴ Accordingly, by not responding to our questionnaires, Daewoo, Samsung, and the GOK withheld information that we requested and significantly impeded our ability to conduct this investigation. Thus, we must rely on facts otherwise available in accordance with section 776(a)(2)(A) and (C) of the Act.

In selecting from among the facts available, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the various questionnaires described above, Daewoo, Samsung, and the GOK did not cooperate to the best of their abilities in this administrative review. Thus, we find that the application of adverse facts available (AFA) is warranted to ensure that none of these parties obtains more favorable results by failing to cooperate than had they complied with our requests for information.

¹³ See *Preliminary Results* PDM at “Background.”

¹⁴ *Id.*

Accordingly, with respect to the GOK Supplier Support Fund Tax Deduction program and the multiple programs covered in the NSA questionnaire,¹⁵ we are finding, based on AFA, that there is a financial contribution from an “authority” within the meaning of sections 771(5)(B) and 771(5)(D) of the Act for those programs. On this same basis, we also find that the programs at issue meet the specificity requirements of section 771(5A) of the Act. Further, because Daewoo, Samsung, and the GOK failed to cooperate to the best of their abilities with respect to these programs, we infer based on AFA that these programs conferred a benefit within the meaning of section 771(5)(E) of the Act. Finally, because Daewoo and Samsung failed to cooperate to the best of their abilities in this review, we find based on AFA that they used the programs listed in the Subsidy Chart section below at the rates listed.

A. Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b)(2) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. Section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Our 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 us with complete and accurate information in a timely manner.”¹⁶ Our practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁷

Accordingly, and pursuant to section 776(d) of the Act and our established practice,¹⁸ for each subsidy program being reviewed, we first applied, 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 applied, 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 applied 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 (*i.e.*, Korea), so long as the producer of the subject merchandise or the industry to

¹⁵ See Section V below for a description of these programs.

¹⁶ 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).

¹⁷ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).

¹⁸ 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.

which it belongs could have used the program for which the rates were calculated.¹⁹ Absent such a rate, we applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any CVD proceeding involving Korea, 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 Korea, we applied the highest calculated rate from any program in any CVD proceeding for Korea.

B. Corroboration of Secondary Information

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.”²⁰ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²¹ 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.²² However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.²³ Furthermore, under the TPEA, the Department is not required to corroborate any CVD applied in a separate segment of the same proceeding, nor is it required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁴

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.²⁵ As explained above, in applying the AFA hierarchy, the Department seeks to identify identical or similar program rates calculated for a cooperative respondent from another segment of this proceeding. Alternatively, the Department seeks to identify identical or similar program rates calculated in any proceeding covering imports from Korea. Actual rates calculated based on actual usage by Korean 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,

¹⁹ See *Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies.”

²⁰ See, e.g., SAA at 870.

²¹ *Id.*

²² See, e.g., *id.* at 869.

²³ *Id.* at 869-870.

²⁴ See section 776(c)(2) of the Act; TPEA, section 502(2).

²⁵ 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.

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.”²⁶ Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.²⁷

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 the investigation and other proceedings. 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 Department corroborated the rates it selected to use as AFA to the extent practicable for the final results of this administrative review.²⁸

As discussed in the Final AFA Memorandum,²⁹ due to the failure of the GOK, in part, and the respondent companies 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 final results.³⁰ 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 basis for the calculation of the applicable AFA rates.

C. Subsidy Chart

As noted above, the rates for Daewoo and Samsung are based on AFA. The basis for the rates are discussed in the accompanying Final AFA Memorandum dated concurrently with this memorandum.

²⁶ See SAA at 870.

²⁷ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

²⁸ 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.

²⁹ See Memorandum to the File, “Administrative Review of the Countervailing Duty Order on Large Residential Washers from the Republic of Korea: Application of Adverse Facts Available” (September 8, 2015) (Final AFA Memorandum).

³⁰ *Id.*

| Program Name | Daewoo AFA Rate | Samsung AFA Rate |
|---|--------------------------------|---------------------------------|
| Daewoo Restructuring: a)GOK and GOK-Directed Equity Infusions under the Daewoo Workout b)GOK and GOK-Directed Ongoing Preferential Lending under the Daewoo Workout | 58.09% | N/A |
| GOK Facilities Investment Support: RSTA Article 26 | 1.05% | 1.05% |
| Tax Reduction for Research and Manpower Development: RSTA 10(1)(3) | 0.72% | 0.72% |
| Research, Supply, or Workforce Development Investment Tax Deductions for “New Growth Engines” Under RSTA Art. 10(1)(1) | 1.05% | 1.05% |
| Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” Under RSTA Art. 10(1)(2) | 1.05% | 1.05% |
| RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities | 1.05% | 1.05% |
| GOK Supplier Support Fund Tax Deduction | 1.05% | 1.05% |
| RSTA Article 7-2 Tax Credit for Improving Enterprise’s Bill System | 1.05% | 1.05% |
| RSTA Article 22 Tax Exemption from Corporate Tax on Dividend Income from Investment in Overseas Resources Development | 1.05% | 1.05% |
| RSTA Article 24 Tax Credit for Investment, etc. in Productivity Increasing Facility | 1.05% | 1.05% |
| RSTA Article 25-3 Tax Credit for Investment in Facilities for Environmental Conservation | 1.05% | 1.05% |
| RSTA Article 104-14 Tax Credit for Third Party Distribution Expense | 1.05% | 1.05% |
| Korea Electric Power Corporation Provision of Electricity for LTAR | 1.65% | 1.65% |
| Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act | 1.05% | 1.05% |
| GOK Subsidies for “Green Technology R&D” and its Commercialization | 1.65% | 1.65% |
| Support for SME “Green Partnerships” | 1.65% | 1.65% |
| GOK 21st Century Frontier and Other R&D Programs | 1.65% | N/A |
| Grants Discovered at Verification | N/A | 1.65% |
| Industrial Bank of Korea (IBK) Preferential Loans to Green Enterprises | 1.65% | 1.65% |
| Korean Export-Import Bank (KEXIM) Export Factoring | 1.65% | 1.65% |
| Korea Development Bank (KDB) and IBK Short-Term Discounted Loans for Export Receivables | 1.65% | 1.65% |
| Infrastructure Funding under Article 29 of the Special Law (Subsidy for investment in Gyeonggi Province) | N/A | 1.65% |
| Financial Support under Article 19 of the Special Law (Subsidy for investment in Gyeonggi Province) | N/A | 1.65% |
| Exemption of Dues under Article 20 of the Special Law (Subsidy for investment in Gyeonggi Province) | N/A | 1.05% |
| Provision of Land for LTAR (Subsidy for investments in Hwaseong Dongtan Semiconductor Factory) | N/A | 1.65% |
| Loan Forgiveness on Land Contract (Subsidy for investments in Hwaseong Dongtan Semiconductor Factory) | N/A | 1.65% |

| | | |
|--|---------------|---------------|
| Provision of Preferential Water Supply Infrastructure for Free (Subsidy for investments in Hwaseong Dongtan Semiconductor Factory) | N/A | 1.65% |
| Total AFA Countervailable Subsidy Rate | 81.91% | 34.77% |

V. Analysis of Programs

Programs 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 respondent companies:

- 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.³¹ 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.³²

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

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.³³ Because assistance under this program only extends to corporations holding a green certificate, we determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the

³¹ 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 20.

³² See 19 CFR 351.524(b).

³³ See GOK July 17, 2014 questionnaire response at 9.

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.³⁴

- 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.³⁵ Because financing provided under this program contingent on export performance, we 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.³⁶

- 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 2012.³⁷ 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 Restructuring³⁸
 - 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 elements of a subsidy under sections 771(5)(B) and 771(5A) of the Act.³⁹ These programs are found to be countervailable based on AFA, because of the GOK's failure to respond to the Department's NSA Questionnaire:

³⁴ 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.

³⁵ See GOK July 17, 2014 questionnaire response at 10.

³⁶ 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."

³⁷ See *Washers Investigation*, and accompanying Issues and Decision Memorandum at 24.

³⁸ 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).

³⁹ 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).

- Subsidies for Investment in Gyeonggi Province⁴⁰
 - 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 Factory⁴¹
 - 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 LTAR⁴²
- RSTA Article 7-2 Tax Credit for Improving Enterprise's Bill System⁴³
- RSTA Article 22 Tax Exemption from Corporate Tax on Dividend Income from Investment in Overseas Resources Development⁴⁴
- RSTA Article 24 Tax Credit for Investment, etc. in Productivity Increasing Facility⁴⁵
- RSTA Article 25-3 Tax Credit for Investment in Facilities for Environmental Conservation⁴⁶
- RSTA Article 104-14 Tax Credit for Third Party Distribution Expense⁴⁷

⁴⁰ 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.

⁴¹ 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.

⁴² 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.

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ According to Petitioner, RSTA Article 104-14 provides for a tax credit for certain expenses paid to third-party distributors. *Id.* at 12.

VI. Analysis of Comments

Comment 1: Selection of the Adverse Facts Available for Samsung Electronics Co., Ltd.

Petitioner's Comments

- The Department should depart from its program-specific methodology for assigning facts available and instead assign to Samsung Daewoo's subsidy rate from the investigation, as updated in this administrative review, as total AFA in the instant final results. Assigning the highest rate from the proceeding would capture the total potential subsidies that Samsung may have received without rewarding Samsung for its refusal to cooperate.
- Prior court and administrative cases (*e.g.*, *Rhone Poulenc*, *KYD*, *Ta Chen*, *Nan Ya*, and *Steel Pipe from India*) provide precedent for the Department to follow this course of action.⁴⁸

Samsung did not rebut Petitioner's comments.

Department Position: The Department will not depart from its program-specific methodology for assigning an AFA subsidy rate to Samsung for these final results. Although Petitioner is correct that *Rhone Poulenc*, *KYD*, *Ta Chen*, and *Nan Ya* affirmed the Department's ability to assign as AFA the highest rate from a proceeding, the TPEA makes clear that the Department may apply the hierarchy described above under "Selection of the Adverse Facts Available Rate" when choosing the AFA rates applicable to non-cooperating respondents.⁴⁹ Furthermore, section 776(d)(2) of the Act grants the Department the discretion to apply the highest countervailable subsidy rate identified under section 776(d)(1)(A), and we have exercised that discretion by applying the highest countervailable subsidy rate for each program applicable to Samsung.

In addition, as noted under the "Selection of the Adverse Facts Available Rate" section of this memorandum, the Department will apply the highest above *de minimis* calculated subsidy rate for the identical or similar program 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.⁵⁰ This exercise of discretion is appropriate in this case because the Department has previously found that the Daewoo Restructuring program was not used by Samsung.⁵¹ Therefore, per Department practice, it is not appropriate to assign Samsung an AFA rate based on this program.

⁴⁸ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *KYD, Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010) (*KYD*); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (*Ta Chen*) (citing *Rhone Poulenc*, 899 F.2d at 1190); *Nan Ya Plastics Corp. v. United States*, 6 F. Supp. 3d 1362, 1368 (CIT 2014) (*Nan Ya*); and *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*) and accompanying Issues and Decision Memorandum (IDM) at "Selection of the Adverse Facts Available Rate."

⁴⁹ See section 776(d)(1)(A) of the Act.

⁵⁰ See *Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

⁵¹ See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) and accompanying Issues and Decision Memorandum at "Programs Not Used."

The Department also notes that the circumstances of the *Steel Pipe from India* investigation are not applicable in the instant case. Specifically, in the *Steel Pipe from India* investigation, the Department stated that there was no information on the record from which to select an AFA rate for any of the subject programs.⁵² Unlike the India case, the Department has subsidy rate information from the investigation segment of the instant case as well as from other recent Korea CVD cases from which to derive AFA rates for Samsung.

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If accepted, we will publish the final results of review in the *Federal Register*.

AGREE ✓ DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2015
Date

⁵² See *Steel Pipe from India* IDM at 11.