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

C-580-873
Investigation
POI: 01/01/2012 – 12/31/2012
Public Document
AD/CVD Office I: JSM / TES

October 6, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea

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I. SUMMARY

The Department of Commerce (the Department) determines that *de minimis* countervailable subsidies are being provided to producers and exporters of non-oriented electrical steel (NOES) in the Republic of Korea (Korea), pursuant to section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are Daewoo International Corporation (DWI) and POSCO. The petitioner is AK Steel Corporation (hereinafter, Petitioner).

II. BACKGROUND

On March 25, 2014, we published our *Preliminary Determination* for this investigation.[1] Following the *Preliminary Determination*, we issued supplemental questionnaires to POSCO and DWI, and the Government of Korea (the GOK), to which we received responses from POSCO and DWI,[2] and the GOK on April 10, 2014.[3] On May 8, 2014, we issued a Post-Preliminary

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[1] *See Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 16295 (March 25, 2014) (*Preliminary Determination*).

[2] *See* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Third Supplemental Questionnaire Response" (April 10, 2014) (P3SR).

[3] *See* Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation: GOK's Response to the Department's Second Supplemental Questionnaire for Government of the Republic of Korea" (April 10, 2014) (G2SR).

Analysis that addressed DWI's equityworthiness during the years in which it had debt converted into equity and the countervailability of these conversions under 19 CFR 351.507.[4]

Between May 13 and May 23, 2014, we conducted verification of the questionnaire responses submitted by the GOK, DWI, and POSCO. We released verification reports on June 24, 2014.[5] The GOK submitted an affirmative brief concerning case-specific issues on July 8, 2014.[6] No other parties submitted affirmative or rebuttal briefs.

The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the "Analysis of Comments" section below, which contains our responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each program. We recommend that you approve the positions we described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

Comment 1 Minor Corrections at the Verification of the Government of Korea (the GOK)

Comment 2 Regional Specificity and the Restriction of Special Taxation Act (RSTA) Article 26

Comment 3 The Use of Corporate Tax Returns in *De Facto* Specificity Analysis for RSTA Tax Deduction Programs

Comment 4 Analyzing the Number of Recipients of Certain RSTA Tax Programs Based on Average Life Span of Purchased Assets

Comment 5 Analyzing RSTA Articles 10(1)(1), 10(1)(2), and 10(1)(3) as One Program

Comment 6 The Number of RSTA Tax Incentives Recipients and "Limited"

Comment 7 The Korea Export-Import Bank (KEXIM) as an "Authority"

Comment 8 Support for Acquisitions of Foreign Mines Program and *De Jure* Specificity

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[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Post-Preliminary Analysis in the Countervailing Duty Investigation: Non-Oriented Electrical Steel from the Republic of Korea (Korea)" (May 8, 2014) (Post-Preliminary Analysis).

[5] *See* Memoranda to Thomas Gilgunn, Acting Director, AD/CVD Operations Office I, "Verification Report: The Government of the Republic of Korea" (June 20, 2014) (GOK Verification Report); and, "Verification Report: POSCO and Daewoo International Corporation (DWI)" (June 20, 2014) (POSCO and DWI Verification Report).

[6] *See* Letter from the GOK, "*Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation*: Revised Case Brief of the Republic of Korea" (July 8, 2014) (GCB). We note that the GOK originally submitted its case brief on July 1, 2014, but due to the inclusion of new factual information, we allowed the GOK to revise and re-submit its case brief.

Comment 9 Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC) and *De Jure* Specificity

Comment 10 The Financial Contribution of DWI's Debt Workout

Comment 11 DWI's Debt to the Korea Export Insurance Corporation (K-SURE)

III. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material.[7] The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

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

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part *(i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings

[7] *See Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 29426 (May 22, 2014), and accompanying Preliminary Decision Memorandum at "Scope Comments" at 4-6, for background regarding the change in scope as included in our *Preliminary Determination*.

7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. SUBSIDIES VALUATION

A. Period of Investigation

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

B. Allocation Period

We normally allocate the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. We find 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.[8] No party to this proceeding objected to our use of this AUL.[9]

C. 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" we will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, we "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii).

During the POI, POSCO had outstanding countervailable long-term U.S. Dollar (USD)-denominated and Korean Won (KRW)-denominated loans from GOK-owned banks and financial institutions.[10] Furthermore, POSCO maintained long-term foreign currency loans guaranteed by GOK-owned banks.[11] As noted above, as benchmarks for countervailable subsidies in the form of long-term loans, we typically use, where available, the company-specific interest rates on the company's comparable commercial loans.[12] However, POSCO reported that it did not have any long-term loans from a commercial bank that were comparable to the countervailable loans at

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[8] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.
[9] *See* Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Response to the Questionnaire for the Government of Korea" (February 3, 2014) (GQR) at I-2; *see also* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Initial Questionnaire Response" (February 3, 2014) (PQR) at 12.
[10] *See, infra*, "Programs Determined To Be Countervailable" – "Korea Export Import Bank's (KEXIM) Support for Acquisitions of Foreign Mines" and "Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)."
[11] *Id*., at "KDB Loan Guarantees for POSCO Loans from Foreign Financial Institutions."
[12] *See* 19 CFR 351.505(a)(3).

issue.[13] In cases where such loans are not available, we use, where available, the company-specific corporate bond rate based on the company's public and private bonds.[14] As such, POSCO provided its company-specific corporate bond rate on its foreign currency denominated public and private bonds for the USD-denominated loans,[15] and its company-specific corporate bond rate on its KRW-denominated public bonds for the KRW-denominated loans.[16] The use of a corporate bond rate as a long-term benchmark interest rate is consistent with the approach we took in several prior Korean countervailing duty (CVD) proceedings.[17]

For the long-term foreign currency loans guaranteed by GOK-owned banks, POSCO was unable to provide application or approval documents for these loans, stating that because the loans were executed between 1984 and 1986, records have not been maintained.[18] The GOK, however, was able to identify the original lending bank as being "a French financial institution."[19] Because POSCO was not able to provide any information as to the terms of the original French loans, we have no information from which to derive a company-specific benchmark. Because no such data were available, we relied on data from the International Monetary Fund (IMF)'s *International Financial Statistics* for the years in which the terms of the loans were agreed upon (*i.e.*, 1984 and 1986) to identify bond interest rates representing yields to maturity of bonds that would indicate longer-term rates.[20] This is consistent with the approach we took in *Large Residential Washers*.[21]

As discussed further below, we determine that under its debt workout, the restructured debt from the Korea Export Insurance Corporation (K-SURE) is being provided to DWI interest free.[22] Because the workout program for DWI was terminated on December 30, 2003,[23] we relied on

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[13] *See* PQR at 20.
[14] 19 CFR 351.102(b)(31) defines a loan to be "a loan or other form of debt financing, *such as a bond*," (emphasis added).
[15] *Id*., at 20 and Exhibit B-10.
[16] *See* PNSAQR at Exhibit NSA-7.
[17] *See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) and "Analysis Memorandum on the Korean Domestic Bond Market" (March 9, 1999); *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*Steel Beams from Korea*), and accompanying Issues and Decision Memorandum (IDM) at "Benchmark Interest Rates and Discount Rates;" *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at "Discount Rates and Benchmark for Loans;" and *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338, 37345-37346 (July 9, 1993).
[18] *See* PNSAQR at 5-6.
[19] *See* Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation: GOK's Response to the Department' s New Subsidy Allegations Questionnaire for Government of the Republic of Korea" (March 13, 2014) (GNSAQR) at "Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions – Standard Questions."
[20] *See* Memorandum to the File, "External Benchmarking Source Data" (March 18, 2014) at Attachment 1 – *IFS Yearbook 1995*. Absent a corporate bond rate, for this time period, we have relied on the "Government Bond Yield."
[21] *See 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.
[22] *See*, *infra*, "Programs Determined To Be Countervailable" – "DWI's Debt Workout."
[23] *See* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Supplemental Questionnaire Response" (March 6, 2014) (P1SR) at 20.

2003 as the year of agreement between DWI and K-SURE for its restructured debt. Accordingly, this requires a long-term KRW-denominated benchmark from this time period to calculate a benefit from this countervailable liability. After the *Preliminary Determination*, POSCO and DWI submitted information on this interest-free liability, which supported our preliminary findings.[24] As such, we continue to rely on data from the IMF's *International Financial Statistics* for 2003 to identify bond interest rates representing yields to maturity of bonds that would indicate longer-term rates.[25]
As discussed further below, we are affirming our preliminary finding that DWI was unequityworthy during 2000 and 2001, *i.e.*, the years in which it had debt converted into equity. Accordingly, we continue to rely on data from the IMF's *International Financial Statistics* for 2000 and 2001 to identify bond interest rates representing yields to maturity of bonds that would indicate longer term rates.[26] Pursuant to 19 CFR 351.524(d), we used these respective interest rates as discount rates to allocate over the AUL the benefit DWI received from these debt-to-equity conversions.

D. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of our regulations states that "normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations." The preamble to our regulations further clarifies our cross-ownership standard. According to the *Preamble*,[27] relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) … Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting

[24] *See* P3SR at Exhibit D-6.
[25] *See* Memorandum to the File, "External Benchmarking Source Data" (March 18, 2014) at Attachment 2 – *IFS Yearbook 2008*. For this time period, we have relied on the "Corporate Bond Rate."
[26] *See* Memorandum to the File, "External Benchmarking Source Data" (March 18, 2014) at Attachment 2. For these time periods, we have relied on the "Corporate Bond Rate."
[27] *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

> ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[28]

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

The U.S. Court of International Trade (CIT) upheld our 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.[29]

POSCO and DWI

POSCO was founded in 1968 by the GOK, and began being privatized in 1988 through its listing on the Korea Stock Exchange, before becoming completely private in 2000.[30] During the POI, it operated two integrated steel mills in Korea, producing various steel products, including, *inter alia*, NOES.[31] By the end of the POI, POSCO maintained ownership of 60.31 percent of DWI's outstanding shares.[32] DWI was created as a result of a spinoff from Daewoo Corporation in 2000, was listed for public trading on the Korea Stock Exchange in 2001,[33] and became a majority-owned subsidiary of POSCO in 2010.[34] During the POI, DWI engaged in export and import activities of industrial grade steel, metals, chemicals, transportation equipment, machinery, ships, plants, electronics, textiles and other specialty goods to numerous markets, including the United States, as well as providing export services, export agent services, intermediary trading, manufacturing, distribution, and natural resource development.

POSCO responded to our questionnaires on behalf of itself and DWI, the trading company that exported POSCO-produced subject merchandise to the United States during the POI.[35] As such, we determine that POSCO and DWI are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through common ownership.[36] For POSCO, we are attributing subsidies received by POSCO to its own sales in accordance with 19 CFR 351.525(b)(6)(i). Pursuant to 19 CFR 351.525(c), we cumulate benefits from subsidies to a trading company that exports subject merchandise with benefits from subsidies provided to the firm producing subject merchandise that is sold through the trading company. Therefore, pursuant to 19 CFR 351.525(c), we are

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[28] *Id*.
[29] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[30] *See* PQR at 6.
[31] *Id*.
[32] *Id*., at 2.
[33] *Id*., at 7.
[34] *Id*., at Exhibit 4, page 35.
[35] *Id*., at 1.
[36] This determination is consistent with our previous findings regarding POSCO and DWI. *See, e.g., Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 55241 (September 10, 2013), and accompanying Preliminary Decision Memorandum at 3; unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 5378 (January 31, 2014).

attributing the benefit from subsidies to DWI to the combined sales of DWI and POSCO (less inter-company sales).[37]

E. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), we consider the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Determination Calculation Memorandum for POSCO and DWI" prepared for this investigation.[38] We note that we amended DWI's POI sales value from the *Preliminary Determination* and Post-Preliminary Analysis based on a minor correction presented at verification.[39]

F. Equityworthiness

Due to the lack of any information from DWI and the GOK that would be relevant to a pre-infusion analysis of DWI before the time of its 2000 debt-to-equity swap, we preliminarily determined that it was unequityworthy in 2000.[40] Additionally, we preliminarily determined that DWI was unequityworthy in 2001 because a reasonable private investor would not accept the potential risks associated with the uncertainty surrounding DWI's restructuring plan.[41] The GOK objected to this finding, and we address its arguments below at "Comment 10 The Financial Contribution of DWI's Debt Workout." As discussed *infra*, we affirm our conclusions as stated in the Post-Preliminary Analysis and determine that DWI was unequityworthy during the years 2000 and 2001, in which it had debt converted into equity, under 19 CFR 351.507.

V. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following.

A. Programs Determined To Be Countervailable

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

Article 26 of the RSTA was first introduced in 1982 to encourage companies to make investments "out of the overconcentration control region of the Seoul Metropolitan Area"[42] in their respective field of business by providing tax relief. Article 26 of the RSTA enables

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[37] *Id.*; *see also, e.g.*, *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 5.
[38] *See* Memorandum to the File, "Final Determination Calculation Memorandum for POSCO and Daewoo International Corporation (DWI)" (October 6, 2014) (Final Determination Calculation Memorandum).
[39] *Id.*, at 2.
[40] *See* Post-Preliminary Analysis at 11.
[41] *Id*.
[42] *See* PQR at Exhibit C-1.

companies to claim a tax credit of seven percent *or* five percent of eligible investments in facilities.[43] Eligibility criteria for benefits under Article 26 of the RSTA had been set forth through Article 23 of the Enforcement Decree of the RSTA.[44] However, the GOK modified Article 26 on December 27, 2010, through the "Tax Credit for Employment-Creating Investments," amendment to the RSTA,[45] to add job creation as a requirement for companies to qualify for tax deductions for facilities investments. The GOK provided a transitional period of one year during which companies could continue to receive tax credits without meeting the job creation requirement.[46]

Despite this change to the program, POSCO submits that during the POI, it only claimed "tax credits for investments" under Article 26 as prescribed prior to the December 27, 2010 amendment that had been carried forward from prior years into 2011.[47] POSCO asserts that the tax credits earned under the 2011 criterion for employment-creating investments were not claimed on the tax return filed during the POI, rather they will be carried forward to future years.[48] Accordingly, for the 2011 tax return filed during the POI, POSCO received a tax credit for investments it made prescribed by Article 23(1) of the Enforcement Decree.[49]

The GOK submits that under Article 23 of the Enforcement Decree of the RSTA, an applicant is required to submit (i) Applications for the tax deduction, (ii) Corporate Tax Base and Taxable Income Settlement Invoice, and (iii) Corporate Tax Base and Taxable Amount Reports to the National Tax Service (NTS), who then reviews the materials submitted to determine the eligibility of the application in accordance with relevant laws, regulations, and the merit of each individual application.[50] The deductible rate decreased from seven percent in 2010 to five percent in 2011 due to the December 27, 2010 amendment to Article 26.[51]

The relevant law authorizing the credit, Article 26 of the RSTA, as well as the implementing law, Article 23 of the Enforcement Decree of the RSTA, limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy. Accordingly, we determine 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*.[52] The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

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

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[43] *See* GQR at Appendices Volume, pages 92 and 98.
[44] *Id*., at Appendices Volume, page 92.
[45] *Id*.
[46] *Id*.
[47] *Id*.
[48] *See* PQR at Exhibit C-1.
[49] *Id*.
[50] *See* GQR at Appendices Volume, page 105.
[51] *Id*., at Appendices Volume, page 92.
[52] *See Large Residential Washers*, and accompanying IDM at 14.

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

The purpose of this program is to facilitate the enhancement of energy efficiency in business sectors through a deduction from taxes payable.[53] The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Enforcement Regulation of RSTA.[54] The eligible types of facilities investment are identified in Article 22(2) of the RSTA, while Appendix 8-3 of Article 13(2) of the Enforcement Regulation of the RSTA lists energy related facilities which are eligible for this program, and Appendix 8-4 lists the facilities that are treated as manufacturing facilities for renewable energy production.[55]

The GOK agency that administers this program is the NTS, under the direction of the Ministry of Strategy and Finance (MOSF).[56] In order to obtain the tax deduction, the GOK notes that an applicant is required to submit (i) an application for the tax deduction and (ii) the report of the taxation scale to the NTS which then reviews the materials submitted to determine the eligibility pursuant to the relevant laws and regulations.[57] Article 25(2) of the RSTA stipulates that ten percent of the eligible investment can be deductible from the taxes payable by a corporation or an individual taxpayer; this rate is to be reduced to three percent as of January 1, 2014.[58] POSCO submits that it claimed a deduction under this program on its tax return filed during the POI.[59]

Information provided by the GOK demonstrates that only a limited number of companies claimed this tax credit in 2012.[60] Accordingly, we determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This finding is consistent with *Large Residential Washers*, in which we relied on information that is comparable to that which the GOK provided in the current investigation.[61] This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), which effectively is the amount of the tax credit claimed.

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

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

In their respective supplemental questionnaire responses, both the GOK and POSCO submit that we previously found this program to not be countervailable in *CORE from Korea 2004 Review*

[53] *See* GQR at Appendices Volume, pages 113 and 130.
[54] *Id*., at Appendices Volume, pages 115-122.
[55] *Id*.
[56] *Id*., at Appendices Volume, page 114.
[57] *Id*., at Appendices Volume, page 124.
[58] *Id*., at Appendices Volume, page 124-125, 129.
[59] *See* PQR at Exhibit C-3.
[60] *See* GQR at Appendices Volume, page 129.
[61] *See Large Residential Washers*, and accompanying IDM at 13-14.

Prelim.[62] In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions, instead arguing that we previously found this program to not be countervailable.[63] While the GOK did not initially respond to our questions with respect to this program, it did provide information specifically requested, *e.g.*, the *Statistical Yearbook of National Tax for 2012* published by the NTS in the G1SR.[64] The type of information contained in the *Statistical Yearbook 2012* was not on the record of the *CORE from Korea 2004 Review Prelim*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns, as well as the number of companies that claimed each type of RSTA tax credit and exemption, in addition to the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 7(2) tax credit is *de facto* specific under section 771(5A)(D)(iii) of the Act.

The SAA states that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."[65] We examined the number of companies that used this program and the number of corporations that filed tax returns as listed in the *Statistical Yearbook 2012*. According to this NTS document, only 2,619 companies (*i.e.*, 0.57 percent of companies filing corporate tax returns in 2011) received benefits under this program.[66] A corporate tax program that is used by less than one percent of corporate tax filers is not one that is widely used throughout an economy, the legal standard set forth in the SAA. Therefore, we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on

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[62] *See Preliminary Results of Countervailing Duty Administrative Review: Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413 (September 11, 2006) (*CORE from Korea 2004 Review Prelim*), unchanged in *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007); s*ee also* Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Countervailing Duty Investigation: GOK's Response to Department's First Supplemental Questionnaire for Government of the Republic of Korea" (March 5, 2014) (G1SR) at 12 and P1SR at 17.

[63] *See CORE from Korea 2004 Review Prelim*, 71 FR at 53420.

[64] *See* G1SR at Exhibit GEN-8 entitled "*Statistical Yearbook of National Tax for 2012*" (*Statistical Yearbook 2012*).

[65] *See* Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d Sess. 911, 929 (1994).

[66] *See* G1SR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 2,619 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.57 percent of all corporate tax filers.

POSCO's overall subsidy rate.[67] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[68]

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

Introduced in 1982 under the Tax Exemption and Reduction Control Law, this program aims to facilitate Korean corporate investment in research and development activities through a reduction of taxes payable for eligible expenditures.[69] The tax reduction is administered by the NTS,[70] under the direction of the MOSF, and manifests itself as either 40 percent of the difference between the eligible expenditures in the tax year and the average of the prior four years, or a maximum of six percent of the eligible expenditures in the current tax year.[71] 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.[72]

As explained in *Large Residential Washers*,[73] and referenced by the GOK,[74] the language of the law for this program, as well as the language of the implementing provisions for this tax program, do not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. Therefore, consistent with *Large Residential Washers*, we examined whether, based on the information on the record of this investigation, the provision of this tax benefit is specific, in fact, to an enterprise or industry or group thereof pursuant to section 771(5A)(D)(iii) of the Act. In *Large Residential Washers*, we determined that this program was specific under section 771(5A)(D)(iii)(III) of the Act because the respondent companies in that investigation, Samsung and LG, were provided with a disproportionate share of tax credits under this program.[75]

In the *Preliminary Determination*, we stated that while the GOK "does not compile data concerning recipients of tax credits … in terms of sectors or industries,"[76] the record does contain information on the total amount of tax reductions received pursuant to Article 10(1)(3) of the RSTA during 2011.[77] We also stated that the *Statistical Yearbook 2012* shows that there were 460,614 corporate tax returns filed in 2011.[78] In the GCB, the GOK stated that in completing the G1SR, it mistakenly submitted only the numbers in the categories for "Small and Medium Enterprises" and "General Corporation under "Subjected to Minimum Tax" and left out those under "Not Subjected to Minimum Tax."[79] Thus, the actual number of recipients that used this program during 2011 was 13,884.[80] Accordingly, our preliminary finding that only 803

[67] *See* 19 CFR 351.524(a).
[68] *See, e.g.*, *Large Residential Washers*, and accompanying IDM at 10.
[69] *See* G1SR at Appendices Volume, pages 2 and 16.
[70] *Id*., at Appendices Volume, page 3.
[71] *Id*., at Appendices Volume, pages 5 and 17.
[72] *Id*., at Appendices Volume, pages 4-6.
[73] *See Large Residential Washers*, and accompanying IDM at 11-13.
[74] *See* G1SR at 12.
[75] *See Large Residential Washers*, and accompanying IDM at 12.
[76] *See* GQR at Appendices Volume, page 14.
[77] *See* G1SR at Exhibit GEN-8.
[78] *Id*., at Exhibit GEN-8, Table 8-1-1.
[79] *See* GCB at 5.
[80] *Id*., footnote 3. *See also* G1SR at Exhibit GEN-8, Table 8-3-2.

companies benefitted from this program, equating to only 0.17 percent of all 2011 corporate tax filers, is inaccurate. Based on the updated information from the GOK, 3.01 percent of all 2011 corporate tax filers benefitted from this program.

Notwithstanding the GOK's revised recipient total, we continue to find this program *de facto* specific under 771(5A)(D)(iii)(I) because the actual recipients are limited in number. The SAA states that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."[81] We examined the number of companies that used this program and the number of corporations that filed tax returns as listed in the *Statistical Yearbook 2012*. According to this NTS document, only 3.01 percent of companies filing corporate tax returns in 2011 received benefits under this program.[82] A corporate tax program that is only used by three percent of corporate tax filers is not one that is widely used throughout an economy, the legal standard set forth in the SAA. Therefore, we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Further, the tax reductions are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, which effectively is the amount of the tax credit claimed on the tax return filed during the POI, pursuant to 19 CFR 351.509(a)(1).

POSCO claimed benefits under this program during the POI,[83] from which we calculated a subsidy rate of 0.04 percent *ad valorem*.

5. <u>RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development</u>

Under RSTA Article 22, a domestic corporation whose income for each business year ending before December 31, 2012, includes dividend income from its investment in overseas resource development projects as prescribed by the Enforcement Decree of the RSTA, is exempt from corporate tax.[84] Article 19 of the Enforcement Decree of the RSTA prescribes the following investment projects as being eligible for this tax exemption: Agricultural products, Animal products, Fishery products, Forest products, and Mineral products.[85]

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[81] *Id.*, at 929.
[82] *See* G1SR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 13,884 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 3.01 percent of all corporate tax filers. (We would note that the actual percentage of corporate tax payers using this program is less than 3.01 percent because the number of recipients reported in the NTS includes companies that also claimed tax credits under Article 10(1)(1) and Article 10(1)(2), two tax incentives previously found to be *de jure* specific but that were not used in this investigation. (*See also* GOK Verification Report at 8.))
[83] *See* P1SR at Exhibit C-7.
[84] *Id*., at Exhibit C-8.
[85] *Id*.

POSCO reported that it had investments in overseas resource development projects as prescribed by the Enforcement Decree of the RSTA, and received tax exemptions for these investments.[86] The tax exemptions were reflected in the tax return that POSCO filed during the POI.[87]

We determine that the tax exemption POSCO received under Article 22 of the RSTA constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). Furthermore, consistent with *CORE from Korea 2010 Review*,[88] we determine that the tax exemption POSCO received under Article 22 of the RSTA is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because Article 19 of the Enforcement Decree of the RSTA expressly limits access to the subsidy to firms with overseas investment projects in agricultural, animal, fishery, forest, or mineral products.

Under this program, the benefit is equal to the difference between the amount of income taxes POSCO paid and the amount it would have paid in the absence of the program. We calculated a subsidy rate of 0.01 percent *ad valorem* for POSCO.

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

In their respective supplemental questionnaire responses, both the GOK and POSCO submit that we previously found this program to not be countervailable in *Carbon Steel from Korea*.[89] In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions because it argued that we previously found this program to not be countervailable.[90] We must first note that we determine the parameters of our investigations, not the respondent. While the GOK did not respond to our questions with respect to this program, it did provide information that we could use to analyze whether this program is countervailable. As mentioned above, the *Statistical Yearbook 2012* published by the NTS was provided in the G1SR.[91] The type of information contained in the *Statistical Yearbook 2012* was not on the record of *Carbon Steel from Korea*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns as well as the number of companies that claimed each type of RSTA tax credit and exemption and the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 24 tax credit is *de facto* specific under section 771(5A)(D)(iii) of the Act.

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[86] *Id*.
[87] *See* PQR at Exhibit 10.
[88] *See, e.g., Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013) (*CORE from Korea 2010 Review*), and accompanying IDM at 22.
[89] *See Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Carbon Steel from Korea*), and accompanying IDM; *see also* G1SR at 12, and P1SR at 18.
[90] *See* G1SR at 12.
[91] *Id*., at Exhibit GEN-8.

Based upon the information provided by the GOK in the *Statistical Yearbook 2012*, in this proceeding, we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because, in contrast to the information available in *Carbon Steel from Korea*, record evidence demonstrates that the actual recipients are limited in number, as only 565 companies received benefits under this program.[92] Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[93] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[94]

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

In their respective supplemental questionnaire responses, both the GOK and POSCO submit that we previously found this program to not be countervailable in *Carbon Steel from Korea*.[95] In our supplemental questionnaire, we requested that the GOK provide us with information on this tax credit; the GOK did not provide a response to these questions because it argued that we have previously found this program to not be countervailable.[96] We must first note that we determine the parameters of our investigations, not the respondent. While the GOK did not respond to our questions with respect to this program, it did provide information that we could use to analyze whether this program is countervailable. As noted above, the *Statistical Yearbook 2012* published by the NTS was provided in the G1SR.[97] The type of information contained in the *Statistical Yearbook 2012* was not on the record of *Carbon Steel from Korea*. In addition, the *Statistical Yearbook 2012* provides the number of corporate tax returns as well as the number of companies that claimed each type of RSTA tax credit and exemption and the total amount of tax credit claimed. This *Statistical Yearbook 2012* provides information for 2011, one year prior to our POI. While we would also prefer to have information for 2012, our POI, the GOK did not respond to our questions soliciting usage data for the POI for this tax credit. Therefore, we examined the information provided in the *Statistical Yearbook 2012* in order to determine whether the Article 25 tax credit is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Based upon the information provided by the GOK in the *Statistical Yearbook 2012*, in this proceeding, we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number, as only 180 companies received

[92] *See* G1SR at Exhibit GEN-8, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 565 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.12 percent of all corporate tax filers.
[93] *See* 19 CFR 351.524(a).
[94] *See, e.g.*, *Large Residential Washers*, and accompanying IDM at 10.
[95] *See* G1SR at 12, and P1SR at 18.
[96] *Id*., at 12.
[97] *Id*., at Exhibit GEN-8.

benefits under this program.[98] Furthermore, a financial contribution from the GOK exists in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act.

To calculate the benefit to POSCO from the tax credit under this program, the tax credit claimed under this program on the tax return filed during the POI is divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this tax credit results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[99] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[100]

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

Introduced in 2007, RSTA Article 25(3) aims to motivate investments in facilities that are constructed for the purpose of preserving the environment.[101] The GOK submits that any entity making an investment in facilities under this motivation may apply for a ten percent tax deduction.[102] Administered by the NTS, under the direction of the MOSF, Article 25(3) of the RSTA is the law authorizing the deduction, which is implemented through Article 22(3) of the Enforcement Decree of the RSTA.[103] POSCO submits that it made investments in its environmental conservation production facilities (*e.g.*, waste water and sludge disposal facilities, waste oil treatment facilities, coke dust collector facilities, *etc*.), and claimed the tax deduction based on its assessment that these investments were among those prescribed by Article 22(3) of the Enforcement Decree of the RSTA.[104]

According to the *Statistical Yearbook 2012*, there were 460,614 corporate tax returns filed in 2011, 182 of which claimed the Article 25(3) tax deduction.[105] Additionally, the GOK submits that there were 163 users in 2010 and 220 users in 2012.[106] Because only 220 companies benefitted from this program in 2012, as well as only the 182 companies in 2011, we determine that this program is *de facto* specific under 771(5A)(D)(iii)(I) because the actual recipients are limited in number.

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

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[98] *Id.*, wherein Table 8-1-1 indicates that 460,614 corporate tax returns were filed in 2011, and Table 8-3-2 indicates that only 180 of these 460,614 corporate tax returns received benefits under this tax credit program. Accordingly, that is only 0.04 percent of all corporate tax filers.
[99] *See* 19 CFR 351.524(a).
[100] *See, e.g.*, *Large Residential Washers*, and accompanying IDM at 10.
[101] *See* G1SR at 13 and Appendices Volume, page 20.
[102] *Id*., at Appendices Volume, page 20.
[103] *Id*., at Appendices Volume, pages 20 and 22.
[104] *See* P1SR at Exhibit C-9.
[105] *See* G1SR at Exhibit GEN-8 at Tables 8-1-1 and 8-3-2.
[106] *Id*., at Appendices Volume page 31.

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

This tax credit was introduced in 2007, with the purpose of motivating manufacturing companies to outsource logistics business operations to third parties that specialize in logistics by offering a tax incentive for doing so.[107] Administered by the NTS, under the direction of the MOSF, Article 104(14) is the law authorizing the tax incentive, which is implemented through Article 104(14) of the Enforcement Decree of the RSTA.[108]

POSCO submits that under this program, where a company used third-party distribution companies (*e.g.*, an unaffiliated outside trucking company, ocean-shipping company, or loading/unloading company) and paid for distribution expenses, the company may apply for this tax credit if the company meets two requirements prescribed by Article 104(14) of the Enforcement Decree of the RSTA: 1) the third-party distribution expense spent for the tax year (*e.g.*, fiscal year 2011) shall be at least fifty percent or more of the total distribution expense spent by the company for the tax year (*e.g.*, fiscal year 2011); and 2) the ratio (*i.e.*, third-party distribution expense divided by total distribution expense) for the tax year (*e.g.*, fiscal year 2011) shall not be lower than that ratio for the previous year (*e.g.*, fiscal year 2010).[109] POSCO submits that if the company meets these two requirements, it can apply for a tax credit based on three percent of the increased amount of third-party distribution expenses (*i.e.*, the third-party expenses spent for the tax year minus the third-party expenses spent for the previous year, *e.g.*, 2010).[110] POSCO states that the limit of the tax credit under this program is 10 percent of corporate income tax.[111]

We have not previously investigated Article 104(14) tax credits. The language of the law, *i.e.*, Article 104(14) of the RSTA, as well as the language of the implementing provisions, *i.e.*, Article 104(14) of the Enforcement Decree of the RSTA, do not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. Next, we examine whether, based on the information on the record of this investigation, the provision of this tax benefit is specific, in fact, to an enterprise or industry or group thereof pursuant to section 771(5A)(D)(iii) of the Act.

The *Statistical Yearbook 2012* indicates that there were 460,614 corporate tax returns filed in 2011, of which, 291 companies claimed benefits pursuant to Article 104(14) of the RSTA.[112] Moreover, the GOK submits that in 2012 there were only 283 companies that benefitted from this tax credit, and only 191 companies in 2010.[113] Because only 283 companies used this program in 2012, and 291 companies used this program in 2011, we find this program *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Additionally, we determine that this program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the difference between the amount of taxes the

[107] *Id*., at Appendices Volume, page 37.
[108] *Id*., at Appendices Volume, page 39.
[109] *See* P1SR at Exhibit C-10.
[110] *Id*.
[111] *Id*.
[112] *See* G1SR at Exhibit GEN-8, at Tables 8-1-1 and 8-3-2.
[113] *Id*., at Appendices Volume, page 49.

company paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), which effectively is the amount of the tax credit claimed. On this basis, we calculated a subsidy rate of 0.06 percent *ad valorem* for POSCO.

10. Korea Export Import Bank's (KEXIM) Support for Acquisitions of Foreign Mines[114]

Beginning in 1976, this program provides financial assistance from KEXIM to Korean companies through capital contributions, as well as through the acquisition of stocks and provision of long-term funds, thus enabling Korean companies to make foreign investments.[115] Under the program, KEXIM extends loans to Korean companies in order to purchase foreign assets on the condition that the company has been doing business for more than three years in the same field as the targeted foreign asset.[116] The GOK submits that KEXIM calculates the borrowing enterprise's interest rate by amending a base rate to reflect factors such as the delivery cost, administrative fees, credit rates of the lendee, and the expected profit.[117] The GOK notes that in addition to KEXIM, other commercial banks also provide comparable financial services for the acquisition of assets abroad, and that this program has previously been called the "Overseas Investment Credit."[118] As of the end of 2010, KEXIM was a government-owned entity, through 74.4 percent ownership by the GOK.[119]

The GOK submits that this program is administered by KEXIM, pursuant to Article 18(1)(5) of the KEXIM Act, Article 15(1) of its Enforcement Decree, and Articles 67 through 69 of KEXIM's Regulation Governing Financing Operations.[120] Through this statutory and regulatory framework, when an applicant submits an application and the supporting documents for financing, the KEXIM loan officer reviews the materials to determine the eligibility based on the merits of the application, after which, if the application meets all the requirements and completes the internal credit extension evaluations process successfully, approval is granted.[121] Both POSCO and DWI utilized this program prior to, and during the POI, maintaining outstanding loans from KEXIM for the acquisition of foreign mines.[122]

Of the loans outstanding during the POI, POSCO maintains that certain of these borrowings relate to the excavation of elements that cannot be used in the production of NOES, and thus, any benefit derived therefrom is not attributable to subject merchandise under 19 CFR 351.525(b)(5).[123] In the PQR, POSCO did not provide necessary information to support its claim; thus, we sought further information in a supplemental questionnaire. In response to our further questions, POSCO submitted application and approval documents which indicate that at

[114] We note that in the Initiation Checklist and InitQ, this program was titled "KEXIM's Support for Acquisitions of Foreign Mines." The GOK submitted that the actual program name is "KEXIM's Overseas Investment Credit Program." *See* GQR at I-9. However, for this proceeding, we will continue to reflect the name as stated in the Initiation Checklist.
[115] *See* GQR at Appendices Volume, page 46.
[116] *Id*.
[117] *Id*.
[118] *Id*.
[119] *Id*., at Appendices Volume, page 50.
[120] *Id*., at Appendices Volume, page 49-50.
[121] *Id*., at Appendices Volume, page 52.
[122] *Id*., at I-10; *see also* PQR at 19-21 and Exhibits B-2 through B-12.
[123] *Id*., at 19-21.

the point of bestowal, the purpose of the loan was specific to the excavation of certain elements tied to products not related to the production of subject merchandise.[124] As such, only certain of these loans from KEXIM for the acquisition of foreign mines are countervailable. We confirmed this at verification.[125]

We determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because this program is limited to companies that are investing in foreign mines. We also previously determined that loans from KEXIM constitute financial contributions.[126] Information submitted in the instant investigation by the GOK confirms the decision reached on the KEXIM in *CORE from Korea 2006 Review*.[127] In the Registration Statement filed on March 22, 2012 with the U.S. Securities and Exchange Commission, KEXIM and the GOK state: "We {KEXIM} were established, as stated in the KEXIM Act, to 'promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment, and the development of natural resources abroad.' As an instrument in serving the Government's public policy objectives, we do not seek to maximize our profits."[128] Therefore, we determine that because KEXIM is an authority under section 771(5)(B) of the Act, this program results in a financial contribution in the form of a direct transfer of funds through loans under section 771(5)(D)(i) of the Act, which confers a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amount of interest POSCO paid on the KEXIM loan and the amount the recipient would pay on a comparable commercial loan.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[129] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[130]

11. DWI's Debt Workout

Background of DWI's Debt Workout

The Daewoo Group was dissolved in 1999 as a result of an unsustainable debt load and the 12 companies of the Daewoo Group, including Daewoo Corporation, were placed into separate

[124] *See* P1SR at Exhibits B-18 and B-20.
[125] *See* POSCO and DWI Verification Report at 10-12; *see also* GOK Verification Report at 9-11.
[126] *See, e.g., Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) (*CORE from Korea 2006 Review*), and accompanying IDM at 17.
[127] *See, e.g.,* GQR At Appendices Volume, page 25 – "KEXIM is a financial institution incorporated under the KEXIM Act of Korea. The GOK owns 74.4%, Bank of Korea owns 22.6% and the Korea Finance Corporation owns 3.0% of KEXIM."
[128] *See* GQR at Exhibit B-3, page 5.
[129] *See* 19 CFR 351.524(a). *See also* POSCO Preliminary Calculation Memorandum.
[130] *See, e.g., Large Residential Washers*, and accompanying IDM at 10.

workout programs under the Corporate Restructuring Act (CRA).[131] Daewoo Corporation, along with all the Daewoo Group companies, entered into workout programs on August 26, 1999.[132] On March 15, 2000, the Creditors' Council of the Daewoo Corporation established under the CRA made an agreement to transfer certain of Daewoo Corporations' liabilities by spinning them off to DWI, formerly the international trading division of Daewoo Corporation, and to Daewoo Engineering & Construction Co. (Daewoo E&C), formerly the construction division of Daewoo Corporation, which resulted in DWI becoming a primary debtor, or guarantor, for those carried-over liabilities.[133] As a result of this agreement, DWI was incorporated on December 27, 2000.[134]

Under the workout program, DWI's Creditors' Council determined to restructure the liabilities transferred to DWI in three separate debt restructurings using the following methods: (1) debt-for-equity swaps by the creditors on December 31, 2000; (2) debt transferred to equity through the issuance of convertible bonds on December 29, 2001, which were to be exchanged for shares; and (3) extensions of debt maturities and the revision of interest rates.[135] There was no debt forgiveness.[136] This workout program for DWI was terminated on December 30, 2003.[137]

POSCO submits that all of the debt restructured by the creditors that participated in the workout program was repaid by 2009.[138] However, other outstanding liabilities resulting from the debt workout remained on DWI's books through the POI.[139] When the Daewoo Corporation defaulted on loans from various banks that were guaranteed by K-SURE, K-SURE made payments to these creditors on Daewoo Corporation's behalf.[140] As a result, K-SURE became a creditor of Daewoo Corporation and a portion of the liability to K-SURE was transferred to DWI as part of the spin-off agreed by the Creditors' Council. DWI agreed to pay off this liability in quarterly payments to K-SURE over 12 years with the first installment beginning on March 31, 2004.[141] According to DWI's 2012 audited financial statements, the balance of this liability at the beginning of the POI was 41,463 million KRW.[142] According to these financial statements, no interest is paid on this debt.[143]

In addition, the financial statements reference a line item "debt-for-equity swap."[144] The amount of this at the beginning of 2012 is 376 million KRW.[145] POSCO states that this relates to an amount of debt that was agreed to be converted into equity as part of the workout agreement but

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[131] *See* P1SR at 20 and Exhibit D-1.
[132] *Id*., at 20.
[133] *Id*.
[134] *Id*.
[135] *Id*.
[136] *Id*.
[137] *Id*.
[138] *Id*., at 20-21 and Exhibit D-2; *see also* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: Second Supplemental Questionnaire Response" (March 11, 2014) (P2SR) at 5.
[139] *See* P1SR at 21.
[140] *Id*.
[141] *Id*.
[142] *See* PQR at Exhibit 10, Note 15 – "Borrowings".
[143] *Id*.
[144] *Id*.
[145] *Id*.

was never converted into equity by the creditors.[146] It remained as a liability in DWI's balance sheet until December 31, 2012, when it went to zero.[147]
DWI's debt workout was controlled by the Creditors' Council that was first formed under the Corporate Restructuring Act (CRA) and its replacement act, the Corporate Restructuring Promotion Act (CRPA).[148] As we stated in *Refrigerators from Korea*, decisions of a company's Creditors' Council are made by vote, with a super-majority of 75 percent, based on the percentage of debt held, required for any resolution to pass.[149] In that investigation, we found that government-controlled entities held the super-majority of 75 percent, which allowed the government to control the Creditor's Council.[150]

In our first supplemental questionnaire to the GOK, we requested information on DWI's Creditors' Council, including the identification of the members of the Creditors' Council and the ownership stake of the GOK in each of the members. In response to each of our questions regarding the Creditors' Council, the GOK stated that it is not in a position to know the details of the debt workout program for DWI.[151] We requested this information, in part, to be able to determine whether government-controlled entities accounted for 75 percent of the votes of the Creditors' Council in order to determine whether the GOK could control the decision of DWI Creditors' Council.

Financial Contribution of DWI's Debt Workout

As stated in the Post-Preliminary Analysis, subsequent to the *Preliminary Determination*, we sought clarification from the GOK regarding its knowledge of the details of the debt workout program for DWI. In the G2SR, the GOK confirmed that it was not in a position to know the details of DWI's debt workout.[152] In addition to seeking further clarification from the GOK, we requested DWI to submit a list of each bank and/or financial institution that participated in DWI's debt-to-equity conversions in 2000 and 2001.[153] For the 2000 debt-to-equity conversion, DWI was unable to find any reference material to submit to us that would allow it to identify the participating banks.[154] However, for the 2001 debt-to-convertible bond swap, DWI submitted a list of participating banks/financial institutions,[155] and shared this list with the GOK.[156] DWI shared this list of participating banks and financial institutions with us and with the GOK.[157] However, when we requested the GOK to then indicate the level of ownership and/or control by GOK-owned or GOK-controlled entities of each of these banks/financial institutions at the time of each of the debt-to-equity conversions, the GOK submitted that it was unable to do so.

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[146] *See* P1SR at 22.
[147] *See* P2SR at 9.
[148] *See* G1SR at 15.
[149] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at 11.
[150] *Id*.
[151] *See* G1SR at 16-18.
[152] *See* G2SR at 2-3.
[153] *See* P3SR at 3 and Exhibit D-11.
[154] *Id*., at 5.
[155] *Id*., at Exhibit D-11.
[156] *Id*., at 5.
[157] *Id*., at 6.

Specifically, the GOK stated that "{t}he GOK does not keep track of the level of ownership and/or investment by GOK-owned or GOK-controlled entities in the banks and/or financial institutions, and thus does not possess the information to answer this questionnaire."[158] Had we simply requested the GOK to identify levels of GOK ownership and/or control of the participating banks and/or financial institutions at the time of DWI's 2001 debt-to-convertible bond swap without having the information submitted by DWI, the GOK's above-stated answer would have been consistent with its contention that it is not in a position to know the details of DWI's debt workout. However, DWI readily supplied the names of all banks and/or financial institutions involved in the swap,[159] and yet the GOK still claimed it was unable to provide the requested information regarding ownership and/or control of those banks and/or financial institutions. This information is necessary for us to determine whether the creditors participating in DWI's debt workout were private entities or were "authorities" under the Act. Pursuant to section 776(a) of the Act, we may rely on facts otherwise available when necessary information is not on the record or when a party withholds requested information, fails to provide requested information by the applicable deadline, significantly impedes a proceeding, or provides information that may not be verified. We find that necessary information is not on the record. Thus, we are continuing to rely on the facts available under section 776(a) of the Act to determine that the creditors participating in the workout were "authorities."

This decision is based on the fact that of the *identifiable* creditors of DWI that participated in the debt restructuring of the company, several are known authorities under section 771(5)(B) of the Act. Information provided in the P1SR demonstrates that DWI was bailed out by "KAMCO, The Export-Import Bank of Korea, Korea Development Bank and others."[160] The Korea Asset Management Company (KAMCO), KEXIM, and the KDB have each been previously determined to be "authorities" within the meaning of section 771(5)(B) of the Act.[161] In *Refrigerators from Korea*, we stated that "KAMCO is a government special purpose institution" and that "it is a government authority carrying out GOK functions."[162] In *Large Residential Washers*, we determined that loans from the KDB constitute financial contributions because the KDB is a government-owned policy bank.[163] In *CORE from Korea 2006 Review*,[164] we determined that loans from KEXIM also constitute a financial contribution. Information submitted in the instant investigation by the GOK confirms the decisions reached on the KDB in *Large Residential Washers*[165] and the KEXIM in *CORE from Korea 2006 Review*.[166]

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[158] *See* G2SR at 6.
[159] *See* P3SR at 6 and Exhibit D-11.
[160] *See* P1SR at Exhibit D-4.
[161] *See, e.g.*, *Refrigerators from Korea*; *Large Residential Washers*; and *CORE from Korea 2006 Review*.
[162] *See Refrigerators from Korea*, and accompanying IDM at 108.
[163] *See Large Residential Washers*, and accompanying IDM at 8.
[164] *See CORE from Korea 2006 Review*, and accompanying IDM at 17.
[165] *See, e.g.*, Letter from the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: Response to the Questionnaire for the Government of Korea" (February 3, 2014) (GQR) at I-16 through I-21.
[166] *See, e.g.*, GQR at Appendices Volume, page 25 – "KEXIM is a financial institution incorporated under the KEXIM Act of Korea. The GOK owns 74.4%, Bank of Korea owns 22.6% and the Korea Finance Corporation owns 3.0% of KEXIM."

K-SURE is another entity that played a major role in the debt workout of DWI.[167] We previously determined in *Refrigerators from Korea* that funding provided to Korean companies by K-SURE constitutes a financial contribution under the Act.[168] In the GQR, the GOK argues that K-SURE is neither a GOK agency nor authority.[169] However, information provided in the GOK's questionnaire responses supports our determination in *Refrigerators from Korea*. The GOK states that K-SURE is an incorporated special entity funded by the GOK and that it was established by a specific law enacted by the Government of Korea, the Trade Insurance Act.[170] Under the Trade Insurance Act and K-SURE Articles of Association, K-SURE is supervised by the GOK, and the scope of its operations and its budget are approved and/or set by the GOK.[171] In addition, under Article 52 of the Trade Insurance Act and Article 32 of the Articles of Association, officers and employees of K-SURE who are not already government employees will be treated as government employees.[172] Therefore, we confirm our prior determination that K-SURE is an authority under section 771(5)(B) of the Act that is capable of providing a financial contribution under section 771(5)(D) of the Act.

Given the record evidence indicating the participation of these "authorities," we find that the lending and equity provided to DWI in the debt workout constituted financial contributions from authorities within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act.[173]

Specificity of DWI's Debt Workout

We next analyze whether this program is specific under the Act. DWI was placed into a separate workout program under the CRA. The CRA was subsequently replaced by the CRPA. Subsidies under these laws are not *de jure* specific under section 771(5A)(D)(i) of the Act. We recently found the debt workout program to be *de facto* specific on the basis of predominant or disproportionate use under section 771(5A)(D)(iii) of the Act.[174] With respect to debt-to-equity conversions that are provided under the debt workout program, we determined in *Refrigerators from Korea* that the Daewoo Group, which would include DWI, received a predominant or disproportionate share of the debt-to-equity conversions provided to all companies undergoing workout programs under the CRPA.[175]

In the G1SR, the GOK stated that it is not in a position to know the details of the debt workout program for DWI including the amount of debt that was addressed in the DWI workout.[176] In the G2SR, the GOK confirmed this statement.[177] However, the GOK was able to provide

[167] *See* P1SR at 21 and P2SR at 8.
[168] *See Refrigerators from Korea*, and accompanying IDM at 16.
[169] *See* GQR at Appendices Volume, page 74.
[170] *Id.*, at Appendices Volume, page 75-76.
[171] *Id.*, at Exhibits B-64, B-68, and B-71.
[172] *Id.*, at Exhibits B-64 and B-71.
[173] Certain German banks have also been identified; however, these banks opposed the spinoff of DWI and Daewoo E&C from Daewoo Corporation and entered into a separate debt restructuring agreement with Daewoo Corporation outside of the parameters of the Creditors' Council. *See* P1SR at 21. Because this action was taken outside the direction of DWI's Creditors' Council, this action is not part of the investigated DWI Debt Workout Program.
[174] *See, e.g.*, *Refrigerators from Korea* and *Large Residential Washers*.
[175] *See Refrigerators from Korea*, and accompanying IDM at 11.
[176] *See* G1SR at 16-18.
[177] *See* G2SR at 2-3.

information regarding the names of corporations under restructuring pursuant to the CRPA, as well as the types of financial tools (*e.g.*, Debt-Equity Swap, Debt Exemption, *et cetera*), and values thereof, for a specific year, which included DWI.[178]

Additionally, public information placed on the record of this investigation[179] reveals that 66.74 percent of the debt restructuring that was done under the workout program was provided to the Daewoo Group.[180] The source of the data was ultimately the GOK's Financial Supervisory Commission (FSC).[181] Because the information on the record shows that the Daewoo Group, which includes DWI, received 66.74 percent of the debt restructurings under the workout program, we determine that Daewoo Group was a predominant user of this program within the meaning of section 771(5A)(D)(iii)(II) of the Act. This conclusion, reached in the *Preliminary Determination*, and affirmed here, comports with the information the GOK submitted in the G2SR.[182]

Benefit Conferred Under DWI's Debt Workout

A) DWI's Debt-to-Equity Swaps

Under the workout program for DWI, the company had 751,304 million KRW in debt that was restructured; 127,440 million KRW of debt swapped into equity; and 254,835 million KRW in debt converted into convertible bonds which could be exchanged into equity.[183] In addition, DWI had restructured debt with K-SURE that bore no interest[184] and a liability of 374 million KRW of debt that could be converted into equity but never was by the creditors.[185] DWI reported that all of the restructured debt under the debt workout program except for the K-SURE restructured debt was repaid by 2009.[186]

With respect to the debt-to-equity conversion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in question.[187] We first examine whether private investor prices are available to compare to the government-provided equity infusion. Here, there are no private investor prices available. Accordingly, we must consider whether DWI is equityworthy or unequityworthy. If a company is determined to be unequityworthy under 19 CFR 351.507 then the amount of the debt-to-equity conversion would be treated as a grant. As stated above, we are affirming our preliminary finding that DWI was unequityworthy at the time of its 2000 and 2001 equity infusions. Specifically, due to DWI and the GOK's inability to provide any information with respect to a pre-infusion analysis of DWI

[178] *Id.*, at Exhibit E-3.
[179] *See* Memorandum to the File, "Independent Research on the Financial Restructuring of Daewoo" (March 18, 2014) (Daewoo Workout Memo).
[180] *See* Daewoo Workout Memo at Attachments 1 through 11.
[181] *Id.*, at Attachment 11.
[182] *See* G2SR at Exhibit E-3.
[183] *See* P2SR at 5-6.
[184] *See* P1SR at 21.
[185] *Id.*, at 9.
[186] *Id.*, at 20-21.
[187] *See* section 771(5)(E)(i) of the Act and 19 CFR 351.507(a).

before the time of its 2000 debt-to-equity swap, we determine that it was unequityworthy in 2000. That is, we find that at the time of the debt-to-equity swap, DWI did not show an ability to generate a reasonable rate of return within a reasonable period of time.

Because we determine that DWI was unequityworthy in 2000 and 2001, we therefore determine the benefit to DWI to be the entire amount of the DWI's equity infusion accomplished through the debt-to-equity conversions. In accordance with 19 CFR 351.507(c), we treated the benefit as a non-recurring subsidy and allocated the benefit over the AUL pursuant to 19 CFR 351.524(d). On this basis, we determine that these GOK debt-to-equity conversions under DWI's Debt Workout provided a net subsidy rate of 0.02 percent *ad valorem* stemming from the 2000 conversion, and 0.04 percent *ad valorem* stemming from the 2001 conversion.[188]

B) DWI's Debt Forgiveness

As noted above, DWI had 374 million KRW in debt workout liabilities that went to zero during the POI;[189] therefore, we treated this 374 million as debt forgiveness under 19 CFR 351.508 during the POI. We divided this amount by the sales denominators prescribed above to determine the amount of the benefit provided by this debt forgiveness. Using this methodology, we calculated an *ad valorem* subsidy benefit of less than 0.005 percent. Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[190]

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

In the *Preliminary Determination*, we treated the outstanding balance of the K-SURE restructured debt as an interest free liability because, based on the facts available, it did not appear that interest is being charged on this restructured debt. Subsequently, DWI submitted the relevant POI payment information on this liability,[191] thereby confirming that it was interest-free.[192] Consistent with our preliminary finding, because no interest is being charged on this debt, a benefit is being conferred under section 771(5)(E)(ii) of the Act. To determine the benefit provided by the debt restructured by K-SURE, we amended our preliminary calculations to utilize the template DWI submitted,[193] to calculate the amount of interest that would have been paid on the outstanding debt during the POI using the benchmark as described above. We then divided the interest savings during the POI by the sales denominators prescribed above. Using this methodology, we calculated an *ad valorem* subsidy benefit of less than 0.005 percent. Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[194]

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[188] For a complete discussion regarding the calculation of DWI's subsidy rate under this program, *see* Final Calculation Memorandum.
[189] *See* P2SR at 9.
[190] *See, e.g., Large Residential Washers*, and accompanying IDM at 10.
[191] *See* P3SR at Exhibit D-6.
[192] *Id*.
[193] *Id*.
[194] *See, e.g., Large Residential Washers*, and accompanying IDM at 10.

12. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector.[195] Through the provision of financial support, the GOK seeks to increase rail and vessel transport, while decreasing motorized vehicle freight, in the hope that this will promote a shift towards a greater use of environment-friendly means of transportation and rebalance the method of transport in the logistics sector.[196] Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport to administering agencies for truck-to-rail "modal shift" entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight "modal shift" entities.[197] The legal framework for this program is Article 21 of the Sustainable Transportation Logistics Development Act, Article 24 of its Enforcement Decree, and Articles 14 through 17 of the Regulation on Modal Shift Agreement as promulgated by the MOF.[198]

POSCO submits that it received financial support under this program prior to and during the POI.[199] In order to receive this support, POSCO states that it submitted an application to an administering agency, Korean Rail (KORAIL), with its proposal to shift some of its existing transportation by truck to transportation by train, and to another administering agency, the Korea Shipping Association (KSA), related to shifting some of its existing truck transportation to transportation by vessel.[200] Subsequently, KORAIL and the KSA approved the application and entered into a modal shift agreement with POSCO.[201]

The GOK submits that in 2012 there were 32 companies that were approved for assistance under this program, and 16 companies in 2011.[202] Because only 32 companies were approved for assistance under this program in 2012, and only 16 companies used this program in 2011, we find that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number.[203] Furthermore, a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

To calculate the benefit to POSCO from the grants under this program, the grants received under this program during the POI are divided by the company's adjusted total FOB sales during the POI. However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[204] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[205]

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[195] *See* GNSAQR at "Section II – Support for Freight Modal Shift Program Standard Questions Appendix," page 2.
[196] *Id*.
[197] *Id*., at "Section II – Support for Freight Modal Shift Program Standard Questions Appendix," pages 2-3.
[198] *Id*., at "Section II – Support for Freight Modal Shift Program Standard Questions Appendix," pages 3-4.
[199] *See* Letter from POSCO, "Non-Oriented Electrical Steel from Korea, Case No. C-580-873: New Subsidy Allegations Questionnaire Response" (March 13, 2014) (PNSAQR) at 1.
[200] *Id*., at Exhibit NSA-1.
[201] *Id*.
[202] *See* GNSAQR at "Section II – Support for Freight Modal Shift Program Standard Questions Appendix," page 11. We note that the GOK lifted proprietary treatment of this information in the response to our request. *See* G2SR at 6.
[203] *Id*.
[204] *See* 19 CFR 351.524(a).
[205] *See, e.g.*, *Large Residential Washers*, and accompanying IDM at 10.

We note that since POSCO also received funds under this program prior to the POI, any non-recurring benefits would normally be allocated over the AUL.[206] However, in this instance, the benefits POSCO received prior to the POI fall within the exception pursuant to 19 CFR 351.524(b)(2), and have, therefore, been expensed in the year of receipt.

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

This program was introduced in 1982, with the purpose of enhancing and stabilizing the supply of energy resources in Korea.[207] The GOK submits that multiple levels of governance implement the program, beginning with the Ministry of Trade, Industry and Energy (MOTIE) as the agency in charge, which administers the program with assistance from the Energy and Mineral Resource Development Association of Korea (EMRD).[208] The Financing Review Committee (FRC) reviews applications and decides whether the business plan of the applicant is adequate for the assistance provided, taking into account elements such as the credit rating of the applicant, the technical feasibility of the business, the terms and conditions of the contract.[209] Once the FRC recommends approval of the application to MOTIE and the EMRD, KNOC and KORES are the entities that execute the program through the disbursement of funds in the form of long-term loans.[210] The GOK submits that KNOC is responsible for the development of oil, while KORES is responsible for the development of other natural resources.[211]

The laws and regulations relating to this program are Articles 12 and 14 of the Submarine Mineral Resources Development Act; Articles 5 and 11 (clause 1 and 2) of the Overseas Resources Development Business Act (ORDB Act); Article 11 (clause 1) of its Enforcement Decree; Article 3 (paragraph 1) of its Ministerial Decree; and Articles 5, 6 (clause 1), 7 (clause 1), 20 (clause 1 and 2), 20-2, and 22-2 (clause 1, 2, and 4) as well as Appendices 1 and 2 of the Ministerial Notice promulgated by MOTIE on the Criteria for Overseas Resources Development Business Fund.[212]

During the POI, both POSCO and DWI maintained outstanding long-term loans from KNOC and KORES under this program.[213] However, information on the record demonstrates that the loans from KNOC to DWI or POSCO are tied to non-subject merchandise.[214] As such, our analysis solely pertains to loans from KORES.

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[206] *See* 19 CFR 351.524(b)(1).
[207] *See* GNSAQR at "Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix," page 17.
[208] *Id*.
[209] *Id*.
[210] *Id*.
[211] *Id*.
[212] *Id*., at "Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix," page 18.
[213] *See* PNSAQR at 2.
[214] *Id*.; *see also* GNSAQR at Exhibits NSA 16 and 17.

Both DWI and POSCO maintained loans outstanding from KORES during the POI.[215] In the *Preliminary Determination*, we noted that the GOK and POSCO submitted conflicting information as to the resource being extracted at one of these mines.[216] However, at verification of the GOK, KORES officials presented a correction to the GNSAQR at Appendices Volume, page 20, relating to the type of mineral for which the New Caledonia[217] loan from KORES was bestowed to POSCO.[218] GOK officials explained that in preparing the GNSAQR, the GOK had mistakenly identified the New Caledonia loan to POSCO as being for soft coal,[219] whereas it was actually for nickel.[220] We fully verified this minor correction,[221] and, thus, reverse our preliminary finding regarding this New Caledonian mine.

We determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because this program is limited to companies that are investing in foreign resource extraction. According to the GOK, MOTIE is the government agency responsible for this program; 100 percent of the capital of KORES is funded by the GOK pursuant to the MOTIE Ministerial Notice; and under this Ministerial Decree, MOTIE delegated the authority to execute the loans provided under this program to KORES.[222] Therefore, we determine that loans provided under this program are from an authority under section 771(5)(B) of the Act and result in a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. Furthermore, a benefit is conferred under section 771(5)(E)(ii) of the Act in the amount of the difference between the amount of interest POSCO and DWI paid on the KORES loans and the amount the recipients would pay on a comparable commercial loan.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[223] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[224]

14. <u>Korea Development Bank (KDB) Loan Guarantees for POSCO Loans from Foreign Financial Institutions</u>

We initiated on this subsidy program in the NSA Memorandum, wherein Petitioner alleged that the KDB provided guarantees for loans from foreign financial institutions during the years 1984 and 1986 which, according to POSCO's 2012 financial statements, were still outstanding during

[215] *See* PNSAQR at 3.
[216] *Id*.; *see also* GNSAQR at "Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix," page 20.
[217] We note that the proprietary treatment for this location and use of this mine was lifted when POSCO submitted the P3SR. *See* P3SR at 8.
[218] *See* GOK Verification Report at VE-1B.
[219] *See* GNSAQR at Appendices Volume, page 20, under "From KORES – (2) Loans outstanding during the POI."
[220] *See* GOK Verification Report at VE-1B.
[221] *Id*., at 13-14.
[222] *See* GNSAQR at "Section II – Long-term loan program for the exploitation of natural resources abroad Standard Questions Appendix," pages 17, 22, and 24.
[223] *See* 19 CFR 351.524(a); *see also* POSCO Preliminary Calculation Memorandum.
[224] *See, e.g.*, *Large Residential Washers*, and accompanying IDM at 10.

the POI.[225] We noted that during the period from 1984 through 1986, the GOK controlled access to loans from foreign institutions and we have found access to foreign loans to be countervailable in prior Korean CVD proceedings.[226]

The GOK submits that the purpose of this program was to assist companies procure capital from foreign financial institutions,[227] and that under this program, POSCO received loans from a French financial institution which were guaranteed by the KDB.[228] The GOK submits that at the time POSCO received these loans, the KDB was subject to the Foreign Capital Inducement Act, under which the program was administered pursuant to Article 29, Clause 1.[229] During the POI, the GOK submits that the KDB was wholly-owned by the GOK.[230]

Because the GOK restricted access to loans from foreign financial institutions when these loans were approved, and access to this foreign financing was disproportionately provided to the steel industry at that time,[231] consistent with *Steel Beams from Korea*, we determine that this program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Furthermore, we determine that because the KDB is an authority under section 771(5)(B) of the Act, and this program results in a financial contribution in the form of a potential direct transfer of funds through loans guarantees under section 771(5)(D)(i) of the Act, which confers a benefit under section 771(5)(E)(iii) of the Act between the amount POSCO paid on the guaranteed loan and the amount POSCO would have paid for a comparable commercial loan absent the KDB guarantee.

To calculate a benefit under this program, we compared the amount of interest POSCO paid on these loans during the POI to the amount it would have paid under the benchmark interest rate prescribed above. However, the calculation of the subsidy from these loan guarantees results in a rate that is less than 0.005 percent, and, as such, this rate does not have an impact on POSCO's overall subsidy rate.[232] Consistent with our past practice, we have not included this program in our net subsidy rate calculations for POSCO.[233]

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[225] *See* PQR at Exhibit 8.
[226] *See, e.g., Steel Beams from Korea*, and accompanying IDM under "Analysis of Programs" at I.A.1. "The GOK's Credit Policies through 1991."
[227] *See* GNSAQR at 4 and "Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions," at A.
[228] *Id*., at "Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions," at A.
[229] *Id*., at "Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions," at D. and G.
[230] *Id*., at "Section II – Korea Development Bank Loan Guarantees for POSCO Loans from Foreign Financial Institutions Standard Questions," at J. 6.
[231] *See Steel Beams from Korea*, and accompanying IDM under "Analysis of Programs" at I.A.1. "The GOK's Credit Policies through 1991."
[232] *See* 19 CFR 351.524(a); *see also* POSCO Preliminary Calculation Memorandum.
[233] *See, e.g., Large Residential Washers*, and accompanying IDM at 10.

B. Programs Determined To Be Not Used During the POI

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

1. Grants to POSCO

2. Korea Export Import Bank (KEXIM)

    a. Shared Growth Program

    b. Short-Term Export Credits

    c. Export Factoring

    d. Export Loan Guarantees[234]

    e. Trade Bill Rediscounting Program

    f. Long-Term Loans other than those for the Acquisition of Foreign Mines

3. Korea Trade Insurance Corporation (K-SURE)

    a. Short-Term Export Credit Insurance

    b. Export Credit Guarantees

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

5. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)

6. Subsidies to Companies Located in Free Economic Zones (FEZs)

    a. Tax Reductions and Exemptions

    b. Exemptions and Reductions of Lease Fees

    c. Grants and Financial Support

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

C. Programs Determined To Not Exist During the POI

1. Green-Steel Industry Support

In the Initiation Checklist, we initiated an investigation into this program, under which Petitioner alleged that the GOK created a Green-Steel Industry Support program to develop CO_2-free steel manufacturing, with subsidies set for distribution beginning in 2013.[235] However, in the GQR, the GOK submitted that the Green-Steel Industry Support program as alleged by Petitioner never come into effect.[236] The GOK stated that while it had initially included a program that would have provided financial support to companies with plans to develop CO_2-free steel manufacturing technologies in the proposed draft of the 2013 National Budget bill, the final version of the bill failed to include the program.[237] Accordingly, the GOK maintains that no such program has ever been introduced in Korea.[238] After the *Preliminary Determination*, we verified the GOK's claims,[239] and therefore determine that this program did not exist during the POI.

VI. ANALYSIS OF COMMENTS

Comment 1 Minor Corrections at the Verification of the Government of Korea (the GOK)

GOK's Comments

The GOK argues that we should accept the minor correction regarding the tax programs which we refused to accept at the verification of the GOK because:

- The information is already on the record in the *Statistical Yearbook 2012* that the GOK submitted as Exhibit GEN-8 of the G1SR;
- The correction was merely a summary of data from the *Statistical Yearbook 2012*;
- The GOK submitted the corrected information in footnote 3 of its case brief;[240] and
- In responding to our request, the GOK should have added the numbers in all four categories together, but mistakenly only reflected the numbers in the categories for Small and Medium Enterprises Corporation (SME) and General Corporation under "Subjected to Minimum Tax" and left out those under "Not Subjected to Minimum Tax."

[235] *See* Initiation Checklist at 18-19.
[236] *See* GQR at I-4 and I-5.
[237] *Id*.
[238] *Id*.
[239] *See* GOK Verification Report at 29.
[240] We observe that the table is mislabeled as being for year 2012; it is actually for year 2011. Table 8-3-2 in the *Statistical Yearbook 2012* only includes data through 2011. *See* G1SR at Exhibit GEN-8.

Department's Position

As stated in the GOK Verification Report, while at the NTS, GOK officials presented a revised Table #1 as submitted in the G1SR at Appendices Volume, page 13. However, this revised table covering multiple years of data included new factual information rather than a correction to the table covering the same time period as submitted in the G1SR (*i.e.*, only year 2011 data sourced from the *Statistical Yearbook 2012*). Therefore, pursuant to 19 CFR 351.301(b)(1), we did not accept this new factual information because it was not timely filed.

The GOK initially attempted to resubmit this revised table covering multiple years of data in its case brief and argued that we should not have declined to accept the chart as a minor correction at verification. In addition, the GOK provided a detailed explanation as to how the chart was a derivation of information on the record. However, we rejected this information in the brief because the chart contained data for prior years and for 2012 not contained in any of the factual information submitted in the GOK's questionnaire responses.[241] Accordingly, we allowed the GOK to revise and re-submit its case brief, wherein the GOK continued to maintain that we erred in declining to accept the revised table as presented at verification.

We disagree. It was not until its case brief that the GOK explained that the chart contained, in part, information already on the record. This detailed explanation was absent at verification. Lacking this crucial reference detail, Department verifiers were unable to ascertain that the information presented at verification was not entirely new factual information (*i.e.*, prior years and for 2012 was new factual information, while revised 2011 data sourced from the *Statistical Yearbook 2012* was not). Thus, we were correct in declining to accept the information while at verification. In its revised case brief, the GOK resubmitted the table at issue, referencing only data already on the record of the investigation (*i.e.*, that sourced from the *Statistical Yearbook 2012*), and thoroughly linked this revised table to information already on the record. Accordingly, we are using this revised table for purposes of this final determination.

Comment 2 Regional Specificity and the Restriction of Special Taxation Act (RSTA) Article 26

GOK's Comments

The GOK argues that Article 26 of the RSTA is not regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because:

- The program implies dual purposes in providing tax a deduction to every enterprise or industry in Korea to promote investments and preventing the overpopulation of the Seoul Metropolitan Area (SMA);

- There is no indication that the purpose of this program is to encourage companies to make investments in areas "out of the overconcentration control region of the SMA;"

[241] *See* Letter to the GOK, (July 3, 2014).

- The purpose of this program is not to provide assistance to enterprises or industries located within certain designated geographical regions, but to encourage companies to invest in facilities relevant to their field of business;

- The GOK explained in its response that this program excludes the provision of assistance to investments made within the Seoul metropolitan city, which has been designated as population control area;

- This is a national policy designed to enhance the living environment and conditions by preventing population concentration in a single region and is irrelevant to any kind of economic support targeted at a specific region; and

- From an economic perspective, there is no reason for the GOK to discriminate against the SMA from other areas in its effort to encourage investments in Korea, and national policies do not attempt to channel investments to a specific region as long as the investments are made into or within Korea.

Department's Position

We disagree with the GOK. Consistent with *Refrigerators from Korea*[242] and *Large Residential Washers*,[243] we continue to find that this program is regionally specific under section 771(5A)(D)(iv) of the Act. The CIT sustained our findings on this issue in the *Large Residential Washers* investigation.[244] It is clear from the text of Article 23 of the Enforcement Decree that benefits provided under RSTA Article 26 are limited to a designated geographical region.[245] That designated region is all parts of the Korean territory outside of the SMA. It is not relevant to our determination the geographic size of the landmass outside of the SMA in Korea that is eligible to receive benefits under the program, so long as the GOK designates a geographical region (*i.e.*, the SMA) that it intends to exclude from these benefits. The percentage or respective size of land mass bears no relationship to regional specificity, or to the percentage of economic activities excluded under this specific program. Thus, consistent with long-standing practice,[246] we continue to find that the GOK established a designated geographical region to which this program is available, and that subsidies under this program are specific within the meaning of section 771(5A)(D)(iv) of the Act.

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[242] *See Refrigerators from Korea*, and accompanying IDM at "Comment 3: Whether RSTA Article 26 Benefits are Specific" at 37.
[243] *See Large Residential Washers*, and accompanying IDM at "Comment 9: Whether RSTA Article 26 is Regionally Specific" at 44.
[244] *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329 (CIT 2014) ("Because access to Art. 26 tax credits was conditioned upon investment in a 'designated geographical region,' Commerce's regional specificity determination was reasonable.") (Internal citations omitted).
[245] *See* GQR at Appendices Volume, page 94.
[246] *See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Portland Hydraulic Cement and Cement Clinker From Mexico*, 48 FR 43063, 43065 (September 21, 1983).

Comment 3 The Use of Corporate Tax Returns in *De Facto* Specificity Analysis for RSTA Tax Deduction Programs

GOK's Comments

The GOK argues that the tax deduction programs under the RSTA are not *de facto* specific within the meaning of the Act because:

- The Department compared the number of recipients of each program to the total number of corporate tax returns, which is flawed;

- The Department should not have included the number of corporate tax returns filed by companies that do not produce products;

  - Section 771(5A)(D)(iii)(I) of the Act requires that the comparison be made on an enterprise or industry basis.

  - Section 771(4)(A) of the Act defines an "industry" to mean producers of a domestic like product as a whole or producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product;

  - The term "industry" in section 771(5A)(D) of the Act excludes those entities that do not produce products (such as entities in the financial service industry or the health care service industry); and

  - Although the term enterprise is not defined in section 771 of the Act, considering its location in Title 19, and the fact that it is juxtaposed with the term industry, it ought to be interpreted to mean producers of a product.

Department's Position

Section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Section 771(5A) of the Act further states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA notes: "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[247] Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy.

The GOK argues that we should limit our analysis to companies that produced "products." We note that the RSTA tax incentives at issue in this investigation are tax incentives that are

[247] *See* SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act…." 19 USC 3512(d).

available to all types of businesses and corporations in Korea. Thus, it is appropriate to include all corporate tax returns in our analysis of *de facto* specificity. Therefore, in order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy as contemplated by the SAA, we examined both the nominal number of recipients of each of these RSTA tax incentives, other than those determined to be either regionally specific or *de jure* specific, and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns.

Moreover, we disagree with the GOK that the definition of "industry" in section 771(4)(A) of the Act is relevant here. The relevant term in section 771(5A) of the Act is "enterprise or industry" and section 771(5A) itself provides a definition of this term, stating that the term refers to "a foreign enterprise or industry and includes a group of such enterprises or industries." Section 771(4)(A) of the Act, on the other hand, refers to a domestic (*i.e.*, U.S.) industry and is not relevant to a specificity analysis.

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprises or industry basis, are limited in number. Therefore, the analysis of whether a program is *de facto* specific based on a limited number of subsidy recipients is one that must be conducted by a review of the actual recipients of the program. As stated above, we compared the number of actual recipients to the total number of corporate tax filers (*i.e.*, total potential users) to determine whether the number of recipients is limited within the meaning of section 771(5A)(D)(iii)(I) of the Act. On this basis, we find these programs to be *de facto* specific.

Comment 4 Analyzing the Number of Recipients of Certain RSTA Tax Programs Based on Average Life Span of Purchased Assets

The GOK argues that we did not take into account the characteristics of each RSTA program in determining whether the actual recipients of the subsidy were limited in number. Moreover, the GOK contends that we should have considered on an enterprise or industry basis, because:

- With regard to the tax deduction programs for investments in Energy-Economizing Facilities (RSTA Article 25(2)), Productivity Increase Facilities (RSTA Article 24), Facilities for Environment or Safety (RSTA Article 25), and Environmental and Safety Facilities (RSTA 25(3)), since corporations do not make investments in such facilities on an annual basis, the number of the recipients of the tax deduction under the above programs should have been aggregated for the period of the replacement cycle of relevant facilities; and

- The Department should have investigated further to obtain such information (*e.g.*, the average life span of relevant facilities) to come up with a more exact evaluation, but failed to do so.

Department's Position

Under 19 CFR 351.524(c), tax deductions such as these RSTA tax credits, are classified as recurring subsidies. At no point in this investigation did the GOK, based on the criteria listed under 19 CFR 351.524(c)(1), argue or demonstrate that these RSTA tax credits are non-recurring. In addition, the GOK did not provide the usage of these tax credits over the respondents' AUL, nor did it provide information on usage for all recipients of these RSTA tax credits for the "average life span of relevant facilities." Furthermore, the GOK failed to cite to any information on the record to support its contention that corporations do not make investments in energy-economizing facilities, investments to increase productivity, and investments for environmental and safety facilities on a continuing basis. Moreover, the GOK failed to cite to any statutory, regulatory, case, or court precedent to support its claim that our *de facto* specificity analysis should be conducted on an "average life span of relevant facilities."

The laws and regulations establishing the RSTA programs at issue appear to provide tax credits for a myriad of energy, environmental, and safety products and facilities that were available to all corporations in Korea. Thus, we determined that these tax programs would not be *de jure* specific. In our analysis of the laws and regulations of these programs, we found no evidence that these laws and regulations expressly limited these subsidies within the meaning of section 771(5A)(D)(i) of the Act. It appears that now the GOK is arguing that the laws and regulations that created these programs were designed to only provide tax credits to a very narrow range of investments that would rarely be undertaken by Korean companies; thus, the GOK appears to be suggesting that each of these RSTA programs is *de jure* specific. To this, based on our examination of the laws and regulations for these programs, we continue to disagree.

Under 771(5A)(D)(iii)(I) of the Act, we will find a program *de facto* specific if the number of enterprises actually using the subsidy program is limited. Neither the statute nor our regulations expressly state the period for which we should analyze program usage data to determine whether a subsidy program has a limited number of users. Therefore, we are permitted to make that determination on a period-specific basis (*e.g.*, the POI). However, the statute does state that we will take into account the length of time during which the subsidy program has been in operation.[248] Likewise, the SAA cautions us to ensure that a subsidy program with the appearance of only a small number of recipients is not due to the fact that these subsidies are from a brand new program.[249] Therefore, we will normally request that a government provide usage data for the year in which the subsidy was conferred plus the two- or three-year period preceding the year in which a respondent was provided with the subsidy.[250] Requesting this data for a two- or three-year period allows us to ensure that the number of companies using the program in the year in which our respondent used the program is representative of the actual distribution of subsidies under the program.

To determine whether these RSTA tax credits were *de facto* specific we requested the GOK to provide the amount of assistance approved under each of these programs and the total number of

[248] *See* section 771(5A)(D)(iii) of the Act.
[249] *See* SAA at 931-32.
[250] *See, e.g.*, Letter to the GOK, "Countervailing Duty Investigation: *Non-Oriented Electrical Steel from the Republic of Korea*" (December 20, 2013) at "Standard Questions Appendix."

companies that were approved for each of these programs for the year in which the mandatory respondent used this program as well as for each of the preceding three years. In determining whether each of these tax programs was *de facto* specific, we requested four years of data. Based on our examination of record evidence, we determined that each of these four tax programs was *de facto* specific. For example, during each of the years companies filed over 400,000 corporate tax returns, while the number of companies that used RSTA Article 25(3) ranged from 144 in 2009 to 220 in 2012,[251] and the number of companies that used RSTA Article 25(2) ranged from 176 in 2008 to 348 in 2012.[252] With respect to RSTA Article 24 and Article 25, the GOK did not fully respond to our request for information on these programs and we only had information on the number of companies that used this program in 2011, which were 565 and 180, respectively. Because only a limited number of companies received these subsidies in 2012, we determine that these programs are *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 5 Analyzing RSTA Articles 10(1)(1), 10(1)(2), and 10(1)(3) as One Program

The GOK argues that we should analyze the three sub-articles of RSTA Article 10(1) as one program because:

- The tax reduction program for Research and Human Resources Development (RSTA Article 10), RSTA Sub-Articles 10(1)(1), 10(1)(2), and 10(1)(3) all comprise one single program, which provides tax deduction regarding the investments in research and human resources development;

- The tax reduction program under RSTA Article 10 is provided for the research and human resources development, an activity that all enterprises doing business are engaged in;

- The figures cited by the Department in the *Preliminary Determination* are incorrect, as demonstrated by the actual figure in the *Statistical Yearbook 2012*; and

- Considering that the companies do not invest in research and human resource development every year, these figures should also have been aggregated after further investigating the intervals of the companies making such investments.

Department's Position

The GOK submits multiple arguments with respect to RSTA Article 10(1)(3). First, the GOK argues that we should treat the three different tax credits as one program for the purposes of examining the specificity of each. In order to consider these programs as one program, the GOK must provide evidence that the three programs meet all of the criteria to be considered integrally linked as set forth under 19 CFR 351.502(c). The GOK has not cited to any record evidence that the programs are integrally linked under our regulations. Based on the information that is on the

[251] *See* G1SR at Appendices Volume, page 31.
[252] *See* GQR at Appendices Volume, page 129.

record, these programs do not meet all of the criteria for integral linkage under 19 CFR 351.502(c).

For example, 19 CFR 351.502(c) requires that the subsidy programs have the same purpose and bestow a similar level of benefits on similarly situated firms. These criteria are not met with respect to these three tax incentives. These three tax incentive programs provide tax credits for different types of expenditures and investment. While the tax credits that are provided by the GOK under Article 10(1)(3) are provided to facilitate Korean companies' investment with respect to their general research and human development activities;[253] RSTA Article 10(1)(1) only provides tax credits for investment in "New Growth Engines" and Article 10(1)(2) only provides tax credits for investment in "Core Technologies," and for these reasons both of these tax programs were found to be *de jure* specific.[254] Thus, these programs provide tax incentives for different types of investment. In addition, there are different formulas for calculating the amount of tax incentives provided under these programs. Under Article 10(1)(2), companies investing in "Core Technologies" receive a tax credit equal to 20 percent of their eligible expenditures in "Core Technologies;"[255] while the tax credit for Article 10(1)(3) is calculated by taking the difference between the amount of eligible research and development expenses for the relevant tax year and the annual average amount of these expenses incurred during the four preceding years and multiplying that difference by 40 percent.[256] Finally, these tax programs were created at different times. According to the GOK, the program that provided the tax incentives under Article 10(1)(3) was introduced in 1982,[257] while the tax credit program for "Core Technologies" was introduced by the GOK in 2010.[258]

The second argument made by the GOK is that since companies do not invest in research and human resources development on a recurring basis, we should analyze program usage over the periods in which companies make these types of investment. This argument is without merit and must be dismissed. The GOK has not cited to any record evidence to support the claim that corporations do not incur research and human resources development expenses on a recurring basis. To the contrary, the regulations established by the GOK for Article 10(1)(3) explicitly acknowledge that these type of expenditures are incurred by corporations on a yearly basis.[259] The tax credits that are calculated under this program are based upon the increase in these research and human resources development expenses from one year to the next,[260] as we have described above. Moreover, the GOK failed to cite to any statutory, regulatory, case, or court precedent to support its claim that our *de facto* specificity analysis should be conducted on an "aggregated {basis}after further investigating the intervals of the companies making such investments."

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[253] *See* G1SR at Appendices Volume, page 2.
[254] *See, e.g., Large Residential Washers* and accompanying IDM at 9-11.
[255] *See* GQR at Appendices Volume, page 107.
[256] *See* G1SR at Appendices Volume, page 5.
[257] *Id*. at 2
[258] February 3, 2014 GOK Questionnaire Response, Appendices Volume at 107.
[259] *See, e.g.,* G1SR at Appendices Volume, page 4-5 where the GOK states that RSTA Article 10(1)(3)'s provisions state that "in case the research and human resources development expense incurred for the relevant taxable year exceeds the annual average of research and human resources development expenses incurred during the four years preceding the date on which the applicable taxable year begins…"
[260] *Id.*

Comment 6 The Number of RSTA Tax Incentives Recipients and "Limited"

The GOK argues that the number of recipients of all the tax deduction programs under the RSTA is not limited, and this finding alone is insufficient to support *de facto* specificity because:

- With respect to all the Tax Credit programs including those for Improving Enterprise's Bill System (RSTA Article 7(2)) and the Tax Program for Third-Party Logistics Operations (RSTA Article 104(14)), the number of the recipients for each program is more than enough to negate *de facto* specificity under section 771(5A)(D)(iii)(I) of the Act;

- The Department should have considered more than such a simple quantitative comparison in finding the programs under the RSTA to be *de facto* specific;

- Considering the reasoning of the panels in *Upland Cotton*[261] and *Large Civil Aircraft*,[262] qualitative assessment in addition to quantitative assessment must be made in determining whether *de facto* specificity exists under section 771(5A)(D)(iii)(I) of the Act, which may include analyzing:

    - whether the program on its face appears to impose a significant limitation on its applicability to a group of enterprises or industries in Korea;
    - whether there exists any condition in the eligibility criteria of the program that limits the availability of the program to a limited group of enterprises or industries;

    - the manner in which the program has actually been expended; and

    - whether the purpose of the program allow the availability of the program to a limited group of enterprises or industries.

Department's Position

Under section 771(5A)(D)(iii)(I) of the Act, we will find a program *de facto* specific if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. As previously explained,[263] we found RSTA Article 7(2) *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because fewer than 0.60 percent of Korean companies filing corporate tax returns used this program, thereby demonstrating that the actual recipients are limited in number. Again, as previously explained, we found RSTA Article 104(14) *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because only 180 Korean companies used this program, thereby demonstrating that the actual recipients are limited in number.

The GOK proposes other criteria that should be used in our *de facto* specificity analysis; however, these proposed criteria are not part of U.S. law. (It appears that the GOK, in proposing

[261] *See US-Upland Cotton*, WT/DS267/R, WT/DS267/AB/R (*Upland Cotton*).
[262] *See US-Measures Affecting Trade in Large Civil Aircraft*, WT/DS353/R (*Large Civil Aircraft*).
[263] *See supra* "Programs Determined To Be Countervailable – RSTA Article 7(2): Tax Credit for Improving Enterprise's Bill System."

these criteria, may be attempting to rewrite or expand the language of section 771(5A)(D)(ii) of the Act; however, section 771(5A)(D)(ii) itself is only relevant with respect to a *de jure* specificity analysis). Finally, the GOK's references to *Upland Cotton* and *Large Civil Aircraft* are not relevant to this issue because our specificity analysis is governed by U.S. law (although U.S. law is consistent with our international obligations).[264]

Comment 7 The Korea Export-Import Bank (KEXIM) as an "Authority"

GOK's Comments

The GOK argues that KEXIM's Support for Acquisitions of Foreign Mines program does not confer a countervailable subsidy because KEXIM does not qualify as an "authority" as defined in section 771(5)(B) of the Act.

- KEXIM is not listed under either the National Government Organizational Act or the Local Government Act;

- In *US-Anti-Dumping and Countervailing Duties (China)*,[265] the Appellate Body found that the term "public body" covers only those entities that possess, exercise or are vested with governmental authority;

- The fact that the GOK owns 74.4 percent of KEXIM's shares does not automatically mean that KEXIM is a public entity;

- With regard to the Support for Acquisitions of Foreign Mines program, KEXIM cannot be said to possess, exercise or be vested with governmental authority that a "public entity" would have;

    - Other commercial banks besides KEXIM also provide financial services to their clients for the acquisition of assets abroad;

    - KEXIM competes with other commercial financial institutions in the market in providing financial service under this program;

    - The fact that this program is operated to earn profit could be confirmed by the fact that the interest rate for this program is calculated by applying various factors, not only the delivery cost, administrative fee, and credit rates of the lender, but also the expected profit for KEXIM to the base rate;

    - KEXIM does not report to the GOK nor does the GOK keep any record regarding this program at any level; and

[264] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F 3d. 1343, 1347-49 (Fed. Cir. 2005); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[265] *See US-Anti-Dumping and Countervailing Duties (China)*, WT/DS379/R (Panel),WT/DS379/AB/R (Appellate Body).

- The decision by the Department to consider KEXIM an authority appears to rely heavily on a description in the Registration Statement filed on March 22, 2012 with the Securities and Exchange Commission. However, further description makes it clear that some of the financial services are operated for profit in competition with other commercial institutions whereas others are operated as an authority or public body within the context of subsidies.

Department's Position

Under the U.S. CVD law, a subsidy exists when an authority provides a financial contribution, such as a loan, to a person and a benefit is thereby conferred. Section 771(5)(B) of the Act defines an "authority" as a government of a country or any public entity within the territory of the country. KEXIM is a majority-owned government policy bank. A policy bank is created by a government in order to implement government industrial policies through the provision of financing to industries and enterprises; thus a policy bank, by its very nature, is an authority under section 771(5)(B) of the Act.

Information submitted to the Securities and Exchange Commission (SEC) by KEXIM and the GOK, further supports the determination that KEXIM is an authority under the Act:

- We were established in 1976 as a special governmental financial institution pursuant to the Export-Import Bank of Korea Act, as amended (the KEXIM Act).[266]

- Our primary purpose, as stated in the KEXIM Act, is to "promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment and the development of natural resources abroad." Over the years, we developed various financing facilities and lending policies that are consistent with the Government's overall economic policies.[267]

- The Government's determination each fiscal year regarding the amount of financial support to extend to us, in the form of loans, contributions to capital or transfers of our income to reserves, plays an important role in determining our lending capacity.[268]

- The Government has the power to appoint or dismiss our President, Deputy President, Executive Directors and Auditor.[269]

- As a result of the KEXIM Act, the Government is generally responsible for our operations and is legally obligated to replenish any deficit that arises, if our reserves, consisting of our surplus and capital surplus items, are insufficient to cover any of our annual net losses.[270]

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[266] *See* GQR at Exhibit B-3, page 3.
[267] *Id*.
[268] *Id*.
[269] *Id*.
[270] *Id*.

- We are treated as a special juridical entity under Korean law and are not subject to certain of the laws regulating activities of commercial banks.[271]

- As an instrument in serving the Government's public policy objectives, we do not seek to maximize our profits.[272]

- One month prior to the beginning of each fiscal year, we must submit our proposed program of operations and budget for the fiscal year to the Minister of Strategy and Finance for his approval.[273]

- The minister of Strategy and Finance must approve our operating manual, which sets out guidelines for all principal operating matters, including the range of permitted financings.[274]

- We may amend our By-laws and operating manual only with the approval of the Minister of Strategy and Finance.[275]

- Before approving a credit, we consider the industry's rank in order of priorities established by the Government's export-import policy.[276]

- Proposals for overseas investment credits to finance the acquisition of important materials or the development of natural resources for the Korean economy as determined by the Government are given priority.[277]

The GOK also argues that the Support for Acquisition of Foreign Mines is one of the services that KEXIM provides for profit in competition in the market, and thus in this context KEXIM does not qualify as an authority as defined in section 771(5)(B) of the Act. Here, the GOK is confusing the issue of a financial contribution with a benefit.

In the instant situation, just because the rate on a loan provided by an authority may be similar to the rate charged by a commercial bank does not mean that the authority has not provided a financial contribution; it only means that the loan from the authority did not provide a benefit to that loan recipient.[278] The fact that KEXIM may make a profit on certain loans does not negate the fact that KEXIM is an authority or that it provides a financial contribution through this program. Finally, we note that the Support for Acquisition of Foreign Mines is one of the identified public policy objectives of the GOK as listed in the KEXIM Act (*see* "development of natural resources abroad"), thus further indicating that KEXIM is a policy bank implementing

[271] *Id*. at 4.
[272] *Id*. at 5.
[273] *Id*. at 7.
[274] *Id*.
[275] *Id*.
[276] *Id*. at 10.
[277] *Id*. at 13.
[278] *See* section 771(5)(E)(ii) of the Act.

government industrial policies through the provision of financing to industries and enterprises . In short, the record demonstrates that KEXIM is an authority under section 771(5)(B) of the Act.

Comment 8 Support for Acquisitions of Foreign Mines Program and *De Jure* Specificity

The GOK argues that KEXIM's Support for Acquisitions of Foreign Mines program is not *de jure* specific because:

- KEXIM does not separately run an independent program called the "Support for Acquisitions of Foreign Mines;"
- This program is officially operated under the name "Overseas Investment Credit;"
- Korean companies acquiring shares of any foreign entity may apply for this "Overseas Investment Credit" program but the applicant's business field need not be related to foreign mines; and
- The provisions that regulate KEXIM in its operation of the program do not limit the eligibility of the program to certain industries.

Department's Position

The GOK's arguments regarding our *de jure* specificity finding of this program in the *Preliminary Determination* are unconvincing. As an initial matter, the name of the program alone is immaterial to our countervailability analysis. More pointedly, Article 18(1)(5) of the KEXIM Act and Article 15(1) of the Enforcement Decree make clear that "KEXIM may provide funding to {Korean} entities … acquiring shares of foreign entities."[279] Thus, despite the GOK's contention otherwise, a statutory direction to provide funding to firms investing in the acquisition of foreign entities is a *de jure* limitation of eligibility to the industry in which funds may be provided – those companies investing in foreign mines.

To the extent the GOK is arguing that section 771(5A)(D)(ii) of the Act applies here, the GOK has not demonstrated that all of the criteria in section 771(5A)(D)(ii) are satisfied. Thus, as stated in the *Preliminary Determination*, we find this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because KEXIM, as the authority providing the subsidy, expressly limits access to the subsidy to a particular industry, *i.e.*, companies that invest in foreign mines.

[279] *See* GQR at Appendices Volume, page 51; *see also* GQR at Exhibit B-1 at "Article 18 (Operations)", Exhibit B-2 at "Article 15 (Overseas Investment)."

Comment 9 Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC) and *De Jure* Specificity

GOK's Comments

The GOK argues that long-term loans from the KORES and the KNOC are not *de jure* specific because:

- As the Department verified, the industry or sector in which the applicant primarily operates does not determine the eligibility for the receipt of any assistance under the program;

- Even though the project that the applicant proposes to pursue with the assistance under the program must be related to mineral resources, agriculture, livestock or forestry industry, the subsidy is not *de jure* specific because:

    - the eligibility for this program is automatic;

    - the eligibility criteria are strictly followed, and any discretion that goes beyond the criteria laid out in the law, regulation, or other official documents is prohibited; and

    - the criteria are clearly stipulated in the relevant statute, regulation, or other official documents.

Department's Position

We find that the loans from KORES and KNOC are *de jure* specific.

The GOK's statement that "the industry or sector in which the applicant primarily operates does not determine the eligibility for the receipt of any assistance under the program" is irrelevant to *de jure* specificity. This is because eligibility to receive funding from KORES, for example, is expressly limited by law to Korean companies for the extraction of resources abroad. This distinction places a legal limitation on the enterprises that can receive the subsidy. Under section 771(5A)(D)(i) of the Act, when the government provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. Further, section 771(5A) of the Act clearly states that the reference to "enterprise or industry" includes a "group of such enterprises or industries." The subsidies that are provided by KORES and KNOC are expressly limited by law to companies that extract resources abroad, meaning that the GOK has established, by law, a group of enterprises that will receive loans from KORES and KNOC. Therefore, these programs are both *de jure* specific under section 771(5A)(D)(i) of the Act.

The GOK's argument with respect to the criteria set forth under section 771(5A)(D)(ii) of the Act is misplaced and is based upon a misunderstanding of the statute. Section 771(5A)(D)(ii) of the Act states that a subsidy is not specific as a matter of law if there are objective criteria or conditions governing the eligibility for, and amount of, the subsidy. The following conditions must be met: (1) eligibility must be automatic; (2) the criteria or conditions for eligibility must

be strictly followed; and (3) the criteria or conditions must be clearly set forth in the relevant statute, regulation or document so as to be capable of verification. The statute defines "objective criteria or conditions" as criteria or conditions that are neutral and do not favor one enterprise or industry over another. The SAA further states that they must be economic in nature and horizontal in application, such as number of employees or size of the enterprise.

These requirements are not met in this case. The record indicates that to receive a loan under this program, an applicant must "make a report on a plan for overseas resources development…"[280] In approving an application, the relevant criteria and conditions for the granting authority include such things as a cost-benefit analysis, an economic and technical review of the applicant's plan, and the track record of the applicant. These are not objective criteria; in fact they involve discretion on the part of the granting authority in determining whether, and in what amount, to make a loan.[281] As stated above, this subsidy is limited by law to that group of companies that extract overseas resources. Therefore, this subsidy is expressly limited by law.

Comment 10 The Financial Contribution of DWI's Debt Workout

GOK's Comments

The GOK argues that DWI's Creditor Financial Institutions Council (CFIC) is not an "authority" under the Act or a "public body" within the context of the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement) because:

- The CRPA only provides a statutory mechanism of general application and does not itself provide the authority or the public body the power to address or dictate internal discussions or ultimate decisions of creditors;
    - The decision on whether to force a company to undergo a corporate restructuring process under the CRPA was entirely made by its creditors, and the specific terms and conditions of a debt restructuring are also reserved to the decision of the creditors;
    - Neither the FSC nor the Financial Supervisory Services has the statutory authority under the CRPA to request the creditor banks to submit documents or report internal discussions conducted in the course of debt restructurings;
- Even if it is assumed that all of the identified creditors of DWI that participated in the company's debt workout are KAMCO, KEXIM, KDB, and K-SURE, this fact does not automatically lead to the conclusion that the CFIC, consisting of these companies, is an "authority";
    - In order to be an "authority," it should be proved that such an entity possesses, exercises or is vested with governmental authority; and

[280] *See* GNSAQR at Exhibit NSA-8.
[281] *Id.*, at 25.

- Because the purpose of DWI's debt workout is to reasonably pursue and maximize the creditors' economic interest, the CFIC's role in implementing DWI's Debt Workout cannot be seen to be possessing, exercising or being vested with governmental authority.

Department's Position

Our finding that a financial contribution is provided under this program has already been fully explained above.[282] As previously noted, the GOK failed to provide requested information on this program and we have relied on the facts available on the record under section 776(a) of the Act to determine that the creditors involved in the workout were "authorities" within the meaning of section 771(5)(B) of the Act. With respect to the DWI Debt Workout program, we requested the following information from the GOK:[283]

- Please provide the amount of the debt that was addressed in the work-out.
- Please describe the Creditors' Council that was created to oversee the work-out of DWI.
- Please identify the members of the Creditors' Council and any ownership stake of the GOK in each member.
- Please provide a description of the responsibilities and powers granted to the Creditors' Council.
- Please provide copies of all "Memorandum of Understanding(s)" for the DWI work-out.
- Please explain the actions taken by the Creditors' Council with respect to the treatment of DWI's debt.
- Explain whether DWI is still in the workout, and if not, provide the date that DWI "graduated" from the debt work-out program.

The GOK, in a submission that it certified was accurate and complete, stated in response to each of these questions: "{t}he GOK is not in position to know the details of the debt work-out program for DWI."[284]

After having failed to provide requested information with respect to most aspects of the DWI Debt Workout program because it was "not in the position to know" such details, the GOK cannot now claim that no financial contribution was provided under this program. Importantly, we note that the GOK does not dispute the facts available that we relied upon in making our preliminary determination that a financial contribution was provided to DWI under this program.

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[282] *See supra* "Programs Determined To Be Countervailable – DWI's Debt Workout."
[283] *See* Letter to the GOK, "Non-Oriented Electrical Steel from the Republic of Korea: *Countervailing Duty Investigation*" (February 12, 2014) at 7-8.
[284] *See* G1SR at 16-19.

The GOK argues that the Creditors' Council was not an "authority," but this is beside the point. Our finding, based on the facts available, is that the actual creditors participating in DWI's debt restructuring were "authorities" within the meaning of section 771(5)(B) of the Act. We are basing this finding on the information that we do have and do know about several of the major creditors, such as KAMCO, KEXIM, the KDB and K-SURE. These are policy banks and policy institutions that fulfill public functions in Korea, as described above.

Comment 11 DWI's Debt to the Korea Export Insurance Corporation (K-SURE)

The GOK argues that DWI's outstanding debt to K-SURE is not coutervailable because it is an indemnity liability as a result of assumption of DWI's debt by K-SURE as a guarantor, and was not part of DWI's debt workout. According to the GOK, it is erroneous to consider DWI's outstanding debt from K-SURE as interest free liabilities.

- DWI's outstanding debt to K-SURE occurred under K-SURE's export bill guarantee program that came into effect before the initiation of DWI's debt workout program;
    - The export bill guarantee program guarantees to the banks the payment of export bills that the banks have obtained from the exporters as collateral;
    - DWI owed the debt to K-SURE not because of the workout program but because of the export bill guarantee that K -SURE had provided to the banks before the initiation of the DWI workout as explained in the response to questionnaire;
    - K-SURE has not provided any financial services to DWI under this program since 1999;
- DWI's outstanding debt to K-SURE is an indemnity liability because K-SURE, as a guarantor, assumed DWI's debt;
    - The Department erroneously held that this is a countervailable subsidy based on its assumption that DWI's outstanding debt came from a separate interest free loans program provided by K-SURE;
    - K-SURE was at the risk of having its account receivable under this program against DWI becoming insolvent, but secured the principal which was the best result that K-SURE could have obtained under such market conditions.

Department's Position

The GOK contends that because the interest-free liability DWI maintained from K-SURE during the POI was an indemnity liability, it is not a countervailable subsidy. We find the GOK's contention to be misplaced, as it shows a misunderstanding of the U.S. CVD law. The specific history behind why the liability came to fruition between K-SURE and DWI is irrelevant to the countervailability of the liability that existed during the POI. Importantly, there is nothing in the statute or our regulations that distinguishes indemnity liabilities from other government-provided

loan guarantees. Thus, we must analyze the countervailability of this liability based on the facts on the record of this investigation.

As discussed above under "Financial Contribution of DWI's Debt Workout," we find that K-SURE is an authority within the meaning of section 771(5)(B) of the Act. Thus, as an authority, the transfer of K-SURE's liability in the form of a loan guarantee to DWI constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Next, since no interest is being charged on this debt, a benefit is being conferred under section 771(5)(E)(ii) of the Act. Finally, because information on the record shows that the Daewoo Group, which includes DWI, received 66.74 percent of the debt restructurings under the workout program,[284] we find Daewoo Group was the predominant user of this subsidy and therefore it is *de facto* specific within the meaning of section 771(5A)(D)(iii)(II) of the Act.

The GOK's additional argument, that this liability was not part of DWI's debt workout, is erroneous. DWI's existence is a direct result of the Creditors' Council's decision to spin-off, *inter alia*, DWI from the Daewoo Group. This decision ultimately led to the arrangement between K-SURE and DWI for this liability, as DWI was a successor company of Daewoo Corporation – the company which defaulted on the export bills guaranteed by K-SURE.[285] It was those export bills guaranteed by K-SURE which resulted in the liability on which DWI made interest-free payments during the POI. Thus, as stated above, we continue to find this interest-free liability from K-SURE to DWI to be a countervailable subsidy.

VII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the ITC of our determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 OCTOBER 2014
(Date)

[284] *See* Daewoo Workout Memo at Attachments 1 through 11.
[285] *Id.*