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May 13, 2015

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

FROM: Howard Smith
Acting Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Nails from the Republic of Korea

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I. SUMMARY

The Department of Commerce (Department) determines that *de minimis* countervailable subsidies are being provided to producers and exporters of certain steel nails (nails) 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 Daejin Steel Company (Daejin), Jinheung Steel Corporation (Jinheung Steel), including cross-owned affiliates Duo-Fast Korea Co., Ltd. (Duo-Fast) and Jinsco International Corporation (Jinsco) (collectively, Jinheung), and the Government of Korea (the GOK). Petitioner is Mid Continent Steel & Wire, Inc. (hereinafter, Petitioner).

II. BACKGROUND

On November 3, 2014, we published our *Preliminary Determination* for this investigation.[1] Between December 8 and December 17, 2014, we conducted verifications of the questionnaire responses submitted by the GOK, Daejin, and Jinheung. We released verification reports between February 4 and February 10, 2015.[2] No parties submitted case or rebuttal briefs.

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[1] *See Certain Steel Nails From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 65187 (November 3, 2014) (*Preliminary Determination*) and Memorandum to Paul Piquado: Decision Memorandum for the Preliminary Negative Determination in the Countervailing Duty Investigation of Certain Steel Nails from the Republic of Korea (Preliminary Decision Memorandum).

[2] *See* Memoranda to the File, through Robert Bolling, Program Manager, Office IV, "Verification of the Questionnaire Responses of Jinheung Steel Corporation, Jinsco International Corporation, and Duo-Fast Korea Co., Ltd." (February 4, 2015) (Jinheung VR); "Countervailing Duty Investigation of Certain Steel Nails from Korea: Verification of Daejin Steel Company" (February 5, 2015) (Daejin VR); and "Verification of the Questionnaire Responses of the Government of Korea" (February 10, 2015) (GOK VR).

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on 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 describe in this memorandum.

III. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the "SCOPE COMMENTS" section, below, appears in Appendix I of the *Final Determination*.

IV. SCOPE COMMENTS[3]

On March 17, 2015, the Department invited interested parties to submit additional comments on certain scope issues that had been raised on the record of this and the concurrent antidumping and countervailing investigations of certain steel nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam (All Nails Investigations).

On March 23, 2015, two interested parties, The Home Depot (Home Depot) and Target Corporation (Target) requested in a joint submission that the Department exclude certain nails from the scope of All Nails Investigations. On that same day, another interested party, IKEA Supply AG (IKEA), made the very same request, using identical language to that in the Home Depot/Target submission. On March 26, 2015, Petitioner submitted a response that agreed with the exact scope exclusion language proposed by the aforementioned parties in their March 23, 2015 submissions. The exclusion language proposed by those parties and Petitioner is referenced below as "Interested Parties' Proposed Exclusion." That language reads as follows:

> Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article is described in one of the following current HTSUS subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403 .81 or 9403.89.

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties' Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the merchandise referenced in the HTSUS subheadings identified in Interested Parties' Proposed Exclusion, and which altered the reference to "described in one of the following current HTSUS subheadings" to "currently classified under the following HTSUS subheadings." The

[3] In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties' requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

Department proposal also contained two other revisions.[4] In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit ("mixed media and kits") analysis criteria.

On April 15, 2015, Home Depot, Target, IKEA, and Petitioner submitted comments objecting to the Department's proposed modification to Interested Parties' Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.[5] Those parties also commented that language related to "mixed media and kits" analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and Petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

No parties provided rebuttal comments to those submitted by Home Depot, Target, IKEA, and Petitioner.

The Department has determined that inclusion of language from the HTSUS for the additional exclusion is appropriate, as modified in the Department's April 10, 2015 memorandum to incorporate narrative from the HTSUS. The Department notes it is important for such exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department's preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.

As noted, the April 10, 2015 version proposed by the Department incorporates two other modifications. No parties have raised objections to those other modifications, and the Department determines they are appropriate for clarification purposes.

The Department also determines that it would not be appropriate to introduce language into the scope to address "mixed media and kits." We note no interested parties have requested such language, and those that commented in fact opposed such language.

[4] The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

[5] Home Depot and Target also noted that use of "described in one of the following current HTSUS subheadings" ties the complete language of the HTSUS regarding those subheadings to the scope, while use of "currently classified under the following HTSUS subheadings" fails to achieve that goal.

V. SUBSIDIES VALUATION

A. Period of Investigation

The period for which we are measuring subsidies, the period of investigation (POI), is January 1, 2013, through December 31, 2013.

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.[6] We find the AUL in this proceeding to be 15 years, pursuant to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[7] We notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party to this proceeding objected to our use of this AUL. For this final determination, we are not examining any non-recurring subsidies.

C. 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 respondents with cross-owned companies. Subsidies to the following types of cross-owned companies 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 this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to our regulations further clarifies our cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

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

[6] *See* 19 CFR 351.524(d)(2).
[7] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

(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.[8]

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.[9]

Daejin

Daejin did not report any cross-owned companies. We received no comments on the *Preliminary Determination* from interested parties, and we found no information inconsistent with the *Preliminary Determination*. Therefore, for purposes of this final determination, we are continuing to examine only subsidies provided to Daejin.

Jinheung

Jinheung Steel reported the following cross-owned affiliates: (1) Duo-Fast, a producer of subject steel nails, and (2) Jinsco, an exporter of subject steel nails produced by Jinheung Steel and Duo-Fast. We found in the *Preliminary Determination* that Jinheung Steel, Duo-Fast, and Jinsco are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through common ownership. We received no comments on the *Preliminary Determination* from interested parties, and we found no information inconsistent with the *Preliminary Determination*. Therefore, because Jinheung Steel and Duo-Fast are both manufacturers producing subject merchandise, in accordance with 19 CFR 351.525(b)(6)(ii), we are continuing to attribute the subsidies received by either manufacturer to the combined sales of both Jinheung Steel and Duo-Fast (excluding inter-company sales). For Jinsco, pursuant to 19 CFR 351.525(c), the Department cumulates subsidies to an exporter of subject merchandise with subsidies provided to the firm which produced the subject merchandise that is sold through the exporter. Therefore, pursuant to 19 CFR 351.525(c), we are continuing to attribute the benefit from subsidies to Jinsco's sales or exports, as appropriate, and to cumulate those subsidies with the subsidies provided to Jinheung Steel and Duo-Fast. We also continue to determine that the standard for attribution for cross-owned companies under 19 CFR 351.525(b)(6) has not been met with respect to the following companies that Jinheung reported as affiliates: Jinheung Iron & Steel Co., Ltd., Mirae Tour Co., Ltd., Mirae F&E Co., Ltd., Beijing Jinheung Hwanwoo Trading Ltd., Wellbuy Korea Co., Ltd., and Neptune T&C Co., Ltd.

D. 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

[8] *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[9] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

subsidy program described below are explained in the "Final Calculation Memorandum" prepared for this investigation.[10]

E. Benchmarks

The Department is examining export credit guarantees on loans received by Jinheung Steel and Jinsco. The benchmarks used to identify the existence and extent of any benefit from these loan guarantees are summarized below, with further detail provided in the Jinheung Final Calculation Memorandum.[11]

Section 771(5)(E)(ii) of the Act explains 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." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes in accordance with section 351.505(a)(3)(i) of its regulations.

Jinheung Steel and Jinsco reported receiving Korea Trade Insurance Corporation (K-SURE) export credit guarantees for two loans that were outstanding during the POI.[12] Jinheung Steel and Jinsco also provided information about short-term loans from commercial banks for consideration as comparable commercial loans for purposes of identifying an interest rate benchmark.[13] We determine that some of the loans Jinheung Steel identified constitute comparable commercial loans and it is appropriate to use these loans to calculate a weighted-average benchmark interest rate.[14] Because Jinsco is cross-owned by Jinheung Steel, we are also using the relevant Jinheung Steel loans to determine the benchmark interest rate for Jinsco.

VI. ANALYSIS OF PROGRAMS

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

A. Programs Determined To Be Countervailable

1. Korea Trade Insurance Corporation (K-SURE) Export Credit Guarantees

The GOK stated that K-SURE provides both pre-shipment and post-shipment export credit guarantee programs.[15] The GOK reported that the pre-shipment export credit guarantee program provides guarantees to the financial institutions which have provided loans to the exporters in connection with their export transactions, and that the post-shipment export credit guarantee program provides guarantees to the financial institutions which have negotiated the export

[10] *See* Memoranda to the File, "Final Negative Countervailing Duty Determination: Calculations for Daejin Steel Company," and "Final Negative Countervailing Duty Determination: Calculations for Jinheung Steel Corporation," May 13, 2015 ("Daejin Final Calculation Memorandum and Jinheung Final Calculation Memorandum").
[11] *See* Jinheung Final Calculation Memorandum.
[12] *See* IQR-Jinheung at 24 and Appendix 9.
[13] *See* SQR1-Jinheung at Appendix S-3.
[14] *See* Jinheung Final Calculation Memorandum.
[15] *See* IQR-GOK at I-31.

receivables based on bills of exchange and shipping documents.[16] Jinheung Steel reported that it and its cross-owned affiliate, Jinsco, received loan guarantees under this program during the POI.[17]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(i) of the Act, in the form of a potential direct transfer of funds or liabilities, such as loan guarantees. We find that a benefit has been conferred by this program, under section 771(5)(E)(iii) of the Act, because a difference exists between the amount of interest Jinheung Steel and Jinsco paid on their guaranteed loans and the amount of interest they would have paid for a comparable commercial loan with no guarantee.[18] We find that the program is specific under section 771(5A)(A) and (B) of the Act because it is available only in connection with export transactions.[19]

To calculate the benefit received by Jinheung Steel and Jinsco in connection with this program, we first calculated the amount of guarantee fees and interest paid by Jinheung Steel and Jinsco during the POI on the loans guaranteed by the K-SURE export credit guarantee program. We then used the benchmark interest rate described in section V.E., above, to calculate the amount of interest Jinheung Steel and Jinsco would have paid for a comparable commercial loan with no guarantee. We calculated the difference between the two amounts as the benefit received by Jinheung Steel and Jinsco under this program. We divided the benefit from Jinheung Steel's loan guarantee by the sum of Jinheung Steel's and Duo-Fast's POI export sales (net of inter-company transactions). We divided the benefit from Jinsco's loan guarantee by Jinsco's POI export sales. We added together the resulting rates, and on this basis, we determine a countervailable subsidy rate of 0.05 percent for Jinheung Steel under this program.[20]

2. Simplified Fixed Amount Refund of Import Duties

The GOK stated that the Simplified Fixed Amount Refund program is a customs duty refund program pursuant to the Act on Special Cases concerning the Refund of Customs Duties, *etc.* Levied on Raw Materials for Export (ARCD).[21] The GOK explained that this customs duty refund program is a program under which customs duties paid at the time of the import of materials consumed to manufacture goods for exportation are refunded to the exporters or the manufacturers when goods are exported.[22] For exported goods produced by a small or medium enterprise (SME), the Commissioner of the Korea Customs Service may determine a fixed amount refund rate on the basis of the average refund of customs duties or the average paid tax amount on the raw materials for export.[23] The fixed amount refund rate will be refunded as if it were the actual customs duties paid upon the import of the raw materials needed for producing the goods for export.[24] The simplified fixed amount refund is received as a duty drawback, but

[16] *Id.*
[17] *See* IQR-Jinheung at 24 and Appendix 9; *see also* SQR1-Jinheung at 8-11 and Appendix S-3.
[18] *See* Section 771(5)(E)(iii) of the Act.
[19] *See* IQR-Jinheung at Appendix 9-A.
[20] *See* Jinheung Final Calculation Memorandum.
[21] *See* SQR1-GOK at 45.
[22] *Id.*
[23] *See* IQR-Daejin at 35.
[24] *Id.*

SMEs are eligible for a fixed refund of 0.10 percent of the declared export price value of subject merchandise.[25] Daejin, Jinheung Steel, Duo-Fast and Jinsco reported that they received refunds under this program during the POI.[26]

Under 19 CFR 351.519(a)(1)(i), in the case of duty drawback of import charges, a benefit exists to the extent that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowance for waste. According to 19 CFR 351.519(a)(4)(i), the entire amount of such remission or drawback will confer a benefit, unless the Department determines that the government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amount, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

Information provided by the GOK indicates that the GOK provides this rebate to SMEs at a fixed rate of the value of exports so that SMEs do not have to bear the administrative burden of tracking actual import duties incident to imports of inputs consumed in the production of goods for export.[27] As such, under this program, the GOK does not have in place or apply a system to confirm which inputs are consumed in the production of the exported product and in what amounts. Therefore, we consider that the entire amount of the rebate confers a benefit, consistent with 19 CFR 351.519(a)(4). This finding is consistent with our final determination of *Coated Free Sheet Paper from Korea*.[28] We also determine that a financial contribution has been provided pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone and that a benefit had been conferred under section 771(5)(E) of the Act. We further determine that this program is specific under section 771(5A)(A) and (B) of the Act, as it is contingent upon export performance. During the POI, the simplified fixed refund was provided at a rate of 0.10 percent of the free-on-board (FOB) value of exports of steel nails.[29] Therefore, we determine that Daejin and Jinheung Steel (including its cross-owned company, Duo-Fast, and its affiliated trading company Jinsco) received a countervailable subsidy at the rate of 0.10 percent under this program.[30]

3. <u>Short-Term Export Credit Insurance Premium Subsidy Program for Small and Medium Enterprise</u>

Under this program, the Gyeongsangnam provincial government provides assistance to SMEs located in the province by paying a certain portion of their insurance premiums payable to K-SURE.[31] This program was established and is administered pursuant to the 2013 Small and Medium Enterprise Policy, which was established pursuant to Article 3 of the Framework Act on

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[25] *Id.*
[26] *Id.*; *see also* SQR1-Jinheung at Appendix S-6.
[27] *See* SQR1-GOK at Appendices Volume, page 45.
[28] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and accompanying Issues and Decision Memorandum at the discussion of the program "Duty Drawback on Non-Physically Incorporated Items and Excess Loss Rate."
[29] *See* SQR1-GOK at 47.
[30] *See* Jinheung Final Calculation Memorandum.
[31] *See* SQR1-GOK at Appendices Volume, pages 2-4.

Small and Medium Enterprises.[32] The GOK stated that the purpose of this program is to protect enterprises from trade risks such as the failure to receive payments for their exports and to provide financing to small and medium exporters without sufficient assets for collateral.[33] The GOK stated that 80 SMEs located in Gyeongsangnam Province used this program and that only SMEs with a head office in Gyeongsangnam Province and that elect coverage under the K-SURE export insurance program are eligible for assistance under this program.[34] Daejin reported that it received assistance under this program during the POI.[35]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(i) of the Act, because it is direct transfer of funds paid on behalf of Daejin for Daejin's insurance premiums. We find that a benefit has been conferred by this program, under section 771(5)(E) of the Act, in the amount of the assistance provided. Under 19 CFR 351.503(b), the Department will consider a benefit to be conferred where a firm pays less than it otherwise would pay in the absence of the government program. We find that the program is specific under section 771(5A)(A) and (B) of the Act because only exporters may elect coverage under the K-SURE export insurance program, and only those exporters can receive assistance with paying their premiums; therefore, use of the program is contingent upon export performance.[36]

To calculate the benefit, we divided the amount of the K-SURE export insurance premium paid on behalf of Daejin by the Province of Gyeongsangnam under this program by the FOB value of Daejin's total export sales for the POI. On this basis, we determine that Daejin received a countervailable subsidy of 0.04 percent *ad valorem* under this program.[37]

4. Busan Economic Promotion Agency Support Working Fund for Small and Medium Business

Under this program, Busan Metropolitan City assists SMEs located in the city by paying for portions of their interest payments on loans from financial institutions.[38] Support under this program is available to SMEs located in the Busan metropolitan area that are engaged in multiple specified eligible industries, including manufacturing.[39] According to the conditions of assistance under this program, eligible companies for loans greater than 50 million Korean won (KRW) must have exports that account for one-quarter or more of annual sales.[40] For loans of KRW 50 million or below, the government will confirm the actual exports of the company.[41] Jinheung Steel reported that it had one long-term loan during the POI that it obtained through this program.[42] Jinheung Steel reported that the Busan Economic Promotion Agency paid a

[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *See* IQR-Daejin at 19-26.
[36] *See* SQR1-GOK at Appendices Volume, page 4.
[37] *See* Daejin Final Calculation Memorandum.
[38] *See* SQR2-GOK at Appendices Volume, page 15.
[39] *See* SQR1-Jinheung at Appendix S-5-A.
[40] *See* SQR2-GOK at Appendices Volume, pages 17-18.
[41] *Id.*
[42] SQR1-Jinheung at Appendix S-5-A.

certain amount of interest on that loan during the POI, and that Jinheung Steel also paid an additional amount of interest on the loan.[43]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(i) of the Act because it represents a direct transfer of funds from the Busan Economic Promotion Agency, on behalf of Jinheung Steel as partial payment of interest expenses. We find that a benefit has been conferred by this program, under section 771(5)(E) of the Act. Under 19 CFR 351.503(b), the Department will consider a benefit to be conferred where a firm pays less than it otherwise would pay in the absence of the government program. We find that the program is specific under section 771(5A)(A) and (B) of the Act because the eligibility for assistance under this program is contingent upon export performance.

To calculate the benefit received by Jinheung Steel in connection with this program, we divided the amount of interest paid by the Busan Economic Promotion Agency on Jinheung Steel's loan by the sum of the FOB values of Jinheung Steel's and Duo-Fast's POI export sales (net of inter-company transactions). On this basis, we determine that Jinheung Steel received a countervailable subsidy rate of 0.02 percent under this program.[44]

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

The GOK reported that the Tax Credit for Improving an Enterprise's Bill System is available under Article 7(2) of the Restriction of Special Taxation Act (RSTA). Article 7(2) of the RSTA states that a payment amount meeting certain criteria shall be deducted from the amount of income tax owed, up to ten percent of the income tax owed.[45] The GOK stated that under this program, a company receives a tax credit if the applicant makes payments to SMEs through a method that has less chance of default such as bills of exchange.[46] Jinheung Steel reported that it received assistance under this program during the POI.[47]

In response to the Department's supplemental questionnaire, the GOK provided portions of the *Statistical Yearbook of National Tax for 2013* (*Statistical Yearbook 2013*) published by the National Tax Service (NTS).[48] The *Statistical Yearbook 2013* provides information for tax returns filed in 2012.[49] The *Statistical Yearbook 2013* provides the total number of corporate tax returns that were filed, as well as the number of tax returns claiming the Article 7(2) tax credit.[50]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it is a tax credit that results in foregone revenue. We find that a benefit has been conferred by this program, under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) to the extent that the tax

[43] *Id.*
[44] *See* Jinheung Final Calculation Memorandum.
[45] *See* SQR1-GOK at 73-75.
[46] *Id.* at 71.
[47] *See* SQR1-Jinheung at Appendix S-4.
[48] *See* SQR2-GOK at Exhibit G2SR-1.
[49] *Id.*
[50] *Id.*

paid as a result of this program is less than the tax that would have been paid in the absence of the program. Because the legislation establishing this program does not expressly limit access to this tax credit, we determine that this program is not *de jure* specific under section 771(5A)(D)(i) of the Act. Therefore, we examined whether this program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Based upon the *Statistical Yearbook 2013*, only 2,665 companies (or 0.55 percent of companies filing corporate tax returns in 2012) received benefits under this program.[51] 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 for examining specificity set forth in the SAA.[52] Therefore, we find that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. This determination is consistent with the Department's recent final determination in *NOES from Korea* in which the RSTA Article 7(2) program was found countervailable.[53]

To calculate the benefit received by Jinheung Steel in connection with this program, we divided the amount of Jinheung Steel's tax credit in the tax return filed during the POI by the sum of the FOB values of Jinheung Steel's and Duo-Fast's total POI sales. On this basis, we determine that Jinheung Steel received a countervailable subsidy rate of 0.01 percent under this program.[54]

6. Small and Medium Size Enterprises Funding: Facility Equipment Funding and Business Stabilization Funding from Gyeongsangnam Province

The GOK stated that under this program, Gyeongsangnam Province provides assistance to SMEs located in the province by paying for portions of their interest payments on loans that a financial institution has extended.[55] The GOK stated that after a bank evaluates an applicant's credit, approves a loan extension, and determines the applicable interest rate, the Gyeongsangnam Provincial Government provides a certain portion of the interest payment on the loan payable to the bank.[56] Thus, a commercial bank would approve a loan for an SME and the Gyeongsangnam Provincial Government would pay a portion of the interest rate on behalf of the SME. For example, if the commercial bank approved a loan with an interest rate of 6 percent, the Gyeongsangnam Provincial Government would pay 2.5 percent of the interest on the loan to the bank and the SME program recipient would pay the remaining 3.5 percent of the interest to the bank.[57] Daejin reported that it had loans outstanding under this program during the POI, one for Facility Equipment Funding and one for Business Stabilization Funding, and therefore it received assistance under this program from the Gyeongsangnam Provincial Government.[58] Daejin also reported that assistance is available to all SMEs at one rate, and to "preferential"

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[51] *See* SQR2-GOK at Exhibit G2SR-1. Table 8-1-1 of this exhibit indicates that 482,574 corporate tax returns were filed in 2012, and Table 8-3-2 indicates that 2,665 of those returns received tax credits under RSTA Article 7(2). Accordingly, only 0.55 percent of corporate tax filers in 2012 received tax credits under this program.
[52] *See* Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d Sess. 911, 929 (1994).
[53] *See Non-Oriented Electrical Steel From the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination* 79 FR 61605 (October 14, 2014), and accompanying Issues and Decision Memorandum at section V. A.3.
[54] *See* Jinheung Final Calculation Memorandum.
[55] *See* IQR-GOK at 16 and 30.
[56] *Id.* at 19 and 33.
[57] *See* SQR1-GOK at Exhibit G1SR-5.
[58] *See* IQR-Daejin at 26-31.

SMEs at a higher rate for both the Facility Equipment Funding and the Business Stabilization Funding.[59] In the *Preliminary Determination*, we found that Daejin had received assistance under this program for both the Facility Equipment Funding and the Business Stabilization Funding only at the rates of assistance available to non-preferential SMEs.[60] However, at verification, we examined documents showing that while Daejin received assistance at the non-preferential level of assistance for the Facility Equipment Funding, the assistance that Daejin received for the Business Stabilization Funding loan that was outstanding during the POI was provided at the preferential level of assistance.[61] This loan was granted in 2010 and was fully repaid during the POI.[62]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(i) of the Act because it represents a direct transfer of funds on behalf of Daejin for Daejin's interest payment. We determine that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because of the higher levels of assistance provided to SMEs classified as "preferential" by the Gyeongsangnam Provincial Government under this program. We also examined whether the provision of the interest rate subsidy provided to "non-preferential" SMEs is *de facto* specific under section 771(5A)(D)(iii) of the Act. We determine that this portion of the program is not limited in number of recipients and that Daejin was neither a predominant nor disproportionate user of the subsidy; therefore, we determine that the interest rate subsidy provided to non-preferential SMEs is not *de facto* specific under section 771(5A)(D)(iii) of the Act.

Under 19 CFR 351.503(d), where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or more of such levels is not specific, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at the non-specific level under the program. Therefore, we determine that Daejin has received a benefit under this program to the extent that the interest rate subsidy that it received under this program for Business Stabilization Funding is greater than the non-specific level of assistance provided by the interest rate subsidy available to non-preferential SMEs. In addition, because Daejin received only Facility Equipment Funding at the non-specific interest rate subsidy for non-preferential SMEs, we determine that Daejin did not receive a countervailable benefit under this program for Facility Equipment Funding.

To calculate the benefit received by Daejin for the Business Stabilization Funding that it received at the preferential company rate, we first calculated the difference in the amount of interest paid by the Gyeongsangnam Provincial Government under this program at the preferential SME rate received by Daejin and the amount of interest that would have been paid at the non-preferential and non-specific SME rate. We then divided that difference by the FOB value of Daejin's total sales for the POI. On this basis, we determine that Daejin received a countervailable subsidy that is too small to measure, *i.e.*, less than 0.005 *ad valorem* under this program.[63] Because the calculation of the subsidy results in a rate that is less than 0.005 percent, this rate does not have

[59] *See* SQR1-Daejin at Attachment SQ1-8.
[60] *See* Daejin Preliminary Decision Memorandum at 14.
[61] *See* Daejin VR at 11; GOK VR at 8-9.
[62] *Id.*
[63] *See* Daejin Final Calculation Memorandum.

an impact on Daejin's overall subsidy rate.[64]

B. Program Determined To Be Not Countervailable

1. Employment of Elderly People Aged 55 Years or Older

The GOK reported that this program provides a grant to companies that employ a certain percentage of employees older than 55, compared to the company's total number of employees.[65] In our preliminary determination, we found that the program provided a grant to SMEs, but we confirmed at verification that the program is, in fact, available to all companies.[66] For the manufacturing industry to which Daejin belongs, the GOK and Daejin reported that the specified proportion of employees over age 55 to total employees is four percent.[67] This qualifying percentage of employment was established by the GOK Ministry of Employment and Labor (MOEL) through a survey of various industry sectors at the time the program was implemented. With these surveys, the MOEL established the average level of elderly employment in each industry sector, and implemented incentives for companies exceeding the average level.[68] The GOK and Daejin reported that Daejin received benefits under this program during the POI.[69]

We determine that this program is not specific and is, therefore, not countervailable. Under section 771(5A)(D)(i) of the Act, we will find a program *de jure* specific if the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry. Here, because the program is available to any company that employs a specified portion of employees aged 55 years and over, with no other criteria further limiting the availability of and access to this incentive, we determine that this program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Furthermore, we also determine that this program is not *de facto* specific under section 771(5A)(D)(iii) of the Act because the number of recipients is not limited and Daejin has not received either a predominant or disproportionate share of the subsidies under this program.

C. Programs Determined To Be Not Used or Not to Confer a Benefit During the POI

1. Small and Medium Size Enterprises Funding: Facility Equipment Funding and Business Stabilization Funding from Yangsan City

The GOK stated that under this program, the Government of Yangsan City provides assistance to SMEs located in the city by paying a portion of the SMEs' interest payments on loans that a financial institution has extended.[70] The GOK stated that after a bank evaluates an applicant's credit, approves a loan extension, and determines the applicable interest rate, the Government of Yangsan City provides a certain portion of the interest payment on the loan payable to the

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[64] *See* 19 CFR 351.524(a).
[65] *See* SQR2-GOK at Appendices Volume, page 2.
[66] *See* GOK VR at 3-6.
[67] *Id.* at Appendices Volume, page 4; *see also* IQR-Daejin at 31.
[68] *See* GOK VR at 4-5.
[69] *See* SQR2-GOK at Appendices Volume, page 3; *see also* IQR-Daejin at 31-35.
[70] *See* IQR-GOK at 16 and 30.

bank.[71] Thus, a commercial bank would approve a loan for an SME and the Government of Yangsan City would pay a portion of the interest on behalf of the SME. For example, if the commercial bank approved a loan with an interest rate of six percent, the Government of Yangsan City would pay 2.5 percent of the interest on the loan to the bank and the SME program recipient would pay the remaining 3.5 percent of the interest to the bank.[72] Daejin reported that it had outstanding loans during the POI related to Facility Equipment Funding and Business Stablization Funding for which it received assistance from the Government of Yangsan City under this program.[73]

Under this program, the Government of Yangsan City set a single rate of assistance in 2011 that was available to all SMEs. The 2011 rates were 2.5 percent for Business Stabilization Funding and 3.5 percent for Facility Equipment Funding.[74] The Government of Yangsan City revised the assistance levels in 2013 to set one rate of assistance available to all SMEs, with a higher rate of assistance available only to companies designated as "preferential" SMEs under Article 10 of the Yangsan City Ordinance for Preferential Enterprises.[75] The 2013 rates for Business Stabilization Funding were 2.5 percent for all SMEs and 3.5 percent for preferential SMEs, and the rates for Facility Equipment Funding were 3.0 percent for all SMEs and 4.0 percent for preferential SMEs.[76] Daejin received assistance for a Business Stabilization loan under the 2013 program structure; the assistance that Daejin received was provided at the standard level, 2.5 percent. Daejin received assistance for a Facility Equipment loan under the 2011 program structure; the assistance that Daejin received was provided at the standard level, 3.5 percent.[77]

We determine that this program constitutes a countervailable subsidy. The program represents a financial contribution within the meaning of section 771(5)(D)(i) of the Act because it represents a direct transfer of funds on behalf of Daejin for Daejin's interest payment. We determine that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because of the higher levels of assistance provided to SMEs classified as "preferential" by the Government of Yangsan City under this program. We also examined whether the provision of the interest rate subsidy provided to "non-preferential" SMEs is *de facto* specific under section 771(5A)(D)(iii) of the Act. We determine that this portion of the program is not provided to a limited number of recipients and that Daejin was neither a predominant nor disproportionate user of the subsidy; therefore, we determine that the interest rate subsidy provided to non-preferential SMEs is not *de facto* specific under section 771(5A)(D)(iii) of the Act.

In the *Preliminary Determination*, we found that Daejin had received Facility Equipment Funding at the preferential rate of assistance on a loan that was outstanding during the POI, and therefore received a countervailable benefit from this program during the POI.[78] However, at verification we learned that this assistance was provided for a loan that was obtained prior to the Government of Yangsan City's implementation of the higher level of assistance for preferential

[71] *Id.* at 19 and 33.
[72] *See* SQR1-GOK at Exhibit G1SR-5.
[73] *See* IQR-Daejin at 26-31.
[74] *See* SQR1-GOK at Exhibit G1SR-4.
[75] *Id.* at 16-25.
[76] *Id*. at Exhibit G1SR-5.
[77] *See* IQR-Daejin at Attachment 13.
[78] *See* Daejin Preliminary Decision Memorandum at 13.

SMEs in 2013, and therefore, the assistance that Daejin received was provided at a rate available to all SMEs. In addition, at verification we learned that the assistance Daejin received for Business Stabilization Funding, although provided after higher levels of assistance were made available to preferential SMEs in 2013, was not provided at the rate available to preferential SMEs.[79] As such, because Daejin received assistance under this program only at the non-preferential, and therefore non-specific, rates of assistance, for both Business Stabilization Funding and Facility Equipment Funding, we determine that Daejin did not receive a countervailable benefit under this program.

2. Korea Trade Insurance Corporation (K-SURE) Short-Term Export Credit Insurance

During the POI, both Jinheung Steel and Jinsco stated that they purchased export credit insurance from K-SURE;[80] however, both companies stated that they did not make any insurance claims nor did they receive any payments on insurance claims made with respect to exports of the subject merchandise.[81] The results of verification confirmed these statements.[82] Therefore, we determine that these companies did not receive a benefit under this program during the POI under 19 CFR 351.520(a)(2).

In addition to the above-listed program, we determine that Daejin, Jinheung Steel, Duo-Fast, and Jinsco did not apply for or did not receive any countervailable benefits during the POI under the following programs:

1. Korea Export Import Bank's (KEXIM) Shared Growth Program
2. Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA)
3. Promotion of Specialized Enterprises for Parts and Materials
4. Modal Shift Program
5. Short-Term Export Credits from KEXIM
6. Export Factoring from KEXIM
7. Export Loan Guarantees from KEXIM
8. KEXIM's Trade Bill Rediscounting Program
9. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables
10. GOK Facilities Investment Support: Article 26 of the Restriction of Special Taxation Act (RSTA)
11. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
12. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
13. Tax Deductions for Investments in Energy-Economizing Facilities under RSTA Article

[79] *See* Daejin VR at 10.
[80] The Department found this program countervailable in *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012), and accompanying Issues and Decision Memorandum at section IV.
[81] *See* IQR-Daejin at 11; *see also* IQR-Jinheung at 23.
[82] *See* Jinheung VR at 4-5.

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14. Special Tax Reduction or Exemption for Small and Medium Enterprises
15. Tax Reductions and Exemptions for Companies Located in Free Economic Zones (FEZs)
16. Exemptions and Reductions of Lease Fees for Companies Located in FEZs
17. Grants and Financial Support to Companies Located in FEZs

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 U.S. International Trade Commission of our determination.

_____ _____
Agree Disagree

_____
Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

_____
(Date)