

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-580-866]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea).

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Case History**

On April 19, 2011, the Department initiated a countervailing duty (CVD) investigation of bottom mount refrigerators from Korea.¹ In the *Initiation Notice*, the Department set aside a period for all interested parties to raise issues regarding product coverage. The comments we received are discussed in the “Scope Comments” section below.

In the *Initiation Notice*, the Department identified Samsung

¹ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 FR 23298 (April 26, 2011) (*Initiation Notice*). The petitioner in this investigation is Whirlpool Corporation.

Electronics Co., Ltd. (SEC) and LG Electronics, Inc. (LGE) as respondents in this investigation. As we noted in the *Initiation Notice*, it is the Department's usual practice to rely on import data from U.S. Customs and Border Protection (CBP) to select respondents in CVD investigations. However, because the Harmonized Tariff Schedule of the United States (HTSUS) categories under which bottom mount refrigerators may be entered are basket categories, which include many other types of refrigerators and freezers, we could not rely on CBP data. Because the petition identified SEC and LGE as the only producers in Korea that exported bottom mount refrigerators to the United States, and because we knew of no other producers that exported subject merchandise to the United States, we initially selected for examination the respondents that were identified in the petition. However, we invited interested parties to comment on our respondent selection within five days of the publication of the initiation notice (*i.e.*, by May 2, 2011).

We received no comments regarding our selection of SEC and LGE within the period designated in the *Initiation Notice*. However, on May 9, 2011, subsequent to the comment period, the petitioner requested that Daewoo Electronics Corporation (DWE) be included as a respondent in the instant CVD investigation. The petitioner made this request because, separately, on the last day of the comment period, DWE made a submission in the parallel antidumping duty (AD) investigation identifying itself as an exporter and producer of the subject merchandise and requesting that it be designated as a mandatory respondent in the AD investigation, in addition to LGE and SEC. The petitioner stated that, if DWE's request to be included in the AD investigation was granted, the Department should also include DWE in the CVD investigation. The petitioner argued that a foreign producer should not be permitted to choose to participate in the AD investigation but not in the companion CVD investigation, which would allow DWE to take full advantage of the AD analysis of cost reductions associated with subsidies.² On May 10, 2011, DWE submitted a letter stating that the Department should reject the petitioner's request. On May 13, 2011, the petitioner submitted a second letter emphasizing that the statute directs the

Department to investigate all known producers and exporters and affords the Department no discretion to do otherwise. The petitioner argued that the Department, having concluded in the AD investigation that three known producers is not an impracticably large number, must reach the same conclusion in the CVD investigation.

On May 18, 2011, the Department decided to include DWE in the CVD investigation, consistent with the statutory requirement under section 777A(e)(1) of the Tariff Act of 1930, as amended (the Act), which directs the Department to determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.³

On May 9, 2011, the Department issued the CVD questionnaire (including government and company sections) to the Government of Korea (GOK). On May 18, 2011, the Department provided a copy of the questionnaire to DWE. In the initial questionnaire, we requested that certain information from company respondents regarding affiliation and cross-ownership be submitted prior to the response to the remainder of the questionnaire. On May 23, 2011, SEC submitted the first part of its questionnaire response (SEC Initial Questionnaire Response Part 1). LGE submitted the first part of its questionnaire response on June 1, 2011 (LGE Initial Questionnaire Response Part 1). DWE submitted the first part of its questionnaire response on June 1, 2011 (DWE Initial Questionnaire Response Part 1). On June 14, 21, and 23, 2011, the Department issued supplemental questionnaires to SEC, LGE, and DWE, respectively. On July 1, 5, and 7, 2011, responses to these questionnaires were submitted by DWE, SEC, and LGE, respectively.

On June 29, 2011, SEC and LGE submitted the remainder of their questionnaire responses (SEC Initial Questionnaire Response Part 2 and LGE Initial Questionnaire Response Part 2, respectively); the GOK also submitted its questionnaire response on this day (GOK Initial Questionnaire Response). On July 7, 2011, DWE submitted the remainder of its questionnaire response (DWE Initial Questionnaire Response Part 2).

On June 2 and 9, and July 12 and 14, 2011, the Department received comments from the petitioner regarding these questionnaire responses. On July

26, 2011, the Department issued supplemental questionnaires to SEC, LGE, and DWE. Responses to these questionnaires were received on August 9, 2011 (SEC Supplemental Questionnaire Response Part 1; LGE Supplemental Questionnaire Response Part 1; and DWE Supplemental Questionnaire Response, respectively). On August 19 and 23, 2011, respectively, SEC and LGE submitted the second part of their responses. On August 1, 2011, the Department issued a supplemental questionnaire to the GOK (GOK Supplemental Questionnaire). A response to this questionnaire was received on August 15, 2011 (GOK Supplemental Questionnaire Response). On August 22, 2011, the petitioner submitted comments on the responses to these questionnaires for the Department's consideration. On August 23, SEC submitted comments related to the calculation of its *ad valorem* subsidy rate for the purposes of this preliminary determination. On August 29, 2011, LGE filed comments in response to the petitioner's August 23, 2011 submission.

On July 15, 2011, the Department received new subsidy allegations from the petitioner. On August 16, 2011, we issued our decision to initiate on eight of these newly alleged subsidy programs, to defer initiation on two programs, and not to initiate on one program.⁴ On August 29, 2011, we issued questionnaires related to the new subsidy allegations to the respondents and to the GOK. The programs on which we initiated include equity infusions through debt-to-equity conversions and preferential lending provided by the GOK to DWE, as well as additional tax deductions, loans, and grant programs available to companies in specific sectors or industries. Because we will not receive responses to these questionnaires until after the preliminary determination, an analysis of whether these programs are countervailable will be provided in a post-preliminary analysis, and the parties will have an opportunity to comment on our analysis.

On June 3, 2011, the Department postponed the preliminary determination until August 27, 2011. However, since that date is a Saturday, the Department stated that its

² The Department included DWE as a mandatory respondent in the AD investigation. See "Memorandum to the File from David M. Goldberger, Inclusion of Daewoo as Mandatory Respondent," dated May 9, 2011.

³ See "Memorandum from Myrna L. Lobo to Barbara E. Tillman, Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Inclusion of Daewoo as a Mandatory Respondent," dated May 18, 2011.

⁴ See "Memorandum from Dana S. Mermelstein to Barbara E. Tillman, Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations," dated August 16, 2011 ("NSA Initiation Memorandum").

determination would be issued on the next business day, August 29, 2011.⁵

Alignment of Final CVD Determination With Final AD Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of bottom mount refrigerators from Korea and Mexico.⁶ The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered. On August 22, 2011, in accordance with section 705(a)(1) of the Act, the petitioner requested alignment of the final CVD determination with the final AD determination of bottom mount combination refrigerators from Korea. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 9, 2012, unless postponed.

Injury Test

Because Korea is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On May 23, 2011, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of subject merchandise.⁷

Scope of the Investigation

The products covered by the investigation are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea.

For purposes of the investigation, the term “bottom mount combination refrigerator-freezers” denotes freestanding or built-in cabinets that have an integral source of refrigeration

using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;
- The upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment;⁸ and
- There is at least one freezer or convertible compartment that is mounted below the upper-most interior storage compartment(s).

For purposes of the investigation, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) Any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigation are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to the investigation may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

⁸The existence of an interior sub-compartment for ice-making in the upper-most storage compartment does not render the upper-most storage compartment a freezer compartment.

Scope Comments

In accordance with the preamble to the Department’s regulations, in our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.⁹ We received a number of comments concerning the scope of the AD and CVD investigations of bottom mount refrigerators from Korea.

Timely comments were filed by SEC on May 9, 2011, requesting that the Department alter the scope language by adopting the Association of Home Appliance Manufacturers (AHAM) definition of combination refrigerator-freezer. Specifically, according to SEC, the AHAM definition would more accurately define a “freezer” in accordance with industry standards as a compartment which is “designed for the freezing and storage of frozen foods at temperatures of 8 degrees F (– 13.3 degrees C) average or below, and typically capable being adjusted by the user to a temperature of 0 degrees F (– 17.8 degrees C) or below.”¹⁰ SEC also requested that the Department determine that a certain type of refrigerator with four compartments known as “Quatro Cooling Refrigerators” be excluded from the scope of the investigations due to its upper left non-convertible freezer compartment.¹¹ On May 18 and 19, 2011, respectively, LGE and DWE indicated their support for SEC’s preference for using the industry definition of “freezer.”¹² LGE also requested that the Department amend the scope language by using the AHAM definition to exclude refrigerators referred to as “kimchi refrigerators” that are incapable of hard-freezing foods (*i.e.*, storing foods at a temperature of 8 degrees F (– 13.3 degrees Celsius)).¹³ On May 18, 2011, the petitioner filed comments objecting to SEC’s request to

⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice*, 76 FR at 23299.

¹⁰ See “Letter to Secretary Locke from Samsung Electronics Co., Ltd., Re: Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico: Scope Exclusion Request and Scope Comments,” dated May 9, 2011, at Attachment 2.

¹¹ See *id.*

¹² See “Letter to Secretary Locke from LG Electronics Inc., Re: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico: Rebuttal Comments on Product Characteristics and Scope of the Investigation,” dated May 18, 2011 at 2–3, and “Letter to Secretary Locke from Daewoo Electronics Corporation, Re: Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from Korea; Rebuttal Comments on Scope,” dated May 19, 2011.

¹³ See *id.*

⁵ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 76 FR 32142 (June 3, 2011).

⁶ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23281 (April 26, 2011).

⁷ See *Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico*, 76 FR 29791 (May 23, 2011); and USITC Publication 4232 entitled *Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico: Investigation Nos. 701–TA–477 and 731–TA–1180–1181 (Preliminary)* (May 2011).

narrow the scope language by using the AHAM definition and also opposing SEC's request to exclude Quatro Cooling Refrigerators.¹⁴ On June 30, 2011, the petitioner also filed comments opposing LGE's request to exclude kimchi refrigerators.¹⁵ On June 30, officials from Whirlpool Corporation, along with counsel, met with Department officials to explain why kimchi refrigerators are covered under the scope of the investigations and why there should be no scope exclusion for this type of merchandise.¹⁶ On July 25, 2011, SEC submitted further comments explaining why it believes SEC's Quatro models are outside the scope of the investigations.

The Department is currently evaluating these scope comments, and will issue its decision regarding the scope of the investigations no later than the date of the preliminary determination in the companion AD investigation. That decision will be placed on the record of this CVD investigation, and all parties will have the opportunity to comment.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2010, through December 31, 2010.

Subsidies Valuation Information

Cross-Ownership and Attribution of Subsidies

The Department's regulations state that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of other corporation(s) in essentially the same ways it can use its own assets.¹⁷ This section of the Department's 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 the Department's regulations further clarifies the Department's cross-ownership

standard.¹⁸ 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 (including subsidy benefits) of the other corporation in essentially the same way it can use its own assets (including subsidy benefits). The cross-ownership standard 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 (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.¹⁹

As such, the Department's regulations make it clear that we must examine the facts presented in each case in order to determine whether cross-ownership exists. In accordance with 19 CFR 351.525(b)(6)(iv), if the Department determines that the suppliers of inputs primarily dedicated to the production of the downstream product are cross-owned with the producers/exporters under investigation, the Department will attribute the subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

SEC has reported a cross-ownership relationship with its subsidiary Samsung Gwangju Electronics Co., Ltd. (SGEC), the producer of bottom mount refrigerators subject to this investigation. We have examined the relationship to determine whether it meets the definition of cross-ownership such that we will identify, measure, and attribute subsidies granted to the cross-owned companies to the entity exporting subject merchandise.

As reported by SEC,²⁰ during the POI, SGEC produced various home appliances including bottom mount refrigerators. At that time, SGEC was 94.25 percent owned by its parent company, SEC. The physical assembly of the refrigerators was performed by SGEC, which also executed production plans in accordance with the sales plans provided by SEC, in addition to establishing input supply arrangements,

and paying input suppliers. SGEC sold the vast majority of bottom mount refrigerators to SEC, which was responsible for sales in the domestic and export markets; SGEC did not retain any inventory. SEC performed all other refrigerator-related functions, including sales planning for the domestic and export markets; marketing, research and development; engineering and design; and finalization of specifications of raw material inputs. SEC also reported that effective January 1, 2011, after the POI, SGEC was merged into SEC.

Based on the information provided by SEC, we conclude that SGEC and SEC are cross-owned within the definition provided in 19 CFR 351.525(b)(6)(vi). SGEC was virtually wholly-owned by SEC during the POI, and therefore SEC was able to "use and direct the individual assets of" SGEC in "essentially the same ways it can use its own assets."²¹ Furthermore, SEC was intrinsically involved with the production, sales, and marketing of the subject merchandise. As such, for purposes of this preliminary determination, we are examining subsidies to both SGEC, the producer of subject merchandise, and to SEC, its parent company. Consistent with 19 CFR 351.525(b)(6)(i), we are attributing the subsidies to the products produced by the corporation that received the subsidy. Therefore subsidies provided directly to SGEC are attributable to SGEC's total sales. In addition, consistent with 19 CFR 351.525(b)(6)(iii) we are attributing the subsidies conferred on SEC to SEC's consolidated sales, which include all of SGEC's sales.²²

Cross-Ownership With Input Suppliers

The petitioner has alleged that SEC, LGE, and DWE have relationships with their input suppliers that meet the definition of cross-ownership provided in 19 CFR 351.525(b)(6)(vi). Specifically, large companies exercise control over the actions of small and medium-sized enterprises (SMEs) that provide inputs to the large companies, an important feature of what is known as the chaebol system in Korea.²³ As a result of the petitioner's contention that SEC, LGE, and DWE are in a position to exercise effective control over their input suppliers, "to use the suppliers' assets as though they were its own, and have the ability to effectively dictate the

¹⁴ See "Letter to Secretary Locke from Whirlpool Corporation, Re: Bottom Mount Combination Refrigerator-Freezers from the Republic of South Korea and Mexico; Petitioner's Rebuttal Comments on Product Scope and Product Characteristics," dated May 18, 2011.

¹⁵ See "Letter to Secretary Locke from Whirlpool Corporation, Re: Bottom Mount Combination Refrigerator-Freezers from Mexico and the Republic of Korea," dated June 30, 2011.

¹⁶ See "Memorandum to the File from Brandon Custard, Re: Meeting with Petitioner on Scope and Kimchi Refrigerators," dated July 6, 2011; *see also* "Memorandum to the File from David Goldberger, Re: Addendum to July 6 Memo on Scope Issues Meeting with Petitioner," dated July 19, 2011.

¹⁷ See 19 CFR 351.525(b)(6)(vi).

¹⁸ See *Countervailing Duties*, 63 FR 65347, 65401 (November 25, 1998) (preamble).

¹⁹ *See id.*

²⁰ See SEC Initial Questionnaire Response Part 1 at 1-2.

²¹ See 19 CFR 351.525(b)(6)(vi).

²² See preamble at 65402.

²³ See the petition, dated March 30, 2011 at 33-35.

essential terms of trade,”²⁴ the petitioner has urged the Department to investigate subsidies provided to the input suppliers and to attribute those subsidies to respondents.

We are examining whether the respondent companies are cross-owned with their suppliers, and whether the inputs supplied are primarily dedicated to the production of the downstream product. In our initial questionnaire, we requested that the respondents identify all of their input suppliers, any suppliers that are affiliated in accordance with section 771(3) of the Act, and any suppliers that are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi).²⁵ Further, we asked them to describe in detail the nature of the relationships with their suppliers, including whether they are sole suppliers, whether there is a supply or purchase agreement, and whether there are financial relationships beyond the purchase or sale of goods.

In response, the respondents identified hundreds of input suppliers.²⁶ SEC and DWE reported that none of those suppliers were cross-owned in accordance with 19 CFR 351.525(b)(6)(vi). LGE, however, reported several input suppliers as being cross-owned, but stated that the inputs provided by these suppliers were not primarily dedicated to the production of bottom mount refrigerators. In supplemental questionnaires, we asked additional questions about the companies' relationships with their suppliers, their supply agreements, and whether the inputs supplied account for a majority of the suppliers' business. We also requested additional information to assess whether the inputs were primarily dedicated to the production of the downstream product. The responses to these questionnaires provided additional information about the relationships with suppliers and the supply agreements.

We issued additional supplemental questionnaires on July 26, 2011, to SEC, LGE, and DWE asking more detailed questions regarding family relationships, and common board members and managers between the respondents and their suppliers. DWE provided its response on August 9,

2011; SEC and LGE provided the responses to these questions on August 18 and August 23, 2011, respectively. We have not had sufficient opportunity to evaluate these questionnaire responses prior to this preliminary determination, and we have not requested questionnaire responses from the suppliers at this time. We will continue to examine the information submitted regarding the relationships between the respondent companies and their suppliers. If we conclude that there is sufficient information that the respondents may be in a position to use and control the assets of their input suppliers as though they were their own, as provided in 19 CFR 351.525(b)(6)(vi), and that the inputs they supply may be primarily dedicated to the production of the downstream product, then we will request the information we deem necessary to determine whether input suppliers received countervailable subsidies that are attributable to the production of subject merchandise in accordance with 19 CFR 351.525(b)(6)(iv). The Department will issue a post-preliminary analysis on this issue in sufficient time for the parties to submit comments for the final determination.

Benchmark Interest Rate for Short-Term Loans

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market” the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). For the “Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables” program, an analysis of any benefit conferred by loans from KDB or IBK to the respondents requires a comparison of interest actually paid to interest that would have been paid using a benchmark interest rate.²⁷

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a

government-provided short-term loan program, the preference would be to use a company-specific annual average of interest rates of comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. LGE has reported receiving KDB and IBK short-term loans. LGE also reported receiving loans from commercial banks that are comparable commercial loans within the meaning of 19 CFR 351.505(a)(2)(i). We preliminarily determine that the information provided by LGE about its commercial loans satisfies the preference expressed in 19 CFR 351.505(a)(2)(iv). As such, we have used LGE's commercial loans to calculate a benchmark interest rate that represents a company-specific annual average interest rate.²⁸

SEC also received loans under the KDB and IBK short-term loan program. However, SEC/SGEC has not provided information about comparable commercial loans that would provide an appropriate basis for an interest rate benchmark. Pursuant to 19 CFR 351.505(a)(3)(ii), where a firm has not reported comparable commercial loans during the POI, the Department may use a national average interest rate for comparable commercial loans. In this instance, the GOK also did not provide usable information regarding national average interest rates. Because no such data were available, we relied on appropriate published sources for information regarding average commercial short-term interest rates to select benchmark interest rates to measure the benefit to SEC/SGEC from the KDB and IBK loans.²⁹

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or

²⁸ See “Memorandum to the File from Justin M. Neuman, Re: Calculations for LG Electronics Inc.,” dated August 29, 2011.

²⁹ See “Memorandum to the File from Myrna Lobo, Re: Calculations for Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd.,” dated August 29, 2011 (SEC/SGEC Calculation Memorandum).

²⁴ See the petitioner's June 2, 2011 submission, “Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Submission of Further Evidence in Reply to Response of Samsung Electronics Co., Ltd.,” at 5.

²⁵ See Initial Questionnaire at Section III. Question I.A.

²⁶ See Samsung Initial Questionnaire Response Part 1 at Exhibit 2; LGE Initial Questionnaire Response Part 1 at Exhibit 2; DWE Initial Questionnaire Response Part 1 at Exhibit 2.

²⁷ See 19 CFR 351.505(a)(1).

industry under investigation. Specifically, the party must establish that the difference between the AUL shown in the tables and the company-specific AUL, or the country-wide AUL for the industry under investigation, is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). For assets used to manufacture bottom mount refrigerators, the IRS tables prescribe an AUL of 10 years. Neither the respondents nor the GOK has disputed the AUL of 10 years in this investigation. Therefore, the Department is using an AUL of 10 years in this investigation.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

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

The petitioner alleges that the GOK, through two government-owned policy banks, KDB and IBK, provided support to producers of bottom mount refrigerators by offering short-term export financing in the form of discounted Documents against Acceptance (D/A).

According to the GOK, KDB and IBK operate both D/A and "open account export transaction" (O/A) financing. These types of financing are designed to meet the needs of KDB and IBK clients for early receipt of discounted receivables prior to their maturity. In a D/A transaction, the exporter first loads contracted goods for shipment as per the contract between the exporter and the importer, and then presents the bank with the bill of exchange and the relevant shipping documents specified in the draft to receive a loan from the bank in the amount of the discounted value of the invoice, repayable when the borrower receives payment from its customer. In an O/A transaction, the exporter effectively receives advance payment on its export receivables by selling them to the bank at a discount prior to receiving payment by the importer. The exporter pays the bank a "fee" that is effectively a discount rate of interest for the advance payment. In this arrangement, the bank is repaid when the importer pays the bank directly the full value of the invoice; the exporter no longer bears the liability of non-payment from the importer.

Only LGE and SEC reported using this program during the POI. Because receipt of D/A and O/A loans is contingent upon export performance, we determine that D/A and O/A loans from KDB and IBK are specific within the meaning of

sections 771(5A)(A) and (B) of the Act. The Department finds that D/A and O/A loans from KDB and IBK constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent of the difference between the amount of interest 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.

LGE reported having D/A loans outstanding during the POI on exports of subject merchandise to the United States. To calculate the benefit for LGE, for each KDB and IBK loan, we compared the amount of interest paid on the KDB and IBK loans to the amount of interest that would be paid on a comparable commercial loan in accordance with 19 CFR 351.505(a).³⁰ Where the interest actually paid on the KDB and IBK loans was less than the interest that would have been payable at the benchmark rate, the difference is the benefit. We summed all of the individual loan benefits and divided the difference by the company's exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine the countervailable subsidy to LGE under this program to be less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we find that the countervailable benefit to LGE is not measurable.³¹

Although SEC reported using the program, it stated that these were not loans and that it did not pay interest. Rather SEC stated that it paid "negotiation fees" and it reported the fees it paid during the POI on a monthly basis. SEC did not provide information about individual loans. However, the GOK did provide information about all the loans KDB and IBK had provided to SEC that were outstanding during the POI.

Because SEC did not provide information on its comparable commercial short-term loans, we calculated the benefit for SEC from the loans it received on an O/A basis during the POI by comparing the amount of

interest paid on the KDB and IBK loans, as reported by the GOK, to the amount of interest that would have been paid using a benchmark selected according to the hierarchy discussed in the "Benchmark Interest Rate for Short-Term Loans" section, above.³² Because these loans are made on a discounted basis (*i.e.*, interest is paid up-front at the time the loans are received), where necessary, we converted the nominal short-term interest rate benchmark to an effective discount rate. We compared the interest paid by SEC, as reported by the GOK, to the interest payments, on a loan-by-loan basis, that SEC would have paid at the benchmark interest rate. Where the actual interest paid was less than the interest that would have been payable at the benchmark rate, the benefit is the difference. We then summed the differences for each loan and divided this aggregate benefit by the company's total export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to SEC/SSEC under this program to be 0.01 percent *ad valorem*.

B. Restriction of Special Taxation Act (RSTA) Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities

According to the petitioner, corporations making investments in one of four "energy economizing facilities," are eligible for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent.

According to the GOK, this program was introduced in the Korean tax code in the predecessor of the RSTA to facilitate Korean corporations' investments in the energy utilization facilities.³³ The underlying rationale for the introduction and maintenance of the program is that the enhancement of energy efficiency in the business sectors may help enhance the efficiency in the general national economy. The eligible types of facilities are identified in Article 22(2) of the RSTA. 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.

Under the program, the GOK explained that corporations that have made investments in facilities to enhance energy utilization efficiency or produce renewable energy resources, in accordance with the RSTA decree and regulation, are entitled to a credit

³⁰ See "Subsidies Valuation Information" section, above.

³¹ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (*HRS from India*), and the accompanying Issues and Decision Memorandum at "Exemption from the CST."

³² See the SEC/SSEC Calculation Memorandum.

³³ See GOK Initial Questionnaire Response at 246 of the Appendices Volume.

toward taxes payable in the amount of 10 percent of the eligible investment. Once it is established that the requirements under the laws and regulations are satisfied, the provision of support under this program is automatic. If a company is in a tax loss situation in a particular tax year, the company is permitted to carry forward the applicable credit under this program for five years. The relevant tax law pertaining to loss carry-forward is Article 144(1) of the RSTA. The GOK agency that administers this program is the Ministry of Strategy and Finance. SEC and SGEC both claimed credits under this program on their tax returns filed during the POI. LGE and DWE did not claim the tax credits available under this program on their tax returns filed during the POI.

In its response, the GOK provided the 2010 Statistical Yearbook of National Tax which provides the number of corporate taxpayers that claimed tax credits under Article 25(2). This information demonstrates that the actual recipients of tax credits under this program are limited in number. Therefore, this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. 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), effectively, the amount of the tax credit claimed. Consistent with 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the benefit to SEC from the tax credits used by SEC and SGEC, for each corporate entity, we divided the tax credit claimed under this program during the POI by each company's total sales during the POI. We added together the two resulting rates to preliminarily determine a countervailable subsidy that is less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is not measurable.³⁴

C. RSTA Article 26 Tax Deduction for Facilities Investment

The petitioner alleges that the GOK provides direct support to producers of bottom mount refrigerators investing in facilities by allowing a tax deduction of

10 percent of the total investment amount. Although the Department had found this program not countervailable in a past case,³⁵ the petitioner provided new information in the petition³⁶ to indicate that benefits under this tax deduction program are *de facto* specific because recipients of the tax deduction are limited in number on an enterprise or industry basis, or because an enterprise or industry is a predominant user of the program or receives a disproportionately large amount of the benefit.³⁷ Therefore, in the *Initiation Notice* and the accompanying CVD Investigation Initiation Checklist, we determined that it was appropriate to investigate this program because evidence in the petition indicated *de facto* specificity may exist.

In the initial questionnaire, we asked the GOK to describe the program, and to provide the relevant laws authorizing the program. In addition, we asked for information relating to the number of recipient companies and industries that used the tax program, as well as the amount of assistance provided. The GOK reported that the program does not provide a deduction from taxable income, but allows companies to take a credit toward taxes payable of seven percent of eligible investments in facilities. The GOK provided 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. According to the GOK, eligible investments are determined by presidential decree.³⁸ The GOK response indicated that although Article 26 of the RSTA specifies a 10 percent credit toward taxes payable, the 10 percent is a cap on the total amount of the credit; the actual tax credit is prescribed in Article 23(4) of the Enforcement Decree of the RSTA as seven percent.³⁹ In addition, the GOK provided data showing the total number of corporations that received the tax credit during the POI, as well as the total value of the credits taken. The GOK also reported that it "does not

compile the data of recipients in terms of sectors or industries." However, SEC reported that only "{c}ompanies which are located outside the Seoul Metropolitan Area (SMA) are eligible" for the tax credit provided by this program.⁴⁰

Therefore, in the GOK Supplemental Questionnaire, we asked the GOK to confirm whether this tax credit is limited to companies outside the SMA, and that investments made within the SMA are not eligible for this program. In its response, the GOK confirmed that tax credits under Article 26 of the RSTA are, in fact, limited to the investment of a corporation in facilities located outside the "Overcrowding Control Region" of the SMA. The GOK further confirmed that corporate investments in facilities located within the Overcrowding Control Region of the SMA are not eligible for credits under this tax program.⁴¹ The GOK explained that the copy of the text of Article 23(1) of the Enforcement Decree of the RSTA that it submitted as part of the GOK Initial Questionnaire Response inadvertently omitted the lines referring to the regional limitation on eligibility. The GOK submitted a complete translation of Article 23(1) of the Enforcement Decree of the RSTA, which confirmed that eligibility for the tax credit under Article 26 is limited to investments made outside the Overcrowding Control Region of the SMA.

Because information provided by the GOK indicates that the tax credits under this program are limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, we preliminarily find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.⁴² 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,

³⁵ See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and the accompanying Issues and Decision Memorandum (*DRAMS Final Determination*).

³⁶ See Exhibits C-8-FF and C-8-GG in the March 30, 2011 petition.

³⁷ See section 771(5A)(D)(iii)(I)-(III) of the Act.

³⁸ See GOK Initial Questionnaire Response at 203-4 of the Appendices Volume. In addition, the GOK explained that the term "presidential decree" refers to the Enforcement Decree of the RSTA. See GOK Supplemental Questionnaire Response.

³⁹ See GOK Initial Questionnaire Response at 204-5 of the Appendices Volume.

⁴⁰ See SEC Initial Questionnaire Response Part 2 at Exhibit 13.

⁴¹ See GOK Supplemental Questionnaire Response at 29.

⁴² See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and the accompanying Issues and Decision Memorandum at the "Provision of Electricity for Less than Adequate Remuneration" section (where eligibility for a program was limited to users outside the Bangkok metropolitan area, we found the subsidy to be regionally specific under section 771(5A)(D)(iv) of the Act).

³⁴ See, e.g., *HRS from India* and the accompanying Issues and Decision Memorandum at "Exemption from the CST."

effectively, the amount of the tax credit, pursuant to 19 CFR 351.509(a)(1).

LGE, SEC, and SGEN reported receiving tax credits under Article 26 of the RSTA during the POI. DWE did not receive tax credits under the program. For LGE, we divided the benefit, the tax credit claimed by LGE under this program during the POI, by the company's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy provided to LGE under this program to be 0.05 percent *ad valorem*. Consistent with 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the countervailable subsidy from the tax credits used by SEC and SGEN, for each corporate entity, we divided the benefit, the tax credit claimed under this program during the POI, by each company's total sales during the POI. We added together the two resulting rates to preliminarily determine a countervailable subsidy of 0.32 percent *ad valorem* for SEC/SGEN.

D. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Tax Exemptions

The petitioner alleges companies that newly establish or expand facilities within industrial complexes in Gwangju are exempt from acquisition and registration taxes. In addition, the petitioner states that capital gains on the land and buildings of such companies are exempt from property taxes for the first five years from the establishment or expansion of the facilities, and receive a 50 percent reduction of such taxes over the next three years.

According to the GOK, under Article 276 of the Local Tax Act, companies that newly establish or expand facilities within an industrial complex are exempt from property, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities. DWE reported that because it was exempt from paying property tax, it also received an additional exemption on the local education tax.⁴³ The GOK reported that, although Article 276 is a national program, it is administered at the local level by the Gwangju City government. The GOK provided the relevant sections of the City Tax Exemption and Reduction Ordinance of Gwangju City which shows Article 276 is administered by the Gwangju City government.

⁴³ See DWE Initial Questionnaire Response Part 2 at 5 and Exhibit D-2.

The Department has previously determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies.⁴⁴ There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. Only SGEN and DWE reported receiving these exemptions. We preliminarily find that the tax exemptions received by SGEN and DWE constitute a financial contribution and confer a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we preliminarily determine that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because Article 276 of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because they are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, 2010, and the prior nine years), in which a respondent claimed exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt. For both SGEN and DWE, none of the exemptions claimed over the AUL period met the prerequisite for allocation over time, and the only benefits attributable to the POI are those benefits received during the POI.

The exemptions from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.⁴⁵ The benefit to each company during the POI is the value of the real property tax exempted during the POI. Although DWE reported receiving an additional exemption of the education tax, we have not included the amount of that exemption during the POI in our benefit

⁴⁴ See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and the accompanying Issues and Decision Memorandum at 12. See also *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745 (September 15, 2010), final results unchanged.

⁴⁵ See 19 CFR 351.524(a).

calculation. We will gather additional information about this exemption from the GOK and the respondents in order to conduct a full analysis for the final determination.

Both SGEN and DWE reported that, as a result of their exemption from acquisition and registration taxes, they are subject to an additional tax under the Act on Special Rural Development. This tax is assessed at 20 percent of the value of the acquisition and registration tax exemption. SGEN and DWE contend that this additional tax should be treated as an offset to the real property tax exemption and subtracted from the exemption the Department recognizes as a benefit. We have examined the assessment of the Special Rural Development Tax in light of the provisions of section 771(6) of the Act, which limits the circumstances under which the Department may subtract an amount from the countervailable benefit to amounts related to application fees, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes imposed by the government specifically to offset CVDs imposed by the United States. We find that the Special Rural Development Tax does not meet the statutory requirement to be recognized by the Department as an offset to the countervailable exemption of acquisition and registration taxes. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit, the Department does not consider the tax consequences of the benefit.

To calculate the countervailable subsidy from the three tax exemptions provided under this program to SGEN and to DWE, for each company, we added the value of exemptions of acquisition and registration tax received during the POI to the value of exemptions of real property tax received during the POI. We divided the resulting benefit by each company's total sales during the POI. On this basis we determine a countervailable subsidy of 0.01 percent *ad valorem* for SEC/SGEN⁴⁶ and 0.01 percent *ad valorem* for DWE.

E. Gyeongsangnam Province Production Facilities Subsidies: Tax Reductions and Exemptions

According to the petitioner, eligible companies moving to Changwon that meet certain criteria can receive a 50 percent reduction in corporate taxes for five years, a 100 percent reduction on property taxes for five years, and a full

⁴⁶ See 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii).

exemption from land acquisition and registration taxes.

The GOK explained that, under Article 276 of the Local Tax Act, companies that newly establish or expand facilities within an industrial complex are exempt from property, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities. The GOK reported that although Article 276 is a national program, it is administered at the provincial or local level, as appropriate. In this instance, according to the GOK, because Changwon City is not a metropolitan city, it does not have the authority to administer the provisions of the Local Tax Act; therefore, the program is administered by the Province of Gyeongsangnam. The GOK provided the relevant sections of the Province of Gyeongsangnam Ordinance Tax Reduction and Exemption, Ordinance No. 3470, which shows that Article 276 is administered by the Province of Gyeongsangnam. LGE reported receiving tax exemptions under this program.

The Department has previously determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies.⁴⁷ There is no new information or evidence of changed circumstances which would warrant reconsideration of that determination. We preliminarily find that the tax exemptions received by LGE constitute a financial contribution and confers a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we preliminarily determine that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because Article 276 of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because they are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, 2010, and the prior nine years), in which LGE claimed exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of

receipt. None of the exemptions LGE claimed over the AUL period met the prerequisite for allocation over time, and the only benefits attributable to the POI are those benefits received during the POI.

The exemptions from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.⁴⁸ The benefit to LGE during the POI is the value of the real property tax exempted during the POI.

To calculate the countervailable subsidy rate for LGE, we divided the sum of all taxes exempted during the POI by LGE's total sales on an FOB basis during the POI. On this basis we determine a countervailable subsidy that is less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is not measurable.⁴⁹

II. Programs Preliminarily Determined To Be Not Countervailable

A. Gyeongsangnam Province and Korea Energy Management Corporation Energy Savings Subsidies

The petitioner alleges that Gyeongsangnam Province and the Korea Energy Management Corporation (KEMCO) provided grants as incentives to local companies that adopt energy savings technologies to reduce overall energy consumption. As support for its allegation, the petitioner provided information indicating that benefits under the program were only available to four "strategic industries," including the "Smart Home Industry," which includes home appliances such as refrigerators.

Each of the respondents reported that they did not receive any benefits under this program.⁵⁰ The GOK reported that Gyeongsangnam Province is not associated with the management of this program.⁵¹ Furthermore, the GOK stated that the program alleged by the petitioner is actually a program providing loans to fund the replacement of existing energy-consuming facilities. The GOK identified both SEC and LGE as having received loans under the

program.⁵² Funds for this loan financing are provided by the "Energy Savings Fund" (ESF). KEMCO is responsible for the actual administration of the program in accordance with the "Energy Use Rationalization Act," and disbursements from the fund are completed through independent financial institutions. Companies applying for disbursements under the fund first submit an application to KEMCO for financing; on the application the company will designate a bank through which it prefers to receive the financing once the application is approved. Once the application is approved by KEMCO, a recommendation letter is addressed to the designated bank. Applicant companies then submit a loan application to the bank, along with the recommendation letter from KEMCO; if approved, KEMCO transfers funds to the bank which uses them to extend financing to the applicant company.

In addition to providing the description of the program, the GOK notes that the Department has previously investigated this program and found it not countervailable, in the *DRAMS Final Determination*. In that investigation, the program was referred to as the "ESF Program." In the *DRAMS Final Determination*, we determined that the ESF Program was a widely available program seeking to promote goals not specific to any industries or companies and that it was "used by a significant number of companies in a wide range of industries," and was therefore not *de facto* specific.⁵³

According to section 775(1) of the Act, if, in the course of a proceeding, the Department discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a CVD petition, then the Department shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding. As explained above, we have previously found this program to be not countervailable. However, because we examined whether the subsidies provided under the program were *de facto* specific to producers of DRAMS in the *DRAMS Final Determination*, and because the ESF loans outstanding during the POI are new loans granted to the respondents since the *DRAMS Final Determination*

⁴⁸ See 19 CFR 351.524(a).

⁴⁹ See, e.g., *HRS from India* and the accompanying Issues and Decision Memorandum at "Exemption from the CST."

⁵⁰ See LGE Initial Questionnaire Response Part 2 at 23, SEC Initial Questionnaire Response Part 2 at III-20, DWE Initial Questionnaire Response Part 2 at 26.

⁵¹ See GOK Initial Questionnaire Response at 186 of the Appendices Volume.

⁵² See GOK Supplemental Questionnaire Response at 25.

⁵³ See *DRAMS Final Determination*, and the accompanying Issues and Decision Memorandum at 34.

⁴⁷ See *supra* note 44.

in 2003, the facts underlying the Department's previous decision that the program is not specific are no longer applicable. Therefore, the Department is examining whether this program is *de facto* specific to producers/exporters of bottom mount refrigerators during the POI.⁵⁴

In the GOK Initial Questionnaire Response, the GOK provided data regarding the total number of companies, by industry, that received financing under this program, as well as the total amount disbursed to each industry.⁵⁵ The data provided by the GOK demonstrate that, within the meaning of sections 771(5A)(D)(iii)(I)–(III) of the Act, the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are not limited in number; and that no enterprise or industry is a predominant user of the subsidy or receives a disproportionately large amount of the subsidy. In addition, there is no evidence that demonstrates that the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.⁵⁶

Because loans provided under this program are neither *de jure* nor *de facto* specific, we continue to find this program to be not countervailable within the meaning of section 771(5) of the Act.

III. Programs Preliminarily Determined Not to Confer a Benefit During the POI

A. Research, Supply, or Workforce Development Investment Tax Deductions for “New Growth Engines” Under RSTA Article 10(1)(1)

According to information provided by the petitioner, large corporations making research, supply, or workforce development investments in any of 10 “new growth engine” technologies qualify for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent. The petitioner has provided information indicating that these “new growth engines” include certain technologies related to the production of subject merchandise, such as LED.

The GOK has provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the

purpose of facilitating Korean corporations' investments in their respective research and development activities relating to the New Growth Engine program. The statutory basis for this program is Article 10(1)(1) of the RSTA. Paragraph 1 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(1) of the RSTA and Appendix 7 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program.

Because this program came into existence in 2010, any benefits from this program would not be realized until the tax returns for 2010 are filed in 2011. In accordance with 19 CFR 351.509(b)(1), we recognize tax benefits as having been received the date that the recipient would otherwise have had to pay the taxes. Normally, this date will be the date on which the firm filed its tax return. The first time the tax benefits available under this program could be claimed is on the return for the 2010 tax year, which was filed in 2011. Therefore, we preliminarily determine that this program did not provide countervailable benefits to the respondents during the POI.

B. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” Under RSTA Article 10(1)(2)

According to information provided by the petitioner, large corporations making research, supply, or workforce development investments in any of 18 “core technologies” qualify for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent. These “core technologies” include certain technologies related to the production of subject merchandise.

The GOK has provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the purpose of facilitating Korean corporations' investments in their respective research and development activities relating to core technologies covered by the New Growth Engine program.⁵⁷ The program is designed to facilitate the research and development (R&D) activities within the context of the New Growth Engine program. The program offers a credit toward taxes payable with respect to certain costs of personnel and equipment falling under the eligible category. The statutory basis for this program is Article 10(1)(2) of the RSTA. Paragraph 2 of Article 9 of the

Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA and Appendix 8 of the Enforcement Decree sets forth a list of core technologies that are covered by the New Growth Engine program.

Because this program came into existence in 2010, any benefits from this program would not be realized until the tax returns for 2010 are filed in 2011. In accordance with 19 CFR 351.509(b)(1), we recognize tax benefits as having been received the date that the recipient would otherwise have had to pay the taxes. Normally, this date will be the date on which the firm filed its tax return. The first time the tax benefits available under this program could be claimed is on the return for the 2010 tax year, which was filed in 2011. Therefore, we preliminarily determine that this program did not provide countervailable benefits to the respondents during the POI.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the respondents did not apply for or receive benefits during the POI under the following programs:

A. KEXIM Programs

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

KEXIM export factoring is a form of trade finance under which KEXIM provides short-term discounted loans against the trade receivables of Korean exporters resulting from open account transactions such as D/A. These loans are provided by KEXIM on a non-recourse basis, meaning that KEXIM, and not the exporter, assumes the risk of loss with respect to purchaser default. Although LGE and SGEC reported using this program during the POI, they both reported that their use of the program was unrelated to subject merchandise.⁵⁸

2. KEXIM Short-Term Export Credit.

3. KEXIM Export Loan Guarantees.

4. KEXIM Trade Bill Rediscounting Program.

B. Korea Trade Insurance Corporation (K-SURE)—Export Insurance and Export Credit Guarantees

1. Short-Term Export Insurance.

The Korean Export Insurance Corporation (KEIC) was established pursuant to the Export Insurance Act of 1968 for the purpose of providing export insurance. KEIC became K-SURE during the POI. Among the services provided by K-SURE is a short-term export

⁵⁴ See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review*, 76 FR 22868 (April 25, 2011), and the accompanying Issues and Decision Memorandum at 9.

⁵⁵ See GOK Initial Questionnaire Response at 193–196 of the Appendices Volume.

⁵⁶ See section 771(5A)(D)(iii)(III) of the Act.

⁵⁷ See GOK Initial Questionnaire Response at 231 of the Appendices Volume.

⁵⁸ See LGE Initial Questionnaire Response Part 2 at Exhibit 18B, and SEC Supplemental Questionnaire Response Part 1 at S2–3.

insurance program. Under this program, insurance policies issued to Korean companies through this program provide protection from risks such as payment refusal and buyer's breach of contract. Claims are paid from the Export Insurance Fund, which is managed by K-SURE and is funded by contributions from the GOK and insurance premium payments paid by the private sector companies electing export insurance coverage. K-SURE determines premium rates by considering numerous factors, including the creditworthiness of the importing party and the term of the policy. LGE, SEC, and DWE reported electing short-term export insurance provided by K-SURE during the POI. However there were no benefits provided on exports of subject merchandise to the United States during the POI.

2. *Export Credit Guarantees.*

C. Gwangju Metropolitan City Programs

1. *Relocation Grants.*
2. *Facilities Grants.*
3. *Employment Grants.*
4. *Training Grants.*
5. *Consulting Grants.*
6. *Preferential Financing for Business Restructuring.*
7. *Interest Grants for the Stabilization of Management Costs.*
8. *"Special Support" for Large Corporate Investors.*
9. *Research and Development and Other Technical Support Services.*

D. Changwon City Subsidy Programs

1. *Relocation Grants.*
2. *Employment Grants.*
3. *Training Grants.*
4. *Facilities Grants.*
5. *Grant for "Moving Metropolitan Area-Base Company to Changwon".*
6. *Preferential Financing for Land Purchase.*
7. *Financing for the Stabilization of Business Activities.*
8. *Special Support for Large Companies.*

E. Other GOK Programs

1. Targeted Facilities Subsidies through Korea Finance Corporation (KoFC), KDB, and IBK "New Growth Engines Industry Fund".
2. *GOK Green Fund Subsidies.*

V. *Programs for Which Additional Information Is Needed*

On August 16, 2011, the Department included eight new subsidy allegations as part of the investigation.⁵⁹ On August 29, 2011, the Department issued a questionnaire to the GOK and to the respondents regarding these programs. Because there has not been sufficient time to receive responses regarding these new subsidy allegations, we have not included any analysis of these programs in this preliminary determination. The Department will provide a post-preliminary analysis of these programs, and all parties will have an opportunity to comment. The programs for which we need additional information are:

- A. DWE Restructuring
 1. *GOK Equity Infusions under the DWE Workout.*
 2. *GOK Preferential Lending under the DWE Workout.*
- B. Tax Reduction for Research and Manpower Development: RSTA Article 10(1)(3)
- C. GOK Subsidies for "Green Technology R&D" and Its Commercialization
- D. IBK Preferential Loans to Green Enterprises
- E. Support for "Green" Partnerships with SMEs
- F. GOK 21st Century Frontier R&D Program/Information Display R&D Center Program
- G. Gwangju "Photonics Industry Promotion Project" (PIPP) Product Development Support

In addition, we deferred an examination of the following two

programs, which are limited to SMEs, at this time. Although we found that the petitioner has made proper allegations based on reasonably available information, we have not yet decided whether there is sufficient information to determine that the respondents' SME input suppliers are cross-owned, and that the inputs they supply are primarily dedicated to the production of the downstream product, such that benefits to SME input suppliers could be attributable to the respondents within the meaning of 19 CFR 351.525(b)(6)(iv). However, we will continue to gather information to examine whether SME input suppliers are cross-owned with respondents, and whether the inputs provided are primarily dedicated to the downstream product.

H. IBK SME Supplier Support

I. Korea Electronics Technology Institute (KETI) "Marketing Aid" and "Product Development" Support for Gwangju Digital Convergence Promotion Product

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the GOK and the respondents prior to making our final determination.

Preliminary Negative Determination

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated separate subsidy rates for SEC/SGEC, LGE, and DWE, the three producers/exporters of the subject merchandise. The total countervailable subsidy rate for each of these respondents is *de minimis*. These rates are summarized in the table below:

Manufacturer/exporter	Subsidy rate
Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd	0.34 <i>ad valorem (de minimis)</i> .
LG Electronics Inc.	0.05 <i>ad valorem (de minimis)</i> .
Daewoo Electronics Corporation	0.01 <i>ad valorem (de minimis)</i> .

Because all of the rates are *de minimis*, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of bottom mount refrigerators in Korea. As such, we will

not direct U.S. Customs and Border Protection to suspend liquidation of entries of bottom mount refrigerators from Korea.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary

⁵⁹ See NSA Initiation Memorandum.

information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should

confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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