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BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE
AND THE UNITED STATES INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF	**PETITIONS FOR THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES**
NON-ORIENTED ELECTRICAL STEEL FROM CHINA, GERMANY, JAPAN, KOREA, SWEDEN, AND TAIWAN	**VOLUME IX: KOREA COUNTERVAILING DUTY ALLEGATION**

PETITIONER:
AK Steel Corporation

COUNSEL:
Joseph W. Dorn
Stephen A. Jones
Christopher T. Cloutier
Brian E. McGill
P. Lee Smith
Edmond A. O'Neill, Consultant
Richard C. Lutz, Consultant
Craig W. Matney, Consultant

KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 737-0500

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I. NAME OF THE COUNTRY IN WHICH THE SUBJECT MERCHANDISE IS MANUFACTURED OR PRODUCED

The name of the country in which the subject merchandise is manufactured or produced is the Republic of Korea ("Korea").

II. NAMES AND ADDRESSES OF KOREAN NOES PRODUCERS AND EXPORTERS BELIEVED TO BENEFIT FROM COUNTERVAILABLE SUBSIDIES

Petitioner has identified numerous Korean producers or exporters of non-oriented electrical steel ("NOES") believed to benefit from countervailable subsidies provided by all levels of government in Korea. The names and contact information for producers of NOES in Korea are listed in Volume I: Exhibit I-2. The information provided in this exhibit represents the information reasonably available to Petitioner. Petitioner has been unable to obtain information regarding the proportion of total exports to the United States for individual producers during the most recent twelve-month period.

III. IMPORTS OF NOES FROM KOREA ARE BENEFITING FROM COUNTERVAILABLE SUBSIDIES

The Government of Korea ("GOK") – including regional and local governments and government-owned or controlled corporations and agencies – provides countervailable subsidies to producers of NOES as described on a program-by-program basis below. Each of these programs meets the elements of a countervailable subsidy within the meaning of Section 771(5) of the Tariff Act of 1930, as amended (the "Act"). The general information required by Section 351.202(b) of the Department's regulations is provided in Volume I of this petition.

Pursuant to Section 701(a)(1) and (2) of the Act, the Department shall impose a countervailing duty ("CVD") on merchandise imported from a "Subsidies Agreement" country where the imported merchandise (1) is produced or exported by manufacturers that benefit from countervailable subsidies and (2) materially injures or threatens a domestic industry.[1] Korea, as

[1] 19 U.S.C. § 1671(a)(1) and (2).

a member of the World Trade Organization ("WTO"), is a Subsidies Agreement country as defined by Section 701(b) of the Act.[2]

The Department has found a large number of the programs identified below to constitute countervailable subsidies in prior investigations and reviews. Many are subsidy programs on their face and have been identified by the GOK as such. All of the subsidy programs identified below are specific to an enterprise or industry, including the Korean NOES industry, or are contingent on export performance.

The Department should note that for purposes of 19 C.F.R. § 351.524(d)(2), the average useful life of renewable physical assets in the steel industry is 15 years.[3] Accordingly, assuming that the period of investigation ("POI") is calendar year 2012, Petitioner respectfully requests that the Department investigate any allocable, non-recurring subsidies granted during 1997 - 2012, and any outstanding loans or recurring subsidies provided during the presumptive POI.

A. Korean Export-Import Bank ("KEXIM") Countervailable Subsidy Programs

KEXIM is an official GOK export credit agency that provides comprehensive trade financing products to Korean exporters.[4] The bank primarily extends export loans, trade financing, and guarantees to bolster export competitiveness.[5] In light of its nature as a bank wholly owned by the GOK, it is "driven by policy considerations in addition to the customer commercial, environmental and political considerations."[6] It has, for example, "provided a much

[2] 19 U.S.C. § 1671(b).

[3] *See* Internal Revenue Service, "How to Depreciate Property" (2009). Petition Volume VIII: Exhibit VIII-18.

[4] *See* "Developing Opportunities with Korea Eximbank," *Presentation by You MI Park, Senior Loan Officer, Inter-Korean Cooperation Fund* (August 6, 2013). **Exhibit IX-1.**

[5] "Overview," *Export-Import Bank of Korea website*. **Exhibit IX-2**.

[6] "Filling the funding gap – Korea Eximbank," *Project Finance International* (September 23, 2013). **Exhibit IX-3**.

higher level of direct loans during the period of tight liquidity in the bank market to fulfill its role as a gap-filler."[7] KEXIM allows Korean borrowers to obtain "more competitive pricing and longer {terms}" than would otherwise be available.[8] Consequently, the Department has previously determined that loans from KEXIM confer benefits.[9]

1. Short-Term Export Credits

KEXIM extends preferential, low-interest pre-shipment financing to exporters to cover the costs of production and the shipment of exported goods. Companies can borrow up to the full value of the export contract, less any amounts received, in either Korean or a foreign currency. The discount interest rate payable under the program is either a fixed rate (base rate+ margin), floating rate (base rate+ margin), or a foreign currency rate (LIBOR (or swap rate)+ margin).[10] Loan repayment is required within 30 days from the last payment date under the export contract.[11]

The Department has previously determined that KEXIM short-term trade financing is countervailable.[12] The program represents a direct transfer of funds from the government to

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[7] *Id.*

[8] *Id.*

[9] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 Fed. Reg. 17410 (March 26, 2012), Issues and Dec. Memo. at 13 ("*Bottom Mount Refrigerators*").

[10] "Short-term Loan," *KEXIM website*. **Exhibit IX-4**.

[11] *Id.*

[12] *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 Fed. Reg. 55745 (September 14, 2010); *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 71 Fed. Reg. 53413, 53419 (September 11, 2006), (unchanged at the final results, see *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 Fed. Reg. 119 (January 3, 2007)); *Cold-Rolled Carbon Steel Flat Products from the Republic of Korea: Notice Of Preliminary Determination Of Sales At Less Than Fair Value*, 67 Fed. Reg. 31230 (May 9, 2002); *Certain Cut-to-Length*

exporters. As such, the program qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans as compared to what it would pay on a comparable short-term commercial loan. The Department has previously determined that loans from KEXIM confer benefits.[13] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because trade financing from KEXIM is contingent in law upon export performance.

2. Export Factoring

KEXIM export factoring is a form of trade finance. Specifically, KEXIM provides short-term discounted loans against the trade receivables of Korean exporters resulting from open-account transactions, including transactions on a Documents against Acceptance ("D/A") basis.[14] Open-account export transactions involve sales to foreign purchasers on credit. Shipping documents are dispatched to the foreign purchaser once the product is exported and the foreign purchaser remits payment directly to the exporter's account. The factoring 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.

KEXIM's export factoring program is available to two groups of exporters: companies with experience producing or exporting the export item for more than one year and companies that disclose a transactional history with the foreign purchaser.[15] KEXIM will provide financing

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Carbon-Quality Steel Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 64 Fed. Reg. 73176, 73180 (December 29, 1999).

[13] *See, e.g., Bottom Mount Refrigerators*.

[14] "Export Factoring," *KEXIM website*. **Exhibit IX-5**. *See also* 2012 KEXIM Annual Report, *Taking on Challenges*, at 115. **Exhibit IX-6.**

[15] "Export Factoring," *KEXIM website*. Exhibit IX-5.

for up to 80-100 percent of the value of the trade bill at a discounted interest rate (LIBOR + spread). A factoring fee equal to 0.04 to 0.80 percent of the trade bill amount also is applied.[16]

The Department has previously determined that similar KEXIM short-term trade financing is countervailable.[17]

The program represents a direct transfer of funds from the government to exporters and producers. As such, the program qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loan than it would pay on a comparable short-term commercial loan.[18] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because trade financing from KEXIM is contingent in law upon export performance.

3. Export Loan Guarantees

KEXIM offers general financial guarantee support for export activity. Specifically, any default by a Korean company on credit extended to it by Korean or foreign commercial banks will be assumed by KEXIM with repayment of the entire principal and interest on the export-related commercial loans.[19]

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[16] *Id.*

[17] *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 Fed. Reg. 55745 (September 14, 2010); *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 71 Fed. Reg. 53413, 53419 (September 11, 2006), (unchanged at the final results, see *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 Fed. Reg. 119 (January 3, 2007)); *Cold-Rolled Carbon Steel Flat Products from the Republic of Korea: Notice Of Preliminary Determination Of Sales At Less Than Fair Value*, 67 Fed. Reg. 31230 (May 9, 2002); *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 64 Fed. Reg. 73176, 73180 (December 29, 1999).

[18] *See, e.g., Bottom Mount Refrigerators*.

[19] "Financial Guarantees," *KEXIM website*. **Exhibit IX-7**.

KEXIM's export loan guarantees are provided to Korean commercial banks and foreign banks participating in export-related financings.[20] KEXIM charges a variable guarantee fee according to the risk of the underlying credit extension.[21] The guarantee fee charged by KEXIM will vary depending on the risk of the export transaction and the credit risk of the borrower.[22]

The program represents a potential direct transfer of funds and/or an assumption of liabilities and as such qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(iii) of the Act is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loan, adjusted to take into account guarantee fees paid, than it would pay on a comparable short-term commercial loan in the absence of the guarantee.[23] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because export loan guarantees from KEXIM are contingent in law upon export performance.

4. Trade Bill Rediscounting Program

Under this program, exporters first discount their D/A or export letter of credit ("L/C") with participant commercial banks.[24] Those banks, in turn, discount promissory notes with KEXIM.[25] KEXIM, consequently, provides an indirect funding vehicle by which low-cost government loans are provided to exporters. Rediscounting eligible transactions will utilize

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See, e.g., Bottom Mount Refrigerators*.

[24] "Rediscount on Trade Bills," *KEXIM website*. **Exhibit IX-8**. *See also* 2012 KEXIM Annual Report, at 115. Exhibit IX-6.

[25] *Id.*

trade bills with a repayment period of 30 days or more on credit and lump sum repayment of the principal will occur on the maturity date.[26]

The Department has previously determined that KEXIM's trade bill rediscounting program is countervailable.[27] As described by the Department, the GOK enacted the KEXIM Trade Bill Rediscount Program in July 1998.[28] The program was introduced to benefit commercial banks by providing them with foreign currency for their short-term export credit.

From July 1998 to May 2004, KEXIM rediscounted the actual D/A and L/C financing of exporters that had been first discounted by other commercial banks.[29] In May of 2004, however, KEXIM revised its practice and established an indirect rediscount ceiling method.[30]

Under Section 771(5)(B)(iii) of the Act, a subsidy exists where a government "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution... to a person and a benefit is thereby conferred" under circumstances where the making of the financial contribution "would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."

The KEXIM rediscount ceiling provided to commercial banks is contingent on the commercial banks lending funds to Korean exporters. These commercial bank loans involve direct transfers of funds to Korean exporters within the meaning of Section 771(5)(D)(i) of the

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[26] *Id.*

[27] *Coated Free Sheet Paper from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 17507 (April 9, 2007). *See also Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 60639 (October 25, 2007), Issues and Dec. Memo. at 16-17.

[28] *Id.*

[29] *Id.*

[30] *Id.*

Act. The lending by commercial banks to Korean exporters under this program constitutes financing activity that would normally be vested in KEXIM or other GOK policy banks. The lending practice involved under this program does not differ in substance from practices normally followed by the GOK, including the various KEXIM export financing programs further described above. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the commercial bank loans subject to the KEXIM rediscounting program than it would pay on comparable commercial loans that are not subject to the KEXIM rediscounting program.[31] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because rediscounting by KEXIM of commercial bank loans to Korean exporters is contingent in law upon export performance.

5. Shared Growth Program

The KEXIM Shared Growth Program is comprised of two sub-programs – (a) Partnership in Overseas Business and (b) Sustainable Growth with small and medium enterprises ("SMEs"). Under the Shared Growth Partnership in Overseas Business program, "the Bank provides direct and indirect financing for SMEs participating in overseas ventures or projects as suppliers for large companies (which may include government agencies) that have signed MOUs for Shared Growth with the Bank."[32] Under the Shared Growth Sustainable Growth with SMEs program, "the Bank cooperates with large companies (and their local subsidiaries) with whom it has signed Shared Growth MOUs to provide pre-shipment credits and performance guarantees for their SME partners supplying them certain designated items for their export projects."[33]

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[31] *See, e.g., Bottom Mount Refrigerators*.

[32] "Shared Growth Program," *KEXIM website*. **Exhibit IX-9**.

[33] *Id.*

This program provides support to SMEs working with large companies that have signed MOUs for Shared Growth with the Bank in the form of general financing, financing for facility expansions, financing for local manufacturing costs, factoring of accounts receivable arising from sales to the large companies, credit lines from local banks, and pre-shipment credits and performance guarantees.[34] Pohang Iron and Steel Company ("POSCO"), a participant in the "results sharing system" since 2004, recently signed a Voluntary Execution of Results Sharing and Shared Growth Investment Fund Contribution Agreement with the Ministry of Trade, Industry & Energy.[35] This new agreement increased the number of "POSCO family companies" participating in this program from seven to fifteen.[36] Thus, POSCO and its affiliates appear to have benefited from this program in the past and continue to be eligible to receive benefits under this program.

The program represents a direct transfer of funds from the government to exporters. As such, the program qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans and/or financing than it would pay on a comparable commercial lending.[37] This program is deemed specific within the meaning of Section 771(5A)(B) because trade financing from KEXIM is contingent in law upon export performance.

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[34] *Id.*

[35] "210 Billion KRW Contributed to Shared Growth Investment Funds," *Website of POSCO* (May 31, 2013). **Exhibit IX-10**.

[36] *Id.*

[37] *See, e.g., Bottom Mount Refrigerators*.

6. Support For Acquisitions Of Foreign Mines

Under Support for Acquisitions of Foreign Mines program, KEXIM supports the investment and merger and acquisition efforts of Korean companies in foreign mines in order to "ensure the stable procurement of key resources."[38] In 2010, KEXIM "announced support of $250 million {USD} for the acquisition and development an Australian iron mine by POSCO."[39] To support POSCO's acquisition of a key resource, KEXIM "will provide USD 250 million in loans, which is 42% of the needed USD 600 million needed by POSCO for the project."[40]

The program represents a direct transfer of funds from government to exporters. As such, the program qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient under the program to the extent that the recipient pays a lower rate of interest on the loans and/or financing than it would pay on a comparable commercial lending.[41] This program is specific under Section 771(5A)(D)(iii)(IV) of the Act because of the discretion exercised by the government through KEXIM when selecting companies to participate. This program also is specific under Section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number.

B. Korea Development Bank ("KDB") And Industrial Bank Of Korea ("IBK") Short-Term Discounted Loans For Export Receivables

The KDB has offered corporate, investment, and international banking services to Korean industry for decades. Within KDB's international banking division, several export-related services are provided: advice on documentary credit, negotiation of bills of exchange, collection

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[38] "Korea Eximbank Supports Acquisition and Development of Iron Mine with USD 250 Million," *Website of Korea Exim Bank* (August 23, 2010). **Exhibit IX-11**.

[39] *Id.*

[40] *Id.*

[41] *See, e.g., Bottom Mount Refrigerators*.

of bills of exchange, and re-negotiation.[42] From the date of its creation until late 2009, KDB operated as a wholly state-owned institution. Although an initiative was commenced to transfer the policy and development role of KDB to the Korea Finance Corporation, KDB has remained a government-owned policy bank in order to "channel more funds to companies"[43] and "play a crucial role in stabilizing the economy."[44]

The IBK is a leading state-run bank that offers a full array of financial services.[45] Since its establishment several decades ago, IBK's highest priority has been the health and sustainability of the country's SME sector.[46] Over time, the bank has extended the scope of its offerings to compete more effectively on both a domestic and global scale.[47] It remains, however, subject to government influence as evidenced by its use of "policy support" as a criterion for determining the interest rate a borrower will pay.[48]

POSCO and its subsidiaries have short term loans from the KDB.[49] Thus, POSCO was eligible to receive benefits under this program. The Department has previously determined that short-term export financing in the form of discounted D/A loans issued by KDB and other GOK

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[42] "Trade Finance," *KDB website*. **Exhibit IX-12**.

[43] "Park Scraps Privatization Plan for Korea Development Bank," *Bloomberg* (August 27, 2013). **Exhibit IX-13**.

[44] "South Korea Drops Development Bank Privatisation," *Financial Times* (August 27, 2013). **Exhibit IX-14**.

[45] IBK 2012 Annual Report, at 17. **Exhibit IX-15**.

[46] *Id.*

[47] *Id.*

[48] "IBK Cuts Upper Limit On Interest Rates" *Newsworld* (January 31, 2013). **Exhibit IX-16**.

[49] 2012 Form 20-F of POSCO, at F-76, F-77, F-102-104. **Exhibit IX-17**.

policy banks are countervailable.[50] As it has in the past, the Department should investigate whether POSCO has received countervailable benefits under this program.

This program represents a direct transfer of funds to Korean exporters, and as such qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans than it would pay on a comparable short-term commercial loan.[51] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because this financing offered by KDB and IBK is contingent in law upon export performance.

C. Korea Trade Insurance Corporation ("K-SURE") - Export Insurance And Export Credit Guarantees

The Korea Trade Insurance Corporation ("K-SURE") was founded by the GOK in 1992 to operate export and import insurance programs for the purpose of facilitating trade. In 2010, a statutory amendment increased the scope of K-SURE's authority to provide coverage for import, export, and overseas trade transactions.[52] As part of its current portfolio, K-SURE offers short-term export insurance to Korean companies.[53]

1. Short-Term Export Credit Insurance

K-SURE's "Short-Term Export Credit Insurance" program insures against losses arising from default on export receivables.[54] The insurance protects against prescribed political and

[50] *Coated Free Sheet Paper from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 17507 (April 9, 2007). *See also Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 60639, 60641 (October 25, 2007), Issues and Dec. Memo. at 17-18.

[51] *See id.*

[52] "Transformation to K-sure," *K-SURE website*. **Exhibit IX-18**.

[53] *Id.*

[54] "Short-term Export Insurance (General)," *K-SURE website*. **Exhibit IX-19**.

commercial risks where goods are shipped pursuant to an export agreement with a payment period of less than two years.

The Department previously determined that the K-SURE short-term export credit insurance program constitutes a countervailable subsidy.[55] As the Department has explained, claims are paid from the Export Insurance Fund.[56] The fund is managed by K-SURE and financed in part by the state and also through the collection of premiums from insured exporters.[57]

The provision of short-term export insurance involves the making of a financial contribution in the form of a potential direct transfer of funds or liabilities within the meaning of Section 771(5)(D)(i) of the Act. As the Department has previously determined, insurance premiums charged by K-SURE fail to adequately cover the operating losses and long-term costs of the program, as is evident from the most recent available data published by K-SURE in its 2012 Annual Report.[58] The income statement in the 2012 K-SURE Report shows that the organization continues to lose money.[59] The program, therefore, confers a benefit within the meaning of 19 C.F.R. § 351.520. This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because the short-term export insurance provided by K-SURE to Korean exporters is contingent in law upon export performance.

[55] *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 68 Fed. Reg. 16766, 16782 (April 7, 2003). *See also Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 68 Fed. Reg. 37122 (June 23, 2003), Issues and Dec. Memo. at 36-37.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] K-SURE 2012 Annual Report, at 46. **Exhibit IX-20**.

2. Export Credit Guarantees

K-SURE provides export guarantees to facilitate lending for both the pre-shipment and post-shipment phases of an export transaction. Pre-shipment guarantees encourage lending to manufacturers for the purposes of acquiring inputs and processing exported goods.[60] Post-shipment guarantees secure the payment of export proceeds in the event that the importer fails to perform by the contracted due date.[61]

The program represents a potential direct transfer of funds or liabilities and as such qualifies as a financial contribution under Section 771(5)(D)(i) of the Act. A benefit within the meaning of Section 771(5)(E)(iii) of the Act is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loan, adjusted to take into account K-SURE guarantee fees paid, than it would pay on a comparable short-term commercial loan in the absence of the guarantee.[62] This program is deemed specific within the meaning of Section 771(5A)(B) of the Act because export loan guarantees provided by K-SURE are contingent in law upon export performance.

D. GOK Facilities Investment Support: Article 26 Of The Restriction Of Special Taxation Act ("RSTA")

The evidence available indicates that all levels of the GOK – central, regional, and local – provide a wide variety of subsidies for the construction, improvement, and relocation of facilities that produce the subject merchandise, as well as to expand employment relating to such facilities. In particular, the GOK supports facilities investments through Article 26 of the Restriction of

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[60] "Pre-shipment Export Credit Guarantee," *K-SURE website*. **Exhibit IX-21**.

[61] "Post-shipment Export Credit Guarantee," *K-SURE website*. **Exhibit IX-22**.

[62] *See generally Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 68 Fed. Reg. 16766, 16782 (April 7, 2003). *See also Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 68 Fed. Reg. 37122 (June 23, 2003), Issues and Dec. Memo. at 36-37.

Special Taxation Act ("RSTA").[63] As the Department has explained, under this program companies may take a tax credit of seven percent of the eligible investment(s) in facilities. The Department has previously determined that tax savings under Article 26 are countervailable.[64]

Tax reductions under Article 26 of the RSTA represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of Section 771(5)(D)(ii) of the Act. A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of RSTA Article 26 tax reductions in the amount of the tax revenue foregone by the GOK. Because under Article 23(1) of the Enforcement Decree this program is only available outside of the Seoul Metropolitan Area, it is regionally specific under Section 771(5A)(D)(iv) of the Act.[65]

E. GOK Targeted "Stimulus" Subsidies

The GOK's response to the economic downturn has been remarkable in terms of both the magnitude and the targeted nature of the GOK's stimulus spending. On January 6, 2009, the GOK launched a "Green New Deal" package totaling approximately US$38 billion, of which US$30 billion (approximately 80 per cent) was allocated to "green" initiatives, such as renewable energies, energy efficient buildings, low carbon vehicles, and water and waste management.[66]

Consistent with the targeted growth objectives of the "Green New Deal," the GOK has implemented a number of significant subsidy programs aimed at a limited number of defined

[63] Restriction of Special Taxation Act, at Article 26. **Exhibit IX-23**.

[64] *See Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 Fed. Reg. 75975 (December 26, 2012), Issues and Dec. Memo. at 14-15.

[65] *Id.*

[66] "Global Green New Deal: An Update for the G20 Pittsburgh Summit," *United Nations Environment Program (UNEP)*, at 2, 7. **Exhibit IX-24**.

"core technologies" and "new growth engines." Specifically, in July 2009, the GOK announced tax deduction programs for research and/or workforce development expenses. Pursuant to subparagraph 2 of Article 10(1) of the RSTA, one of these programs allows large corporations making research, supply, and/or workforce development investments in one of 18 specified "core technologies" to qualify for a tax deduction of 20 percent of total such expenses in a tax year, and allow SMEs making such investments to qualify for a tax deduction at a rate of 30 percent.[67] "Core technologies" are defined to comprise:

1. Metal	10 Environmental Clean-up technology
2. Technologies fundamental to production lines	11. Chemical processing
3. Textile	12. RFID
4. Increasing energy efficiency	13. Ubiquitous computing
5. Greenhouse gas	14. Medicine
6. Resources	15. Astronomy
7. Electricity	16. Display
8. Nuclear	17 Semi-conductor
9. Information Security	18. Carriers

Under Article 25(2) of the RSTA, the GOK also maintains a tax deduction for investments made in "energy economizing facilities."[68] In a prior case, the Department explained that this program allows "corporations that have made investments in facilities to enhance energy utilization efficiency or to produce renewable energy resources" to claim a credit toward taxes payable in in the amount of 10 percent of the eligible investment." [69]

Each of the above tax deduction programs is a countervailable subsidy, as explained below.

[67] Restriction of Special Taxation Act, at Article 10(1)(2), Restriction of Special Taxation Regulations, and Annex with Presidential Decree defining 'New Growth Engines. Exhibit IX-23.

[68] Restriction of Special Taxation Act, at Article 25-2. Exhibit IX-23.

[69] *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 Fed. Reg. 75975 (December 26, 2012), Issues and Dec. Memo. at 13.

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

Tax deductions for research, supply, or workforce development expenses for "core technologies" represent a foregoing or non-collection of revenue that is otherwise due to the GOK and as such qualify as a financial contribution within the meaning of Section 771(5)(D)(ii) of the Act. A benefit within the meaning of 19 C.F.R.§ 351.509(a) is conferred on the recipient of Art. 10(1)(2) RSTA tax deductions for research, supply, or workforce development expenses in the amount of the tax revenue foregone by the GOK. The eligibility and use of the GOK's research, supply, and workforce development investment tax deduction program are limited to investments pertaining to a specified and limited list of "core technologies," this program is specific both in law and in fact to an enterprise or industry under Sections 771(5A)(D)(i) and (iii)(IV) of the Act.

2. RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities

Tax deductions for investments in energy economizing facilities pursuant to RSTA Article 25(2) represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as financial contributions within the meaning of Section 771(5)(D)(ii) of the Act. A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of GOK RSTA Article 25(2) tax deductions/credits in the amount of the tax revenue foregone. Given that eligibility and use of the RSTA Article 25(2) tax deduction are limited to investments in energy-economizing facilities, this program is specific both in law and in fact to an enterprise or industry under Sections 771(5A)(D)(i) and (iii)(IV) of the Act. The Department has previously found that this program is used by only a small number of companies, also making it *de facto* specific under Section 771(5A)(D)(iii)(I) of the Act.

F. Subsidies To Companies Located In Free Economic Zones

1. Tax reductions and exemptions

Under the Special Act on Designation and Operation of Free Economic Zone, foreign invested firms that operate in one of Korea's Free Economic Zones ("FEZ") are eligible for tax incentives for either five or seven years subject to certain conditions.[70] The "5-year incentives" include an exemption from customs duties for five years and an exemption from corporate and earned income taxes for three years and a 50 percent reduction for the following two years.[71] The "7-year incentives" include an exemption from Custom duties, special consumption tax, and VAT for five years and an exemption from corporate and earned income taxes for three years and a 50 percent reduction for the following two years.[72] In addition, companies meeting the requirements for both the five and seven year incentives are exempt from paying acquisition and property taxes for 15 years.[73]

The requirements for receiving the "5-year incentives" are laid out on the Korean Free Economic Zones website, and appear to be based primarily on investment and revenue levels:

- Manufacturing business: Invest more than $10 million;
- Tourism business: more than $10 million;
- Resort business: more than $10 million;
- International conference facilities: more than $10 million;
- Youth center facilities: more than $10 million;
- Logistics business: more than $5 million;
- Medical institution: more than $5 million;
- R&D: more than $1 million (The applicant should hire more than 10 full-time researchers who hold a Master's degree or higher and have more than 3 years' experience); and

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[70] "Investment Guides: Tax Benefits," *Korean Free Economic Zones Website*. **Exhibit IX-25**.

[71] *Id.*

[72] *Id.*

[73] *Id.*

- Project developer: The foreign investor should invest more than $30 million, or, in the case of a joint venture, the project calls for a total cost of more than $500 million and the foreign investor invests more than 50 percent of the cost.

In order to receive the "7-year incentives," companies must meet one of the following requirements:

- Manufacturing business: Invest more than $30 million;
- Tourism business: more than $20 million;
- Resort business: more than $20 million;
- International conference facilities: more than $20 million;
- Youth center facilities: more than $20 million;
- Logistics business: more than $10 million;
- SOC: more than $10 million;
- Joint project: more than $30 million; and
- R&D: more than $2 million (The applicant should hire more than 10 full-time researchers who hold a Master's degree or higher and have more than 3 years' experience).

POSCO is a foreign-invested enterprise and one of its steel plants, Gwangyang Steel Works, is located in a Korean FEZ.[74] Moreover, POSCO invested $1.4 billion in Gwangyang Steel Works in 2010.[75] Finally, POSCO recognized tax credits worth 188,713 million won in 2012, which may be related to this program.[76] Thus, POSCO is eligible to receive benefits under this program. The Department should investigate the extent to which POSCO and other producers of NOES benefited from this program.

Tax deductions and/or exemptions for investments in FEZs represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of Section 771(5)(D)(ii) of the Act. A benefit within the meaning of 19 C.F.R. §

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[74] "Investment Guides: Success Story," *Korean Free Economic Zones Website*. **Exhibit IX-26**. 2012 Form 20-F of POSCO at 82. Exhibit IX-17.

[75] "POSCO to Invest $1.4 Billion in Development, Construction and Operation of Hot-Rolled Steel Coil Production, an Industrial Info News Alert," *Industrial Info Resources*. **Exhibit IX-27**.

[76] 2012 Form 20-F of POSCO, at F-96-97. Exhibit IX-17.

351.509(a) is conferred on the recipient of the tax reductions/exemptions in the amount of the tax revenue foregone. Given that eligibility and use of this program are limited to companies that locate in Korean FEZs, this program is regionally specific under Section 771(5A)(D)(iv) of the Act.

2. Exemptions and reductions of lease fees

Under the Special Act on Designation and Management of FEZ, Foreign Investment Promotion Act, and Local Regulation on Managing Public Properties, companies investing in Korean FEZs that meet certain requirements are eligible for an exemption or reduction of lease fees.[77]

Companies that meet the following requirements listed on the "Investment Guides" website of the Korean Free Economic Zones are eligible to have 100 percent of the lease fee waived:

- Business involving cutting-edge technologies with more than $1 million investment;
- Foreign investor invests more than $20 million;
- Average daily employment of over 300 workers;
- More than 50% of the total production will be exported and 100% of parts, components, materials will be locally procured; and
- 100% of the total production will be exported.[78]

Companies that meet the following requirements are eligible to have 75 percent of the lease fee waived:

- Foreign investor invests $10~20 million;
- Average daily employment of 200~300 workers;
- More than 50% of the total production will be exported and more than 75% of parts, components, materials will be locally procured; and
- More than 75% of the total production will be exported.[79]

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[77] "Investment Guides: Business Support," *Korean Free Economic Zones Website*. **Exhibit IX-28**.

[78] *Id.*

Companies that meet the following requirements are eligible to have 50 percent of the lease fee waived:

- Foreign investor invests more than \$5~10 million;
- Average daily employment of 100~200 workers;
- More than 50% of the total production will be exported and 50~75% of parts, components, materials will be locally procured; and
- About 50~75% of the total production will be exported.[80]

POSCO's Gwangyang Steel Works is located in a Korean FEZ.[81] Moreover, POSCO invested \$1.4 billion in Gwangyang Steel Works in 2010,[82] and POSCO reported that its "cutting edge technology built world's biggest Furnace."[83] Thus, POSCO was eligible for and likely received benefits under this program. The Department should investigate the extent to which POSCO and other producers of NOES benefited from this program.

Tax deductions and/or exemptions for investments in FEZs represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of Section 771(5)(D)(ii) of the Act. A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of the tax reductions/exemptions in the amount of the tax revenue foregone. Given that eligibility and use of this program are limited to companies that locate in Korean FEZs, this program is regionally specific under Section 771(5A)(D)(iv) of the Act.

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79 *Id.*

80 *Id.*

81 "Investment Guides: Success Story," *Korean Free Economic Zones Website*. Exhibit IX-26. 2012 Form 20-F of POSCO at 82. Exhibit IX-17.

82 "POSCO to Invest \$1.4 Billion in Development, Construction and Operation of Hot-Rolled Steel Coil Production, an Industrial Info News Alert," *Industrial Info Resources*. Exhibit IX-27.

83 "POSCO Renovates World's Biggest Furnace at Gwangyang Steelworks," *POSCO Official Blog* (June 13, 2013). **Exhibit IX-29**.

3. Grants and financial support

According to the FEZ Investment Guide, companies investing in Korean FEZs are eligible to receive grants and financial support. The requirements for the potential support are as follows:

- Occupancy in an industrial park may be subsidized: the difference in the lease fees and the parcel price (up to 50 percent of the regular lease fee and parcel price) - No double accounting will be allowed to a party who receives a cash subsidy;
- Cash subsidy: 5 percent of the investment amount (more than $10 million) within the upper limit of 5 billion won per company;
- Employment subsidy: where more than 20 persons are hired, a subsidy of 500,000 won per month may be paid for each new hire (for up to 6 months and the aggregate limit of 500 million won);
- Education and training subsidy: 100,000~500,000 won per month for each new hire (for up to 6 months and the aggregate limit of 500 million won).

POSCO's Gwangyang Steel Works is located in a Korean FEZ.[84] Moreover, POSCO invested $1.4 billion in Gwangyang Steel Works in 2010.[85] Thus, POSCO was eligible for and likely received benefits under this program. The Department should investigate the extent to which POSCO and other producers of NOES benefited from this program.

This program provides a financial contribution through a direct transfer of funds within the meaning of Section 771(5)(D)(i) of the Act. This program provides a benefit in the amount of the grant(s) according to 19 C.F.R. § 351.504(a). Given that eligibility and use of this program are limited to companies that locate in Korean FEZs, this program is regionally specific under Section 771(5A)(D)(iv) of the Act.

[84] "Investment Guides: Success Story," *Korean Free Economic Zones Website*. Exhibit IX-26. 2012 Form 20-F of POSCO at 82. Exhibit IX-17.

[85] "POSCO to Invest $1.4 Billion in Development, Construction and Operation of Hot-Rolled Steel Coil Production, an Industrial Info News Alert," *Industrial Info Resources*. Exhibit IX-27.

G. Green-Steel Industry Support

According to the GOK's response to a written question during its most recent WTO Trade Policy Review, its Green-Steel Industry support program was implemented "{t}o develop 'CO2-free steel-manufacturing technology' that drastically reduces CO2 emissions."[86] To meet the goal of developing CO2-free steel manufacturing, the GOK

> plans to subsidize 112 billion won or 40% of the total 280 billion won estimated to be required for 8 years starting in 2013. The steel-manufacturing sector is the largest CO2 emitter among industries, accounting for 12.1% of Korea's total emissions.[87]

Following the guidance of the GOK, new furnaces at Hyundai Steel's Dangjin plant brought a "green approach to steel."[88] Hyundai Steel's Dangjin plant invested in "eco-friendly technologies" in order to reduce pollution and implemented several green-steel initiatives that "helps reduce its carbon footprint."[89] Accordingly, Hyundai Steel appears to be eligible to benefit from this program due to its investment in new furnaces.

This program provides a financial contribution through a direct transfer of funds within the meaning of Section 771(5)(D)(i) of the Act. This program provides a benefit in the amount of the subsidies provided to the company to invest in green-steel manufacturing technology according to 19 C.F.R. § 351.504(a). The program is specific within the meaning of Section 771(5A)(D)(i) of the Act because the subsidies are limited to steel producers that implement green technology. This program also is specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act because recipients are necessarily limited in number.

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[86] *Trade Policy Review Report By The Secretariat: Republic Of Korea*, WT/TPR/M/268/Add.1 (November 23, 2012) at 201. **Exhibit IX-30**.

[87] *Id.*

[88] *Hyundai's Steel's Dangjin Plan Brings Green Approach To Steel*. **Exhibit IX-31**.

[89] *Id.*

H. Grants To POSCO

POSCO's 2012 annual report demonstrates that it has received numerous grants from the GOK. In particular, POSCO recognized a total of 25,196,590 million won of government grants related to property, plant, and equipment in 2012.[90] POSCO also recognized a total of 2,715 million won of government grants in related to goodwill and intangible assets in 2012.[91] Finally, POSCO recorded 3,198 million won of government grants as income in 2012.[92]

The various grants reported by POSCO in its annual report constitute financial contributions under Section 771(5)(D)(i) of the Act in the form of a direct transfer of funds. Such grants provide a benefit in the amount of the payment pursuant to 19 C.F.R. § 351.504(a). These grants appear to be specific under Section 771(5A)(D)(i) of the Act, because the information available does not indicate that there was more than one beneficiary. The grants could also be specific under Section 771(5A)(D)(iii)(IV) of the Act, because the relevant government authorities use their discretion when selecting POSCO as the beneficiary.

IV. MATERIAL INJURY AND THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY

Petitioner alleges that subsidized imports of NOES from Korea are a cause of material injury and threaten to cause material injury to the domestic industry. The factual information in support of this allegation is provided to the Department and the International Trade Commission in **Volume I** of this petition.

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[90] 2012 Form 20-F of POSCO, at F-71. Exhibit IX-17.

[91] 2012 Form 20-F of POSCO, at F-73. Exhibit IX-17.

[92] 2012 Form 20-F of POSCO, at F-94. Exhibit IX-17.

V. CONCLUSION AND REQUEST FOR INVESTIGATION

As demonstrated above, Korean producers and exporters NOES benefit from countervailable subsidies. Accordingly, Petitioner requests that the Department initiate a CVD investigation of NOES from Korea.