

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

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PUBLIC VERSION

**BOTTOM MOUNT COMBINATION REFRIGERATOR-FREEZERS
FROM THE REPUBLIC OF KOREA AND MEXICO**

**ANTIDUMPING AND COUNTERVAILING DUTY PETITIONS
ON BEHALF OF
WHIRLPOOL CORPORATION**

VOLUME 1 – NARRATIVE

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I. INTRODUCTION AND SUMMARY

For more than three years, two South Korean appliance manufacturers — Samsung Electronics (“Samsung”) and LG Electronics (“LG”) — that produce bottom mount combination refrigerator-freezers as defined by this petition (“subject refrigerators” or “bottom mount refrigerators”) at plants in the Republic of Korea (“South Korea” or “Korea”) and Mexico have significantly increased their exports of such refrigerators to the United States by selling them at heavily dumped prices. Their exports of subject refrigerators from South Korea also benefit from significant subsidies. Samsung’s and LG’s U.S. gains in bottom mount refrigerator sales have come in large part at the direct expense of Whirlpool Corporation (“Whirlpool”) and, more generally, their pricing has placed strong downward pressure on U.S. prices for U.S.-made bottom mount refrigerators, thus destroying much of the value of the market for these “premium” products. The result has been [*effect on company*

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The purpose of these antidumping and countervailing duty petitions, filed by Whirlpool on behalf of the U.S. bottom mount refrigerator industry (*i.e.*, the U.S. industry that produces the product that is most “like” the subject imports in terms of its characteristics), is to establish conditions of fair trade that will support significant investment in U.S. production of high-end refrigerators and American jobs. To this end, Whirlpool asks the U.S. Department of Commerce (“Commerce” or “the Department”) and the U.S. International Trade Commission (the “Commission” or “ITC”) to initiate antidumping investigations of the subject refrigerators from South Korea and Mexico and a countervailing duty (“CVD”) investigation of imports of such refrigerators from South Korea.

Both Samsung and LG are large diversified producers of electronic products that belong to Korean “*Chaebols*”¹ — the Samsung Group and the LG Group, respectively. Whirlpool believes that, taken together, these two companies control 80 percent or more of a well-protected South Korean market for appliances and use the profits on their sales in the closed South Korean market, as well as government subsidies made available to them in South Korea, to finance their very aggressive push into the United States and other export markets. The extent to which Samsung and LG use the profits they make in their protected home market for appliances to finance their exports is apparent from Samsung’s most recently available (*i.e.*, calendar year 2009) financial statements, which break out the company’s operating profit by “geographic area.” *Samsung reported a 29.06 percent profit margin on its South Korean market sales compared to a 2.06 percent profit margin on its sales in the “Americas.”*² While its geographic profitability data are not segment specific, Samsung also provides business segment profitability data. The business segment data indicate that, for the first nine months of 2010, Samsung’s appliance-producing subsidiary — Samsung Gwangju Electronics Co., Ltd. — lost money.³ Taken together, these two Samsung data sets strongly suggest that much of the losses incurred by its appliance business can be traced directly to below-cost exports to the U.S. market.

¹ The term *chaebol* refers to conglomerates or financial cliques that are run by powerful South Korean families. They dominate the South Korean economy (within South Korea, the country is sometimes referred to as the Republic of Samsung), have developed a reputation for squeezing their suppliers, and can limit competition through, *inter alia*, restricted access to group-controlled distribution channels. They have also demonstrated an ability to exert considerable influence over South Korean government policy.

² 2009 Annual Report of Samsung Electronics Co., Ltd. at 90, attached at **Exhibit 1**.

³ Samsung Gwangju Electronics Co., Ltd. Quarterly Report for 3Q-2010 at 46-47, attached at **Exhibit 2**.

Yet even as they struggle to operate profitably in appliance markets outside of South Korea, Samsung and LG have each stated an intention to become the “top global player” in appliances.⁴ Their dumped and subsidized exports of subject refrigerators have already “materially injured” Whirlpool and the domestic industry generally. Without the discipline provided under the antidumping and countervailing duty laws, the problem will only get worse as Samsung and LG continue to destroy value in the U.S. appliance market in their quest to displace Whirlpool and dominate the U.S. appliance market.

A. Samsung and LG Have Been Exporting Bottom Mount Refrigerators to the United States from their South Korean and Mexican Production Platforms at Heavily Dumped Prices.

A focus of Samsung’s and LG’s export drive in appliances has been the U.S. market for premium products. In refrigeration, this has meant a concentration on high-end “bottom mount” combination refrigerator-freezers. Their tactic has been to offer large, feature-rich (*e.g.*, dual evaporators, LED lighting, ice-and-water, stainless steel, etc.) French Door and other bottom mount refrigerators at “dumped” (often below-cost) prices. The difference between the prices at which Samsung and LG sell their refrigerators in South Korea and the prices at which they export similar products to the United States from their South Korean and Mexican production platforms is striking. It constitutes a classic case of dumping that is actionable not only under

⁴ *Samsung Targets \$30 Billion in 2015 Home Appliance Sales*, REUTERS (Jan. 10, 2011) (“South Korea’s Samsung Electronics Co., Ltd. targets sales of nearly \$30 billion from home appliances in 2015 and a 10 percent share of the global market, Hong Chang-Wan, head of the company’s appliance division, said on Tuesday. Cross town rival LG Electronics, Inc. said on Tuesday that its home appliance business aimed to achieve \$20 billion in sales in 2014 to position the company as the top global player, and targeted double-digit sales growth in 2011.... Samsung’s home appliance business continued to lose money in the third quarter which it attributed to rising logistics and new materials costs, and investments.”), attached at **Exhibit 3**.

U.S. law, but also under the rules of the international trading system, including the pending United States-Korea Free Trade Agreement.

As part of its analysis of Samsung's behavior in South Korea and the United States, Whirlpool identified a 26 cubic foot, stainless steel, two-drawer French Door bottom mount refrigerator sold in South Korea that is very similar to a 28 cubic foot, stainless steel, two-drawer French Door bottom mount refrigerator with more than 25,000 U.S. sales in 2010. Referring to the GfK and NPD databases that report point-of-sale retail prices in South Korea and the United States, respectively,⁵ and adjusting for taxes, a simple comparison of retail prices shows that the South Korean price is 23 percent higher than the price for the comparable U.S. model. After making appropriate adjustments for price-to-price comparisons under the antidumping law, the margin of dumping for this product is 61.8 percent.

As for LG, its South Korean plant produces a similar 25 cubic foot, stainless steel, two-drawer French Door bottom mount refrigerator for sale in the U.S. market. In November 2010, as part of its "Black Friday" promotional sales campaign, LG's discounted retail price for this highly featured product was a stunning \$1,000+ dollars less than similar units sold in the United States during the same month. This example clearly illustrates LG's willingness to sell its product at prices substantially below "fair value" in order to capture U.S. market share.

Beyond these examples, Whirlpool has collected, and presents in this petition, compelling evidence of systematic dumping of subject refrigerators by both Samsung and LG during calendar year 2010. To summarize:

COUNTRY	MARGINS OF DUMPING
South Korea	33.8 % – 61.8 %
Mexico	27.1 % - 183.2 %

⁵ **Exhibit 4 at Attachment A and Exhibit 5.**

B. Both Samsung and LG Benefit from Significant South Korean Government Subsidies.

The South Korean government's response to the global economic crisis of the past few years has been to greatly increase its funding of various export promotion programs as well as funding for R&D in selected sectors, including energy efficient appliances. In addition, the local South Korean governments in Gwangju Metropolitan City (where Samsung produces appliances), and in Changwon City/Gyeongsangnam-do Province (where LG produces appliances), offer significant subsidies to companies that operate there.

While neither Samsung nor LG discloses its use of South Korean government export promotion subsidies or of the benefits received in the form of R&D subsidies and/or local city or provincial government support, we note that South Korean financial statement notes generally provide that, to the extent a company receives government subsidies, they are masked in the form of lower costs.⁶ There is no doubt that both Samsung and LG are in a position to benefit significantly from the subsidy programs at issue:

- Both companies are major exporters that stand to benefit considerably from the South Korean government's various export promotion schemes.
- Both companies have made major investments in the technologies needed to develop energy efficient appliances. Indeed, Samsung has publicly stated that it invested 1 trillion won, or about \$1 billion, in its money-losing appliance division in 2010.
- Both companies are major employers in the cities/provinces where they produce appliances and, therefore, easily qualify for local subsidy programs.

⁶ Samsung Gwangju Electronics Co., Ltd. Quarterly Report for 3Q-2010 at 54, attached at **Exhibit 2** ("In case our company receives a government subsidy to be used in acquiring a tangible asset, the amount received prior to the acquisition of a tangible asset is added as a liability and it is treated as a reduced account of the tangible asset at the time of acquisition of the tangible asset.").

Because Samsung and LG have been losing so much money on their exports of subject refrigerators to the United States, their U.S. bottom mount business would not be creditworthy on a stand-alone basis. Accordingly, the appropriate benchmark for measuring the subsidies associated with Samsung's and LG's production, and sale in the United States, of subject refrigerators, should be the market cost of funding to finance a money-losing business. The fact that Samsung and LG are *chaebol* that operate profitably in their South Korean market businesses does not mean that a free market would provide financing for their below-cost exports of subject refrigerators on the same terms and conditions that would govern financing for their profitable domestic and other businesses.

C. Dumped and Subsidized Imports of Bottom Mount Refrigerators from South Korea and Mexico Have "Materially Injured" U.S. Producers of the Domestic Like Product.

Because the U.S. market for bottom mount refrigerators is sensitive to price discounts, both Samsung and LG were able to sell tens of thousands of their bottom mount refrigerators at heavily discounted prices on "Black Friday" and during other promotional events. More generally, subject imports from South Korea and Mexico increased significantly over the past three years, gaining over [18.3] percentage points of market share, mostly at Whirlpool's expense, because they offer exceptional value when sold at dumped and subsidized prices. In order to compete, Whirlpool has had to lower its own prices to a level that has [

effect

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the U.S. refrigeration market. As the summary data in Table 1 below demonstrate, Whirlpool has been "materially injured by reason of" subject imports during the period of investigation by any objective measure. The cause and effect relationship between, on the one hand, the 2008-2010 rise in dumped and subsidized imports bottom mount refrigerators from South Korea and

Mexico and, on the other, the erosion of Whirlpool's share of the U.S. market for bottom mount refrigerators, as well as the profitability of its U.S. bottom mount refrigerator business, is evident from the data:⁷

Table 1				
2008-2010 Market Share and Profitability Data for Whirlpool's Bottom Mount Refrigerators				
	2008	2009	2010	2008-2010 Change
Subject Import Market Share	[64.9]%	[]%	[84.0]%	[] pts.
Whirlpool Market Share	[]%	[36.5]%	[]%	[] pts.
Whirlpool Operating Profit (\$1,000)	\$[]	\$[]	\$[]	\$[]

II. PETITIONER

Whirlpool is a publicly traded U.S. company that produces refrigerators that are "like" the refrigerators subject to this petition and other units manufactured at plants in the United States and overseas. Whirlpool is incorporated in Delaware; its world headquarters are located at:

Whirlpool Corporation
2000 N. M-63
Benton Harbor, Michigan 49022
Tel: 269-293-5000
www.whirlpoolcorp.com

The addresses of the U.S. plants at which Whirlpool produces bottom mount refrigerators are:

2800 220th Trail
Amana, Iowa 52204

6400 Jenny Lind Road
Fort Smith, AR 72908

⁷ Exhibit 6.

Whirlpool’s contact for inquiries regarding this petition is:

Adrian Estrada Montemayor
Director of Legal Services, NAR
2000 N. M-63
Benton Harbor, Michigan 49022
Tel: 269-923-7212
Adrian_Estrada@Whirlpool.com

Whirlpool — which sells bottom mount refrigerators in the United States under its Whirlpool, KitchenAid, Jenn-Air, Maytag, and Amana brands — believes that it accounted for over [97] percent of U.S. production of the “domestic like product” in 2010.⁸

III. THE U.S. MARKET FOR BOTTOM MOUNT REFRIGERATORS AND THE DOMESTIC INDUSTRY

According to the NPD Group — a leading market research firm that compiles data for U.S. retail transactions involving appliances — the following brands of bottom mount combination refrigerators-freezers were sold in 2010: Amana, Bosch, Electrolux, Frigidaire, General Electric, Jenn-Air, Kenmore, KitchenAid, LG, Maytag, Samsung, and Whirlpool.⁹ Furthermore, Whirlpool is aware of several other brands of bottom mount refrigerators that appear in the U.S. market in lower volumes, including Sub-Zero, Viking, Miele, Liebherr, Ikea, Haier, Dacor, and Fisher & Paykel. Amana, Jenn-Air, KitchenAid, Maytag and Whirlpool are all Whirlpool brands. [Brands] branded bottom mount refrigerators, are all supplied by [source]. Sears sells subject refrigerators supplied by [source]. Both Samsung’s and LG’s bottom mount refrigerators, [types] are made in South

⁸ Exhibit 4.

⁹ Exhibit 5.

Korea and/or Mexico. The bottom mount refrigerators sold under the Electrolux and Frigidaire brands are produced by Electrolux in Mexico; Miele, Bosch, Liebherr, and Thermador have their bottom mount refrigerators made in Europe; Fisher & Paykel makes its bottom mount refrigerators in Asia; and Haier makes its bottom mount refrigerators in China.¹⁰

Based on its market intelligence, Whirlpool believes that it, Sub-Zero, Inc. (“Sub-Zero”),¹¹ and Viking Range Corporation (“Viking”)¹² are the only three U.S. producers of bottom mount refrigerators, and that Whirlpool accounts for more than [97] percent of U.S. production of the “domestic like product,” *i.e.*, all bottom mount refrigerators as defined in this petition.

To summarize, Whirlpool understands that the following companies produced the following brands of bottom mount combination refrigerator-freezers for sale in the U.S. market:

¹⁰ **Exhibit 4.**

¹¹ Sub-Zero’s contact information is:

Sub-Zero, Inc.
4717 Hammersley Road
Madison, Wisconsin 53711
Tel: (608) 271-2233
www.subzero.com

¹² Viking’s contact information is:

Viking Range Corporation
111 Front Street
Greenwood, MS 38930
Tel: (662) 455-1200
www.vikingrange.com

Brands Sold in the United States	Manufacturer(s)	Country of Manufacture
Amana	Whirlpool	US
Jenn-Air	Whirlpool	US
KitchenAid	Whirlpool	US
Whirlpool	Whirlpool	US
Maytag	Whirlpool	US
Dacor	[company]	US
Ikea	[company]	US
Fisher & Paykel	[company]	US
Viking	Viking [company]	US
Sub-Zero	Sub-Zero	US
Electrolux	Electrolux	Mexico
Frigidaire	Electrolux	Mexico
General Electric	[companies]	[countries]
Kenmore	[company]	[countries]
Samsung	Samsung	Mexico & South Korea
Miele	[company]	Europe
Liebherr	[company]	Europe
Bosch	Bosch-Siemens	Europe
Thermador	[company]	Europe
Haier	Haier	China

Exhibit 4 contains an affidavit from a Whirlpool competitive intelligence expert identifying the U.S. production capacity of the other two U.S. producers of bottom mount refrigerators in calendar year 2010. Based on the conservative assumption that these two companies produced at 100 percent capacity, we calculate that Whirlpool alone accounted for more than [97] percent of U.S. production of the domestic like product in the most recent twelve month period for which data are available.

In light of the foregoing, Petitioner has standing, and there is adequate U.S. industry support for the antidumping and countervailing duty petitions covering bottom mount combination refrigerator-freezers from South Korea and Mexico. In particular:

- Petitioner represents more than 25 percent of total production of the domestic like product.¹³
- Because Petitioner accounts for the vast majority of U.S. production of bottom mount combination refrigerator-freezers, producers that account for a majority of the production of the domestic like product explicitly support the antidumping and countervailing duty petitions.¹⁴

IV. RELATED PROCEEDINGS

To the best of Whirlpool's knowledge, these are the first antidumping and countervailing duty petitions that have been filed against imports of bottom mount refrigerators. In 2008, Whirlpool filed for relief under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1377.¹⁵ There have been no other trade remedy proceedings under the trade laws of the United States or any other jurisdiction involving the merchandise that is subject to this proceeding.

V. SCOPE OF PETITION AND TARIFF CLASSIFICATION OF THE SUBJECT MERCHANDISE

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

For purposes of the petitions, 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:

¹³ 19 U.S.C. § 1673a(c)(4)(A)(i).

¹⁴ 19 U.S.C. § 1673a(c)(4)(A)(ii).

¹⁵ *In the Matter of Certain Refrigerators and Parts Thereof*, 337-TA-632. Although the Commission did not enforce Whirlpool's asserted claims of U.S. Patent No. 6,082,130, in March 2010, a jury in federal court subsequently ruled that Whirlpool's patent is valid and that LG infringed on certain of the patent claims at issue and awarded damages to Whirlpool. *LG Electronics U.S.A., Inc. et al. v. Whirlpool Corp. et al.*, C.A. No. 08-234 (GMS) (D. Del.).

- 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;¹⁶ 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 petitions, 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 petitions 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 these petitions may also enter under HTSUS

¹⁶ The 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.

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.

VI. PRODUCT INFORMATION

Bottom mount combination refrigerator-freezers as defined above are produced and sold in a variety of configurations (*e.g.*, two-door, three-door French Door, multi-door/drawer French Door, built-in versus freestanding, counter-depth versus standard depth, etc.) with a wide variety of features (*e.g.*, stainless steel, dual evaporators, LED lighting, ice and water dispensing, quick-freezing, convertible compartments, premium shelving, energy efficiency, LCD interface, etc.). These petitions include bottom mount refrigerators in all configurations and with all feature combinations.

While most of the South Korean and Mexican bottom mount refrigerators subject to these petitions are designed to “hard freeze” food in one or more freezer compartments, this is not always the case. Samsung Mexico, for example, offers a “4 Puertas” refrigerator that allows the convertible bottom drawers to be used as either refrigeration or “soft freeze” compartments.¹⁷ The Samsung “4 Puertas” model, and all other bottom mount refrigerators with convertible compartments mounted below either a refrigeration or convertible compartment, are expressly covered within the scope of these petitions.

Although all refrigerator-freezers are designed to refrigerate and/or freeze food, bottom mount refrigerators have distinct physical characteristics and are recognized by producers,

¹⁷ **Exhibit 8.**

retailers, and consumers as a distinct type of refrigerator. More specifically, the bottom mount refrigerators subject to these petitions are:

- Distinct in configuration from other types of refrigerator-freezers, such as “top mount” refrigerators (where the upper-most compartment is a freezer) and “side-by-side” refrigerators (which have the freezer compartment located alongside the refrigeration compartment without any horizontal division that separates the top part of the refrigerator from the bottom part). The unique configuration of bottom mount refrigerators offers the convenience of an eye-level refrigerator, combined with both wide refrigeration and wide freezer storage space.
- Produced largely on separate production lines.
- Marketed as a distinct refrigerator type in industry brochures and promotional literature.
- Generally viewed as a premium product in the marketplace.
- Sold at prices that are significantly higher than prices for “top mount” refrigerators and at prices that are typically higher than prices for side-by-side refrigerators.

Attached at **Exhibit 10** is an explanation of the differences between bottom mount, side-by-side, and top-mount refrigerators published by *Consumer Reports*.

A. Domestic Like Product

All refrigerators are capable of storing food, *i.e.*, they can be used for the same basic purpose. However, there are clear distinctions in characteristics between top mount, side-by-side, and bottom mount refrigerator-freezers that are recognized by producers, retailers, and consumers.¹⁸ Because the antidumping statute defines the domestic like product as the product

¹⁸ *Id.* (Consumer Reports); *see also* **Exhibits 11-12** (containing materials from The Home Depot and Whirlpool, respectively, identifying “Bottom Mount,” “Side-by-Side,” and “Top Mount” refrigerators as distinct products in the marketplace).

that is “most similar in characteristics” as well as uses with the product under investigation,¹⁹ there is no statutory basis to dispute the proposition that bottom mount refrigerators produced in the United States by companies such as Whirlpool are the “domestic like product.” All references to the U.S. market and the U.S. industry in these petitions are to the market for, and U.S. producers of, the domestic like product as defined by the U.S. antidumping and countervailing duty statutes.

In its “like product” analysis, the Commission looks for “clear dividing lines among possible like products and disregards minor variations,” focusing on (1) physical characteristics, (2) end-uses and interchangeability, (3) channels of distribution and producer/customer perceptions, (4) manufacturing facilities, processes, and employees, and (5) price.”²⁰ There is, to be sure, considerable overlap between bottom mount refrigerators and other types of refrigerators with respect to two of these criteria — end-use and channels of distribution — but there are “clear dividing lines” between them with respect to all of the other criteria.

Bottom mount refrigerators are different from other refrigerator types in their design and ergonomics — *i.e.*, the configuration offers the convenience of an eye-level refrigerator, combined with both wide refrigeration and wide freezer storage space. Bottom mount refrigerators are marketed by producers and retailers, and perceived by consumers, as a distinct product type. With minimal exceptions, they are produced on dedicated production lines, and they typically serve the “high end” of the overall refrigerator market.

¹⁹ 19 U.S.C. § 1677(10).

²⁰ *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan*, Inv. Nos. 701-TA-467 and 731-TA-1164-1165, USITC Pub. 2099 (Aug. 2009).

NPD point-of-sale data during the 2008-2009 period show significant retail price differences as between top mount, side-by-side, and bottom mount refrigerators.²¹

Type	2008 Avg. Retail Price	2009 Avg. Retail Price	2010 Avg. Retail Price
Top Mount	\$482	\$487	\$475
Side-by-Side	\$1,076	\$1,075	\$972
Bottom Mount	\$1,502	\$1,491	\$1,442

These differences in the average point-of-sale retail prices for the different types of refrigerators refute any claim that top mount or side-by-side refrigerators are viewed by consumers as “like” bottom mounts.

B. The Production Process

A bottom mount combination refrigerator-freezer consists of several distinct systems manufactured from a wide variety of materials. Some materials are purchased in bulk, others as cut, shaped and painted pieces, and others are purchased as component systems. Ultimately, the various components are brought together on an assembly line, and then are tested and packed for shipment.

Whirlpool recognizes ten modules in a bottom mount combination refrigerator-freezer. They consist of the cabinet, control system, cooling system, exterior features, freezer door/drawer, interior features, ice and water system, refrigerator door, literature and labels, and packaging. The components for each module originate within five areas in Whirlpool's plant, including: materials receiving, cabinet forming, fabrication support, plastics forming, and door foam. Different producers may originate their components and assemblies in different departments, but the technology and process are common.

²¹ **Exhibit 5.**

The material receiving department receives all purchased raw materials, pre-stamped or pre-painted steel coils, blanks, electrical subassemblies, precision injection-molded parts, mechanical kits such as drawer glides, printed literature and labels, and packaging materials. Raw materials include the plastics used to make refrigerator and door inner liners, the constituent chemicals combined to make insulating foam, copper and steel tubing, and so on.

The cooling system related components — which include the compressor, evaporators, and condensers — are designed and sized by engineers and purchased from specialty manufacturers. Compressor manufacturing is highly specialized and it is a high volume manufacturing business. Most refrigerator manufacturers buy compressors from few global suppliers. The interior and exterior feature components are designed by Whirlpool engineers and these components are supplied by specialty suppliers. Whirlpool owns these tool dies for all feature components.

The quality group inspects incoming materials based on defined plans and material department maintains inventories and delivers them to the appropriate fabrication department or to the assembly line.

The cabinet forming department produces the exterior metal shell of the refrigerator. Using semi-automated equipment, raw metal blanks are formed from steel coils, stamped, and assembled. Some components are pre-fabricated in the fabrication support and plastics forming departments and delivered to the cabinet formers. The back panel and deck are assembled into the cabinet shell. Completed metal cabinets are delivered to the assembly lines.

The fabrication support department processes raw materials such as coil sheet steel and copper or steel tubing. Sheet steel is blanked to the appropriate size, stamped and formed using custom dies designed by Whirlpool. The formed parts are cleaned, deburred, and painted as

necessary. Such fabricated steel components go into the cabinet and door modules. Purchased coils of copper and steel tubing are cut to length, formed, and brazed into components of the cooling or the ice and water systems.

The plastics forming department processes raw plastic granules or pellets principally into the plastic liners for the cabinet, freezer, and door modules. The plastic granules are melted and extruded in sheet form and cut to length. Cut to length sheets are delivered to thermoforming equipment that uses molds designed by Whirlpool to obtain the required geometry. The liners are trimmed, and holes punched where required, and then delivered to the cabinet and door foam departments.

The door foam departments first assemble the liners and steel exteriors along with ice and water dispensing components, wire harnesses, gaskets, and handle anchors. The pre-foam assembled doors are warmed and insulating foam is injected in the cavity between the liner and the door exterior, and allowed to cure. The finished doors are then delivered to the assembly line.

The manual assembly process consists of pre-foam cabinet assembly which includes exterior cabinet shell and plastic inner liner. Before foaming the cabinet, the cooling system, control system and other electrical components are attached to the cabinet or the liner on a moving conveyor. The insulating foam is then injected into the cavity between the cabinet liner and exterior by automated foaming equipment. Post-foam assembly includes fan motors, wiring, valves and additional cooling system assembly. The compressor, condenser, and evaporators are connected by brazing; the sealed system is evacuated of all contaminants and charged with refrigerant and oil. The final manual assembly includes the installation of the interior and exterior features and the doors. One hundred percent inspection is performed on the cooling system, control system, ice and water system. Fit and finish are visually inspected.

After inspection, the finished unit is transferred to the packaging area where literature and labels are applied and the unit is packaged. External protective packaging is applied manually before the unit is automatically shrink-wrapped. The completed unit is then shipped to a distribution center.

VII. SOUTH KOREAN AND MEXICAN PRODUCERS AND EXPORTERS

A. South Korea

Whirlpool believes that the only two South Korean producers that exported subject refrigerators to the United States in 2010 were Samsung and LG.²²

1. Samsung

Samsung is a major diversified producer of a wide range of electronic products. It is a member of the Samsung *chaebol* and produces its subject refrigerators in South Korea at its Samsung Gwangju Electronics Co., Ltd. (“Samsung Gwangju”) plant. To the best of Whirlpool’s knowledge, Samsung Gwangju “sells” bottom mount refrigerators to Samsung at a transfer price and Samsung, in turn, either exports the refrigerators produced by Samsung Gwangju or sells them into the South Korean market.

In the South Korean market, Samsung sells its refrigerators to Department stores (such as the Lotte Department Store chain, the Hyundai Department store chain, and the Sinsegayae Department store chain), discount stores or “hypermarkets” (such as E-Mart, GS Mart, and Lotte Mart stores), Electronics Appliance stores (such as Hi Mart and Electro Land) and franchise “Samsung” stores. Whirlpool believes that the Shinsegae Department Stores, the E-Mart

²² Daewoo also produces bottom mount refrigerators in South Korea, but Petitioner does not believe that Daewoo exported subject refrigerators to the United States during the period of investigation.

hypermarkets, and the Samsung stores are affiliated with Samsung within the meaning of the antidumping statute.

Whirlpool believes that Samsung's bottom mount refrigerator exports to the United States are made to its wholly-owned U.S. subsidiary, Samsung Electronics America, Inc. ("SEA"), for resale to its unaffiliated U.S. customers, or directly to major U.S. retailers and distributors such as Lowe's. Samsung also sells bottom mount refrigerators to [*company*] directly or through SEA. [*company*] then resells its Korean-made Samsung refrigerators to retailers, distributors and contractors [*method*].

The address of Samsung's global headquarters is:

Samsung Electronics Co., Ltd.
Samsung Electronics Building
1320-10, Seocho 2-dong,
Seocho-gu, Seoul 137-857, South Korea
Tel: (82) 2-2255-0114
www.samsung.com

Samsung Gwangju's contact information is:

Samsung Gwangju Electronics Co., Ltd.
271 Ohseon-dong
Hanam Industrial Complex
Gwangsau-gu
Gwangju Metropolitan City
Tel: (82) 62-950-6114

The contact information for SEA is provided *infra* in Section VIII of this Petition.

In addition to Samsung Gwangju, several other Samsung affiliates, as defined by 19 U.S.C. § 1677(33), are involved in the production of subject Samsung refrigerators in South Korea. These affiliated companies include members of the Samsung Group and smaller companies that belong to the "Samsung Association" and/or depend disproportionately on

Samsung in their business. Many of these smaller companies are located in Gwangju and are managed by executives that maintain close ties to Samsung.

2. LG

LG, like Samsung, is a large producer of a wide range of consumer electronic products and is a member of a large South Korean *chaebol*, the LG Group, which is engaged in a variety of goods producing and service providing businesses. LG produces subject refrigerators at its Changwon plant (“LG Changwon”) which, Whirlpool believes, operates as an LG division rather than an LG subsidiary.

In the South Korean market, LG sells its bottom mount refrigerators through Department stores, discount stores, electronic appliance stores and LG stores. The LG stores are affiliated with LG Electronics. LG exports its bottom mount refrigerators to the United States either through its U.S. sales subsidiary, LG Electronics USA, Inc. (“LGE USA”),²³ or directly to distributors or retailers such as The Home Depot and Sears. LG also sells bottom mount refrigerators [*other modus operandi*].

In addition, several other LG affiliates, as defined by 19 U.S.C. § 1677(33), are involved in the production of subject LG refrigerators in South Korea. These affiliated companies include members of the LG Group and smaller companies that belong to the “LG Association” and/or depend disproportionately on LG in their business. Many of these smaller companies are located in Changwon and are managed by executives that maintain close ties to LG.

²³ LGE USA’s contact information is set out, *infra*, in Section VIII of this petition.

B. Mexico

To the best of Whirlpool's knowledge, four companies — Samsung Mexico, S.A. de C.V. ("Samsung Mexico"), LG Electronics Monterrey Mexico, S.A. de C.V. ("LG Mexico"), Electrolux Home Products De Mexico, S.A. de C.V. ("Electrolux Mexico"), and Controladora Mabe S.A. de C.V. ("Mabe") — produce bottom mount refrigerators in Mexico. All four export their Mexican-origin bottom mount refrigerators to the United States.

1. Samsung Mexico

The contact information for Samsung's Mexican plant that produces bottom mount refrigerators is:

Samsung Mexico, S.A. de C.V.
Av. Benito Juárez 119
Parque Industrial Querétaro,
Querétaro, Qro., Mexico, C.P. 76220
Tel: (+52) 442.229.5500

2. LG Mexico

The contact information for LG's Mexican plant that produces bottom mount refrigerators is:

LG Electronics Monterrey México, S.A. de C.V.
Ave. Industrias #180
Parque Industrial / Zona Industrial Parque Monterrey
Apodaca, N.L., Mexico, C.P. 66603
Tel: (+52) 818.196.5500

3. Electrolux Mexico

The contact information for Electrolux's Mexican plant that produces bottom mount refrigerators is:

Electrolux Home Products De México, S.A. de C.V.
Ave. de Las Industrias y Kelvin
Parque Industrial A.J. Bermúdez
Cd. Juárez, Chihuahua, Mexico, C.P. 32470
Tel: 52 656.625.0636

4. Mabe

Mabe makes subject refrigerators at its plant in Queretaro, Mexico. Mabe is affiliated with GE, which owns an estimated 48 percent interest in it. Mabe's contact information is:

Controladora Mabe, S.A. de C.V.
Paseo de las Palmas
Col. Lomas de Chapultapec, DF 1000
Mexico
Tel: 52 5 310 5765
Fax: 52 5 591 788224
www.mabe.com.mx

VIII. U.S. IMPORTERS OF SUBJECT REFRIGERATORS

To the best of Whirlpool's knowledge, the largest U.S. importers of subject South Korean and/or Mexican refrigerators are Samsung Electronics America ("SEA") and LG Electronics USA, Inc. ("LGE US"). In addition, it is possible that certain retailers may act as the importer of record for certain purchases of subject refrigerators. The addresses of these potential importers are provided below:

1. Samsung Electronics America, Inc.
105 Challenger Road
Ridgefield Park, NJ 07060
Tel: 973-601-6000
www.samsung.com
2. LG Electronics USA, Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632
Tel: 201-816-2011
www.lge.com

3. General Electric Company
3134 Easton Turnpike
Fairfield, Connecticut 06828
Tel: 203-373-2211
www.ge.com
4. Sears Holding Corporation
33 Beverly Road
Hoffman Estates, IL 60179
Tel: 847-286-2500
www.searsholdings.com
5. Lowe's
1000 Lowe's Boulevard
 Mooresville, NC 28117
Tel: 704-758-1000
www.Lowe's.com
6. The Home Depot
2455 Paces Ferry Road, N.W.
Atlanta, GA 30339
Tel: 770-433-8211
www.homedepot.com
7. Best Buy Co., Inc.
7601 Penn Avenue South
Richfield, MN 55423
Tel: 612-291-1000
www.bestbuy.com
8. HH Gregg, Inc.
4151 East 96th Street
Indianapolis, IN 46240
Tel: 317-848-1517
www.hhgregg.com

IX. SALES AT LESS THAN FAIR VALUE

A. Introduction

Both Samsung and LG have been pricing the bottom mount refrigerators they sell in the United States well below fair value in order to expand the volume of their exports to the United States from their production platforms in South Korea and Mexico. In so doing, they have

destroyed much of the value associated with the production and sale of bottom mount refrigerators in the United States. Whirlpool has concluded that the only way to address the problem is by challenging Samsung's and LG's export pricing under the U.S. trade remedy laws. To that end, Whirlpool has collected, and presents in this petition, both U.S. and home market pricing data and cost of production data on representative bottom mount refrigerators produced in South Korea and Mexico that Samsung and LG sold in the United States in significant volume in calendar year 2010.

B. South Korea

1. United States Price

The point of departure for antidumping analysis is the gross invoice price to the first unrelated U.S. customer, *e.g.*, the retailer. In this industry, prices to retailers are generally derived from the prices that the retailer charges to the customer (*i.e.*, the so-called "cash register price"). Fortunately, excellent retail sales data exist that are SKU-specific, contemporaneous with the period of investigation ("POI"), and cover most U.S. transactions (including retail sales at Sears, Lowe's, and Best Buy). In particular, Petitioner's calculations are based on transaction data provided by the NPD Group for appliances sold in the U.S. market.²⁴

Petitioner identified two high volume SKUs in the NPD database for which cost estimates could also be readily developed. The first model selected was Samsung model RF4287HARS, which is a 28 cubic foot, stainless steel, 2-drawer French Door bottom mount refrigerator.²⁵ The

²⁴ **Exhibits 5 and 13.** The NPD detail provided in **Exhibit 13** covers all of the data fields reported by NPD for the selected SKUs under analysis for the 2010 period.

²⁵ **Exhibit 14.**

second model selected was LG model LFC25770SW, which is a 25.0 cubic foot, white French Door bottom mount refrigerator.²⁶

As detailed in **Exhibit 23**, Petitioner calculated the following Net U.S. Prices:

Product	Net U.S. Price
Samsung RF4287HARS	\$1,358.31
LG LFC25770SW	\$611.57

2. Normal Value

a. Home Market Price

The point of departure for calculating a price-based normal value is the gross invoice price to the first unrelated home market customer, *e.g.*, the retailer. As in the U.S. market, South Korean prices to retailers are generally derived from the prices that the retailer charges to the customer (*i.e.*, the so-called “cash register price”). In South Korea, retail sales data exist that are SKU-specific, contemporaneous with the period of investigation (“POI”), and cover a significant volume of South Korean market transactions. In particular, Petitioner’s calculations are based on transaction data provided by the GfK Group for appliances sold in the South Korean market.²⁷

Petitioner identified two SKUs in the GfK database that were comparable to the U.S. models analyzed above and for which cost estimates could also be readily developed. The first model selected was Samsung model SRM737ARP, which is a 726 liter (25.3 cubic foot), stainless steel, 2-drawer French Door bottom mount refrigerator.²⁸ The second model selected was LG

²⁶ **Exhibit 15.**

²⁷ **Exhibit 4 at Attachment A.**

²⁸ **Exhibit 16.**

model RF716GHR, which is a 714 liter (24.9 cubic foot), red French Door bottom mount refrigerator.²⁹

As detailed in **Exhibit 23**, Petitioner calculated the following Net Home Market Prices:

Product	Net Home Market Price
Samsung SRM737ARP	\$2,202.01
LG RF716GHR	\$236.92

b. Allegation of Sales Below Cost

Petitioner has compared LG’s Net Home Market Price of \$236.92 for LG model RF716GHR with an estimate of LG’s cost of production for the same product.³⁰ Petitioner’s methodology for calculating LG’s product-specific production costs is summarized below and at **Exhibit 22**. This comparison reveals that LG’s home market pricing is grossly insufficient to enable it to fully recover its cost of production. Indeed, even an analysis of the *gross* home market retail price (net of VAT) for model RF716GHR reveals that the price is well below LG’s fully allocated cost of production. Accordingly, Petitioner respectfully requests that the Department initiate a sales-below-cost investigation of South Korean respondents.

c. Cost of Production and Constructed Value

Petitioner’s cost of production calculation is based on Whirlpool’s cost of manufacture for specific SKUs, adjusted for known differences in cost between South Korea and the United States, plus amounts for selling, general, and administrative (“SG&A”) and finance expenses.³¹ Petitioner first estimated LG’s and Samsung’s material costs based on Whirlpool’s usage and

²⁹ **Exhibit 17.**

³⁰ **Exhibit 23.**

³¹ **Exhibit 22.**

input prices available to producers in Asia. Specific adjustments were made for differences in material costs due to differences in technology. Petitioner then adjusted for other known cost differences, including labor, factory overhead, and packing. Petitioner's SG&A and interest expense ratios were based on the 2009 Annual Report of Samsung Electronics Co., Ltd. and the 2009 Annual Report of LG Corp.³²

Based on the above methodology, Petitioner calculated constructed value for LG model LFC25770SW because there was no comparable above-cost model to which it could be matched in the South Korean home market:

Product	Constructed Value
LG LFC25770SW	\$818.10

3. Margins of Dumping

On the basis of this analysis, Petitioner alleges the following dumping margins for South Korean producers:

Product	Dumping Margin Based on Home Market Price	Dumping Margin Based on Constructed Value
Samsung RF4287HARS	61.8 %	n/a
LG LFC25770SW	n/a	33.8 %

C. Mexico

1. United States Price

As noted above, Petitioner's calculations are based on transaction data provided by the NPD Group for appliances sold in the U.S. market.³³ For U.S. sales of bottom mount refrigerators

³² Exhibits 1, 32.

³³ Exhibits 5 and 13. The NPD detail provided in Exhibit 13 covers all of the data fields reported by NPD for the selected SKUs under analysis for the 2010 period.

from Mexico, Petitioner identified two high volume SKUs in the NPD database for which cost estimates could also be readily developed.

The first model selected was Samsung model RF267AERS, which is a 26 cubic foot, stainless steel, French Door bottom mount refrigerator.³⁴ The second model selected was LG model LFC20760ST, which is a 19.7 cubic foot, stainless steel, French Door bottom mount refrigerator.³⁵

As detailed in **Exhibit 23**, Petitioner calculated the following Net U.S. Prices:

Product	Net U.S. Price
Samsung RF267AERS	\$893.17
LG LFC20760ST	\$634.36

2. Normal Value

a. Home Market Price

The point of departure for calculating a price-based normal value is the gross invoice price to the first unrelated home market customer, *e.g.*, the retailer. As in the U.S. market, Mexican prices to retailers are generally derived from the prices that the retailer charges to the customer (*i.e.*, the so-called “cash register price”). Since no third-party database covering 2010 sales transactions was readily available, in November 2010, Whirlpool conducted its own survey covering POI Mexican retail transactions and used the data obtained as the starting point for its price-based normal value calculations.

Whirlpool’s survey covered two SKUs — a Samsung model and an LG model — that were comparable to the U.S. models analyzed above and for which cost estimates could also be readily developed. Samsung model RF26DEUS is a 25.8 cubic foot, stainless steel, French Door

³⁴ **Exhibit 18.**

³⁵ **Exhibit 19.**

bottom mount refrigerator.³⁶ LG model GMB238JSAL is a 22.6 cubic foot, French Door bottom mount refrigerator.³⁷

As detailed in **Exhibit 23**, Petitioner calculated the following Net Home Market Prices:

Product	Net Home Market Price
Samsung RF26DEUS	\$785.12
LG GMB238JSAL	\$1,817.98

b. Allegation of Sales Below Cost

Petitioner has compared Samsung’s Net Home Market Price of \$785.12 for Samsung RF26DEUS with an estimate of Samsung’s cost of production for the same product. Petitioner’s methodology for calculating Samsung’s product-specific production costs is summarized below and at **Exhibits 22-23**. This comparison reveals that Samsung’s home market pricing is insufficient to enable it to fully recover its cost of production. Accordingly, Petitioner respectfully requests that the Department initiate a sales-below-cost investigation of Mexican respondents.

c. Cost of Production and Constructed Value

Petitioner’s cost of production calculation is based on Whirlpool’s cost of manufacture for specific SKUs, adjusted for known differences in cost between Mexico and the United States, plus amounts for selling, general, and administrative (“SG&A”) and finance expenses.³⁸ Petitioner first estimated LG’s and Samsung’s material costs based on Whirlpool’s usage and input prices available to producers in Mexico. Specific adjustments were made for differences in

³⁶ **Exhibit 20.**

³⁷ **Exhibit 21.**

³⁸ **Exhibit 22.**

material costs due to differences in technology. Petitioner then adjusted for other known cost differences, including labor, factory overhead, and packing. Petitioner's SG&A and profit ratios were based on the experience of Whirlpool's refrigeration plants in Mexico during 2010.³⁹

Petitioner conservatively assumed zero interest expense for our constructed value calculation.

Based on the above methodology, Petitioner calculated constructed value for Samsung model RF267AERS because there was no comparable above-cost model to which it could be matched in the Mexican home market:

Product	Constructed Value
Samsung RF267AERS	\$1,135.60

3. Margins of Dumping

On the basis of this analysis, Petitioner alleges the following dumping margins for Mexican producers:

Product	Dumping Margin Based on Home Market Price	Dumping Margin Based on Constructed Value
Samsung RF267AERS	n/a	27.1%
LG LFC20760ST	183.2%	n/a

X. BOTTOM-MOUNT COMBINATION REFRIGERATOR-FREEZERS FROM SOUTH KOREA ARE BEING SUBSIDIZED

A. Government of South Korea Subsidization of Home Appliances

Under the cover of generally available "stimulus" and new "green growth" spending to counter the global financial crisis, the Republic of Korea ("Government of Korea" or "GOK") sought to funnel vast amounts of subsidies to specific South Korean exporting industries,

³⁹ Exhibit 27 at Attachment A.

including those in the home appliance industry.⁴⁰ National-level subsidy programs of the South Korean government, such as subsidies to promote the growth of so-called “green” industries and “core technologies,” were complemented during the POI by regional and local government subsidy programs. Among the South Korean champion exporters benefiting from these subsidies are Samsung and LG, as well as their suppliers of materials, parts and components used in the production of subject merchandise.

Whirlpool has collected information reasonably available to show that all of these subsidies are countervailable, have directly benefitted benefited the manufacture, production and export of subject merchandise by Samsung and LG during the POI, and should therefore be the subject of a thorough investigation by the Department.

⁴⁰ Press reporting at the height of the financial crisis in Korea opens a window onto the objectives of these programs and onto the targeted recipients, which include Samsung and LG. The Korea Times on July 7, 2009 reported that “cash-rich *chaebol* showed a lukewarm attitude to the investment promotion campaign” of the GOK. See **Exhibit C-1-A**, The Korea Times (July 7, 2009), “Firms Lukewarm on Investment.” South Korea’s President is reported as having pressed *chaebols* into facilities expansion and research and development spending, urging them “to actively build plants and other business-related facilities.” *Id.* (“The government will provide 10 trillion won this year to encourage businesses here to expand investment and create jobs. It also plans to offer companies greater tax incentives for research and development (R&D) investments in state-of-the-art industrial technologies and new growth engines, while also introducing poison pills, an anti-hostile merger and acquisition (M&A) measure, to help them preserve managerial control and thus spend more to expand facilities. (...)During a meeting between President Lee Myung-bak and leaders of large business groups at Cheong WaDae, Thursday, the government unveiled these and other measures aimed at bolstering sluggish business investment and job creation. President Lee urged tycoons to actively build plants and other business-related facilities in the second half of the year to help facilitate the ongoing economic rebound. ‘The government has introduced a series of stimulus steps this year to prevent the economy from falling into recession. Now is the time for business and other private sector players to do their part,’ the President said.”) Korea’s Minister of Finance echoed President Lee Myung-bak on this issue. *Id.* (“Strategy and Finance Minister Yoon Jeung-hyun also echoed Lee’s remarks, saying now is the time for private companies to step up and expand investments to lead the ongoing economic recovery. ‘The fiscal spending in the second half will be 50 trillion won less than in the first half. To promote business investments, we decided to provide more funds, greater tax incentives, as well as introduce a mechanism to help companies protect management control. Now is the time for businesses to act,’ Yoon said.”)

B. South Korean *Chaebols* and Suppliers of Inputs

Because of the significance of *chaebols* such as the Samsung Group and the LG Group to South Korea's economy, and given the way in which major *chaebol* members like Samsung and LG are able to exercise effective control over their networks of smaller dependent suppliers,⁴¹ the Department's investigation of subsidies that benefit Samsung and LG must extend to subsidies to all Samsung and LG affiliates within the meaning of 19 U.S.C. § 1677(33).⁴²

With respect to the "external" relationship between *chaebols* and small and medium sized enterprises ("SME's"), *chaebols* have been characterized as having a "dictatorial monopoly" over the national economy to the point that:

⁴¹ The financial statements of both LG Electronics Inc. and Samsung Gwangju Electronics Co., Ltd. identify companies within the LG and Samsung family of companies as suppliers of important inputs in the production of subject merchandise. *See e.g.*, **Exhibit 2**, SGEC Quarterly Report Q3 2010 at 12, identifying Samsung Total (resins), Samsung Electronics Co., Ltd. (compressors) and Samsung Hong Kong (motors) as being among the suppliers of major materials.

⁴² The pervasiveness of *chaebols* in the Korean economy is well documented. In a paper presented to the Organization for Economic Co-Operation and Development entitled "*Chaebol* Reform: The Missing Agenda in Corporate Governance," Mr. Yoon Youngmo, International Secretary of the Korean Confederation of Trade Unions, described the "internal structure" of *chaebols* as follows:

"Chaebol owner is different from the owner of an SME: a chaebol owner-chief exercises an unchallenged and unaccountable control over a network of companies whose total asset is 40 to 50 times the capital he actually invested."

See Exhibit C-1-B, Y. Youngmo, "Chaebol Reform: The Missing Agenda in Corporate Governance," presented to OECD Conference "Corporate Governance in Asia: A Comparative Perspective," Seoul, March 3-5, 1999 at 3. *See also Exhibit C-1-C*, Korea Joonang Daily (September 14, 2010), "Lee urges businessmen to 'coexist';" *See also, Exhibit C-1-D*, Hanopolis (July 30, 2010), "President Lee Myung-bak clashes with big business." *See also Exhibit C-1-E*, Korea Ministry of Strategy and Finance, "Policy Directions for Managing the Economy in the Second Half of 2010" (June 24, 2010) ("Business practices between large companies and SME's will be improved in a way that result of economic activities spill to the latter, which will later contribute to raising competitiveness of the SME's.")

“The dominance of chaebol firms has brought about a suffocated development of SME’s and a gross imbalance in the national economy. This was exasperated by the recent developments where the power of chaebols has surpassed the capacity of the government and banks, breaking out of their gravitational influence.”⁴³

Additionally, the Korean Fair Trade Commission formed a task force in July 2010 charged with examining “unfair” business transactions between large conglomerates and their small suppliers. Commenting on the formation of the task force, Kim Dong-sun, head of the Small and Medium Business Administration stated that, “Statistics show the gap between the profitability of large businesses and that of small and medium enterprises has worsened” and that “We have many subcontractors who say they can no longer keep their businesses, and we urgently need plans to help save them.”

Petitioner has gathered information reasonably available to it on specific suppliers of inputs for the production of subject merchandise by both Samsung and LG.⁴⁴ In the case of LG, a large proportion of these suppliers are located either in or close to Changwon City, whereas in the case of Samsung, suppliers are concentrated in or close to Gwangju Metropolitan City.

The evidence reasonably available to Petitioner shows that a significant number of the programs described in the sections below are manifestly applicable to LG and Samsung’s suppliers of inputs for subject merchandise, especially those suppliers that are located in the Gwangju and Changwon cluster areas. The evidence also shows that a significant number of suppliers of inputs for subject merchandise are either “internal” suppliers, in which LG and Samsung have a direct or indirect ownership interest, or are SME’s that LG and Samsung

⁴³ *Id.* Y. Yongmo, “Chaebol Reform: The Missing Agenda in Corporate Governance,” presented to OECD Conference “Corporate Governance in Asia: A Comparative Perspective,” Seoul, March 3-5, 1999 at 3.

⁴⁴ **Exhibit C-1-I**, List of suppliers of Samsung; **Exhibit C-1-J**, List of suppliers of LG.

effectively control. Petitioner requests that the Department gather all available and relevant information to ensure that any supplier subsidies that should be properly included in the Department's ad valorem subsidy calculations are fully identified and captured in the investigation.

C. Countervailable Subsidies Benefitting the Manufacture, Production and Export of Home Appliances

Petitioner has information reasonably available to it demonstrating that the GOK, as well as regional and local governments and South Korean government corporations and agencies provide countervailable subsidies as described on a program-by-program basis below. Each of these programs meets the elements of a countervailable subsidy within the meaning of 19 U.S.C. § 1677(5).

The Department has found a large number of the programs identified below to constitute countervailable subsidies in prior determinations and findings. 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 South Korean home appliance industry and/or its South Korean supplier network, or are contingent on exports.

1. Korean Export-Import Bank (“KEXIM”) Countervailable Subsidy Programs

KEXIM is an official GOK export credit agency that provides comprehensive trade financing products to South Korean exporters. The bank primarily extends export loans, trade financing and guarantees to bolster export competitiveness.⁴⁵

a. KEXIM Short-Term Export Credit

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 South Korean won or a foreign currency. The discount interest rate payable under the program is either fixed rate (base rate + margin), floating (base rate + margin), or a foreign currency rate (LIBOR (or swap rate) + margin). Loan repayment is required within 30 days from the last payment date under the export contract.⁴⁶

The Department has previously determined that KEXIM short-term trade financing is countervailable.⁴⁷

⁴⁵ **Exhibit C-2-A**, KEXIM website: http://www.koreaexim.go.kr/en2/01_exim/01_exim/01.jsp.

⁴⁶ **Exhibit C-2-B**, KEXIM website: http://www.koreaexim.go.kr/en2/02_export/01_export/02.jsp.

⁴⁷ Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 75 Fed. Reg. 55745 (September 14, 2010); Preliminary Results of Countervailing Duty Administrative Review: *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 Fed. Reg. 53413, 53419 (September 11, 2006), (unchanged at the final results, see Final Results of Countervailing Duty Administrative Review: *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 Fed. Reg. 119 (January 3, 2007)); Notice Of Preliminary Determination Of Sales At Less Than Fair Value: *Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 Fed. Reg. 31230 (May 9, 2002); Final Affirmative Countervailing Duty Determination: *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 Fed. Reg. 73176, 73180 (December 29, 1999).

(i) Financial Contribution

The program represents a direct transfer of funds from government to exporters. As such, the program qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans as compared to what they would pay on a comparable short-term commercial loan.

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because trade financing from KEXIM is contingent in law upon export performance.

(iv) Use of KEXIM Short-Term Export Credit during the POI

During the period beginning in the fourth quarter of 2008 through to the POI, the GOK used the global financial crisis to adopt a national strategy to help its export industries. Through the adoption of various fiscal measures designed to boost the lending capacity of South Korean government policy banks, the GOK provided direct and targeted support to South Korean export industries.

According to a Ministry of Strategy and Finance (“MOSF”) press release dated December 15, 2008, the National Assembly approved the 2009 Budget and Public Fund Operations Plan to Overcome the Economic Difficulties.⁴⁸ Among the economic provisions therein, the GOK

⁴⁸ **Exhibit C-2-C**, GOK Press Release (December 15, 2008), “Aggressive fiscal policies to overcome economic difficulties.

pledged to support the stabilization of SME's and the financial markets by increasing guarantees and through early budget execution. The proposed early budget execution rate of 60 percent by the end of Q2 represented a 7 percent year-on-year increase.

According to an MOSF press release dated December 30, 2008, governmental support to public lending institutions was set to increase from KRW 105 trillion in 2008 to KRW 130 trillion in 2009. South Korea's nine major public lending institutions promised to invest an additional KRW 25 trillion to support lending and a further KRW 55 trillion for guarantees and export insurance.⁴⁹

In January 2009, the regulated authorized capital of KEXIM was doubled from KRW 4,000 billion to KRW 8,000 billion. This increase improved the bank's BIS ratio and provided the KEXIM with more lending capacity to support export credit.⁵⁰ In February 2009, the GOK announced a targeted cash injection of KRW 2,300 billion into five state-owned financial institutions. KEXIM directly received KRW 300 billion in 2009 by virtue of this stimulus package. The cash was disbursed directly to South Korean exporters.⁵¹

The KEXIM Annual Report for 2009 explains the bank's unprecedented effort to foster export growth during the economic crisis in 2009. KEXIM advanced KRW 32.8 trillion in export loans and KRW 22.9 trillion in guarantees - the equivalent of USD 47.8 billion.⁵² These amounts at that time represented the largest credit volume (in USD) on record since the bank's inception in

⁴⁹ **Exhibit C-2-D**, GOK Press Release (December 30, 2008), "Public enterprises will increase investment to overcome financial crisis at an early stage."

⁵⁰ **Exhibit C-2-E**, GOK Press Release (February 2, 2009), "Completion of KRW 2,300 billion cash injection into 5 State-run Financial Institutions."

⁵¹ *Id.*

⁵² **Exhibit C-2-F**, 2009 KEXIM Annual Report, *Finding the Way Together* at 7.

1976. The KEXIM Annual Report for 2010 explains that by the end of 2010, that record had been broken with credits totaling KRW 64.3 trillion (KRW 38.7 trillion in loans and KRW 25.6 trillion in guarantees) – the equivalent of USD 56.5 billion, which along with other measures propelled South Korea’s export volumes to an all-time record of USD 467 billion in 2010 (an increase of 28.3 percent year-over-year, and of 35.8 percent in the first quarter alone).⁵³ Exports to the United States alone increased by 32.3 percent.⁵⁴ The 2009 KEXIM Annual Report also confirms that export credit distributions accounted for 76.9 percent (KRW 25.3 trillion) of all KEXIM disbursements in the year; when compared to 2008, KEXIM’s overall export credit commitments grew by 45.1 percent year-on-year from KRW 19.6 trillion to KRW 28.5 trillion.⁵⁵ For 2010, KEXIM reports credit facilities totaled KRW 64 trillion.⁵⁶

The KEXIM Annual Reports also confirm that KEXIM doubled the amount of export credit made available to SMEs and tripled the pre-delivery stage credit extended to manufacturers in 2009,⁵⁷ such that by the end of 2010 disbursements to SME’s represented 37.7 percent of total disbursements.⁵⁸ In 2009, KEXIM had allocated a total of KRW 60 trillion for export financing for 2010 (a 13 percent increase over 2009) “aimed toward promoting exports for enhanced

⁵³ **Exhibit C-11**, 2010 KEXIM Annual Report, *Making the Right Moves*, at 12, 21, 32.

⁵⁴ *Id.*

⁵⁵ **Exhibit C-2-F**, 2009 KEXIM Annual Report, at 7, 22.

⁵⁶ **Exhibit C-11**, 2010 KEXIM Annual Report, at 12.

⁵⁷ **Exhibit C-2-F**, 2009 KEXIM Annual Report, at 4-5.

⁵⁸ **Exhibit C-11**, 2010 KEXIM Annual Report, at 29.

economic recovery,” including KRW 38 trillion earmarked for loans and KRW 22 trillion in guarantees.⁵⁹

Information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of LG or Samsung, or any other companies in the LG or Samsung group of companies, used export financing during the POI for exports of subject merchandise. However, on its face, KEXIM financing would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of KEXIM financing.

b. KEXIM – Export Factoring

KEXIM export factoring is a form of trade finance whereby KEXIM provides short-term discounted loans against the trade receivables of South Korean exporters resulting from open-account transactions, including transactions on a Documents against Acceptance (“D/A”) basis.⁶⁰ Open-account export transactions involve sales to foreign purchasers on credit, whereby 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 made available for use by two groups of exporters: companies that have produced or have exported a given product for more than one year; or

⁵⁹ **Exhibit C-2-F**, 2009 KEXIM Annual Report, at 4-5.

⁶⁰ **Exhibit C-3-A**, KEXIM website, online: http://www.koreaexim.go.kr/en2/02_export/03_structure/01.jsp. See also, **Exhibit C-11**, 2010 KEXIM Annual Report, *Making the Right Moves*, at 34.

companies that disclose a transactional history with the foreign purchaser.⁶¹ KEXIM will provide financing for up to 80%-100% of the value of the trade bill at a discounted interest rate (LIBOR + spread). A factoring fee equal to 0.04% to 0.80% of the trade bill amount also is charged.⁶²

The Department has previously determined that similar KEXIM short-term trade financing is countervailable.⁶³

(i) Financial Contribution

The program represents a direct transfer of funds from government to exporters and producers. As such, the program qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on a comparable short-term commercial loan.

⁶¹ **Exhibit C-3-A**, KEXIM website.

⁶² *Id.*

⁶³ *Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 75 Fed. Reg. 55745 (September 14, 2010); *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 Fed. Reg. 53413, 53419 (September 11, 2006), (unchanged at the final results, see *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 Fed. Reg. 119 (January 3, 2007)); *Notice of Preliminary Determination Of Sales At Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*: 67 FR 31230 (May 9, 2002); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 Fed. Reg. 73176, 73180 (December 29, 1999).

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because trade financing from KEXIM is contingent in law upon export performance.

(iv) Use of KEXIM Export Factoring during the POI

KEXIM export factoring was introduced in 2005 as the first program of its kind to offer non-recourse terms.⁶⁴ It appears that the popularity of the program grew between 2005-2007 when KEXIM began to provide non-recourse trade loans to major South Korean exporters and companies such as LG and Samsung have been significant users of the program.⁶⁵ The program has evolved into a key financing vehicle as evidenced by the KRW 1,601 billion advanced by KEXIM to exporters in 2009 (a 21.0% increase year-over-year)⁶⁶ and by the KRW 2,610 billion advanced to exporters in 2010 (a 63.0% increase year-over-year).⁶⁷

On its face, KEXIM export factoring is available to LG and Samsung. In the notes to its Q3 2010 Consolidated Financial Statements, Samsung Electronics defines “trade receivables” as amounts due from customers for merchandise sold or services performed in the ordinary course of business.⁶⁸ If collection is expected within one year (or in the normal operating cycle of the

⁶⁴ *Id.* at 24.

⁶⁵ **Exhibit C-3-B**, Economy Today Newspaper (October 16, 2009), “Export bank more like ‘large companies banks.’”

⁶⁶ **Exhibit C-2-F**, 2009 KEXIM Annual Report, at 24.

⁶⁷ **Exhibit C-11**, 2010 KEXIM Annual Report, at 34.

⁶⁸ **Exhibit C-3-D**, 2010 SEC Q3 Consolidated Financials at 22-23.

Company if longer), they are classified as current assets.⁶⁹ The report then contemplates factoring:

“{i}n the event of receivables and factoring, the Company derecognizes receivables when the Company has given up control or continuing involvement.”⁷⁰

Samsung would give up control of receivables when it uses KEXIM export factoring.

c. KEXIM – Export Loan Guarantees

KEXIM offers general financial guarantee support for export activity, whereby any default by a South Korean company on credit extended to it by South Korean or foreign commercial banks will be assumed by KEXIM with repayment of the entire principal and interest on the export-related commercial loans.⁷¹

KEXIM’s general export guarantees are provided to South Korean commercial banks and foreign banks participating in export-related financings.⁷² KEXIM charges a variable guarantee fee according to the risk of the underlying credit extension.⁷³ The guarantee fee charged by KEXIM will vary depending on the risk of the export transaction and the credit risk of the borrower.⁷⁴

⁶⁹ *Id.*

⁷⁰ *Id.* at 23.

⁷¹ **Exhibit C-4**, KEXIM website, online:
http://www.koreaexim.go.kr/en2/02_export/08_guarantees/01.jsp.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

(i) Financial Contribution

The program represents a potential direct transfer of funds and/or an assumption of liabilities and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) 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, as compared to what they would pay on a comparable short-term commercial loan in the absence of the guarantee.

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because export loan guarantees from KEXIM are contingent in law upon export performance.

(iv) Use of KEXIM Export Loan Guarantees during the POI

Information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of LG or Samsung, and/or any other companies in the LG or Samsung group of companies, used KEXIM loan guarantees during the POI for exports of subject merchandise. However, on its face, KEXIM financing would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of KEXIM financing.

Again, as described in respect of KEXIM short-term export credit above, the GOK support to public lending institutions was set to increase, according to a MOSF press release of December 30, 2008, from KRW 105 trillion in 2008 to KRW 130 trillion in 2009. South Korea's nine major public lending institutions promised to invest an additional KRW 25 trillion to support lending

and a further KRW 55 trillion for guarantees and export insurance.⁷⁵ In addition, the 2010 KEXIM Annual Report specifies that KEXIM advanced KRW 22.912 trillion in guarantees that year.⁷⁶

d. KEXIM – Trade Bill Rediscounting Program

Under this further KEXIM program, exporters first discount their D/A or export letter of credit (“L/C”) with participant commercial banks.⁷⁷ Those banks, in turn, discount promissory notes with KEXIM.⁷⁸ KEXIM, as a result, provides an indirect funding vehicle by which low-cost government loans are provided to exporters. Re-discounting eligible transactions will feature 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.⁷⁹

The Department has previously determined that KEXIM’s trade bill rediscounting program is countervailable.⁸⁰ As described by the Department, the GOK enacted the KEXIM Trade Bill Rediscount Program in July 1998.⁸¹ The program was introduced to benefit commercial banks by providing them with foreign currency for their short-term export credit.

⁷⁵ GOK Press Release (Dec. 30, 2008)(**Exhibit C-2-D**).

⁷⁶ 2010 KEXIM Annual Report (**Exhibit C-11**), at 18.

⁷⁷ **Exhibit C-5**, KEXIM website, online: http://www.koreaexim.go.kr/en2/02_export/03_structure/05.jsp. See also 2010 KEXIM Annual Report (**Exhibit C-11**), at 109.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Preliminary Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 17507 (Apr. 9, 2007). See also Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (Oct. 17, 2007) (C-580-857).

⁸¹ *Id.*

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.⁸² However, in May of 2004, KEXIM switched practice and installed an indirect rediscount ceiling method.⁸³

(i) Financial Contribution

19 U.S.C. § 1677(5)(B)(iii) provides that 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 South Korean exporters. These commercial bank loans involve direct transfers of funds to South Korean exporters within the meaning of 19 U.S.C. § 1677(5)(D)(i). The lending by commercial banks to South Korean exporters under this program therefore constitutes financing activity that would normally be vested in KEXIM or other GOK policy banks, and 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.

⁸² *Id.*

⁸³ *Id.*

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) 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 as compared to what they would pay on comparable commercial loans that are not subject to the KEXIM rediscounting program.

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because rediscounting by KEXIM of commercial bank loans to South Korean exporters are contingent in law upon export performance.

(iv) Use of KEXIM Trade Bill Rediscounting Program during the POI

As outlined in respect of the various other KEXIM programs described above, the GOK 2009 economic “stimulus” package directly affected KEXIM credit volumes, including the use of trade bill rediscounting. In 2009, for example, the bank’s export credit commitments increased by 45.1 percent year-over-year from KRW 19.6 trillion to KRW 28.5 trillion, in large measure due to an increase in the rediscounting of trade bills.⁸⁴

As with the other KEXIM programs above, information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of LG or Samsung, or any other companies in the LG or Samsung group of companies, used KEXIM rediscounting facilities during the POI for exports of subject merchandise. However, on its face, this KEXIM program

⁸⁴ 2009 KEXIM Annual Report (**Exhibit C-2-F**) at 23.

would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of it.

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

a. KDB and IBK Discounted Loans

The KDB has offered corporate, investment, and international banking services to South Korean industry since 1954. Within KDB’s international banking division, several export-related services are provided: advice on documentary credit, negotiation of bills of exchange, collection of bills of exchange, and re-negotiation.⁸⁵ From the date of its creation until late 2009, KDB operated as a wholly state-owned institution. A recent initiative was commenced in October of 2009 to transfer the policy and development role of KDB to the Korea Finance Corporation but KDB has remained a government-owned policy bank.⁸⁶

The IBK is a leading state-run bank that offers a full suite of financial services.⁸⁷ Since its establishment in 1961, IBK’s highest priority has been the health and sustainability of the country’s SME sector. Over time, the bank has extended the scope of its offerings to compete more effectively on both a domestic and global scale.

⁸⁵ **Exhibit C-6-A**, KDB website, online:
<http://www.kdb.co.kr/screen/jsp/IHEng/IHEngUPrt02030401E.jsp>.

⁸⁶ **Exhibit C-6-B**, KDB website, online:
<http://www.kdb.co.kr/screen/jsp/IHEng/IHEngUIrs03080001E.jsp>.

⁸⁷ **Exhibit C-6-C**, IBK 2009 Annual Report, at 2.

The Department has previously determined that short-term export financing in the form of discounted D/A loans issued by KDB and other GOK policy banks are countervailable.⁸⁸

(i) Financial Contribution

This program represents a direct transfer of funds to South Korean exporters, and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on a comparable short-term commercial loan.

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because this financing offered by KDB and IBK is contingent in law upon export performance.

b. Use of Program during the POI

As discussed in respect of the programs described above, the GOK injected KRW 2,300 billion into five state-run lenders in February 2009 to improve market liquidity. KDB received KRW 900 billion and IBK received KRW 500 billion in new funding as a result.⁸⁹

More specifically, beginning in 2009, KDB implemented the GOK plan to stabilize domestic markets and to protect exporters from the impacts of the global recession.⁹⁰ The KDB

⁸⁸ *Notice of Final Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea*, 72 Fed. Reg. 60639-60641 (October 25, 2007) and Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (Oct. 17, 2007).

⁸⁹ GOK Press Release (February 2, 2009) (**Exhibit C-2-E**).

Annual Report for 2009 discloses that the bank extended USD 23.5 billion in trade finance in 2009, of which export credit accounted for USD 10 billion. Overall, KDB's credit volume in 2009 represented 9.8 percent of the total South Korean export financing market, a 2 percent lift year-on-year. The bank attributed market share growth to its consistent provision of low-cost, long-term trade finance products.⁹¹

In respect of IBK, as early as in October 2008, MOSF announced an expansion to the bank's capital base to create additional loan facility worth KWR 12 trillion to support SMEs.⁹² Over the course of 2009, IBK set out to proactively assist struggling mid-size companies, including South Korean exporters. To this end, ramping up financing was considered a pre-emptive measure intended to normalize corporate operations and strengthen the industrial capital base.⁹³

Information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of LG or Samsung, or any other companies in the LG or Samsung group of companies, used KDB or IBK short-term discounted loans on export receivables during the POI for exports of subject merchandise. However, on its face, KEXIM financing would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of KEXIM financing.

⁹⁰ **Exhibit C-6-D**, 2008 KDB Annual Report, *Adapt and Prosper*, at 55 "Meeting Needs as a Policy Bank in Times of Crisis."

⁹¹ **Exhibit C-6-E**, 2009 KDB Annual Report, *A Financial Premiere*, at 23 ("Expanding Trade Finance").

⁹² **Exhibit C-6-F**, GOK Press Release (October 21, 2008), "Proposed measures to overcome uncertainties in the international financial markets."

⁹³ **Exhibit C-6-C**, 2009 IBK Annual Report at 31.

3. Korea Trade Insurance Corporation (“K-SURE”) – Export Insurance and Export Credit Guarantees

The Korea Trade Insurance Corporation (“K-SURE”) was founded by the South Korean Government 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 ability to provide coverage for import, export and overseas trade transactions.⁹⁴ As part of its current portfolio, K-SURE offers in particular short-term export insurance to South Korean exporters.

a. Short-Term Export Insurance

K-SURE’s “Short-Term Export Credit Insurance” insures against losses arising from default on export receivables.⁹⁵ The insurance protects against prescribed political and 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.⁹⁶ Claims are paid from the Export Insurance Fund.⁹⁷ The fund is managed by K-SURE and financed in part by the state and in part through the collection of premiums from insured exporters.⁹⁸

⁹⁴ **Exhibit C-7-A**, K-SURE website: http://www.ksure.or.kr/english/jsp/about/about_01_01.jsp.

⁹⁵ **Exhibit C-7-B**, K-SURE website:
http://www.ksure.or.kr/english/jsp/product/product_01_01.jsp.

⁹⁶ *Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 Fed. Reg. 16766 at 16782 (Apr. 7, 2003) and Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (June 16, 2003).

⁹⁷ *Id.*

⁹⁸ *Id.*

In 2009, Short-Term Export Credit Insurance accounted for 99.9 percent of the total amount underwritten by K-SURE for short-term transactions.⁹⁹

(i) Financial Contribution

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 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

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 2009 Annual Report. With respect to profitability, the 2009 K-SURE Report explains that poor economic conditions coupled with a dramatic growth in claims paid-out contributed to operational losses and a deterioration of the company's overall portfolio.¹⁰⁰ These data show a loss ratio (ratio of the claims paid to the premiums collected) of no less than 142.5 percent, representing a 99.5 percent jump in the loss ratio year-over-year. The program therefore confers a benefit within the meaning 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.520.

(iii) Specificity

⁹⁹ **Exhibit C-7-C**, 2009 K-SURE Annual Report, *Open a New Chapter*, at 22.

¹⁰⁰ *Id.* at 17, 32.

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because the short-term export insurance provided by K-SURE to South Korean exporters is contingent in law upon export performance.

b. Export Credit Guarantees

K-SURE provides export guarantees to facilitate lending at both the pre-shipment and post-shipment phases. Pre-shipment guarantees encourage lending to manufacturers for the purposes of acquiring inputs and processing exported goods.¹⁰¹ K-SURE's post-shipment guarantees secure the payment of export proceeds in the event that the importer fails to perform by the contracted due date.¹⁰²

(i) Financial Contribution

The program represents a potential direct transfer of funds or liabilities and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) 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, as compared to what they would pay on a comparable short-term commercial loan in the absence of the guarantee.

¹⁰¹ **Exhibit C-7-D**, K-SURE website, online:
http://www.ksure.or.kr/english/jsp/product/product_01_05.jsp.

¹⁰² **Exhibit C-7-E**, K-SURE website, online:
http://www.ksure.or.kr/english/jsp/product/product_01_06.jsp.

(iii) Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because export loan guarantees provided by K-SURE are contingent in law upon export performance.

c. Use of K-Sure Export Insurance and Export Credit Guarantees during the POI

In February 2009, the GOK announced a series of proactive measures to respond to worsening market conditions. Among these measures was a GOK commitment to provide additional market support through private-public collaboration. In particular, the GOK indicated that “{e}xpansionary support for export insurance will be under examination.”¹⁰³

According to the K-SURE Annual Report for 2009, K-Sure increased overall underwriting volume to a record KRW 165 trillion, representing 27 percent year-on-year growth.¹⁰⁴ In what K-SURE has characterized as a concerted effort to support the South Korean export economy, the company underwrote USD 129 billion, or 35.4 percent of all exports shipped under credit coverage.¹⁰⁵

Forward looking statements in the 2009 K-SURE Annual Report disclosed a strategic intention to provide record underwriting in the amount of KRW 180 trillion during the POI. To achieve this target, K-SURE planned strategically to: (i) expand its total volume of export credit insurance; (ii) increase the volume of export credit insurance to SME exporters in particular; (iii) increase import coverage; and (iv) expand reinsurance and joint insurance policies.¹⁰⁶ In addition,

¹⁰³ **Exhibit C-7-F**, GOK Press Release (February 27, 2009), “Korean government’s response to prolonged global financial market instability.”

¹⁰⁴ 2009 K-SURE Annual Report, at 16 (**Exhibit C-7-C**).

¹⁰⁵ *Id.* at 12.

¹⁰⁶ *Id.* at 18-19.

a key management objective for 2010 is cited as providing proactive support for global market expansion during the economic recovery.

Finally, In December 2009, the GOK issued a report indicating, under the heading of “improving competitiveness of industries,” that K-SURE insurance would be expanded from KRW 170 trillion in 2009 to KRW 190 trillion in 2010.¹⁰⁷

According to a media report dated February 14, 2009,¹⁰⁸ LG requested K-SURE to increase its credit limit for export insurance. In response, K-SURE agree to increase this limit by USD 1 billion. A second media report, dated February 25, 2009,¹⁰⁹ indicated that K-SURE increased LG’s credit for export insurance to Sears, a U.S. retailer, from USD 130 million to USD 400 million.

According to a further media report dated May 21, 2009,¹¹⁰ LG had receivables amounting to USD 41 million from Circuit City, which went bankrupt in November 2008, and these would be paid to LG by K-SURE.

It was reported on January 15, 2010¹¹¹ that Samsung subscribes to insurance from K-SURE for most of its exports. K-SURE and Samsung have allegedly entered into a “Comprehensive Insurance Contract” which covers all Samsung’s exports and, similar to LG,

¹⁰⁷ **Exhibit C-7-G**, GOK Press Release (December 11, 2009) at 13-15, “Improving competitiveness of industries.”

¹⁰⁸ **Exhibit C-7-H**, Financial News, (February 14, 2009), “Semiconductor export expected to decrease by 10%.”

¹⁰⁹ **Exhibit C-7-I**, YTN Article (February 25, 2009), “Export insurance limit jumped to USD 400 million for SEC & LGE.”

¹¹⁰ **Exhibit C-7-J**, Korea Economic TV (May 21, 2009), “SEC & LGE recovers receivables from Circuit City.”

¹¹¹ **Exhibit C-7-K**, Hankook Ilbo (January 15, 2010), “Korea Export Insurance Corporation shows its true strength in danger... reassuring safety net for the exporters.”

Samsung had receivables amounting to USD 115.9 million from Circuit City and these would have been paid by K-SURE.¹¹²

Finally, the 2009 K-SURE Report discloses that 37.7 percent of all claims paid in 2009 related to U.S.-based transactions, the highest of all countries listed.¹¹³

4. Production Facilities Subsidies

South Korean governments at all levels – central, regional, and local – provide a wide variety of subsidies for the construction, improvement, and relocation of facilities of Samsung, LG and other companies that produce the subject merchandise, as well as to expand employment relating to such facilities. Petitioner believes that the programs described below have provided direct countervailable subsidy benefits to the production, manufacture and export of subject merchandise.

a. Gwangju Metropolitan City Subsidy Programs

The Samsung manufacturing facilities producing subject merchandise are located in the Gwangju Metropolitan City,¹¹⁴ including in the Hanam Industrial Complex.¹¹⁵ The Gwangju City government offers a wide variety of facilities-based subsidies that benefit the production and manufacture of subject merchandise. The City describes examples of these subsidies as follows on its website:¹¹⁶

¹¹² *Supra* note 84.

¹¹³ 2009 K-SURE Report, *supra* note 99 at page 32 (**Exhibit C-7-C**).

¹¹⁴ **Exhibit C-8-A**, SGEC website, online: <http://www.sgec.co.kr/eng/business/introduce.html>.

¹¹⁵ **Exhibit C-8-B**, Invest Korea website, “Hanam General Industrial Complex.”

¹¹⁶ **Exhibit C-8-C**, Gwangju Metropolitan City website, online: https://eng.gwangju.go.kr/business/invest_incentive.jsp.

<p>“Tax Reduction / Exemption”</p>	<p>Companies establishing or expanding facilities within an industrial complex are exempt from acquisition taxes and registration taxes. In addition, capital gains on land and buildings of such companies are exempt from property taxes for the first 5 years from the establishment or expansion of the facilities and the taxes owed subsequent to this period are cut by 50% for the following 3 years.</p>
<p>“Location Subsidies”</p>	<p>Companies purchasing land receive grants in an amount equivalent to 20%-40% of the land price.</p>
<p>“Facilities Grants”</p>	<p>Companies investing over KRW 2 billion to build or expand facilities receive grants in amounts equivalent to 5% of amounts invested over KRW 2 billion, and 10% of amounts invested over KRW 2 billion in the case of companies relocating from the Seoul Metropolitan Area.</p>
<p>“Employment Grants”</p>	<p>Companies hiring local residents as employees receive KRW 600 thousand per employee per month for up to 6 months for each additional employee hired past 20 new hires.</p>
<p>“Training Grants”</p>	<p>Companies providing monthly vocational training for newly hired employees receive KRW 600 thousand per month per employee for up to 6 months.</p>
<p>“Consulting Grants”</p>	<p>Companies requiring consulting services to establish production facilities in Gwangju receive up to KRW 100 million.</p>
<p>“Business Restructuring Costs” Financing</p>	<p>Companies seeking financing for the establishment or expansion of fixed assets may receive up to KRW 1 billion in financing at favorable interest rates with repayment being made in equal installments over 5 years after a 3-year grace period. Companies seeking financing for working capital receive up to KRW 300 million in financing at favorable interest rates with repayment being made in equal installments over 2 years after a 1-year grace period.</p>
<p>“Interest Subsidy Grant for Management Stabilization Cost”</p>	<p>Companies requiring financing assistance may receive grants equivalent to a 2.5%-3% interest rate subsidy to defray interest costs in amounts up to KRW 300 million.</p>
<p>“Special Support for Large Corporate Investor”</p>	<p>Domestic companies that “make over KRW 50 billion” or that employ more than 300 persons are eligible for “special support”.</p>

Based on information reasonably available to Petitioner, authority for the granting of these and other City subsidies (e.g. research and development grants) appears to be found in Gwangju's Ordinance on Investment Promotion ("Investment Promotion Ordinance"), the Gwangju Ordinance on the Development Support for Electronics Industry ("Electronics Industry Ordinance"), and its related Implementation Rules in effect during the POI.¹¹⁷

On a plain reading of the Gwangju Ordinances and the related Implementation Rules, it is reasonable to conclude that Samsung and its affiliates located within the jurisdiction of Gwangju Metropolitan City, including but not limited to Samsung Gwangju, receive subsidies that are specific to the electronics industry in forms including those promoted on the City's website.

Article 6 of the Electronics Industry Ordinance gives the mayor of the City discretionary authority to "subsidize, assist or make loans {to}" the Gwangju electronics industry, including in the following forms (translation):

"Article 6 (Supported Businesses etc.)

- 1) The mayor may subsidize, assist or make loans if necessary for the promotion of electronics industry in accordance with the Article 4.

¹¹⁷ **Exhibit C-8-D**, Gwangju Metropolitan City Ordinance on the Development Support for Electronics Industry (date of implementation identified as September 23, 2005 and June 30, 2010); **Exhibit C-8-E**, Gwangju Metropolitan City Ordinance on Investment Promotion (date of implementation identified as April 15, 2009); and **Exhibit C-8-F**, Implementation Rules for the Investment Promotion Ordinance. In respect of any past non-recurring subsidies granted by the City that may continue to provide benefits during the POI, authority likewise would appear to be found in prior iterations of those Ordinances and Regulations in effect during the 10-year average useful life of the facilities producing the subject merchandise pursuant to 19 C.F.R. § 351.524 and Table B-2 of IRS Publication 946 (2009) (*How To Depreciate Property*) for the manufacture of electrical and non-electrical machinery and other mechanical products for commercial and home appliances (Item 35.0). See **Exhibit C-8-G**. As such, the Department should investigate any non-recurring subsidies granted between 2001 and 2010. Petitioner requests that the Department investigate the granting of past non-recurring subsidies under authority of any such past Ordinances and Regulations.

1. Technology development for commercialization such as difficult technology support, development of new technology foundation, development of prototype model and new product.
2. Attracting and promotion of electronics related promising business or research center
3. Cluster creation such as integrated complex, research center and production support facility related to electronics.
4. Support of university research center specialization, founding of digital appliances business support, international exchange and cooperation support, information of business support and other electronics industry promotional support.
5. Electronics technology personnel acquisition, electronics industry founding support, electronics industry production support business expansion, electronics product testing and certification.
6. Industry complex development, allocation of land and lease business related to the electronics industry.
7. Other activities that are deemed to be necessary by the mayor such as exchange-cooperation, marketing, public relations and exhibition activities.

2) A support in the form of research development business expense from the Industrial-Educational Technology Development Fund can be provided to the business engaged in the development of new foundation technology and development of commercialization technology pursuant to the section 1, item 1 and according to the regulations of general accounting or {The Gwangju Gwangyuksi Small-Medium Business Promotion Fund}. In this event, the mayor shall establish and announce items necessary for the implementation of these activities such as selection of supported business, the target task of the support, the support scope and the criteria as well as the implementation plan by each year.

3) The mayor may provide land and other necessary support pursuant to the {Local Finance Act} and the {Gwangju Gwangyuksi Public Property Management Ordinance} in the event of attracting government subsidized research centers related to electronics in order to promote the electronics industry.”¹¹⁸

¹¹⁸ Exhibit C-8-D, Electronics Industry Ordinance.

With respect to research, technological, and testing support as provided for in Article 6 above, in particular, Petitioner believes on the basis of information reasonably available that Gwangju Metropolitan City provides R&D subsidies, in the form of discounted or free basic research, testing and certification, pilot production, and industry bottle-neck technical support, through specialized government-owned centers. Petitioner requests that the Department gather all information necessary to determine the extent to which Gwangju Metropolitan City “support centers” and similar programs provide countervailable subsidies to the Gwangju electronics industry and, in particular, on subject merchandise manufactured or produced in Gwangju.

Information reasonably available includes, in addition to the Electronics Industry Ordinance, certain investment promotion materials developed by the City for purposes of attracting foreign direct investment. These materials make clear that research and technical support subsidies contemplated by Article 6 above are made available to the industry. In a presentation entitled “Biz Favorable City – Gwangju; Invest in Gwangju,” the city sets out a “Current Status of R&D Centers in Gwangju” to show how R&D support programs offered by public research institutions located within the City are provided to certain industries such as “LED, Optical Communication & Camera Module” and “Photonics, Digital appliance, New Material.”¹¹⁹

In addition, according to a Digital Times report dated December 9, 2003, the City established the “Gwangju Electronics Industry Support Center” as far back as 2003 to support local companies in the electronics industry.¹²⁰ The center was reportedly to have a budget of KRW 161.97 billion from January 2004 through to December 2008, and was to be led by

¹¹⁹ **Exhibit C-8-H**, Gwangju Metropolitan City Presentation at sections 2-1 and 2-2.

¹²⁰ **Exhibit C-8-I**, Digital Times (December 9, 2003), “Gwangju Electronics Industry Support Center launches.”

“The Gwangju Advanced Institute of Science and Technology” along with three local universities, the focus being on the home appliances industry.¹²¹

Finally, the Digital Times reported on October 13, 2005 that Chosun University, one of the major universities located in Gwangju, established as far back as September 2005 a “Supportive R&D Center for Samsung Gwangju Electronics.” This Center was reported as being slated to perform 40 R&D projects with a focus on home appliances, including refrigerators and washing machines and core parts for a period of 2 years.¹²²

Further specificity in terms of the types of businesses being supported by Gwangju within the electronics industry is found in Article 5 (Selection of Business) of the Electronics Industry Ordinance. This provision states that the mayor may select the following businesses, among few others, to be subsidized in the manner provided for in Article 6 to the benefit of the electronics industry (translation): “2. Research Center or company subsidized, invested by or supported by the government of the city” and “5. Other business or entity deemed necessary for the promotion of electronics industry by the mayor.”¹²³

Article 4 of the same Ordinance specifies that the Gwangju Electronics Industry includes manufacturers of the subject merchandise (translation):

“Article 4 (Scope of Support)

1. The mayor shall support home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses.

¹²¹ *Id.*

¹²² **Exhibit C-8-J**, Digital Times (October 13, 2005), “SEC & Chosun University jointly launch ‘Supportive R&D Center’.”

¹²³ *Id.*

2. A particular area of the industry may be selected for a concentrated support if a promotion by area is necessary for the electronics industry as specified by the rules in the section 1.”¹²⁴

The separate Investment Promotion Ordinance also provides clear authority to the mayor to grant a wide range of subsidies, including those advertised on the City’s website. Article 14 of this Ordinance lists various bases for granting countervailable subsidies and establishes wide discretion for the mayor in this respect (translation):

“Article 14 (Support of Investment Attracting Business) The mayor may provide administrative and financial support related to the following items for investment attracting businesses deemed able to contribute to the invigoration of the local economy:

1. Items related to investment attracting business’ relocation and re-establishment
2. Items related to provision of apartment and welfare promotion of employees of investment attracting business
3. Items related to education of foreign employees and such employees’ children
4. Items related to investment attracting business’ export expedition and production capacity enhancement
5. Items related to development of infrastructure pursuant to the {Civilian Investment of Infrastructure Act}
6. Other items deemed necessary by the mayor related to investment attracting business.”¹²⁵

Specific forms of subsidies set out in the Investment Promotion Ordinance include:

Article 15 – local tax reductions/exemptions; Article 16 – land purchase grants or preferential lease terms; Article 19 – land grants for industrial complexes; Article 20– grants for facilities construction or expansion; Article 21 – employment grants; Article 22 – training grants; Article 23 – consulting grants; and Article 27 – preferential financing.¹²⁶ Most of these subsidies

¹²⁴ **Exhibit C-8-D**, Electronics Industry Ordinance.

¹²⁵ **Exhibit C-8-E**, Investment Promotion Ordinance.

¹²⁶ *Id.*

appear to be subject to additional governing limits and procedures under the Implementation Rules that accompany the Ordinance on Investment Promotion.¹²⁷

Finally, notably, Article 26 (“Special Support for Large Scale Investment Business”) of the Investment Promotion Ordinance confers upon the mayor broad discretion to provide unspecified “special support” to “large scale investment attracting businesses” that are “deemed to have a substantial effect on the local economy.”¹²⁸ In this respect, Article 14 of the Implementation Rules accompanying the Ordinance goes on to specify that the special support for large corporations may take the form of a payment of a portion of the corporation’s total investment:

“Article 14 (Special Support for Large Scale Investment Business)

1) The mayor may provide special support in the form of partial payment of the total investment amount for the large scale investment business according to Article 26 of the Ordinance and the total investment amount is defined as the following items. However, the said support cannot be provided at the same time as the various subsidy payments provided for in Articles 8 to 13 as well as other supports from other methods.

1. Investment amount related to plant etc.'s location and installations.
2. Expenses expanded for infrastructure outside of the plant in connection with the large scale investment.”¹²⁹

In terms of the recipients targeted under the Investment Promotion Ordinance, Article 18 the provides for the establishment of eligibility criteria but also provides the mayor with vast

¹²⁷ **Exhibit C-8-F**, Implementation Rules for the Investment Promotion Ordinance.

¹²⁸ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 26.

¹²⁹ **Exhibit C-8-F**, Implementation Rules for the Investment Promotion Ordinance at Article 14.

discretion for the granting of subsidies to businesses locating to a particular industrial complex located within the jurisdiction of the City or to specific industries (translation):

“Article 18 (Target of Subsidy Support)

1) The mayor may provide support for businesses that satisfy any of the following items such as business that relocates, establishes new business or builds an extension within the period specified for subsidy from outside the jurisdiction to within the jurisdiction or if a business relocates to an industrial complex by going through the new business development facility located within the jurisdiction or for new businesses for the emphasized industry the mayor deems to be necessary etc.”¹³⁰

The mayor of Gwangju Metropolitan City has also publically announced the City’s plans to direct its subsidies to specific industries during the POI. In a September 24, 2010 interview with Korea IT Times, Mayor Woon-tae Kang is quoted as stating that “the city will foster the five main industries in earnest, which are automobiles, home appliances, photonics, green energy and culture industries.”¹³¹ Mayor Kang is also quoted as having specified that Gwangju Metropolitan City “will rear such future-oriented home appliances industries as intelligent home appliance robot and life care” and plans to “nurture” other industries that promise future value and that are related to home appliances, such as “precision molding.”¹³²

The Mayor’s statement is consistent with Gwangju Metropolitan City’s declared goals of becoming one of the world’s top 3 centers for the digital home appliances and components

¹³⁰ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18.

¹³¹ **Exhibit C-8-K**, Korea IT Times (Sept. 24, 2010), “Gwangju City Pushes for 6 Strategies to Build ‘Affluent Economic Community.’”

¹³² *Id.*

industries, and establishing itself as the largest household electric appliance production cluster in South Korea.¹³³

On the basis of information reasonably available to Petitioner, each of the above programs provided for in City Ordinances as well as in Implementing Rules constitutes a countervailable subsidy on the manufacture, production or export of subject merchandise.

(i) Gwangju Programs Meet the Requirements of a Countervailable Subsidy

Each of the programs described above satisfy the financial contribution, benefit, and specificity elements of a countervailable subsidy, as set out below. Petitioner requests that the Department gather information sufficient to ensure that all such programs, and any others that may be established under the authority of the Gwangju Metropolitan City, be fully investigated.

In addition, to the extent that any of these subsidies are granted in respect of specific production facilities, Petitioner notes that benefit amounts would be tied solely to the production or sale of goods, including subject merchandise, produced at the facilities in question over the relevant allocation period pursuant to 19 C.F.R. § 351.525(b)(5) and 19 C.F.R. § 351.524.

(A) Tax Reductions/Tax Exemptions

Facilities-based tax reductions and exemptions represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii). A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of facilities-based tax reductions and exemptions in the amount of the tax revenue foregone by the City.

¹³³ **Exhibit C-8-L**, Invest Korea, “Digital Home Appliances Industry.”

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹³⁴ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹³⁵ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

¹³⁴ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹³⁵ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

(B) Relocation Grants

Location/relocation grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of facilities-based location grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹³⁶ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹³⁷ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably

¹³⁶ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹³⁷ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(C) Facilities Grants

Facilities grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of facilities grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹³⁸ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or

¹³⁸ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also* **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

move facilities to industrial complexes within the jurisdiction of the City.¹³⁹ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(D) Employment Grants

Employment grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of employment grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju

¹³⁹ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

electronics industry.”¹⁴⁰ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁴¹ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(E) Training Grants

As with employment grants, training grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of training grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics

¹⁴⁰ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁴¹ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁴² This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁴³ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(F) Consulting Grants

Similar to the grants listed above, consulting grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of training grants in the amount of the grant.

¹⁴² **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁴³ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D)). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁴⁴ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁴⁵ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning 19 U.S.C. § 1677(5A)(D)(iii).

¹⁴⁴ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁴⁵ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

(G) Preferential Financing for Business Restructuring

Facilities-based financing for business restructuring represents a direct transfer of funds and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) is conferred on the recipient of such financing to the extent that the recipient pays a lower rate of interest on the loan as compared to what it would pay on a comparable commercial loan.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁴⁶ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁴⁷ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries

¹⁴⁶ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also* **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁴⁷ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also* *Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(H) Interest Grants for the Stabilization of Management Costs

As with all other grants listed above, interest grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of interest grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁴⁸ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or

¹⁴⁸ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

move facilities to industrial complexes within the jurisdiction of the City.¹⁴⁹ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(I) “Special Support” for Large Corporate Investors

The “partial payment” made by the City to offset the recipient corporation’s total investment costs related to plant location and installations as well as to plant infrastructure¹⁵⁰ is a grant representing a direct transfer of funds. As such, this payment qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the large corporate investor-recipient in the amount of the grant or grants in question.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance

¹⁴⁹ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

¹⁵⁰ **Exhibit C-8-F**, Implementation Rules for the Investment Promotion Ordinance at Article 14.

businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁵¹ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁵² Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance, in particular in respect of “Large Corporate Investors.” Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

(J) R&D and Other Technical Support Services

To the extent that Gwangju City and other government agencies operating at the local level provide discounted or free R&D, product testing and certification, and other production-related services, this is the equivalent of a grant and represents a direct transfer of funds and, as such, qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the

¹⁵¹ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also* **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁵² **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also* *Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of such grants in the amount of the grant.

Based on information reasonably available to Petitioner, this subsidy is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). As a preliminary matter, the subsidy is specific in law under 19 U.S.C. § 1677(5A)(D)(i) by virtue of the fact that it is granted to a limited number of enterprises and industries as provided for under Article 4 of the Electronics Industry Ordinance, which provides that the City is supporting the following industries: “home appliances, premium appliances, intelligent digital appliance businesses, robotic appliance businesses and any accompanying electronics component businesses” as well as any other “particular area of the industry” requiring “concentrated support” in order to assist the Gwangju electronics industry.”¹⁵³ This subsidy is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁵⁴ Finally, on its face, the Investment Promotion Ordinance provides discretion to the mayor to favor specific industries in fact through the application of the eligibility criteria of the Ordinance. Information reasonably available to Petitioner including statements made by the mayor of Gwangju in recent press materials indicate that certain industries, such as the electronics industry, are favored over others within the meaning of 19 U.S.C. § 1677(5A)(D)(iii).

¹⁵³ **Exhibit C-8-D**, Electronics Industry Ordinance at Article 4. *See also Exhibit C-8-E*, Investment Promotion Ordinance at Article 18 (“(Target of Subsidy Support) The mayor may provide support... for new businesses for the emphasized industry the mayor deems to be necessary etc.”)

¹⁵⁴ **Exhibit C-8-E**, Investment Promotion Ordinance at Article 18. *See also Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

(ii) Use of Gwangju Subsidy Programs During the POI

According to the Gwangju Metropolitan City investment promotion presentation “Biz Favorable City – Gwangju; Invest in Gwangju,” Samsung made a significant 2004 business expansion that involved a further relocation of refrigeration and air conditioning production lines from Suwon to Gwangju.¹⁵⁵ Petitioner believes based on information reasonably available to it Samsung may have benefited from these Gwangju subsidies in respect of that relocation, which, if the subsidies were non-recurring in nature, would continue to yield benefits during the POI.

According to an April 29, 2004 report in the Digital Times, Gwangju Metropolitan City also developed an industrial complex for Samsung’s suppliers.¹⁵⁶ Some 30 suppliers were expected to also move to Gwangju and take up residence in the industrial complex.¹⁵⁷ The City was reported to be granting subsidies between KRW 100 million and KRW 1.2 billion per company for facilities and employment.¹⁵⁸

On July 4, 2005, the Digital Times reported that Gwangju had enacted the Electronics Industry Ordinance to support Samsung Gwangju Electronics pursuant to the following objectives (translation):

“The reason for this future amendment is to efficiently transform Gwangju city as a ‘city of digital home appliance electronics,’ following the SEC’s decision to move its production line to the city. Also the city said that the future amendments are necessary in order to create legal grounds to provide financial and other assistances.”¹⁵⁹

¹⁵⁵ **Exhibit C-8-H** at slide 8. *See also Exhibit C-8-M.*

¹⁵⁶ **Exhibit C-8-M**, Digital Times (April 29, 2004), “Gwangju city’s efforts to host SEC.”

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ **Exhibit C-8-N**, Digital Times (July 4, 2005), “Gwangju City amends its Ordinance Regarding Electronic Industry Development and Support.”

In 2007, Gwangju Metropolitan City issued a report entitled “Invest Gwangju: The Land of Hope & Prosperity of the 21st Century.”¹⁶⁰ The report confirms the existence of two Samsung factories situated in the Hanam complex that produce home appliances, including refrigerators.

Samsung’s explanation for choosing Gwangju as an operational base is quoted in the report:

“Our fame and competitiveness in the home appliance industry have been globally acknowledged, and our goal is to become the world’s best in the industry.

We have recently integrated all of our home appliance production lines in Gwangju to achieve this goal. It is expected that the industry will be developed into a high tech home appliances’ industry such as a home network and robot, etc. We have chosen Gwangju because the city has already clustered various high-tech industries with top-notch R&D institutes, experts and industrial infrastructure.

Another important advantage we are given is that the city offers a supply system of plentiful workforce in addition to providing a stable working environment.”¹⁶¹

On October 11, 2010 the Korea Herald reported the completion of Samsung’s new 19,590 square meter mold processing center in Gwangju. The new facility is expected to foster new technological applications related to the manufacture of televisions, refrigerators, printers and liquid-crystal displays.¹⁶²

New investments by SGEC increased nearly 2.5 fold from KRW 48 billion in 2009 to KRW 122 billion in 2010 (Jan – September). In respect of facilities improvements and investments, in particular, a note appearing in the Samsung Gwangju 2010 Q3 Business Report

¹⁶⁰ **Exhibit C-8-O**, Invest Gwangju Report at 20-21, online: http://gwangju.investkorea.org/InvestKoreaWar/work/reg/eng/lr/index.jsp?l_unit=90202&m_unit=90302&code=11004&no=611230001

¹⁶¹ *Id.*

¹⁶² **Exhibit C-8-P**, The Korea Herald (Oct 11, 2010), “Samsung Completes Mold Processing Center in Gwangju.”

makes clear that facilities-based subsidies that do not take the form of a loan will remain undisclosed given that the value of the subsidy will have been incorporated into the costing of given assets.¹⁶³

According to a Yonhap News article dated December 28, 2009, Samsung committed KRW 140 billion in Gwangju to develop precision metal casting technologies. In connection with Samsung's investment, Gwangju Mayor Park Gwang-tae was quoted as saying, "I would like to extend my gratitude to Samsung Electronics for making investment in Gwangju. We will spare no effort to help Samsung maintain its reputation as the beloved global leader."¹⁶⁴

b. Changwon City Subsidy Programs

The LG manufacturing facilities producing subject merchandise include facilities located in the Changwon National Industrial Complex,¹⁶⁵ in Changwon City in the Gyeongsangnam-do Province of Korea.¹⁶⁶ As is the case with Gwangju Metropolitan City, Changwon City offers a wide variety of facilities-based subsidies that benefit the production and manufacture of subject merchandise. Like Gwangju, Changwon City also describes examples of these subsidies on its website:¹⁶⁷

¹⁶³ **Exhibit 2** at 53-54.

¹⁶⁴ **Exhibit C-8-Q**, Yonhap News (December 28, 2009), "Samsung Electronics to Invest KRW 140 bil. In Gwangju to Develop Precision Metal Casting Technologies."

¹⁶⁵ **Exhibit C-8-R**, Changwon website, online: http://eng.changwon.go.kr/jsp/sub03/03_03.jsp.

¹⁶⁶ **Exhibit C-8-S**, LG website, "LG Electronics Changwon Digital Appliance Company – Head Quarters", online: <http://www.lg.com/global/about-lg/corporate-information/global-operations/index.jsp?Area=Global|AP&Nation=KR>.

¹⁶⁷ **Exhibit C-8-T**, Changwon City website, *Domestic Companies: Incentives*, online: <http://eng.changwon.go.kr/business/domestic.jsp>.

“Location Settlement”	Companies investing a minimum of KRW 1.5 billion or recruiting a minimum of 20 new employees receive real estate at 30% of market price.
“Employment”	Companies investing a minimum of KRW 1.5 billion or recruiting a minimum of 20 new employees receive KRW 500 thousand per employee for each additional employee past 20 new hires.
“Training”	Companies investing a minimum of KRW 1.5 billion or recruiting a minimum of 20 new employees receive up to KRW 500 thousand per employee for each additional employee trained past 20 trainees.
“Facilities”	Companies investing a minimum of KRW 1.5 billion or recruiting a minimum of 20 new employees receive grants in amounts equivalent to 2% of amounts invested over KRW 3 billion.
Grant for “Moving metropolitan area-base company to Changwon”	Grant of KRW 5 billion given to companies that were based in a metropolitan area for over 3 years and that maintained over 50 full time employees. If company moves headquarters, it must maintain over 50 full time employees. If the company moves research institute, it must maintain 30 full time employees.
“Plant Loan”	Companies that qualify as “high tech industry innovators” that make investments of over KRW 5 billion and maintain over 100 full time employees receive an interest-free loan for 50% of plant land cost.
“Tax Reduction and Exemption”	Companies moving to Changwon that had been based in a metropolitan area for over 3 years and that maintain over 50 full time employees receive: (1) a 50% reduction in corporate taxes for 5 years; (2) a 100% reduction in property taxes for the first 5 years; and a full exemption from land acquisition taxes and registration taxes. If company moves its headquarters, it must maintain over 50 full time employees. If the company moves a research institute, it must maintain 30 full time employees.
“Funding to stabilize businesses’ activities”	Companies requiring funds receive loans up to KRW 600 billion at a loan rate of only “2.5% of total interest rate, market floating rate”, with a repayment period of 3 years including a 2-year grace period.

Based on information reasonably available to Petitioner, authority for the granting of these and other City subsidies appears to be found in the Changwon City Ordinance Regarding

Business and Investment Promotion (“Investment Promotion Ordinance”) and its related Implementation Rules in force during the POI.¹⁶⁸

Article 26 (“Provisions applicable to the support of domestic companies”) of the Investment Promotion Ordinance provides as follows (translation):

“The provisions specified in Articles 16 to 20 can be applied to provide a support to the domestic companies which move in the zone for the promotion of the investment by domestic companies.”¹⁶⁹

Specific forms of subsidies set out in Articles 16-20 of the Investment Promotion Ordinance are: Article 16 – land purchase grants or preferential lease terms; Article 17 – cash grants; Article 18 – employment grants; Article 19 – training grants; and Article 20– grants for

¹⁶⁸ **Exhibit C-8-U**, Changwon City Ordinance Regarding Business and Investment Promotion (revised July 1, 2010) Ordinance No. 58, **Exhibit C-8-V**, Implementation Rules for Changwon City Ordinance Regarding Business and Investment Promotion (revised July 1, 2010) Implementation Rules No. 18, **Exhibit C-8-W**, Changwon City Ordinance Regarding Business and Investment Promotion (date of implementation identified as January 12, 2005), and **Exhibit C-8-X**, Implementation Rules for Changwon City Ordinance Regarding Business and Investment Promotion (date of implementation identified as May 13, 2005). In respect of any past non-recurring subsidies granted by the City that may continue to provide benefits during the POI, authority likewise would appear to be found in prior iterations of those Ordinances and Regulations in effect during the 10-year average useful life of the facilities producing the subject merchandise pursuant to 19 C.F.R. § 351.524 and Table B-2 of IRS Publication 946 (2009) (*How To Depreciate Property*) for the manufacture of electrical and non-electrical machinery and other mechanical products for commercial and home appliances (Item 35.0). See **Exhibit C-8-F**. As such, the Department should investigate any non-recurring subsidies granted between 2001 and 2010. Petitioner requests that the Department investigate the granting of past non-recurring subsidies under authority of any such past Ordinances and Regulations.

¹⁶⁹ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 26. See also Articles 27-28 of the same Ordinance. See also **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 20 (“The mayor can provide a support to the domestic companies which move in the zone for the promotion of the investment by domestic companies by applying the principles specified in Articles 13 to 16”) and at Articles 21-22.

facilities construction or expansion.¹⁷⁰ As is the case with the Gwangju subsidies, most of these Changwon City subsidies that are available to domestic businesses appear to be subject to additional governing limits and procedures under the Implementation Rules that accompany the Investment Promotion Ordinances.¹⁷¹

Article 25 of the Investment Promotion Ordinance provides discretionary authority to the mayor to designate a geographic zone within the City's jurisdiction for the promotion of the investment by domestic companies (translation):

“Article 25 (Designation of and application for the zone for the promotion of the investment by domestic companies)

1) If necessary to promote the inducement of a plant located outside of Kyungsangnam-do (hereafter referred to as the “Province”) into the jurisdiction and the establishment of a new business, the mayor can apply for the designation of one of the following districts as a zone for the promotion of the investment by domestic companies to the province governor via the deliberation of the committee. In this case, the residents' opinions must be collected when necessary.

1. A provincial industrial complex and an agricultural and industrial complex formed in accordance with ‘Act Concerning Industrial Location and Development’

2. An area which is considered by the mayor to be necessary for a balanced area development

2) In case that a plant located outside of the Province is transferred to the zone for the promotion of the investment by domestic

¹⁷⁰ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 16-20. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 13-16.

¹⁷¹ **Exhibit C-8-V**, Implementation Rules for the Investment Promotion Ordinance (revised July 1, 2010); **Exhibit C-8-X**, Implementation Rules for the Investment Promotion Ordinance (date of implementation identified as May 13, 2005).

companies, the transfer subsidy can be provided within the budget limit.”¹⁷²

Finally, much like the Gwangju Investment Promotion Ordinance, Article 29 (“Special Support for Substantially Large Domestic or Foreign Investments”) of the Changwon Investment Promotion Ordinance confers upon the mayor discretion to provide, with the approval of the City Council, “special support” beyond that which is provided for in the Ordinance to “a domestic or foreign large scale investment attracting business deemed to have a substantial effect on the local economy.”¹⁷³ In this respect, Article 24 of the Implementation Rules accompanying the Ordinance goes on to specify that the special support for large investments may take the form of a payment of a portion of the corporation’s total investment:

“Article 24 (Special Support for Substantially Large Domestic or Foreign Investments)

Large scale investment attracting business for the purpose of special support in the Ordinance Article 29 is any one of the below.

1. For foreign companies, where investment is equal to or greater than USD 300 million, or where there are 1500 or more regular employees in a given day.
2. For domestic companies, where investment is equal to or greater than KRW 50 billion, or where there are 300 or more regular employees in a given day.

¹⁷² **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 25. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 19 (Designation of and application for the zone for the promotion of the investment by domestic companies).

¹⁷³ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

3. For companies with 500 or more regular employees”¹⁷⁴

Based on information reasonably available to Petitioner, it appears that a limited number of companies located in Changwon also receive discounted or free production inputs from the City. On June 27, 2010, Newsys reported that from July 2010 onwards Changwon City would provide certain local companies, including LG, with waste heat generated by local incineration plants. It was reported that companies would save an estimated KRW 4.5 billion per year by using the waste heat provided by the City.¹⁷⁵

It was also reported by Newsys June 27, 2010 that, in addition to the cost reduction provided by discounted or free waste heat, these 33 companies would be granted “incentives” amounting to KRW 56.0 million per year for reductions in emissions of greenhouse gases.¹⁷⁶

In terms of Changwon City support for the electronics industry and home appliance manufacturers, City publications describe the investment environment as “support of business friendly environment by fostering strategic industries depending on each zones {sic} (specialized complex per each zones {sic}).”¹⁷⁷ The Seoul Economic Daily reported on May 8, 2008, that an Association for Cluster Promotion had been established in April 2005 by 700 businessmen and regional experts in Changwon.¹⁷⁸ It is reasonable to conclude that the Association’s activities

¹⁷⁴ **Exhibit C-8-V**, Implementation Rules for the Investment Promotion Ordinance (revised July 1, 2010) at Article 24. *See also* Exhibit C-8-W, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

¹⁷⁵ **Exhibit C-8-Y**, Newsys (June 27, 2010), “Changwon City provides waste energy from waste incineration facilities.”

¹⁷⁶ *Id.*

¹⁷⁷ **Exhibit 36**, Changwon City Website Material.

¹⁷⁸ **Exhibit C-8-Z**, Seoul Economic Daily (May 8, 2008), “Changwon Industrial District, model for Korean clusters.”

were conducted in conjunction with the City. Together, they have been promoting R&D for 5 strategic areas including: (1) metallic materials, (2) molding, (3) mechatronics, (4) machine tool, and (5) transportation equipment.¹⁷⁹

In addition, the Seoul Economic Daily on June 19, 2008, reported further that the President of Southeast District Branch of Korea Industrial Complex Corporation views ChangwonCity as an exemplary city for companies to cooperate, and notes that Changwon City has conducted “focused business coordination” with local companies.¹⁸⁰

(i) Changwon Programs Meet the Requirements of a Countervailable Subsidy

Each of the programs described above satisfy the financial contribution, benefit, and specificity elements of a countervailable subsidy, as set out below. Petitioner requests that the Department gather information sufficient to ensure that all such programs, and any others that may be established under the authority of the Gwangju Metropolitan City, be fully investigated.

In addition, to the extent that any of these subsidies are granted in respect of specific production facilities, Petitioner notes that benefit amounts would be tied solely to the production or sale of goods, including subject merchandise, produced at the facilities in question over the relevant allocation period pursuant to 19 C.F.R. § 351.525(b)(5) and 19 C.F.R. § 351.524.

(A) Relocation Grants

Location/relocation grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19

¹⁷⁹ *Id.*

¹⁸⁰ **Exhibit C-8-AA**, Seoul Economic Daily (June 19, 2008), “Investment flows into the Changwon Industrial District.”

C.F.R. § 351.504(a) is conferred on the recipient of facilities-based location grants in the amount of the grant. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁸¹ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁸²

(B) Employment Grants

Employment grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of employment grants in the amount of the grant. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁸³ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁸⁴

¹⁸¹ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁸² **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

¹⁸³ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁸⁴ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

(C) Training Grants

As with employment grants, training grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of training grants in the amount of the grant. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁸⁵ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁸⁶

(D) Facilities Grants

Facilities grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of facilities grants in the amount of the grant. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within

¹⁸⁵ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also Exhibit C-8-W*, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁸⁶ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also Exhibit C-8-W*, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

the jurisdiction of the City.¹⁸⁷ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁸⁸

(E) Preferential Financing for Land Purchase

Facilities-based financing for land purchases represents a direct transfer of funds and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of (19 U.S.C. § 1677(5)(E)(iii) is conferred on the recipient of such financing to the extent that the recipient pays a lower rate of interest on the loan as compared to what it would pay on a comparable commercial loan. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁸⁹ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁹⁰

¹⁸⁷ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁸⁸ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

¹⁸⁹ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁹⁰ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

(F) Tax Reductions and Exemptions

Facilities-based tax reductions and exemptions represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii). A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of facilities-based tax reductions and exemptions in the amount of the tax revenue foregone by the City. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁹¹ In addition, the mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁹²

(G) Financing for the Stabilization of Business Activities

As with financing for land purchases, financing for the stabilization of business activities represents a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) is conferred on the recipient of such financing to the extent that the recipient pays a lower rate of interest on the loan as compared to what it would pay on a comparable commercial loan. This subsidy is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) by virtue of the fact that it is granted to recipients who establish facilities in or move facilities to industrial complexes within the jurisdiction of the City.¹⁹³ In addition, the

¹⁹¹ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

¹⁹² **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

¹⁹³ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Articles 25-28. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Articles 19-22.

mayor is granted discretionary authority to favor large corporations on a company-specific basis.¹⁹⁴

(H) Special Support for Large Companies

On the face of the Changwon Ordinance and Article 29 in particular, subsidies to large corporate investors may take various forms. Based on the information reasonably available to Petitioner, it would appear that the specific form of the subsidy will be a function of company-specific circumstances.

To the extent that Changwon “large companies” support takes the form of facilities-based grants, including employment grants, training grants, facilities grants, and relocation grants, these grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the large company-recipient in the amount of the grant or grants in question.

To the extent the large companies “special support” takes the form of financing, including for the purchase of land or for the stabilization of business activities, the financing represents a direct transfer of funds and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) is conferred on the extent that the large company-recipient pays a lower rate of interest on the loan as compared to what it would pay on a comparable commercial loan.

Finally, to the extent this “special support” takes the form of tax reductions and exemptions, this represents a foregoing or non-collection of revenue that is otherwise due and as

¹⁹⁴ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also* **Exhibit C-8-W**, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii). A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of facilities-based tax reductions and exemptions in the amount of the tax revenue foregone by the City.

As with the Gwangju Ordinance, subsidies to large corporations under the Changwon Ordinance are specific in law and in fact under 19 U.S.C. § 1677(5A)(D)(ii) by favoring certain enterprises over others through possible subsidy amounts and configurations that may be tailored in the discretion of the mayor to the specific needs of individual large companies. Article 29 (“special support for large companies”) of the Changwon Ordinance provides the mayor with significant discretion in the application of eligibility criteria to favor certain large companies deemed to have a significant impact on the local economy.¹⁹⁵

(ii) Use of Changwon Programs During the POI

According to a Korea Times report of May 26, 2008, LG had been recently welcomed along with 16 other new businesses into Changwon City. It is reported that as part of promised efforts to increase investments in the City, LG had invested KRW 250 billion to build dormitories and recreation centers for its employees.¹⁹⁶

The financial reports of LG evidence facilities-related investments which would on their face qualify for subsidies under several of the Gwangju programs described above. For example, it is Q3 2010 Quarterly Report, under the heading “Plans for New and Purchasing Facilities”, LG reported a KRW 172.4 billion investment related to improving productivity of molds, tools and

¹⁹⁵ **Exhibit C-8-U**, Investment Promotion Ordinance (revised July 1, 2010) at Article 29. *See also Exhibit C-8-W*, Investment Promotion Ordinance (date of implementation identified as January 12, 2005) at Article 23.

¹⁹⁶ **Exhibit C-8-BB**, Korea Times (May 26, 2008), “Changwon draws large field of new businesses.”

equipment for refrigerator production.¹⁹⁷ Petitioner notes the molding is one of the 5 strategic industries reported to be targeted for support in Changwon.¹⁹⁸ LG also reported significant increases in the value of buildings and equipment across most of its business divisions, including for home appliances.¹⁹⁹

c. Gyeongsangnam-do Province and Korea Energy Management Corporation Energy Savings Subsidies

Yeonhap News on November 19, 2009 reported that the Gyeongsangnam-do province and 33 local companies, including LG, agreed to adopt energy saving technologies pursuant to an agreement whereby the 33 companies together agreed to save on energy worth KRW 600 million over 5 years. The Gyeongsangnam-do province and the Korea Energy Management Corporation were reported as planning together to provide the companies with “incentives” if the target savings were met.²⁰⁰

To the extent that the “incentives” reported are in the form of a cash grant, this represents a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i) and a benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of the grant in the amount of the grant. In addition, to the extent that any of the above subsidies by Gyeongsangnam-do Province and the Korea Energy Management Corporation are granted in respect of specific production facilities, these benefit amounts would be tied solely to

¹⁹⁷ **Exhibit C-8-CC**, LG Q3 2010 Quarterly Report (translation) at 36.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 34.

²⁰⁰ **Exhibit C-8-DD**, Yeonhap News (November 19, 2009), “Kyung-nam province agrees to reduce energy with 33 business plants.”

the goods, including subject merchandise, which are produced at the facilities in question over the relevant allocation period pursuant to 19 C.F.R. § 351.525(b)(5) and 19 C.F.R. § 351.524.

In terms of specificity, Petitioner believes that this program by Gyeongsangnam-do Province and Korea Energy Management Corporation is specific in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D)(i). The Digital Times of August 22, 2007, reported that the Gyeongsangnam-do province selected the “Smart Home Industry” as one of its 4 strategic industries.²⁰¹ The Province, together with Korea Energy Management Corporation, have either established express criteria that limit the availability of this program to those four “strategic industries” (including the “Smart Home Industry”), or they have limited the availability of this program in fact. According to the Digital Times article, Changwon in particular is considered a good place for smart home businesses because major factory and R&D institutes for home appliances are located in Changwon, including LG’s home appliance factory, LG’s Home Networking R&D Institute, the branch office of the Korea Institute of Machinery and Materials, and the branch office of Korea Electro-Technology Research Institute. In addition, the Digital Times reports that more than 70 smart home-related SMEs are also located in Changwon.

d. Government of Korea Facilities Investment Support: Articles 26 of the Restriction of Special Taxation Act (“RSTA”)

The GOK provides support to facilities investments to the same extent as its local and regional counterpart governments. In addition to providing funds directly to local and regional governments for purposes of subsidies described above, key GOK income tax provisions provide significant tax benefits for facilities investments under RSTA Article 26.²⁰²

²⁰¹ **Exhibit C-8-EE**, Digital Times (August 22, 2007).

²⁰² **Exhibit C-9-B**, Restriction of Special Taxation Act, Article 26.

Article 26 of the RSTA in its form during the POI provided a tax incentive for qualifying facilities investments. The Department has previously determined that Article 26 and its predecessors' version was both countervailable (when the provisions included import-substitution elements) and non-countervailable (when the import-substitution elements were eliminated).²⁰³

(i) Financial Contribution

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 19 U.S.C. § 1677(5)(D)(ii).

(ii) Benefit Conferred

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.

(iii) Specificity

Petitioner believes based on new information reasonably available to it that Article 26 is in fact specific to certain companies and industries and requests the Department to investigate the use of the program over the POI.

Specifically, the Voice of Public reported in October 2010 that for the taxation year 2009, total tax benefits from RSTA Article 26 amounted to just over KRW 2 trillion, 43.7 percent of

²⁰³ *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation, Import Administration Memorandum (June 16, 2003).*

which was granted to 5 major companies including Samsung Electronics Co., Ltd. and LG Electronics Inc.²⁰⁴

In addition, in a November 9, 2010 edition of Tax Daily, Professor Yoon Tae Hwa of Kyungwon University and Vice President of Korean Accountings Academics Associations is reported as having agreed with GOK views that the Article 26 Temporary Tax Credit on Investments as it existed in 2010 was unsatisfactory because “its benefits are disproportionately distributed to the large companies and certain industries, and the magnitude of the inequality in distribution is much greater than other forms of tax benefits.”²⁰⁵ In the same edition, Mr. Ahn Jong Seok of the Taxation Research Institute is reported as adding: “some companies get it and some don’t depending on the industry they are in; some investments are eligible, some are not.”

The GOK itself appears to confirm the de facto specificity of these facilities investment tax programs. In an August 19, 2010 Press Release, the Ministry of Strategy and Finance announced “Revisions to improve fiscal situations.”²⁰⁶ In respect of “lifting unnecessary tax exemptions and reductions,” the Ministry specified as follows: “Tax deductions for facility investment will be given to limited number of companies.”²⁰⁷

(iv) Use of Program during the POI

²⁰⁴ **Exhibit C-8-FF**, Voice of Public (October 5, 2010), “Deductions for employment creations? Benefits only the large companies.”

²⁰⁵ **Exhibit C-8-GG**, Tax Daily (November 9, 2010), “Heated and contentious debates over tax benefit repeal. All eyes at politics.”

²⁰⁶ **Exhibit C-8-HH**, GOK Ministry of Strategy and Finance, Press Release (August 19, 2010), “2010 Tax Revision Plan” at 8.

²⁰⁷ *Id.*

Information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of LG or Samsung, and/or any other companies in the LG or Samsung group of companies, used export financing during the POI on exports of subject merchandise. However, on its face, income tax reduction through Article 26 RSTA would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of this program.

For example, as noted above, LG in its Q3 2010 Quarterly Report noted, under the heading “Plans for New and Purchasing Facilities,” a KRW 172.4 billion investment related to improving productivity of molds, tools and equipment for refrigerator production.²⁰⁸ LG also reported significant increases in the value of buildings and equipment across most of its business divisions, including for home appliances.²⁰⁹

On the basis of this information, Petitioner believes that the Department has sufficient grounds to initiate an investigation into this RSTA provision in order to confirm whether it provides countervailable subsidies on the production, manufacture or export of subject goods.

²⁰⁸ **Exhibit C-8-C**, LG Q3 2010 Quarterly Report (translation) at 36.

²⁰⁹ *Id* at 34.

5. Government of Korea 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\$38.1 billion, of which US\$30.7 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.²¹⁰

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 “core technologies” and “new growth engines”.

Specifically, in July 2009, the GOK announced two new targeted enhanced tax deduction programs for research and/or workforce development expenses. Under the first program, set out at subparagraph 1 of Article 10(1) of the RSTA, large corporations making research, supply or workforce development investments in a “new growth engine” technology would qualify for a tax deduction of 20 percent of such expenses in a taxation year, while SME’s would qualify for a tax deduction at a rate of 30 percent.²¹¹ “New growth engine” technologies have been defined to comprise the following:

1. LED
2. Green transportation
3. Robot application
4. Bio-medicine or healthcare equipment
5. New material/nano fusion
6. New renewable energy

²¹⁰ **Exhibit C-9-A**, United Nations Environment Program (UNEP), “An Update for the G20 Pittsburgh Summit” at 2, 7.

²¹¹ **Exhibit C-9-B**, Restriction of Special Taxation Act, Article 10(1)(1), Restriction of Special Taxation Regulations and Annex defining “New Growth Engines” (translation).

7. Contents-software
8. Carbon-reduced energy
9. High margin food
10. High tech water treatment²¹²

Under the second program, pursuant to subparagraph 2 of Article 10(1) of the RSTA, large corporations making research, supply and/or workforce development investments in a one of 18 specified “core technologies” would qualify for a tax deduction of 20 percent of total such expenses in a taxation year, while SME’s would qualify for a tax deduction at a rate of 30 percent.²¹³“Core technologies” are defined to comprise:

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

Under Article 25(2) of the RSTA, the GOK also continues to maintain a tax deduction for investments made in “energy economizing facilities.”²¹⁴

²¹² *Id.*

²¹³ **Exhibit C-9-B**, Restriction of Special Taxation Act, Article 10(1)(2), Restriction of Special Taxation Regulations and Annex with Presidential Decree defining ‘New Growth Engines (translation).

²¹⁴ **Exhibit C-9-B**, Restriction of Special Taxation Act, Article 25-2 (translation).

Note that the GOK tax deduction program under RSTA Articles 10(1)(1) and 10(1)(2) came into force on January 1, 2010, while the Article 25(2) RSTA deduction for investments made in energy economizing facilities were in force prior to 2010 and remained in effect during 2010.²¹⁵ Under the Korean Corporate Income Tax Law, South Korean companies with a 12 month fiscal year must submit tax returns and pay taxes twice on income earned during the fiscal year: first, no later than two months following the first six month period of that fiscal year and then no later than three months following the end of the fiscal year.²¹⁶ For purposes of the mid-year return and payment, companies can opt between paying half of the prior year's income tax or the current year's half year corporate income taxes.²¹⁷ The latter obviously becomes a more attractive option if a company's total semi-annual taxes are lower than the prior year, for example, due to tax reductions, exemptions, and other tax-related subsidies. As such, in accordance with 19 C.F.R. § 351.509(2)(b), petitioner submits that the Department should use both of these tax filing and payment dates for purposes of determining the time of receipt of any countervailable benefit. Petitioner also respectfully requests that the Department consider all countervailable benefits arising in 2010 from these subsidy programs notwithstanding that part of these benefits may only be reflected in tax filings made on or before March 31, 2011, given that the competitive benefit of these programs will have been realized by the subsidy recipients throughout 2010 and will have been reflected in the 2010 financial statements of the subsidy recipients.

²¹⁵ *Id.*

²¹⁶ **Exhibit C-9-C**, Korea Corporate Income Tax Law, Article 63; Corporation Tax Regulations, Article 100 (translations).

²¹⁷ *Id.* at Article 63(5). *See also* **Exhibit C-9-D**, MAC & Partners, summary of Korea local reporting requirements for a corporation at 1; PKF Republic of Korea Tax Guide 2010.

Specific allegations regarding the status of each of the above tax deduction programs as countervailable subsidies are set out below.

a. Research, Supply or Workforce Development Investment Tax Deductions for “New Growth Engines” Under RSTA Art 10.1

(i) Financial Contribution

Tax deductions for research, supply or workforce development expenses for “new growth engines” 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 19 U.S.C. § 1677(5)(D)(ii).

(ii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of Art. 10(1)(1) RSTA tax deductions for research, supply or workforce development expenses in the amount of the tax revenue foregone by the GOK.

(iii) Specificity

Given that eligibility and use of the GOK’s research, supply or workforce development investment tax deduction is limited to expenses pertaining to a specified and highly limited list of “new growth engines”, this program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D).

(iv) Use of Program during the POI

While information reasonably available to Petitioner does not allow Petitioner to confirm actual receipt and use tax of deductions under RSTA Article 10(1)(1) by South Korean producers/exporters of subject merchandise, there is considerable evidence of substantial

investments by major producers of subject merchandise which would appear on their face to qualify for Art 10.1 RSTA tax deductions for research, supply or workforce development expenses.

For example, both LG and Samsung produce and incorporate LED technology into the subject merchandise that they produce. These technologies are heavily advertised by both LG and Samsung in the marketing of subject refrigerators²¹⁸ In May 2010, Samsung announced a KRW 23.3 trillion investment plan between 2010 and 2020 including KRW 8.6 trillion to be invested in LED technology²¹⁹.

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

(i) Financial Contribution

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 19 U.S.C. § 1677(5)(D)(ii).

²¹⁸ **Exhibit C-9-E.** In its website product and marketing materials, Samsung claims to have established an “eco-design strategy” focused on resource efficiency, energy efficiency and eco-friendly materials. A relevant example of this eco-design innovation is the LED lighting currently featured in Samsung’s subject merchandise. Samsung expressly promotes refrigerator LED lighting as “eco-friendly”, designed to burn brighter, last longer, consume less energy and emit less heat. Similarly, LG has initiated a company-wide “eco-design” program to reduce environmental impacts during the course of product design, development, production and distribution. The four pillars of the LG strategy are: (i) improving efficiency when using resources; (ii) reducing the use of hazardous materials; (iii) improving energy efficiency; and (iv) improving recyclability. LG also manufactures and installs LED lighting into exported refrigeration units.

²¹⁹ **Exhibit C-9-F,** Samsung Investor Relations Press Release (May 13, 2010), “Samsung Outlines Investments in Eco, Healthcare Industries”; Online Media Article (May 11, 2010), “Samsung’s \$20B GreenTech Plan.”

(ii) Benefit Conferred

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.

(iii) Specificity

Given that eligibility and use of the GOK's research, supply and workforce development investment tax deduction program is 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 section 19 U.S.C. § 1677(5A)(D).

(iv) Use of Program during the POI

While information reasonably available to Petitioner does not allow Petitioner to confirm actual receipt and use of deductions under RSTA Article 10(1)(2) by South Korean producers/exporters of subject merchandise, there is considerable evidence of substantial investments by major producers of subject merchandise which would appear on their face to qualify for such deductions.

For example, in February 2010, LG announced that it will invest 1.5 trillion won in 2010 in "eco-related sectors, including renewable energies and smart grids".²²⁰ LG's announcement also specifically referenced technology for controlling compressors (a key component in both air conditioners and subject merchandise) as a target for the LG investment. "Smart Grid"

²²⁰ **Exhibit C-9-G**, Korea Times (February 24, 2010), "LG Electronics Promotes Smart Grid Technology."

technology is included in subject merchandise produced by LG and is advertised to “help homeowners improve their energy efficiency”.²²¹

In July 2010, it was further reported that LG Group intends to invest KRW 20 trillion by 2020 to cut greenhouse gas emissions and to develop more energy-saving products.²²² These initiatives would appear on their face to be eligible for an RSTA Article 10(1)(2) tax deduction as related to “increasing energy efficiency” and/or “greenhouse gas”. Similarly, in July 2009, Samsung announced a \$4 billion investment to reduce greenhouse gas emissions by 50 percent.²²³ Furthermore, LG’s reported KRW 172.4 billion investment related to improving production of molds, tools and equipment for refrigerator production on its face would appear to relate to “technologies fundamental to production.”²²⁴

²²¹ **Exhibit C-9-H**, Energy Efficiency News (January 7, 2011), “LG Unveils New Generation of Smart THINQ appliances”; eMeter (undated), “LG unveils smart appliances, but we still need smart electricity rates”; Online Media Article, “Buy Green: Bottom Freezer Refrigerators.”

²²² **Exhibit C-9-I**, Online media article (July 15, 2010), “South Korea Companies and Government to Spend Billions More on Clean Energy.”

²²³ **Exhibit C-9-J**, NewNet News (July 21, 2009), “Samsung Electronics to slash greenhouse emissions by 50 per cent”.

²²⁴ **Exhibit C-8-C**, LG Q3 2010 Quarterly Report (Translation) at 36.

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

(i) Financial Contribution

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 a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

(ii) Benefit Conferred

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 by the GOK.

(iii) Specificity

Given that eligibility and use of the RSTA Article 25(2) tax deduction is limited to investments in energy-economizing facilities, this program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D).

(iv) Use of Programs During POI

Article 22-2 of the RSTA Regulations specifies four categories investments which qualify as “energy economizing facilities”, including “Facilities, parts or materials necessary for facilities producing new or renewable energy...”²²⁵ On its face, LG’s announced KRW 1.5 trillion investment in eco-related sectors including renewable energies) would appear to qualify under the RSTA Article 25(2) tax credit for investment in energy economizing facilities. Similarly, Samsung’s announcement of a \$20 billion investment to develop green technology, including

²²⁵ **Exhibit C-9-B**, Restriction of Special Taxation Regulation, Article 22-2 (translation).

solar cells, battery cells and LED's, would appear on its face to the production of new or renewable energy.²²⁶ Solar power compatibility is yet another area of marketing focus for producers of subject merchandise.²²⁷

d. Targeted Facilities Subsidies through Korea Finance Corporation (“KoFC”), KDB and IBK “New Growth Engine Industry Fund”

Korea Finance Corporation, (“KoFC”), is a policy-based financial institution wholly owned by the GOK, established in October 2009 by the Korea Finance Corporation Act, 2009.²²⁸ According to KoFC filings with the U.S. Securities Exchange Commission, the GOK plans to transfer the national policy and development bank role of the KDB to KoFC.²²⁹ The Department has previously found that the “GOK controls, directly and indirectly, the lending practices of government-owned banks” such as KDB and has found the lending activities of these policy banks to constitute countervailable subsidies.²³⁰

KoFC’s mandate, as set out in Article 1 of the Korea Finance Corporation Act is as follows:

²²⁶ **Exhibit C-9-F**, Online Media Article (May 11, 2010), “Samsung’s \$20B GreenTech Plan.”

²²⁷ **Exhibit C-9-H**, Online Media Article, “Buy Green: Bottom Freezer Refrigerators.”

²²⁸ **Exhibit C-9-K**, Korea Finance Corporation Act, Act No. 9618, Apr. 1 2009, as amended by Act No. 9703, May 21, 2009 and Act No. 9741, May 27, 2009.

²²⁹ **Exhibit C-9-L**, SEC Notice of Application by Korea Finance Corporation for an order under section 6(c) of the Investment Company Act of 1940 for an exemption from all provisions of the Act.

²³⁰ *Notice of Final Affirmative Countervailing Duty Determinations: Stainless Steel Plate from Korea*, 64 Fed. Reg. 15,530, 15,533; *Notice of Final Affirmative Countervailing Duty Determination: Cut-to-Length Plate from Korea*, 64 Fed. Reg. 73,176, 73180 *see also* *Notice of Final Affirmative Countervailing Duty Determination: DRAMS from Korea*, 68 Fed. Reg. 37,122.

*“...to utilize functions of financial institutions for money brokerage and assist small and medium enterprises to raise funds easily and by supplying and managing funds required for the growth of national economy, such as the development of regions, the extension of social infrastructure, the development of new growth engine industries, the stabilization of financial markets, and the facilitation of sustainable growth”.*²³¹

According to an October 2010 Moody’s Company Profile, at the time KoFC was established, its paid-in capital was comprised almost entirely of KRW 14.9 trillion of shares in KDB Financial Group transferred by the GOK to KoFC.²³² While KoFC financial reports 2010 are not available at the time of drafting of this petition, KoFC’s Annual Report for 2009 shows that KoFC incurred an operating loss of KRW 173.9 billion and a net loss of KRW 68.1 billion, or approximately 63 percent and 25 percent of KoFC’s total operating revenues for 2009, respectively. KoFC reported consolidated assets of KRW 182.9 trillion (US\$156.6 billion) as of December 31, 2009.²³³ Notably, pursuant to Article 31 of the Korea Finance Corporation Act, any annual deficit of KoFC not covered by KoFC reserves shall be replenished by the GOK.²³⁴

Among the products advertised by KoFC is a KRW 2 billion “New Growth Engine Industry Fund.” According to the description of the fund at the KoFC website, the “key focus areas” of the fund are the high tech industry, new or renewable energy industry, “other areas deemed necessary by the FSC” (Financial Services Commission), as well as the following 17 “new growth engines”: new renewable energy, low carbon energy, sophisticated water treatment, LED application, green transportation system, new green cities, broadcasting and communications

²³¹ **Exhibit C-9-K**, Korea Finance Corporation Act, Act No. 9618, Apr. 1 2009, as amended by Act No. 9703, May 21, 2009 and Act No. 9741, May 27, 2009 Article 1.

²³² **Exhibit C-9-M**, Moody’s Company Profile, Korea Finance Corporation, October 26, 2010.

²³³ **Exhibit C-9-N**, Korea Finance Corporation, 2009 Annual Report at 56-57.

²³⁴ **Exhibit C-9-K**, Korea Finance Corporation Act, section 31.

convergence, IT convergence systems, robot application, new materials/nanoscience, biopharmaceuticals/medical appliances, high value added food industry, health care, education, environment-related finances, content and software and tourism.²³⁵ The KoFC website further indicates that loans, bond underwriting and/or equity infusions will be provided under the Fund.²³⁶

The KoFC website also identifies KDB and the IBK as contributors to the fund.²³⁷ As noted above, KDB has previously been recognized by the Department as being a policy bank “serv{ing} a key role in the GOK policy objectives” and the Department has found countervailable subsidies with respect to KDB and other South Korean policy bank financing activities. Similarly, IBK is a policy bank established by the GOK in 1961. In its 2009 Annual Report, IBK describes its mission as, “promoting the independent economic activities of small and mid-sized enterprises (SME’s) and enhancing their economic standing.”²³⁸ IBK explicitly acknowledges that it “continues to receive support from the Korean government” and that the government “is responsible for making the Bank whole on any losses.”²³⁹ IBK further reports:

“In response to the global financial crisis, the Korean government took preemptive steps to fortify the capital base of IBK. Beginning in December 2008, the government has so far invested KRW 1,330 billion in IBK: KRW 500 billion of in-kind investment in December 2008; KRW 500 billion in cash in January 2009; KRW

²³⁵ **Exhibit C-9-O**, KoFC Website, “Our Business”, New Growth Engine Industries Facility Investment Fund; <http://www.kofc.or.kr/eng/business/grow.jsp>.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ **Exhibit C-6-C**, Industrial Bank of Korea, 2009 Annual Report at 12-13.

²³⁹ *Id.*

*300 billion in cash in May 2009 and KRW 30 billion in cash in February 2010.*²⁴⁰

(i) Financial Contribution

Loans made under the New Growth Engine Industry Fund constitute a direct transfer of funds and as such all qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) is conferred on the recipient of loans under the New Growth Engine Industry Fund to the extent that the recipient pays a lower rate of interest on the loan as compared to what the recipient would pay on a comparable commercial loan.

(iii) Specificity

Given that KoFC's stated "key focus areas" of the New Growth Engine Industry Fund are high tech, new or renewable energy, areas specifically identified by the Financial Services Commission and the 17 "new national growth engines" cited above, this program is de jure and/or de facto specific to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). In addition, according to a statement of the KoFC President & CEO in the 2009 KoFC Annual Report, the first goal of the organization, under mandate by the GOK, is to target "new growth industries", including those undertaking "green" initiatives relating to energy efficiency:

*"We believe that the path to sustainable growth in a constantly-changing global market is to target support to 'new growth engine' industries."*²⁴¹

²⁴⁰ *Id.* at 13.

²⁴¹ **Exhibit C-9-N**, Korea Finance Corporation, 2009 Annual Report at 5.

This statement further suggests that New Growth Engine Industry Fund subsidies are specific in law or fact.

(iv) Use of Program during the POI

As described in greater detail above, various investments announced by Samsung and LG with respect to LED, “smart grids” and renewable energies would appear on their face to qualify for financing under several of the “new growth engine” categories of “New Growth Engine Industry Fund”, including LED, new renewable energy and IT convergence systems.

e. Government of Korea Green Fund Subsidies

Another targeted stimulus subsidy program implemented in furtherance of the objectives of the “Green New Deal” has the GOK’s announcement in July 2010 that it had set aside KRW 3.5 billion for the establishment of a “Green Fund”, to be operated by KoFC and to be directed primarily toward businesses involved in greenhouse gas emissions and promoting energy efficiency.²⁴² Petitioner has been unable to locate information from KoFC to further describe the operation of the Green Fund (among other things, KoFC’s 2010 Annual Report is not yet available), however press reports regarding the Green Fund quote the finance ministry’s rationale for the establishment of the Green Fund as follows:

“Such support is needed since R&D requires long-term investments and has relatively slow returns, which can cause private companies to delay making critical decisions”.²⁴³

Legal authority for the creation of the Green Fund would appear to arise from the GOK’s April 2010 *Framework Act on Low Carbon, Green Growth* (the “Framework Act”), article 28 of which

²⁴² **Exhibit C-9-P**, Korea IT Times (July 14, 2010), “Korea more than doubles Green R&D funding.”

²⁴³ *Id.*

provides that the GOK shall establish and enforce “financial measures” to facilitate low carbon, green growth, including “raising of financial resources for supporting green economy and green industries and financial support therefor” and “development of new financial products for supporting low carbon, green growth”²⁴⁴.

Other relevant provisions in the Framework Act include:

- Article 26(1): “Facilitation of Research, Development and Commercialization of Green Technology”: provides that the GOK may establish and enforce measures to facilitate research, development and commercialization of green technology, including “financial support for the facilitation of research, development and commercialization of green technology.
- Article 26(2): provides that the GOK shall facilitate convergence of technology for information and communications and shall promote swift transformation into the low carbon, knowledge-based economy by securing intellectual property of green technology
- Article 30: provides that the GOK shall operate the State’s tax system “in the direction of reducing goods and services that generate greenhouse gases and pollutants or that show low efficiency in the use of energy” and facilitating environmentally friendly goods.
- Article 31(1): provides that the GOK or any local government may provide support as may be necessary for green technology and green industries, “such as the payment of subsidies”.
- Article 31(3): provides that the State or local government may support enterprises related to green technology and green industries by abating or exempting them from income tax, corporate tax, acquisition tax, property tax, registration tax, or other tax, as provided for by the Restriction of Special Taxation Act and the Local Tax Act.²⁴⁵

Article 32 of the Framework Act sets out a process for certification of green technology, green projects, green products, and specialized green enterprises. More specifically, in the case of LG, recent voluntary disclosures reveal that the company has obtained green certifications under

²⁴⁴ **Exhibit C-9-Q**, GOK Ministry of Government Legislation, *Framework Act on Low Carbon, Green Growth*”.

²⁴⁵ *Id.*

the Framework Act for technologies that are or may be directly relevant to refrigeration appliances.²⁴⁶

- Green Technology certification for linear high-efficiency inverter technology for refrigerator compressors (5/27/2010 ~ 5/26/2012)
- Green Technology certification for efficient parallel cooling system technology for refrigerators (05/27/2010 ~ 26/05/2012)
- Eco-friendly Green Technology certification for ultra-low PDP
- Eco-friendly Green Technology certification for low-power Smart Plasma Display Panel technology (09/06/2010 ~ 06/08/2012)
- Green Technology certification for electrically driven heat pump technology
- Green Technology certification for ground power solar cells and modules
- Green Technology certification for white LED lighting
- Green Technology certification for high efficiency / high color flat LED lighting design techniques (13/08/2010 ~ 08/12/2012)

Finally, under the Framework Act, specific manufacturing facilities are certified as green facilities. In the case of LG, both of its factories No. 1 and No. 2 at Changwon, which are used for the production of refrigeration appliances, have been certified during the POI. Similarly, in the case of Samsung, its Gwangju No. 2 Factory, which produces compressors and motors for refrigeration appliances and its nearby Hanam Factory, in which refrigeration appliances are assembled, have been certified during the POI as green facilities.²⁴⁷

Based on the above information reasonably available to petitioner, Green Fund subsidies likely either take the form of grants or loans.

²⁴⁶ **Exhibit C-9-R**, LG - Voluntary Disclosure of Certification related to Green Technology and Green Industries (partially translated; source: <http://dart.fss.or.kr/>).

²⁴⁷ **Exhibit C-9-S**, Samsung – Voluntary Disclosure of Identification as Green Enterprise (partial translation), <http://dart.fss.or.kr/>; LG Voluntary Disclosure of Identification as Green Enterprise (partial translation); source: <http://dart.fss.or.kr/>.

(i) Financial Contribution

Green Fund grants or loans represent a direct transfer of funds and as such all qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

To the extent that Green Fund subsidies take the form of a grant, a benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of Green Fund grants in the amount of the grant. To the extent that Green Fund subsidies take the form of a loan, a benefit within the meaning of 19 U.S.C. § 1677(5)(E)(iii) is conferred on the recipient of Green Fund financing to the extent that the recipient pays a lower rate of interest on the loan as compared to what the recipient would pay on a comparable commercial loan.

(iii) Specificity

Petitioner believes, on the basis of information reasonably available to it, that KoFC and IBK Green Fund subsidies are specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). Notably, at the launch of the Green Fund, GOK specified that support provided from the green funds will be directed mainly towards businesses involved in greenhouse gas emissions reduction and promoting energy efficiency.²⁴⁸

²⁴⁸ **Exhibit C-9-P**, Korea IT Times (July 14, 2010), “Korea more than doubles Green R&D funding.”

The Department has in prior determinations found subsidies to be specific in law to an enterprise or industry within the meaning of 19 U.S.C. § 1677(5A)(D)(i) where access to the subsidy is limited to companies or industries developing or promoting alternative energy.²⁴⁹

(iv) Use of Program during the POI

Given that the GOK's stated intent is that the Green Fund be directed primarily toward businesses involved in greenhouse gas emissions and promoting energy efficiency,²⁵⁰ the various LG and Samsung investments described above would on their face qualify for support under the Green Fund in addition to the R&D tax deductions described in the section above.

G. Conclusion

On the basis of the above information reasonably available to Petitioner, the Department should initiate an investigation with respect to countervailable subsidies benefiting the manufacture, production and export of bottom-mount combination refrigerator-freezers from South Korea.

XI. MATERIAL INJURY/CAUSATION

A. The Legal Standard

The antidumping statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."²⁵¹ In assessing whether a domestic industry is materially injured (or threatened with material injury) "by reason of" dumped and/or subsidized imports, the

²⁴⁹ *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 75 Fed. Reg. 55,745, 55,749 (Sept. 14, 2010).

²⁵⁰ **Exhibit C-9-P.**

Commission examines the “significance” of the volume and price effects of such imports, and the consequential impact of those imports on the condition of the domestic industry, taking into account the prevailing conditions of competition in the U.S. market for the subject imports and the domestic like product.

Under the “by reason of” standard, the Commission must “ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between the subject imports and material injury.”²⁵² At the same time,

. . . the “by reason of” standard {does not} require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry. It is clear that the injury caused by other factors does not compel a negative determination.²⁵³

In this case, the effects of “other factors” on the condition of the U.S. industry ought not be a major issue. Non-subject imports of bottom mount refrigerators are negligible, and there is no evidence that either top mount or side-by-side refrigerators have taken market share from bottom mount refrigerators. To the contrary, according to estimates supplied by AHAM, U.S. demand for the higher priced bottom mount refrigerators grew from [1.2] million units in 2006 to [1.8] million units in 2008 to [2.4] million units in 2010, while demand for side-by-side refrigerators fell from [4.1] million units in 2006 to [2.9] million units in 2008 to [2.6]

²⁵¹ 19 U.S.C. § 1677(7)(A).

²⁵² *Certain Coated Paper Suitable for High-Quality Print Graphics Uses Sheet-Fed Presses from China and Indonesia*, Inv. Nos. 701-TA-470-471 at 17.

²⁵³ *Id.* at 18.

million units in 2010, and the comparable figures for top mounts were [6] million in 2006, [5.2] million in 2008 and [5.2] million in 2010.²⁵⁴

B. The Domestic Industry

In Whirlpool's view, there is no reason to exclude any domestic producer from the definition of the industry under 19 U.S.C. §1677(4)(B) of the antidumping statute. At the same time, Whirlpool notes that because its output of bottom mount refrigerators "constitutes a major proportion" of the total domestic production of the "like product," material injury to its bottom mount operations is, effectively, material to the domestic industry within the meaning of 19 U.S.C. §1677(4)(A).

C. Cumulation

Subject to specific exceptions that are not applicable here, the antidumping statute *requires* the Commission to cumulate subject imports from different countries for purposes of its injury analysis where (1) the imports are subject to petitions filed on the same day, and (2) they compete both with one another and with the domestic like product.²⁵⁵ Samsung and LG both produce bottom mount refrigerators in South Korea and Mexico. Samsung's South Korean production competes with LG's Mexican production and vice versa, LG's South Korean production competes with Samsung's Mexican production and vice versa, and the subject refrigerators that Samsung and LG produce in South Korea and Mexico compete with Whirlpool's "domestic like product." Cumulation in this case is, therefore, mandatory.

²⁵⁴ Exhibit 35.

²⁵⁵ 19 U.S.C. 1677(7)(G).

Even if cumulation in this case were permissive rather than mandatory, the rationale for it would be compelling. All subject imports from South Korea are produced by Samsung and LG, as are the great majority of subject imports from Mexico. Both companies have the ability to produce specific bottom mount models in either country and they use production platforms in both countries to supply the U.S. market through the same channels of distribution using the same set of pricing policies and practices. The impact of Samsung's and LG's dumping on the U.S. industry results from the combined effect of their imports from South Korea and Mexico.

D. Conditions of Competition

1. Demand and the Price Sensitivity of Demand

Demand for bottom mount refrigerators comes from (1) home construction, (2) kitchen remodeling, and (3) refrigerator replacement. Over the period of investigation, home construction has been depressed. Nevertheless, available data show that while overall demand for refrigerators fell steadily from 2006 through 2009 before rebounding modestly in 2010, demand for bottom mount refrigerators grew from 2006 through 2008, fell slightly in 2009, and increased significantly in 2010.²⁵⁶ These data provide no basis on which to conclude that the [*phenomenon*] is a function of depressed demand.

At the same time, the data show very clearly that the choice of one bottom mount model as opposed to another is sensitive to their relative value — that is, the features offered at any particular price point. Thus, although there can be significant differences between a subject import model and a domestic like product in terms of configuration, size, and features, *the evidence shows that it is the perceived value of the various products on offer — i.e., the*

²⁵⁶ **Exhibit 35.**

characteristics and features of a particular bottom mount refrigerator model relative to the sales price — that drives purchase decisions by consumers.

In short, pricing in the U.S. market for bottom mount refrigerators matters enormously, as the jump in the volume of Samsung's and LG's sales when they offered their "Black Friday" discounts proves. The only conclusions that can reasonably be drawn from the data are that demand is highly price sensitive and, therefore, that dumping and government subsidies have had a significant impact on competition between subject imports and the domestic like product.

The general practice in the industry is for manufacturers to promote the retail sale of bottom mount refrigerators by providing advertising allowances (*e.g.*, cooperative advertising funds) for retailer advertising based on the "minimum advertised price" or "MAP" published by the manufacturer.²⁵⁷ At certain times, manufacturers may publish discounted MAPs — also called "promotional MAPs" — to drive sales volumes and to support retailer promotional sales. During such promotions, manufacturers typically offer enhanced allowances that have the effect of reducing retailers' cost in order to preserve the retailer's "margin opportunity" (*i.e.*, the difference between the retailer's cost and selling price).

Samsung has been particularly aggressive in utilizing the combination of promotional MAP pricing and enhanced retailer allowances. It routinely authorizes promotions that support retail prices 20-30 percent below the non-discounted MAP as part of a deliberate high/low retail pricing strategy (*i.e.*, alternating between a non-discounted MAP price and a discounted MAP price). In addition, both Samsung and LG have been very aggressive with their special holiday shopping promotions, such as "Black Friday."

²⁵⁷ While individual practices may vary, manufacturers typically provide advertising funds to support retailer advertising at or above the indicated MAP price. Retailers determine the actual retail selling price in their sole discretion. Upon information and belief, LG's policy is to provide incentives to retailers, regardless of whether they decide to sell product based on MAP prices.

The sales data show that the volume of sales spikes when a particular bottom mount refrigerator model is offered at a promotional price. Thus, for example, when LG cut the MAP price of its four door French Door bottom mount on “Black Friday” in 2010, the jump in its sales was immediate and dramatic — in a matter of a few days, LG sold well over [36,750] units of its four-door French Door bottom mount through various retailers (including The Home Depot) at its \$1,199 promotional retail price. To put this figure in perspective, Whirlpool understands that LG’s sales volume for this model was more than [amount] the size of any other bottom mount holiday promotion in U.S. history, and represented [amount].

To be sure, consumer demand is more than a function of price alone. Product characteristics and features also matter enormously. Bottom mount refrigerators are produced in a variety of different configurations. They can be two-door, three-door French Door, four-door French Door with two freezer compartments, or four-door French Door with a pantry and a freezer compartment. They can be (and are) produced in a variety of different sizes. Some have less than 18 cubic feet of storage space, others more than 27 cubic feet; some are standard depth while others are counter depth; most are free standing, but some are built-in. And they are produced with a variety of different features including (but not limited to): color versus stainless doors/drawers; single versus dual evaporator; LED lighting versus conventional lighting; LED versus LCD user interfaces; internal versus external ice/water; crushed versus solid ice; in-door ice dispensing versus through-door ice dispensing; turbo cooling and freezing versus standard cooling; standard or premium shelving; minimal efficiency versus E-Star efficiency rating; etc.

Given the significance of product characteristics and features, success in the market depends on relative pricing — that is the size, configuration, and features available at a

particular price point. The key to Samsung's and LG's market share gains has been their willingness to offer their feature-rich subject refrigerators at heavily dumped and subsidized prices, thereby offering the consumer a value for the price that, in antidumping terminology, is less than the "fair value" of the product.

2. Supply and the Economics of Production

Whirlpool and subject imports are the only sources of large volume supply of bottom mount refrigerators to the United States market. For consumers that want a bottom mount refrigerator, this means that the choice at The Home Depot, Lowe's, Sears, Best Buy and a number of smaller national and regional retailers comes down to a choice between subject imports (whether sold under the Samsung, LG, [*brands*] Electrolux or Frigidaire brand), and Whirlpool (whether sold under the Jenn-Air, KitchenAid, Whirlpool Gold, Maytag, Whirlpool or Amana brand).²⁵⁸ The limited nature of large volume supply means that U.S. market share gains by subject imports necessarily have come at Whirlpool's expense. And as a matter of elementary economics, this in turn means higher unit costs in addition to lower Whirlpool revenues.

The economics of bottom mount refrigerator production requires heavy investment in plant and equipment costs. For example, an increase in production line capacity by [260,000] units per year would likely require a capital investment of \$[49] million or more. Because of the size of this investment, any significant loss of production volume and capacity utilization,

²⁵⁸ Other producers of bottom mount refrigerators (e.g., Sub-Zero, Bosch, Miele, Viking, Thermador) produce "super premium" built-in units that typically sell in small volumes at prices between \$4,000 and \$8,000.

i.e., the base over which fixed costs are spread, will have a significant adverse impact on production efficiencies.

3. Distribution to Retailers and OEM Sales

a. Sales to Retailers

For the most part, the two high volume sources of bottom mount refrigerator supply — *i.e.*, Whirlpool and subject imports (including [*company practice*

]) — compete with one another through sales to retailers that offer their customers a wide selection of bottom mount refrigerators of different brands, in different configurations and sizes, with different features, and at different price points. Petitioner estimates that four of these retailers — Lowe’s, The Home Depot, Sears and Best Buy — sell more than [**68**] percent of all bottom mount refrigerators sold annually in the United States.

Because retailer inventories are finite, when Samsung or LG supports a promotion that significantly lowers its minimum advertised or “MAP” price, the jump in orders can lead to a significant delay between consumer purchase date and delivery date. To illustrate, Whirlpool understands that many consumers who bought LG’s \$1,199 four-door French Door refrigerator in late November 2010 [*behavior*]. Thus, in order to fully capture period of investigation sales of subject imports, the Commission will want to ensure that its questionnaire collects full data on all 2010 “Black Friday” sales of subject refrigerators, even though thousands of the units sold in late November and early December [*description*].

As noted, consumer choice is primarily a function of perceived value — that is, the size, configuration and features of a particular bottom mount refrigerator at a particular price point offered by the retailer. Samsung’s and LG’s practice of regularly supporting steeply discounted promotional MAP prices for their feature-heavy subject refrigerators has, therefore, shaped price competition for bottom mount sales. Consumer choice is, however, also a function of the floor space that a retailer gives to each brand and model, as well as the sales efforts of a retailer’s sales force.

Thus, in addition to pricing at the retail level, competition among the different brands occurs in the effort to convince the retailers to provide each supplier with the floor space and the sales force support it wants. Such competition is shaped by the “margin opportunities” and incentives that the four major producers (and GE) offer to their retailers. These margin opportunities and incentives come in two forms — “front end” and “back end.” On the “front end,” each producer will sell to a retailer at a price that offers a “margin opportunity” based on the difference between the retailer’s acquisition cost and its retail selling price (generally expressed as a percent of the retail price). Retailers report that Samsung and LG use MAP as their suggested retail selling price for margin purposes. In other words, Samsung and LG offer a “margin to MAP” opportunity.²⁵⁹

During a promotion, Samsung and LG may adjust their prices to the retailer and/or provide enhanced allowances in order to give the retailer the opportunity to realize a particular margin even when selling at the discounted MAP price. To illustrate, Samsung might offer a retailer a front-end margin opportunity of 30 percent on a bottom mount refrigerator with a \$2,000 MAP by selling the refrigerator to the retailer for \$1,400. If, as part of a promotion, the

²⁵⁹ As noted above, retailers are free to sell the refrigerators they purchase at whatever price they want.

MAP price for the refrigerator were lowered from \$2,000 to \$1,800, Samsung might preserve the retailer's 30 percent margin opportunity by effectively lowering its price to the retailer from \$1,400 to \$1,260.

In addition to these "front-end" margin opportunities, manufacturers also commonly provide to the retailer "back-end" support, which refers to the amount off the gross invoice price provided to the retailer, including amounts for such items as end-of-year volume rebates, cooperative advertising, and other discounts and allowances (generally expressed as a percent of the gross invoice price). Whirlpool believes that Samsung and LG offer retailers more favorable pricing (*i.e.*, larger front-end and back-end margin opportunities) than Whirlpool does. Data on the specific margins Samsung and LG offer retailers is not publicly available, but Whirlpool has attached at **Exhibit 38** an analysis from [*retailer*] of the contribution to [*performance*] made by different suppliers. This document confirms that Samsung and LG give [*retailer*] a margin opportunity that exceeds the margin opportunity Whirlpool offers.

b. The Significance of Holiday Sales.

Whirlpool estimates that approximately [*amount*] of all bottom mount refrigerators sold in the United States are sold during promotional events that occur on and around four major holidays – Memorial Day, July 4, Labor Day, and Thanksgiving. Samsung and LG have been especially aggressive in their holiday promotional pricing and allowances.

The significance of these holiday promotions to retailers' sales raises two antidumping issues. For Commerce, the issue is whether the discounts and allowances offered during these sales events amounts to targeted dumping. For the Commission, the question is whether quarterly pricing data will obscure the impact on the market of (for example) LG's \$1199 "Black Friday" promotion of its four door French Door model.

c. OEM Accounts.

There are significant sales of bottom mount refrigerators to two major OEM customers, [*OEM modus operandi*]. At present, [*OEM modus operandi*]. Competition for OEM businesses is a function of product features and support at a specified price to the OEM customer.

E. Whirlpool Has Been Materially Injured within the Meaning of the Antidumping Statute.

From 2008 through 2010, Whirlpool's share of the U.S. market for bottom mount refrigerators fell from [*40.7*] percent to [*24.1*] percent,²⁶⁰ prices for a range of its SKUs fell significantly,²⁶¹ and a business that had been operating at a profit margin of [] percent in 2008 saw its profitability erode to the point that it [*business impact*

]. These and other data, which are set out in Table 2 below, show the extent to which Whirlpool's bottom mount refrigerator business has been "materially injured" over the past three years within the meaning of the antidumping and countervailing duty laws.

(1,000 units)	2008	2009	2010	Q4 2009	Q4 2010
1. Production Volume	[<i>819.1</i>]	[]	[]	[]	[]
2. U.S. Commercial Sales	[]	[<i>570.4</i>]	[]	[<i>149.3</i>]	[]
3. U.S. Commercial Sales Value	[\$ []]	[\$ []]	[\$ [<i>638,818</i>]]	[\$ []]	[\$ []]
5. Operating Profit	[\$ []]	[\$ []]	[\$ []]	[\$ []]	[\$ []]
6. Operating Profit (%)	[]%	[]%	[]%	[]%	[]%
7. Production Employees	[]	[<i>1626</i>]	[]	[]	[]

²⁶⁰ Exhibit 6.

²⁶¹ Exhibit 39.

The Commission has consistently found that declines of these magnitudes during the period of investigation supports a finding of present material injury.

The Commission will note that [

PRW trend

].

The fact is that Whirlpool’s efforts to [

PRW issues

]. If Whirlpool’s very sharp loss of market share and the

decline in its pricing are not reversed, [

possible future impact

].

F. Whirlpool Has Been Materially Injured “By Reason of” Subject Imports.

The rise in subject imports both absolutely and relative to U.S. production and consumption during the period of investigation has been “significant” within the meaning of 19 U.S.C. §1677(7)(c)(i), and Samsung’s and LG’s pricing has suppressed the price of the domestic like product “to a significant degree” within the meaning of 19 U.S.C. §1677(7)(e)(ii)(II). Whirlpool recognizes that a temporal coincidence between a decline in the condition of the domestic industry, on the one hand, and, on the other, a “significant” rise in subject imports or “significant” decline in the pricing of subject imports, is not, in and of itself, proof of a causal link between the two. But where, as here, a consumer decision to purchase a Samsung or an LG bottom mount refrigerator is through a retailer that offers the Whirlpool “like

product” as the only non-dumped alternative, the rise in subject imports is, necessarily, a sale lost by Whirlpool. Under these circumstances, the relationship between injury and subject imports is causal. Similarly, where, as here, (1) Whirlpool and the foreign producers under investigation *are the only large volume competitors in this market*, and (2) Whirlpool has no option but to lower its prices to remain competitive, the link between the pricing of subject imports and injury is causal, not simply a temporal coincidence.

1. The Volume of Subject Imports and Its Increase Have Been “Significant.”

The point of sale data collected by NPD, supplemented by other retail sales data [*Company*], leave no doubt that there has been a sharp and very substantial increase in subject imports over the past three years. However, because refrigerator imports enter under tariff subheadings that do not distinguish between bottom mount refrigerators and other refrigerator types, U.S. import statistics do not permit an analysis of the 2008-2010 trends in the volume of subject imports. Whirlpool has, therefore, had to estimate the period investigation rise in subject imports from NPD, [*Company*], and AHAM data sets that distinguish between subject and non-subject imports.²⁶²

As the data in **Table 3** indicate, by Whirlpool’s calculation, imports of bottom mount refrigerators from South Korea and Mexico rose by [*625,664*] units (or [] percent) from 2008 to 2010 and their share of the U.S. market increased by [*16.0*] percentage points:

²⁶² **Exhibit 6.**

Table 3			
Imports of Bottom Mount Refrigerators and U.S. Market Share Trends			
	2008	2009	2010
<i>Volume</i>			
Subject Imports	[916,544]	[]	[1,555,959]
Non-Subject Imports	[]	[14,000]	[]
U.S. Producer Shipments	[]	[]	[]
<i>Market Share (%)</i>			
Subject Imports	[]%	[61.0]%	[]%
Non-Subject Imports	[6.5]%	[]%	[0.4]%
U.S. Producer Shipments	[]%	[]%	[]%

In assessing the volume of subject imports, the rise in that volume and the share of the U.S. market captured by subject imports, the Commission must keep in mind that, by the end of the period of investigation, all bottom mount refrigerators sold [*by company*] bottom mount refrigerators sold through retailers and distributors, were, in fact, [*source*].

2. Subject Imports Have Suppressed and Depressed U.S. Product Prices to a Significant Degree.

The data show that Samsung and LG have relied on promotional pricing of feature-heavy subject refrigerators to greatly expand their share of the U.S. market and to depress market prices over the past three years at Whirlpool's direct expense.

The NPD data show that Whirlpool's point-of-sale retail pricing for virtually all of its largest selling bottom mount models declined between Q1-2008 and Q4-2010:

- The average retail price of its 2 door, 22 cubic foot, stainless steel bottom mount fell from \$1,216 to \$1,070 over the period, as the price of Whirlpool's model was periodically undercut by pricing of a similar LG model.
- The average retail price of Whirlpool's large selling 25 cubic foot, 3 door French Door, stainless steel bottom mount with external ice and water fell from \$1,947 in Q1-2008 to \$1,226 in Q4-2010. Over the same period, LG undercut the price of Whirlpool's model with a comparable model in Q1-

2008, and Samsung undercut the prices of Whirlpool's model between Q3-2008 and Q2-2009 with a similar, but more heavily featured (*e.g.*, dual evaporator), model. The downward price pressure on the Whirlpool model continued in Q4-2009 when the retail price of Samsung's larger 26 cubic foot model (3 door French Door, stainless steel, dual evaporator, LED lighting, etc.) fell from \$1,733 to \$1,598.

- The average retail price of Whirlpool's 27 cubic foot, 3 door French Door, stainless steel bottom mount with external ice and water fell from \$2,187 in Q3-2009 to \$1,616 in Q4-2010 under pressure from *both* (1) Samsung's 26 cubic foot stainless model (with dual evaporators, turbo freeze, etc.), which sold at \$1,733 in Q3-2009 (*i.e.*, \$454 less than the Whirlpool model) and \$1,598 (*i.e.*, \$481 less than the Whirlpool model) in Q4-2009, *and* (2) Samsung's larger 29 cubic foot unit, which sold at \$2,207 in Q1-2010 (*i.e.*, only \$17 above the smaller Whirlpool model). Because all of Samsung's models had dual evaporators and other features that Whirlpool's did not, the downward pressure on the price of Whirlpool's model from competing Samsung models has been especially strong.
- The average retail price of Whirlpool's 4 door French Door bottom mount fell from \$2,328 when the model was introduced in Q3-2010 to \$1,995 in the next quarter under pressure from the \$1,174 average retail price of LG's comparable model, as well as the reduction in the retail price of Samsung's (larger and more featured) 4 door French Door model from \$2,447 in Q3-2010 to \$2,190 in Q4-2010.

In the section that follows, we identify products for pricing analysis that illustrate how the period of investigation drop in Samsung's and LG's prices have suppressed and depressed Whirlpool's prices.

G. Suggested Products for the Commission's Price Analysis

Because no two bottom mount refrigerators share the same specifications and features, and because there are systematic differences between producers on major features (for example, nearly all Samsung bottom mounts sold during the past three years have “twin-cooling,” *i.e.*, dual evaporators, while all of the Whirlpool bottom mounts are single-evaporator models), the only way the Commission will be able to assess relative pricing in a way that takes account of feature differences that are significant to the market is to:

1. Request quarterly pricing data on each company’s largest selling bottom mount model that has a base set of common features. This will allow the Commission to gather data from Whirlpool and LG on broadly “comparable” models.
2. Request pricing data on Samsung’s largest selling model that shares the same feature set except for (1) size (Samsung often has only larger comparison models), and (2) Samsung’s “dual evaporator” and “turbo freezing/cooling” features.
3. Request specification sheets from questionnaire respondents for each of the largest selling models for which pricing data have been supplied. This will allow the Commission to consider the effect on prices of feature differences that are not included in the base set of common features (such as LED lighting and ice/water dispensing configuration).

Furthermore, in collecting pricing data, Whirlpool urges the Commission to seek data on each producer’s sales price to retailers and OEM customers, net of all discounts, incentives, allowances, rebates, and other adjustments that are directly tied to the specific product, but without adjustment for any allocated discounts, incentives, allowances, rebates, or other “back end” adjustments that are not directly tied to the specific product. This instruction is particularly important because any differences in how a given respondent allocates “back-end” allowances across a range of products could drive significant distortions in the comparative pricing analysis.

With these points in mind, Whirlpool proposes that Commission collect data on the following products for its quarterly pricing analysis:

Product 1: 2 external doors; total capacity of 21.5-22.4 cubic feet; stainless steel; single evaporator; no external ice/water dispenser; Energy Star rated

For each quarter during the period, report data for your highest-volume SKU falling within this product definition, identify the specific SKU number, and supply a specification sheet for that SKU.

Product 2: 4 external doors and/or drawers; total capacity of 24.5-25.4 cubic feet; stainless steel; single evaporator; external ice and water dispenser; Energy Star rated

For each quarter during the period, report data for your highest-volume SKU falling within this product definition, identify the specific SKU number, and supply a specification sheet for that SKU.

Product 3: 4 external doors and/or drawers; total capacity of 25.5+ cubic feet; stainless steel; dual evaporators; external ice and water dispenser; Energy Star rated

For each quarter during the period, report data for your highest-volume SKU falling within this product definition, identify the specific SKU number, and supply a specification sheet for that SKU.

Product 4: 3 external doors; total capacity of 26.5-27.4 cubic feet; stainless steel; single evaporator; external ice/water dispenser; Energy Star rated

For each quarter during the period, report data for your highest-volume SKU falling within this product definition, identify the specific SKU number, and supply a specification sheet for that SKU.

Product 5: 3 external doors; total capacity of 27.5+ cubic feet; stainless steel; dual evaporators; external ice/water dispenser; Energy Star rated

For each quarter during the period, report data for your highest-volume SKU falling within this product definition, identify the specific SKU number, and supply a specification sheet for that SKU.

In reviewing this list of products, please note that products 2 & 3 and products 4 & 5 need to be analyzed as pairs in order to facilitate meaningful comparisons as between Whirlpool/LG

(on the one hand) and Samsung (on the other hand), taking into account meaningful feature differences that affect pricing.

H. Subject Imports' Market Share Gains and Pricing Have Come at Whirlpool's Direct Expense.

The U.S. market for bottom mount refrigerators is a market in which subject imports and Whirlpool are the only sources of large volume supply. Under these circumstances, market share gains by subject imports are necessarily at Whirlpool's expense.

1. Lost Sales through Retailers

The sensitivity of consumer purchase decisions to changes in the value of a subject refrigerator that results from either a change in price (*e.g.*, a "Black Friday" discount) or a change in features (*e.g.*, the introduction of a new larger model) is evident from the data. To take an extreme example, the NPD sales database shows that LG sold approximately 3,500 of its four-door French Door bottom mount refrigerators at an average retail price of \$1,922 in Q2-2010. When the price of a very similar model was lowered to \$1,199 for "Black Friday," the sales volume jumped to over [36,000] units in less than a month.

Whirlpool does not claim that every retail level sale of a subject refrigerator has been a Whirlpool "lost sale," but it does contend that "but for" the dumped imports, the volume of U.S. Whirlpool's sales would have been significantly greater than it was. The data show that the market share gain that subject imports have made has not only largely mirrored the market share that Whirlpool has lost, but that because the volume of subject import sales responds to price discounts, the fact that Samsung's and LG's product offerings have been dumped and subsidized has been a significant cause of their market share gains and Whirlpool's market share losses.

2. **Lost OEM Sales.**

Whirlpool's loss of its contract to [*supply*

] is one of the only instances of a "lost sale" that involved direct competition between subject imports and the domestic like product. It was, however, a gargantuan lost sale.

Whirlpool had supplied bottom mount refrigerators to [*customer account*

]. In 2009, the figure was approximately

[*amount*

]. There is no doubt that [*company*

preference] subject refrigerators to those of Whirlpool – [

impact of decision

].

The [

*interpretation of customer
purchasing decision*

] "price competitive."

3. Lost Revenues/Price Suppression

NPD point-of-sale pricing data show how the quarter-by-quarter changes in Samsung's and LG's bottom mount prices forced Whirlpool to lower its prices to retailers to the point that

[*description of deterioration in conditions*
]. Whirlpool's experience [*competing with imports*

]:

- Whirlpool introduced a Maytag 25 cubic ft., four-door, French Door refrigerator in Q3-2010 (model MFX2571XEM). Whirlpool [*merchandising strategy*

]. However, just prior to Whirlpool's [*action*], the NPD data show that Samsung lowered the price of its competing model to support a \$2,318 average retail price. This [*effect*

] NPD data show that in Q3-2010 the average retail price for the Maytag model was \$2,328, or \$10 *above* the average Q3-2010 retail price of the Samsung model. Then, when the average retail price of LG's competing four door French Door model was reduced from \$1,950 to \$1,174 in Q4-2010, Whirlpool [*effect*

] In other words, during two quarters in 2010, Samsung's and LG's pricing of their four door French Door bottom mounts forced Whirlpool to reduce the effective selling price to retailers for its competing Maytag four door bottom mount due to an approximately [*market development*].

The NPD data show similar instances of lost revenue resulting from price depression throughout the past three years. To illustrate:

- The average retail price of Whirlpool's 2-door, 22 cubic foot, stainless steel bottom mount (models GB2SHDXTS/GB2FHDXWS) fell from \$1,216 to \$1,070 over the period, as the retail price for Whirlpool's model was periodically undercut by pricing of a similar LG model (models LBN22515ST/LDC22720ST) in 2008, 2009, and 2010. Subject import pricing [*action*

]

reduction in the model's average retail price.

- The average retail price of Whirlpool's high volume 25 cubic foot, 3 door French Door bottom mount refrigerator (models MFI2568AES/MFI2569VEM/GI5FSAXVY) fell from \$1,947 in Q1-2008 to \$1,226 in Q4-2010. Over the same period, LG undercut the retail price of Whirlpool's model with a comparable model (LFX25960ST) in Q1-2008, and Samsung undercut Whirlpool's prices between Q3-2008 and Q2-2009 with a similar, but more heavily featured (*e.g.*, dual evaporator) model (RM257ABRS). The downward price pressure on the Whirlpool model was increased in Q4-2009 when the retail price of Samsung's larger 26 cubic foot model (RF267AERS) was reduced from \$1,733 to \$1,598. Subject import pricing [

effect

].

- The average retail price of Whirlpool's 27 cubic foot, 3-door French Door bottom mount (model GI7FVCXWY) fell from \$2,187 in Q3-2009 to \$1,616 in Q4-2010 under pressure from *both* (1) Samsung's 26 cubic foot stainless steel bottom mount (models RF267ABRS/ RF267AERS), which sold at \$1,733 in Q3-2009 (*i.e.*, \$454 less than the Whirlpool model) and \$1,598 in Q4-2009 (*i.e.*, \$481 less than the Whirlpool model), *and* (2) Samsung's larger 29 cubic foot unit (model RFG297AARS), which sold at \$2,207 in Q1-2010 (*i.e.*, only \$17 above the smaller Whirlpool model). Because all of Samsung's models had dual evaporators and other features that Whirlpool's did not, the downward pressure on the retail prices of Whirlpool's model from competing Samsung models has been especially strong. Subject import pricing [

effect

].

- In investigating these allegations, the Commission should develop customized questions that can be posted to the retailers — including [*companies*] — in order to validate Petitioner's claims and assess their magnitude.

XII. THREAT OF MATERIAL INJURY

A. The Legal Standard

The antidumping statute instructs the ITC to assess threat of material injury by reason of dumped imports by reference to, *inter alia*:

- The extent to which there is unused production capacity in the country of export.
- The rate of increase in the volume or market penetration of the subject imports.
- The pricing of the subject imports (e.g., are they likely to have a significant depressing or suppressing effect on domestic prices).
- The actual and potential negative effects of the imports on product research and development by the U.S. industry.

Under these criteria, the threat posed to Whirlpool and other domestic producers by Samsung's and LG's imports from South Korea and Mexico is real, substantial, and imminent. The data show a significant 2008 through 2010 rise in subject imports along with steadily declining prices. Samsung and LG have each stated that the rise in their shipments to the United States is part of a campaign to greatly increase their presence in the U.S. market for premium appliances:

KOREA TIMES:²⁶³

“LG Electronics, which competes with the likes of Whirlpool ... aims to be the industry's undisputed kingpin by 2014.”

CONSUMER ELECTRONICS:²⁶⁴

“Samsung, LG Take Aim at Whirlpool with Smart Appliances”

“The Korean companies aim to parlay their expertise in tech products to develop computer-like household appliances... Samsung Electronics wants to become the biggest large household-appliance brand by making refrigerators smarter.”

“The next year or two will determine which company leads' says Mark Ishac, a managing director at Zpryme Research & Consulting in Austin, Texas. ‘Samsung could take share from the more traditional companies. They could certainly make waves.’”

WALL STREET JOURNAL:²⁶⁵

²⁶³ *LG Eyes Top Spot in Home Appliances*, KOREA TIMES (Jan. 11, 2011), attached at **Exhibit 40**.

²⁶⁴ *Samsung, LG Take Aim at Whirlpool with Smart Appliances*, Consumer Electronics (Jan. 26, 2011), attached at **Exhibit 41**.

“We’d made a massive investment (to help boost the home appliance business) last year’ ... {said Samsung} ... ‘The investment in 2010 nearly totaled around a trillion won ... and we expect that will eventually pay off somewhat.’”

REUTERS:²⁶⁶

“Samsung targets \$30 billion in 2015 home appliance sales”

“Samsung’s home appliance business continued to lose money in the third quarter.”

B. Capacity

In order to meet their very aggressive growth targets, Samsung and LG have been expanding their production capabilities in both South Korea and Mexico. Precise data on their capacity expansion is *not* publicly available. However, the magnitude of the expansion is evident from Samsung’s public disclosure of its 1 trillion won investment in home appliances.²⁶⁷ Moreover, it should be readily apparent that neither company could project the appliance sales growth it projects without the capacity to do so in place or planned.

C. Rate of Increase of Imports from South Korea and Mexico

By Whirlpool’s estimate, the volume of subject imports from South Korea and Mexico has increased by [] percent (*i.e.*, from [**886,978**] in 2008 to [**1,522,497**] in 2010). Given Samsung’s and LG’s stated intention of displacing Whirlpool as the largest supplier of appliances to the United States, there is good reason to believe that, without the discipline imposed by the

²⁶⁵ *Samsung, LG Expect Home Appliance Sales to Rise*, THE WALL STREET JOURNAL (Jan. 11, 2011), attached at **Exhibit 42**.

²⁶⁶ *Samsung Targets \$30 Billion in 2015 Home Appliance Sales*, REUTERS (Jan. 10, 2011), attached at **Exhibit 3**.

²⁶⁷ **Exhibit 42**.

antidumping law and countervailing duty laws, the volume of subject imports from both countries will continue to increase at these rates for the foreseeable future.

D. Import Pricing

As the NPD data in Table 4, below, indicate, both Samsung and LG systematically lowered the prices of their large volume U.S. sales of subject refrigerators over the past three years:

Table 4				
Illustrative Retail Pricing for Samsung and LG Bottom Mount SKUs Sold During POI				
	PRODUCT DESCRIPTION	BEGIN DATE / AVG. PRICE	END DATE / AVG. PRICE	\$ DECLINE / % DECLINE
Samsung				
RF267AERS	3 door, FDBM; 26 cubic feet; stainless steel; dual evaporator; external ice & water; energy star; LED lighting; power cooling/freezing; etc.	Sept. 2009 \$1,870	Dec. 2010 \$1,656	\$214 11.4%
RFG297AARS	3 door, FDBM; 29 cubic feet; stainless steel; dual evaporator; external ice & water; energy star; LED lighting; power cooling/freezing; etc.	April 2008 \$2,860	Dec. 2010 \$1,851	\$1,009 35.3%
RF4287HARS	4 door/drawer, FDBM; 28 cubic feet; stainless steel; dual evaporator; external ice & water; energy star; LED lighting; power cooling/freezing; etc.	May 2010 \$2,505	Dec. 2010 \$2,129	\$376 15.0%
LG				
LFX25971ST	3 door, FDBM; 25 cubic feet; stainless steel; single evaporator; external ice & water; energy star; LED lighting; etc.	April 2008 \$2,331	Oct. 2010 \$928	\$1,403 60.2%
LMX25981ST	4 door/drawer FDBM; 25 cubic feet; stainless steel; single evaporator; external ice & water; energy star; LED lighting; etc.	May 2008 \$2,511	Dec. 2010 \$1,118	\$1,393 55.5%
LMX25964ST	4 door/drawer FDBM; 25 cubic feet; stainless steel; single evaporator; external ice & water; energy star; LED lighting; etc.	October 2010 \$2,007	Dec. 2010 \$1,172	\$835 41.6%

There is no reason to believe that this trend will change without antidumping orders on subject imports from South Korea and Mexico and a countervailing duty order on subject imports from South Korea.

E. The Foreseeable Effects of Continued Dumping of Bottom Mount Refrigerators from South Korea and Mexico on the U.S. Industry.

As the volume of subject imports has increased, and as Samsung and LG have continued to lower the prices of their large selling subject refrigerator models, Whirlpool's bottom mount refrigerator business [*impact*

]. The plainly foreseeable effects of continued unfair import competition from Samsung and LG are conditions that will not support continued investment in U.S. production of bottom mount refrigerators.

XIII. CONCLUSION

As this petition demonstrates, there is compelling evidence that the 2008-2010 rise in imports of bottom mount refrigerators from South Korea and Mexico has been driven by a combination of dumping and government subsidies, and the effect of the unfairly traded imports has been to "materially injure" the U.S. industry that produces the "like product." Even more injury will be inflicted in the future if these unfair trade practices are allowed to continue.

Accordingly, Whirlpool — which accounts for the great majority of U.S. production of the "like product" — asks the Department and the Commission to initiate antidumping investigations

of subject imports from South Korea and Mexico, and to initiate a countervailing duty investigation of subject imports from South Korea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack A. Levy". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Jack A. Levy

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EXHIBIT C-9-G	KOREA TIMES ARTICLE (FEBRUARY 24, 2010)
EXHIBIT C-9-H	ENERGY EFFICIENCY NEWS (JANUARY 7, 2011); EMETER ARTICLE
EXHIBIT C-9-I	[ONLINE MEDIA ARTICLE] (JULY 15, 2010)
EXHIBIT C-9-J	NEUNET NEWS ARTICLE (JULY 21, 2009)
EXHIBIT C-9-K	KOREA FINANCE CORPORATION ACT
EXHIBIT C-9-L	SEC NOTICE OF APPLICATION BY KOREA FINANCE CORPORATION
EXHIBIT C-9-M	MOODY'S COMPANY PROFILE, KOREA FINANCE CORPORATION, OCTOBER 26, 2010
EXHIBIT C-9-N	KOREA FINANCE CORPORATION, 2009 ANNUAL REPORT
EXHIBIT C-9-O	KOFC WEBSITE, "OUR BUSINESS," NEW GROWTH ENGINE INDUSTRIES FACILITY INVESTMENT FUND
EXHIBIT C-9-P	[ONLINE MEDIA ARTICLE] (JULY 13, 2010)
EXHIBIT C-9-Q	GOK MINISTRY OF GOVERNMENT LEGISLATION, <i>FRAMEWORK ACT ON LOW CARBON, GREEN GROWTH</i>
EXHIBIT C-9-R	LGE - GREEN COMPANY VOLUNTARY DISCLOSURE OF CERTIFICATION RELATED TO GREEN TECHNOLOGY AND GREEN INDUSTRIES
EXHIBIT C-9-S	SEC – VOLUNTARY DISCLOSURE OF IDENTIFICATION AS GREEN ENTERPRISE; LGE VOLUNTARY DISCLOSURE OF IDENTIFICATION AS GREEN ENTERPRISE
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TABLE OF EXHIBITS (cont.)

EXHIBIT C-10-B	CERTIFICATION OF ACCURACY FROM MR. HUGH LEE
EXHIBIT C-11	KEXIM ANNUAL REPORT 2010