

KEPCO forecasts the dates in the peak season, usually July and August, when each participating company could curtail its usage. For a company to receive discounts under this program, the company would have to decrease its usage by 20 percent or more over 30 minutes on the contracted dates. The total average for all of the contracted dates must be 20 percent or more and the curtailed period must be over five days or five 30-minute periods, or units, to receive the discount. The discount amount is calculated on the actual curtailment of power. KEPCO calculates the actual power usage during 10 a.m. to 12 p.m. on the day the reduction is to take place. KEPCO then calculates the actual usage during 2 p.m. to 4 p.m. that same day. By comparing these two measurements, KEPCO is able to determine if the company reduced its power usage by the required amount. If the company curtails its power for at least 5 units, KEPCO will determine the total power reduction and then calculate the discount based on this amount. The discount will then be applied to the following month's electricity bill. If the company determines that it does not want to reduce its power on the dates specified, the company would not receive the discount.

We analyzed whether the VEPS program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the VEPS, all general, educational, and industrial customers who have the necessary contract demand are eligible to participate in the discount program. Therefore, based on our analysis of the law, we preliminarily determine that the VEPS electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the VEPS program and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the VEPS are distributed to a large number of firms in a wide variety of industries. See August 7, 2003, Verification Report for the GOK in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (GOK Verification Report) at pages 6–7. Therefore, after analyzing the data with respect to the large number of

companies and diverse number of industries which received electricity discounts under this program during the POR, we determine that the VEPS program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we preliminarily find that the VEPS program is not countervailable.

C. Kangwon's Debt-to-Equity Swap

Petitioners allege that Kangwon Industries Ltd. (Kangwon) received a countervailable benefit through a debt-for-equity swap and that the benefit is attributable to INI. See the April 18, 2003, New Subsidy Allegation Memorandum from the team to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, which is on file in the Department's central records unit (CRU). Specifically, petitioners state that on March 15, 2000, Kangwon merged with Inchon. At the same time as the merger, a substantial number of Kangwon's creditors agreed to forgive Kangwon's debt in exchange for shares in Kangwon. Petitioners state that record evidence indicates that the GOK owned or controlled many of the banks that participated in the swap.¹⁰ Furthermore, petitioners allege that Kangwon was unequityworthy in 2000, the year of the debt-for-equity swap. They base their allegation of Kangwon's unequityworthiness on the fact that the company was found uncreditworthy in 1998. See *Final Affirmative Countervailing Duty Determination of Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) and accompanying Issues and Decision Memorandum.

Petitioners argue that the GOK-owned banks' decision to participate in the swap was inconsistent with the usual investment practice of private investors, and, therefore, conferred a benefit upon Kangwon and its parent company, Inchon, within the meaning of section 771(5)(E)(i) of the Act, in the form of a government equity infusion, as the equity for which the debt was exchanged was worthless at the time of its issuance. Petitioners further allege that the debt-for-equity swap constitutes a government financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone. In addition, they allege that this program is specific under section 771(5A)(D)(iii)(IV) of the

Act, as this transaction was limited to Kangwon.

On June 26, 1999, Kangwon and Inchon entered into a memorandum of understanding (MOU) regarding the merger. On July 27, 1999, Kangwon and Inchon established a task force team to carry out the merger. On October 15, 1999, at the 8th Creditor Financial Institutions' Conference (Creditors' Conference) the creditors voted on seven agenda items that detailed the different financial transactions and agreements, as well as Kangwon's merger with Inchon. Five of these seven items passed with the required 75 percent approval of creditors who were signatories to the CRA. On November 1, 1999, at the 9th Creditors' Conference, the final two agenda items were approved. Then, on November 2, 1999, the BOD of both Inchon and Kangwon met to approve the merger, and the two companies entered into the merger agreement. On December 14, 1999, Kangwon's shareholders met and approved the merger, and on January 7, 2000, Inchon's shareholders met and approved the merger. On January 12, 2000, the debt-to-equity swap was made. The financial transactions completing the merger were executed on March 15, 2000, and Kangwon's stocks were swapped for Inchon's stocks. On March 16, 2000, Inchon reported the merger to the Korean Stock Exchange. On July 31, 2000, the companies entered into the supplemental agreement for the merger, which included additional financial guarantees.

We examined this issue at length during verification (see GOK Verification Report and the August 7, 2003, Verification Report for INI in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (INI Verification Report)). We found that the debt-to-equity swap was agreed to by Kangwon's creditors on the condition that the merger was completed, that an interest rate adjustment on Kangwon's outstanding debt would be considered, that the share issuance price should be the market price, and that Inchon could not choose the loan types that would be converted to equity. See INI Verification Report at 5. Moreover, we found that the terms of the merger and the swap were part of the same agreement, *i.e.*, the 1999 Merger Agreement was approved by Inchon's and Kangwon's BOD at the same time. Based on record evidence and information collected during verification we preliminarily find that, because the swap took place on the condition of the merger's completion, Kangwon's creditors were effectively exchanging their debt for equity in

¹⁰ See the April 19, 2000, Memorandum to Melissa Skinner, Re: Verification Report for Kangwon Industries, Ltd. in the Countervailing Duty Investigation of Structural Steel Beams from the Republic of Korea (Kangwon Verification Report), which is on the record of the instant administrative review.