



C-583-855

Investigation

POI: 1/1/2013 – 12/31/2013

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May 13, 2015

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

FROM: James Maeder  
Senior Director, Office I  
Antidumping and Countervailing Duty Operations

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

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## I. SUMMARY

The Department of Commerce (Department) determines that no countervailable subsidies are being provided to producers and exporters of certain steel nails (nails) in Taiwan, pursuant to section 705(a) of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are PT Enterprise Inc. (PT Enterprise) and Quick Advance Inc. (Quick Advance). The petitioner is Mid Continent Steel & Wire, Inc. (the petitioner).

## II. BACKGROUND

On November 3, 2014, we published our *Preliminary Determination* for this investigation.<sup>1</sup> Between November 6 and November 13, 2014, we conducted verifications of the questionnaire responses submitted by the Taiwan Authorities (the TA), PT Enterprise, and Quick Advance. We released verification reports on December 4, 2014.<sup>2</sup> PT Enterprise submitted a case brief on December 12, 2014.<sup>3</sup> The petitioner submitted a rebuttal brief on December 17, 2014.<sup>4</sup> No other parties submitted case or rebuttal briefs.

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<sup>1</sup> See *Certain Steel Nails From Taiwan: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 65181 (November 3, 2014) (*Preliminary Determination*).

<sup>2</sup> See Memoranda to James Maeder, Senior Director, AD/CVD Operations, Office I, “Verification Report: the Taiwan Authorities” (December 4, 2014) (TA VR); “Verification Report: PT Enterprise, Inc. (PT Enterprise)” (December 4, 2014); and, “Verification Report: Quick Advance, Inc. (Quick Advance)” (December 4, 2014).

<sup>3</sup> See Letter from PT Enterprise, “PT Enterprise’s Administrative Case Brief in the Countervailing Duty Investigation on Certain Steel Nails from Taiwan” (December 12, 2014) (PT Enterprise Brief).

<sup>4</sup> See Letter from the petitioner, “Certain Steel Nails from Taiwan: Petitioner’s Rebuttal Brief” (December 17, 2014) (Petitioner Brief).



The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs at issue for our final determination. Additionally, we address the comments submitted by interested parties in their case briefs and rebuttal briefs in the “Analysis of Comment” section below, which contains our response to the issues raised in these briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below. We recommend that you approve the positions we described in this memorandum.

The sole issue about which we received comments following the *Preliminary Determination* is the specificity of grants under the Energy Technology Program.

### **III. SCOPE OF THE INVESTIGATION**

The final version of the scope, reflecting the changes referenced in the “Scope Comment” section, below, appears in Appendix I of the *Final Determination*.

### **IV. SCOPE COMMENTS<sup>5</sup>**

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

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

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

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties’ Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the

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<sup>5</sup> In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties’ requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

merchandise referenced in the HTSUS subheadings identified in Interested Parties' Proposed Exclusion, and which altered the reference to "described in one of the following current HTSUS subheadings" to "currently classified under the following HTSUS subheadings." The Department proposal also contained two other revisions.<sup>6</sup> In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit ("mixed media and kits") analysis criteria.

On April 15, 2015, Home Depot, Target, IKEA, and the petitioner submitted comments objecting to the Department's proposed modification to Interested Parties' Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.<sup>7</sup> Those parties also commented that language related to "mixed media and kits" analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and the petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

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

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

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

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

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<sup>6</sup> The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

<sup>7</sup> Home Depot and Target also noted that use of "described in one of the following current HTSUS subheadings" ties the complete language of the HTSUS regarding those subheadings to the scope, while use of "currently classified under the following HTSUS subheadings" fails to achieve that goal.

## V. SUBSIDIES VALUATION

### A. Period of Investigation

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

### B. Allocation Period

We normally allocate the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>8</sup> We find the AUL in this proceeding to be 15 years, pursuant to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>9</sup> We notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party to this proceeding objected to our use of this AUL.

### C. Attribution of Subsidies

*Cross Ownership:* In accordance with 19 CFR 351.525(b)(6)(i), we normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-ownership. Subsidies to the following types of cross-owned companies are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership "exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." This section of our regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to our regulations further clarifies our cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

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

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<sup>8</sup> See 19 CFR 351.524(d)(2).

<sup>9</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

(or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>10</sup>

Thus, our regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (CIT) upheld our authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>11</sup>

### *PT Enterprise*

PT Enterprise was formed in 2002, to serve as an exporter for Pro-Team Coil Nail Enterprise, Inc. (Pro-Team), a producer of both subject and non-subject merchandise in Taiwan.<sup>12</sup> Pro-Team was formed in 2001 by a group of Taiwan individuals as a domestically-owned corporation.<sup>13</sup> PT Enterprise is registered in the British Virgin Islands, and operates in Taiwan out of Pro-Team’s headquarters as a foreign corporation owned by a Taiwan individual.<sup>14</sup> During the POI, Pro-Team produced both subject and non-subject merchandise, sold this merchandise to PT Enterprise and unaffiliated exporters, and exported some of its own merchandise.<sup>15</sup> During the POI, PT Enterprise exported subject merchandise produced by Pro-Team and four other unaffiliated producers in Taiwan.<sup>16</sup>

PT Enterprise states that it was owned during the POI by one individual, who was also the largest individual shareholder (though not a majority shareholder) of Pro-Team.<sup>17</sup> Thus, PT Enterprise requested that it be required to provide complete initial countervailing duty (CVD) questionnaire responses only for PT Enterprise and Pro-Team.<sup>18</sup> On August 14, 2014, we issued a letter to PT Enterprise stating that based on the information submitted in the PT Enterprise July 24 Letter and PT Enterprise Affiliation Response, we found it to be appropriate for PT Enterprise to provide complete initial CVD questionnaire responses for PT Enterprise and Pro-Team. As such, PT Enterprise responded to our initial questionnaire on behalf of itself and Pro-Team.<sup>19</sup> In our third supplemental questionnaire to PT Enterprise, we requested that it describe the business relationships between certain additional affiliates and both PT Enterprise and Pro-Team, including providing a detailed description of how each identified company was involved in the production of subject merchandise during the POI.

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<sup>10</sup> *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

<sup>11</sup> *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-03 (CIT 2001).

<sup>12</sup> *See* Letter from PT Enterprise, “PT Enterprise Initial Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (September 2, 2014) (PT Enterprise IQR) at 5-6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* *See also* Letter from PT Enterprise, “PT Enterprise Affiliation Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (July 31, 2014) (PT Enterprise Affiliation Response) at 4.

<sup>15</sup> *See* Letter from PT Enterprise, “PT Enterprise Notification Regarding Unaffiliated Producers/Exporters: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (July 24, 2014) (PT Enterprise July 24 Letter) at 2-3.

<sup>16</sup> *Id.*, at 2.

<sup>17</sup> *See* PT Enterprise Affiliation Response at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *See generally* PT Enterprise IQR.

We continue to determine that PT Enterprise did not itself receive subsidies under any of the programs under investigation during the POI or during the AUL period that would be attributable to the POI.<sup>20</sup> We also continue to determine that PT Enterprise and Pro-Team are not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because based on the degree of common ownership reported,<sup>21</sup> the ownership standard is not met. However, pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, in the *Preliminary Determination*, we cumulated the subsidies Pro-Team received, as the producer of subject merchandise, with those received by PT Enterprise, as the trading company, pursuant to 19 CFR 351.525(c).<sup>22</sup>

Pro-Team, however, received assistance under the “Grants Under the Energy Technology Program (ETP)” discussed below. The assistance Pro-Team received represents the only use of any of the programs under investigation during the POI or during the AUL period that would be attributable to the POI. As noted above, we have determined that no countervailable subsidies are being provided to producers and exporters of certain steel nails in Taiwan. However, we have examined the assistance provided to Pro-Team under the “Grants Under the Energy Technology Program (ETP),” and in accordance with 19 CFR 351.525(c), we have cumulated this assistance with the subsidies received by PT Enterprise. Because this assistance represents the only use of any of the programs under investigation during the POI or during the AUL period that would be attributable to the POI, the calculation resulting in a *de minimis* rate demonstrates that this final determination would be negative regardless of any countervailability finding for the ETP.<sup>23</sup>

Regarding the additional affiliates for which we requested information in our third supplemental questionnaire, we do not reach the issue of whether cross-ownership exists or, whether subsidies to these additional affiliates would be attributable to the subject merchandise produced by Pro-Team or exported by PT Enterprise under 19 CFR 351.525(b)(6), because we determine that

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<sup>20</sup> See generally PT Enterprise IQR; Letter from PT Enterprise, “PT Enterprise First Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (September 22, 2014); Letter from PT Enterprise, “PT Enterprise Second Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (September 29, 2014) (PT Enterprise 2SQR); Letter from PT Enterprise, “PT Enterprise Third Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan” (October 7, 2014) (PT Enterprise 3SQR); Letter from the TA, “RE: Steel Nails from Taiwan, Countervailing Duty Investigation” (September 2, 2014) (TA IQR); Letter from the TA, “Steel Nails from Taiwan, Countervailing Duty Investigation” (September 17, 2014) (TA 1SQR); Letter from the TA, “Steel Nails from Taiwan, Countervailing Duty Investigation” (September 29, 2014) (TA 2SQR); and Letter from the TA, “Steel Nails from Taiwan, Countervailing Duty Investigation” (October 14, 2014) (TA 3SQR).

<sup>21</sup> See PT Enterprise Affiliation Response at Exhibit 1.

<sup>22</sup> See *Preliminary Determination*, and accompanying Decision Memorandum (dated October 27, 2014) at “VII. Subsidies Valuation – B. Attribution of Subsidies” at 8-9. As noted above, PT Enterprise did not receive subsidies under any of the programs under investigation during the POI or during the AUL period that would be attributable to the POI.

<sup>23</sup> See Memorandum to the File, “Final Determination Calculation Memorandum for PT Enterprise, Inc. (PT Enterprise)” dated concurrently with this memorandum (PT Enterprise Final Calculation Memorandum).

these additional affiliates did not receive subsidies under any of the programs under investigation.<sup>24</sup>

### *Quick Advance*

Formed in 2012, Quick Advance is registered in the Republic of Seychelles, and operates as a reseller and exporter of nails, screws, racks, packaging materials, and other products.<sup>25</sup> It submitted responses to our questionnaires on behalf of itself, as an exporter of subject merchandise, and its affiliated exporter/producer of subject merchandise, Ko's Nail Inc. (Ko).<sup>26</sup> Ko was formed in 2001 by a group of Taiwan individuals as a domestically-owned enterprise.<sup>27</sup> During the POI, Ko produced both subject and non-subject merchandise, sold this merchandise to Quick Advance and unaffiliated exporters, and exported some of its own merchandise.<sup>28</sup> During the POI, Quick Advance exported subject merchandise produced by Ko and two other unaffiliated producers in Taiwan.<sup>29</sup>

Quick Advance requested that it be required to provide complete initial CVD questionnaire responses only for itself and Ko.<sup>30</sup> On August 13, 2014, we issued a letter to Quick Advance stating that based on the information submitted in the Quick Advance July 24 Letter and Quick Advance Affiliation Response, we found it to be appropriate for Quick Advance to provide complete initial CVD questionnaire responses only for Quick Advance and Ko. As such, Quick Advance responded to our questionnaires on behalf of itself and Ko, a producer of subject merchandise which Quick Advance exported to the United States during the POI.<sup>31</sup>

However, in our letter of August 13, 2014, we also asked Quick Advance to describe the business relationship both Quick Advance and Ko maintained during the POI with another affiliated company listed in the Quick Advance Affiliation Response, seeking information on how this company was involved in the production of subject merchandise. Quick Advance stated that the affiliate about which we requested additional information operated as a toller for Ko's production of a certain type of nails during the POI, applying a phosphate surface coating on certain drywall nails.<sup>32</sup> Based on this information, we requested that Quick Advance submit a complete initial CVD questionnaire response on behalf of this affiliate, and it did so in the Quick Advance IQR-II. However, we have not reached the issue of whether cross-ownership exists or whether subsidies to the additional affiliate would be attributable to the subject merchandise produced or exported by Quick Advance or Ko under 19 CFR 351.525(b)(6) because we

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<sup>24</sup> See PT Enterprise 3SQR at 6-7 and TA 3SQR at 1-2.

<sup>25</sup> See Letter from Quick Advance, "Quick Advance Initial Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan" (September 2, 2014) (Quick Advance IQR-I) at 5 and 7.

<sup>26</sup> See, e.g., Letter from Quick Advance, "Quick Advance Notification Regarding Unaffiliated Producers/Exporters: Countervailing Duty Investigation of Certain Steel Nails from Taiwan" (July 24, 2014) (Quick Advance July 24 Letter).

<sup>27</sup> See Quick Advance IQR-I at 5-7.

<sup>28</sup> See Quick Advance July 24 Letter at 2-3.

<sup>29</sup> See Letter from Quick Advance, "Quick Advance Affiliation Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan" (July 31, 2014) (Quick Advance Affiliation Response) at 8.

<sup>30</sup> *Id.*

<sup>31</sup> See generally PT Enterprise IQR.

<sup>32</sup> See Quick Advance IQR-I at 3.

continue to determine that none of these three companies received subsidies under any of the programs under investigation.<sup>33</sup>

#### **D. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), we consider the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the subsidy program described below are explained in the "Final Calculation Memorandum" prepared for this investigation.<sup>34</sup>

#### **E. Discount Rates**

Consistent with 19 CFR 351.524(d)(3)(i)(B), in order to allocate non-recurring benefits over time, we used the average cost for long-term, fixed rate loans in Taiwan, as provided by the Bank of Taiwan,<sup>35</sup> as the discount rate because neither PT Enterprise, Quick Advance, nor any of their respective affiliates maintained long-term, fixed-rate loans as described under 19 CFR 351.524(d)(3)(i)(A).

### **VI. ANALYSIS OF PROGRAMS**

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

#### **A. Programs Determined To Be Not Used**

- Income Tax Credit for Upgraded Equipment
- Income Tax Credits for Investment in Designated Regions
- Shareholder's Investment Tax Credit for Investment in Newly Emerging, Important and Strategic Industries
- Subsidies for Companies that Invest in Industrial Parks Under the 006688 Program
- Grants for General Research and Development Activities
- Grants for Research and Development Activities that Meet Future Market Needs

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<sup>33</sup> See generally Quick Advance IQR-I, Letter from Quick Advance, "Initial Questionnaire Response for Additional Quick Advance Affiliate: Countervailing Duty Investigation of Certain Steel Nails from Taiwan" (September 22, 2014) (Quick Advance IQR-II), TA IQR, TA 1SQR, and Letter from Quick Advance, "Quick Advance First Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Steel Nails from Taiwan" (September 22, 2014).

<sup>34</sup> See PT Enterprise Final Calculation Memorandum. As noted above Quick Advance did not receive any subsidies, so no calculation memorandum was prepared for Quick Advance.

<sup>35</sup> See TA 2SQR at Exhibit S2-1, page 57 and Exhibit S2-2 at "Lending Rate (Prime Rate) – 2013."



- Grants to Enhance Research and Development in Non-Technology Related Industries
- Grants for Developing an International Image and Brand

#### **B. Program Determined Not To Exist During the POI**

- Subsidies for Companies that Invest in Industrial Parks

The petitioner alleged, and we initiated on, two programs identified as “Subsidies for Companies that Invest in Industrial Parks” and “Subsidies for Companies that Invest in Industrial Parks Under the 006688 Program.” However, at the verification of the TA, we confirmed that there were no additional incentives provided to companies that invest in industrial parks during the POI beyond those conferred under the “Subsidies for Companies that Invest in Industrial Parks Under the 006688 Program” identified above.<sup>36</sup> Thus, we determine that a program entitled “Subsidies for Companies that Invest in Industrial Parks” did not exist during the POI.

#### **C. Other Investigated Program**

- Grants Under the Energy Technology Program (ETP)

Established on October 31, 2012,<sup>37</sup> and effective in 2013,<sup>38</sup> the ETP provides grants designed to encourage enterprises to research and develop energy technology-related innovations and applications that enhance energy technology within Taiwan.<sup>39</sup> Administered by the Bureau of Energy (BOE) within the Ministry of Economic Affairs (MOEA), the ETP was created through the “Regulations on the Funding and Assistance for Industry Innovation Activities,”<sup>40</sup> promulgated under the authorization of Paragraph 2 of Article 9 of the “Act for Industrial Innovation,”<sup>41</sup> and administered pursuant to the “Enforcement Directions of the {MOEA} in Promotion of Energy Technology Research & Development by Enterprises.”<sup>42</sup>

The “Regulations on the Funding and Assistance for Industry Innovation Activities,”<sup>43</sup> define threshold eligibility criteria that,<sup>44</sup> once met, allow applicants to prepare and submit a technology and financial proposal demonstrating how they qualify for the funds by satisfying the standards and goals of the program.<sup>45</sup> In order to be eligible for assistance, the applicant must be pursuing a project that is among the “Energy Oriented Projects of the Year,” as promulgated by the BOE.<sup>46</sup> The “Energy Oriented Projects of the Year” are classified into two types:<sup>47</sup> “Innovated

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<sup>36</sup> See TA VR at 10-12.

<sup>37</sup> *Id.*, at 7.

<sup>38</sup> See TA IQR at Exhibit B-1-1, page 57.

<sup>39</sup> *Id.*, at Exhibit B-1-1, page 50.

<sup>40</sup> *Id.*, at Exhibit B-1-1, pages 50-52. See also Exhibit B-1-3.

<sup>41</sup> *Id.*, at Exhibit B-1-1, pages 51-52. See also Exhibit B-1-2.

<sup>42</sup> *Id.*, at Exhibit B-1-1, page 52. See also Exhibit B-1-4.

<sup>43</sup> *Id.*, at Exhibit B-1-3.

<sup>44</sup> *Id.*, at Exhibit B-1-3, at Article 5 through Article 7.

<sup>45</sup> *Id.*, at Exhibit B-1-1, pages 50 and 53.

<sup>46</sup> *Id.*, at Exhibit B-1-4, at III.

Service Mode,” which focuses on the research and development of new and renewable energy sources and energy saving and carbon reduction related applications and services;<sup>48</sup> and, “Value-added Industry Mode,” which focuses on the research and development programs oriented to value-added industries, as related to system integration in new and renewable energy sources and energy saving and carbon reduction.<sup>49</sup>

The applicant’s proposal must include a completed general application,<sup>50</sup> a project plan, a designation indicating for which mode the project qualifies, and it must include: the objective(s) of the project; the contents and implementation method of the project; an execution schedule and progress schedule; expected results; risk assessment and response manners; manpower allocation; and, budget allocation.<sup>51</sup> A review committee of independent scholars and experts reviews the proposals along with BOE personnel, and decides whether the level of technology demonstrated in the proposal is eligible to receive a grant under one of the two “modes” described above;<sup>52</sup> this is the “Review in Formality.”<sup>53</sup> If an applicant is found inconsistent with the qualification requirements, attributes of the project, or financial review during the “Review in Formality,” the BOE may request supplementary information within a specified time limit.<sup>54</sup> If the applicant fails to complete the supplementation within the specified time limit, the proposal is rejected.<sup>55</sup>

If the application passes the “Review in Formality,” the committee then reviews the application on the bases of the capabilities of the technology demonstrated in the proposal, and ranks the applications based on creativity, feasibility, implementation, mechanism and possible effects;<sup>56</sup> this is the “Review in Sustainability.”<sup>57</sup> When an applicant fails to pass the “Review in Sustainability,” the BOE does not provide assistance and informs the applicant of the outcome of the review.<sup>58</sup> If an applicant passes both reviews, the proposal is “approved.” The committee then determines the amount of the funds to be provided,<sup>59</sup> and a contract between the MOEA and the applicant is created.

Pro-Team reported entering into a contract with the MOEA under the ETP to develop new biomass fuels to replace coal as a fuel source during the POI,<sup>60</sup> and received funding therefrom. Regarding our analysis of the countervailability of these funds, *see* below at “Analysis of Comment.”

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<sup>47</sup> *Id.*, at Exhibit B-1-4, at V.

<sup>48</sup> *Id.*, at Exhibit B-1-4, at V. (I).

<sup>49</sup> *Id.*, at Exhibit B-1-4, at V. (II).

<sup>50</sup> *Id.*, at Exhibit B-1-7 for a blank application form.

<sup>51</sup> *Id.*, at Exhibit B-1-3, at Article 11.

<sup>52</sup> *Id.*, at Exhibit B-1-1, at 50.

<sup>53</sup> *Id.*, at Exhibit B-1-4, at IX. (I).

<sup>54</sup> *Id.*, at Exhibit B-1-4, at IX.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at Exhibit B-1-1, at 58-59.

<sup>57</sup> *Id.*, at Exhibit B-1-4, at IX. (II)

<sup>58</sup> *Id.*, at Exhibit B-1-4, at IX.

<sup>59</sup> *Id.*, at Exhibit B-1-1, at 50, 53, and 56.

<sup>60</sup> *See* PT Enterprise IQR at 17 and Exhibit IQR-8; *see also* PT Enterprise 2SQR at 2.

## VII. ANALYSIS OF COMMENT

### Comment: Specificity of Grants Under the Energy Technology Program

#### *PT Enterprise's Comment*

PT Enterprise argues that the grant Pro-Team received under the ETP is not specific, and thus not countervailable, because assistance under the ETP is widely available in Taiwan.<sup>61</sup>

Additionally, PT Enterprise contends that there is no industry that stands out as a predominant user of the ETP, and there is no indication that the TA exercised discretion in approving assistance under the ETP.<sup>62</sup>

PT Enterprise acknowledges that while all 70,000 companies in Taiwan were eligible to apply for a grant under the ETP, only a small number of these companies did.<sup>63</sup> However, PT Enterprise attributes this small number to the newness of the program and the fact that approval under the program requires substantial investment and technical know-how. Taking these factors into consideration, PT Enterprise contends that because the majority of the applicants who applied were approved for assistance, and because those approved applicants represented 12 different industries in Taiwan, the program has clearly been widely accessible in the short period since its inception.<sup>64</sup>

PT Enterprise further argues that the Statement of Administrative Action (SAA) actually requires that the Department “take account of the diversification of economic activities within the relevant jurisdiction, as well as the length of time that a subsidy program has been in operation.”<sup>65</sup> The *Preamble* expands on this concept, providing that new programs should be analyzed through the following framework:

in the case of a new program, the first three factors – limited number of users, dominant user, or disproportionately large use – may provide little or misleading indication regarding whether the program is *de facto* specific. Therefore, the manner in which authorities have exercised their discretion in the early days of a new program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might be more useful for the Department in making a specificity determination<sup>66</sup>

PT Enterprise contends that the TA did not exercise discretion in any discernible way in granting or denying applicants.<sup>67</sup> Indeed, PT Enterprise submits that even when analyzed in terms of benefit value received on an industry basis, there is no industry that stands out as a predominant user, and the largest recipient industry is the electronics industry, a different industry than the metal fabrication industry in which Pro-Team operates.

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<sup>61</sup> See PT Enterprise Brief at 1-2.

<sup>62</sup> *Id.*, at 3-4.

<sup>63</sup> *Id.*, at 1-2. See also *Preamble*, at 63 FR 65348, 65357.

<sup>64</sup> See PT Enterprise Brief at 2.

<sup>65</sup> *Id.*, at 914-915.

<sup>66</sup> See PT Enterprise Brief at 2-3. See also *Preamble*, at 63 FR 65359.

<sup>67</sup> See PT Enterprise Brief at 4.

Through these arguments, PT Enterprise concludes that the Department should find that grants under the ETP are not specific.

### *The Petitioner's Comment*

The petitioner disagrees with PT Enterprise, stating that the facts identified by PT Enterprise in its case brief actually support the Department's preliminary determination that grants under the ETP are *de facto* specific.<sup>68</sup> The petitioner first notes that section 771(5A)(D)(iii)(I) of the Act provides that if the number of actual recipients of a subsidy is limited, it does not matter whether the number of companies eligible to apply for a subsidy is limited.<sup>69</sup> Moreover, the petitioner states that if the number of actual recipients of a subsidy is limited when considered on an enterprise basis, the Department does not need to analyze further whether and how the number of industries to which those companies belong might be limited.<sup>70</sup>

Next, the petitioner argues that if in the nature of the program, only a limited number of companies are able to meet the eligibility criteria, then the program is *prima facie* specific; if only a limited number of companies have the ability and resources to justify the investment in the technology necessary to make a successful application for a grant under the program, then the number of actual recipients of the subsidy will be limited as well.<sup>71</sup>

The petitioner continues, arguing that PT Enterprise acknowledges that qualifying for a grant under the ETP requires that companies "devise a creative project that is feasible, innovative and has positive effects on the environment. This is no small task and is one that requires a significant amount of time and money to plan and implement."<sup>72</sup> According to the petitioner, these factors confirm that only certain companies, and not others, will be eligible for ETP grants, and this supports the Department's finding that such grants are specific.<sup>73</sup>

Finally, the petitioner states that the newness of the ETP would not undermine the Department's analysis under the first element of the *de facto* specificity test. The petitioner alleges that this is because the nature of the ETP, not the relatively short period of time the program has been in existence, explains why only a limited number of companies have received grants.<sup>74</sup> Thus, the newness of the program does not require the Department to rely more on other tests of specificity where the number of actual recipients of the subsidy is limited.<sup>75</sup>

### **Department's Position:**

At the outset, we recognize that the ETP is a new program; it was established in 2012,<sup>76</sup> and funds first became available for disbursement in mid-2013, during the POI.<sup>77</sup> The arguments

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<sup>68</sup> See Petitioner Brief at 2.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*, at 2-3.

<sup>72</sup> *Id.*, at 3 (quoting PT Enterprise Brief at 3).

<sup>73</sup> *Id.*, at 3.

<sup>74</sup> *Id.*, at 3-4.

<sup>75</sup> *Id.*

<sup>76</sup> See TA VR at 7.

presented by the parties related to the fact that the ETP is a new program present novel and complex issues relating to how the Department should take this into account in making a *de facto* specificity determination. Nevertheless, in light of the unique facts of this investigation, the Department is not making a countervailability determination with regard to the ETP for this final determination.


We reach this conclusion because (1) a net countervailable subsidy rate calculated from any benefit conferred to Pro-Team and potentially cumulated with subsidies provided to PT Enterprise under 19 CFR 351.525(c), would be *de minimis*, and (2) this is the only program under investigation that was used by PT Enterprise's affiliated producer, Pro-Team, during the POI or during the AUL period that would be attributable to the POI. Therefore, this final determination will be negative regardless of our finding regarding whether the ETP is specific under the Act. Accordingly, we have not reached a determination regarding the countervailability of the ETP for purposes of this final determination and we are considering the net countervailable subsidy rate for the investigation to be zero.

### VIII. RECOMMENDATION

We recommend approving all of the above positions and revising the related countervailable subsidy rate accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the ITC of our determination.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

5/13/15  
\_\_\_\_\_  
(Date)

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<sup>77</sup> See TA IQR at Exhibit B-1-1, pages 50-61.