



C-583-857

Investigation


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May 24, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Negative  
Determination: Countervailing Duty Investigation of Certain  
Corrosion-Resistant Steel Products from Taiwan

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## I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are not being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from Taiwan, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Case History

On November 6, 2015, the Department published the *Preliminary Determination* in this investigation.<sup>1</sup> We calculated a *de minimis* rate for Prosperity Tieh Enterprise Co., Ltd. (PT), and its crossed-owned affiliates: Hong-Ye Steel Co., Ltd. (HY), Prosperity Did Enterprise Co., Ltd. (PD), and Chan Lin Enterprise Co., Ltd. (CL) (collectively the Prosperity Companies). We also calculated a *de minimis* rate for Yieh Phui Enterprise Co., Ltd. (Yieh Phui), and its crossed-owned affiliates: Yieh Corporation Limited (YCL), Shin Yang Steel Co., Ltd. (Shin Yang), and Synn Industrial Co., Ltd (Synn) (collectively the Yieh Phui Companies). Petitioners in this proceeding are the United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation (AK Steel).<sup>2</sup>

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<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Negative Countervailing Duty Determination*, 80 FR 68852 (November 6, 2015) (*Preliminary Determination*) and accompanying Issues and Decision Memorandum (Preliminary IDM).

<sup>2</sup> We refer to these companies as Petitioners unless otherwise specified.



On November 10, 2015, Petitioners, as well as AK Steel separately on its own behalf, requested that the Department align the final determination in each of the countervailing duty investigations with the corresponding final determination in the parallel antidumping duty investigations of *Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan*.<sup>3</sup> On November 20, 2015, the Department determined to align the final CVD determinations with the final AD determinations, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).<sup>4</sup>

On November 18, 2015, the Department issued a supplemental questionnaire to the Taiwan Authorities (TA) regarding AK Steel's New Subsidy Allegations.<sup>5</sup> TA provided its supplemental response on December 1, 2015.<sup>6</sup>

On November 20, 2015, AK Steel submitted Post-Preliminary Comments.<sup>7</sup> On December 1, 2015, AK Steel submitted Pre-Verification Comments.<sup>8</sup>

On November 20, 2015, the Department issued verification outlines to the TA, the Prosperity Companies, and the Yieh Phui Companies, respectively.<sup>9</sup>

On December 7, 2015, AK Steel and the Prosperity Companies requested a public hearing, respectively.<sup>10</sup> On February 12, 2016, the Yieh Phui Companies requested a hearing appearance.<sup>11</sup>

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<sup>3</sup> See Letter to the Department from Petitioners, "Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan," dated November 10, 2015.

<sup>4</sup> See *Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products From India, Italy, and the People's Republic of China, the Republic of Korea, and Taiwan: Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations*, 80 FR 72685 (November 20, 2015).

<sup>5</sup> See the Department's letter, "New Subsidy Allegations Supplemental Questions for Taiwan Authority (TA)," dated November 18, 2015.

<sup>6</sup> See Letter to the Department from TA, "Certain Corrosion-Resistant Steel Products from Taiwan New Subsidy Allegations Questionnaire Response," dated December 1, 2015 (NSA SQR).

<sup>7</sup> See Letter to the Department from AK Steel, "Certain Corrosion-Resistant Steel Products From Taiwan: Post-Preliminary Determination Deficiency Comments," dated November 20, 2015 (Post-Preliminary Comments).

<sup>8</sup> See Letter to the Department from AK Steel, "Certain Corrosion-Resistant Steel Products From Taiwan: Pre-Verification Comments," dated December 1, 2015 (Pre-Verification Comments).

<sup>9</sup> See the Department's November 20, 2015 letters to the three respondents: TA, the Prosperity Companies, and the Yieh Phui Companies, respectively. The three verification outlines are entitled in the same order, as follows: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan – Taiwan Authorities' Questionnaire Responses," "Countervailing Duty Investigation of Certain Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan; Prosperity and its cross-owned affiliates' Questionnaire Responses," and "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan; Yieh Phui Enterprise Co., Ltd., and its cross-owned affiliates: Yieh Corporation Limited, Shin Yang Steel Co., Ltd., and Synn Industrial Co., Ltd."

<sup>10</sup> See Letter to the Department from AK Steel, "Certain Corrosion-Resistant Steel Products From Taiwan: Hearing Request;" and Letter to the Department from the Prosperity Companies, "Corrosion-Resistant Steel Products from Taiwan. Case No. C-583-857: Request for Hearing;" both were dated December 7, 2015.

<sup>11</sup> See Letter to the Department from the Yieh Phui Companies, "Certain Corrosion-Resistant Steel Products from and Taiwan; Request to Appear at Hearings," dated February 12, 2016.

On December 7 and 8, 2015, the Department conducted verification of the TA in Taipei, Taiwan. Additionally, on December 9, 2015, as part of the verification, the verifiers met with the individual who served as the Chairman of the Board of Directors of the China Steel Corporation (CSC) during the period of investigation (POI) in Kaohsiung, Taiwan. Between December 10 and 17, 2015, the Department conducted verifications of the Prosperity Companies and the Yieh Phui Companies in Kaohsiung, Taiwan.

On January 27, 2016, the Department released three verification reports to TA, the Prosperity Companies, and the Yieh Phui Companies.<sup>12</sup>

On February 3, 2016, the Department issued its post-preliminary determination on AK Steel's New Subsidy Allegation.<sup>13</sup>

On February 5, 2016, the Department notified the interested parties of the due dates for submission of case and rebuttal briefs.<sup>14</sup> On February 8, 2016, the Yieh Phui Companies requested an extension of the briefing schedule.<sup>15</sup> On February 9, 2016, the Department granted a one-week extension of the briefing schedule.<sup>16</sup>

On February 19, 2016, we received a case brief from AK Steel.<sup>17</sup> On February 19, 2016, we received rebuttal briefs from the TA, the Prosperity Companies and the Yieh Phui Companies.<sup>18</sup>

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<sup>12</sup> See the Department's January 27, 2016, Memorandum to the File, entitled: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan, RE Verification of the Questionnaire Responses of Taiwan Authorities," (TA Verification Report); the Department Memorandum "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan, RE Verification of the Questionnaire Responses of Prosperity Companies," (Prosperity Verification Report); and the Department Memorandum, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan, RE Verification of the Questionnaire Responses of Yieh Phui Companies," (Yieh Phui Verification Report).

<sup>13</sup> See Department's Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, through Christian March, Deputy Assistant Secretary for Enforcement and Compliance, from Erin Begnal, Director, Antidumping and Countervailing Duty Operations, Office III, entitled "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Post-Preliminary Analysis Memorandum for New Subsidy Allegations," dated February 3, 2016 (Post-Prelim NSA Memorandum). See also the accompanying calculation memorandum, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Calculation Memorandum for the Post-Preliminary New Subsidy Allegations" re "Land Provision for "Sinping Section 164" Located in the Pingtung Industrial Park for Less than Adequate Remuneration (LTAR) for Yieh Phui Enterprise Co., Ltd.," dated February 3, 2016 (Post Prelim Calc. Memorandum Regarding Land LTAR).

<sup>14</sup> See Memorandum to File, "Release of Post-Preliminary Analysis Memorandum for New Subsidy Allegations and Due Dates for Interested Parties to Submit Case and Rebuttal Briefs," dated February 5, 2016.

<sup>15</sup> See Letter to the Department from the Yieh Phui Companies, "Corrosion-Resistant Steel Products from Taiwan; Extension Request," dated February 8, 2016.

<sup>16</sup> See Memorandum to File, "A One-week Extension of the Briefing Schedule for Interested Parties," dated February 9, 2016.

<sup>17</sup> See Letter to the Department from AK Steel, "Certain Corrosion-Resistant Steel Products From Taiwan/ AK Steel's Case Brief," dated February 19, 2016 (AK Steel's Case Brief).

<sup>18</sup> See Letter to the Department from TA, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan – Rebuttal Brief of the Government of Taiwan," dated February 24, 2016 (TA's Rebuttal Brief); see also Letter from the Prosperity Companies "Corrosion-Resistant Steel Products from Taiwan, Case No. C-583-857: Rebuttal Brief" dated February 24, 2016 (Prosperity's Rebuttal Brief); and see Letter from the Yieh Phui Companies, "Corrosion-Resistant Steel Products from Taiwan; Rebuttal Brief," dated February 24, 2016 (Yieh Phui's Rebuttal Brief).

On April 29, 2016, AK Steel and for the Prosperity Companies withdraw their respective requests for a hearing.<sup>19</sup> On May 5 and 10, 2016, the Department held an *ex parte* meeting with counsel for the Prosperity Companies, and counsel for AK Steel, respectively.<sup>20</sup> On May 11, 2016, the Yieh Phui Companies submitted comments the Department's decision to conduct *ex parte* meetings in lieu of a formal hearing.<sup>21</sup> On May 13, 2016, the Department issued a letter to the Yieh Phui Companies explaining that during the *ex parte* meetings, the Prosperity Companies and AK Steel reiterated arguments contained in the briefs filed in the AD and CVD investigations of corrosion-resistant steel from Taiwan.<sup>22</sup>

The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for the final determination. Additionally, we analyzed the case brief comments submitted by Petitioners and the rebuttal comments submitted by the TA, the Prosperity Companies and the Yieh Phui Companies in the "Analysis of Comments" section below, which contains the Department's positions on the issues raised in the brief. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each applicable program. We recommend that you approve the positions described in this memorandum.

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

## **III. SCOPE COMMENTS**

In accordance with the Preliminary Determination Scope Memorandum,<sup>23</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively Baosteel) submitted scope comments on the Preliminary Determination Scope Memorandum regarding Baosteel's prior request to exclude certain hot dipped galvanized steel

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<sup>19</sup> See Memorandum to the File from Andrew Medley, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, entitled "Withdrawal of Requests from a Hearing," dated April 29, 2016.

<sup>20</sup> See Memorandum to the File from Shanah Lee, International Trade Compliance Analyst, Office III, Antidumping and Countervailing Duty Operations, entitled "Ex Parte Meeting with Counsel for Prosperity Tieh Enterprise Co., Ltd." dated May 5, 2016 (Prosperity Companies *Ex Parte* Memorandum). See also Memorandum to the File from Shanah Lee, International Trade Compliance Analyst, Office III, Antidumping and Countervailing Duty Operations, entitled "Ex Parte Meeting with Counsel for AK Steel," dated May 10, 2016 (AK Steel *Ex Parte* Memorandum).

<sup>21</sup> See Yieh Phui's letter, "Re: Corrosion-Resistant Steel Products from Taiwan: Comments on Ex-Parte Meetings," dated May 11, 2016.

<sup>22</sup> See the Department's letter to Yieh Phui, "Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Response to Comments on Ex-Parte Meetings," dated May 16, 2016; and Memorandum to the File, "Scheduling of Ex Parte Meetings for the Final Determination," dated May 16, 2016; see also Prosperity Companies *Ex Parte* Memorandum and AK Steel *Ex Parte* Memorandum.

<sup>23</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (Preliminary Scope Decision Memorandum); see also Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

products from the scope.<sup>24</sup> On February 16, 2016, Petitioners submitted rebuttal comments in support of the Department's findings in Preliminary Determination Scope Memorandum.<sup>25</sup> On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (AmeriLux International) and placed its rejection letter and e-mail correspondence memorandum on the record of this investigation.<sup>26</sup> Based on the reasons provided in the rejection letter, the Department is not considering AmeriLux International's comments for the final determination.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.<sup>27</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this memorandum.

#### IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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<sup>24</sup> See Letter from Baosteel, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Post Preliminary Comments on Scope," dated February 9, 2016.

<sup>25</sup> See Letter from Petitioners, entitled, "Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners' Scope Rebuttal Brief," dated February 16, 2016 ("Petitioners' Scope Rebuttal").

<sup>26</sup> See Letter to AmeriLux International, "Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International's November 30, 2015, Scope Exclusion Request," dated March 29, 2016. See also Memorandum to the File, "Email Correspondence Regarding Scope Exclusion," filed concurrently with the rejection letter.

<sup>27</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this

investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

## **V. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES**

On July 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise from the five countries whose exports are under investigation.<sup>28</sup> On October 29, 2015, the Department issued its preliminary critical circumstances determinations.<sup>29</sup> Pursuant to this determination, the Department determined that, with regard to Taiwan, critical circumstances exist for imports of subject merchandise from “All Other” producers and exporters and did not exist for the Prosperity Companies and the Yieh Phui Companies.<sup>30</sup> Thus, based on the *Preliminary Critical Circumstances Determination*, the

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<sup>28</sup> See Letter from Petitioners, “Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations,” dated July 23, 2015.

<sup>29</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (Preliminary Critical Circumstances Determination).

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

Department explained that retroactive collection of collect cash deposits would apply with regard to companies subject to the all others rate, contingent upon the Department reaching an affirmative result in the preliminary determination. However, in the *Preliminary Determination* and as indicated in this memorandum, we determined that countervailable subsidies are not being provided to producers and exporters of corrosion-resistant steel from Taiwan and, thus, we are issuing a negative countervailing duty determination. Accordingly, for purposes of this CVD investigation, we determine that critical circumstances do not exist with regard to imports of corrosion-resistant steel from Taiwan.

## **VI. SUBSIDIES VALUATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>31</sup> The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>32</sup> The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly.<sup>33</sup> No party in this proceeding disputes this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

### **B. Attribution of Subsidies**

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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<sup>31</sup> See 19 CFR 351.524(b).

<sup>32</sup> See Petitions at Exhibit XI-2. See also U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>33</sup> See Letter from the Department to the TA regarding "Initial Questionnaire" dated July 20, 2015 at "Section II – Program Specific Questions."



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 regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's 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>34</sup>

### *The Prosperity Companies*

PT responded to the Department's questionnaires on behalf of itself and its cross-owned affiliates HY, PD, and CL. HY, PD, and CL are majority-owned by PT and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).<sup>35</sup>

### *The Yieh Phui Companies*

Yieh Phui responded to the Department's questionnaires on behalf of itself and YCL, Shin Yang, and Synn.<sup>36</sup> During the POI, YCL, a trading company, purchased subject merchandise from Yieh Phui and sold it to the U.S. market.<sup>37</sup> Shin Yang and Synn provided Yieh Phui inputs which were primarily dedicated to the production of subject merchandise.<sup>38</sup> During the POI, Yieh Phui and Synn produced subject merchandise.<sup>39</sup> YCL and Shin Yang are majority-owned by Yieh Phui and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).<sup>40</sup>

Concerning Synn, although Yieh Phui does not own the majority of the company's shares, Yieh Phui is Synn's largest shareholder.<sup>41</sup> In addition to providing Yieh Phui an input used for subject merchandise production, Synn also produced and exported subject merchandise to the United States during the POI.<sup>42</sup> Furthermore, the record indicates that one of Yieh Phui's CEOs is also a board member of Synn.<sup>43</sup> At the *Preliminary Determination*, we determined that Synn is cross-

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<sup>34</sup> See *Fabrique de Fer de Charleroi SA v. United States*, 66 F. Supp. 2d 593, 603 (CIT 2001).

<sup>35</sup> See the Prosperity Companies' PQR at 1 and Affiliation QR at pages 1-2.

<sup>36</sup> The Yieh Phui Companies assert that Synn is not cross-owned because the Yieh Phui Companies did not own more than 50 percent of Synn during the POI. Nonetheless, the Yieh Phui Companies responded to the Department's questionnaires on behalf of Synn at the request of the Department. See the Yieh Phui Companies' affiliation QR at 5.

<sup>37</sup> See the Yieh Phui Companies' affiliation QR at 2-3; see also the Yieh Phui Companies' Sections II and III initial questionnaire (PQR) on behalf of YCL, "Corrosion-Resistant Steel Products from Taiwan; Sections II and III Response" dated September 9, 2015.

<sup>38</sup> See Yieh Phui Companies' affiliation QR at 5-7; see also Yieh Phui Companies' submission on behalf of Shin Yang, "Corrosion-Resistant Steel Products from Taiwan; Response to Question 1 of Second Supplemental Company Affiliation Questionnaires," dated September 16, 2015; and see the Yieh Phui Companies' submission on behalf of Synn, "Corrosion-Resistant Steel Products from Taiwan; Response to Question 2 of Second Supplemental Company Affiliation Questionnaire" dated September 16, 2015.

<sup>39</sup> See Yieh Phui Companies' affiliation QR at 5 and its supplemental affiliation QR at 2. See also Yieh Phui Companies' PQR on behalf of Synn at 2.

<sup>40</sup> See Yieh Phui Companies' affiliation QR at 4-6, and supplemental affiliation QR at page 1-2.

<sup>41</sup> See, e.g., Yieh Phui Affiliation Response at Exhibit 2.

<sup>42</sup> *Id.*, at 5.

<sup>43</sup> *Id.*, at Exhibit 2.

owned with Yieh Phui. Because no interested party has presented evidence contrary to our preliminary findings, we continue to determine that Yieh Phui has significant control over Synn's operations and is able to direct the individual assets of Synn in essentially the same ways it can use its own assets, and therefore is cross-owned with Synn within the meaning of 19 CFR 351.525(b)(6)(vi).

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers 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 various subsidy programs described below are explained in the Final Calculation Memoranda prepared for this investigation.<sup>44</sup>

We determine that PT was the only member of the Prosperity Companies that used countervailable subsidy programs during the POI. Thus, because we find no other member of the Prosperity Companies constitutes a producer of subject merchandise, we have, pursuant to 19 CFR 351.525(b)(6)(ii), attributed only the subsidies received by PT in calculating the countervailable subsidy rates. The denominator we have used is the sales value of PT, net of intra-company sales.

Because Yieh Phui and Synn are producers of subject merchandise, we have, pursuant to 19 CFR 351.525(b)(6)(ii), attributed any subsidies received by Yieh Phui and Synn to the total sales of Yieh Phui and Synn, net of intra-company sales. Because we find Shin Yang to be an input producer, we have, pursuant to 19 CFR 351.525(b)(6)(iv), attributed any subsidies received by Shin Yang to the total sales of Shin Yang, Yieh Phui, and Synn, net of intra-company sales. Concerning YCL, we determine that the company did not use any of the alleged subsidy programs.

## **VII. BENCHMARKS AND INTEREST RATES**

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii).

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<sup>44</sup> For the Prosperity Companies, *see* Memorandum to the File from Joy Zhang, entitled "Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination, Calculation Memorandum for Prosperity Companies," dated concurrently with this preliminary decision memorandum (Prosperity Companies Final Calculation Memorandum). For the Yieh Phui Companies, *see* the Memorandum to the File, from Cindy Robinson, entitled "Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination, Calculation Memorandum for the Yieh Phui Companies," dated concurrently with this final decision memorandum (Yieh Phui Companies Final Calculation Memorandum).

In this final determination, we required the use of a long-term interest rate benchmark for a loan program used by PT, Yieh Phui and Shin Yang. Specifically, for PT, we used interest rates of leading banks in Taiwan published by Central Bank of the Republic of China (Taiwan) as our benchmark interest rate. For Yieh Phui and Shin Yang, after the preliminary results, Yieh Phui submitted information concerning private loans that it had outstanding during the POI. Therefore, consistent with 19 CFR 351.505(a)(2)(ii), we have used the weighted average interest rate on Yieh Phui's outstanding private loan(s) as the long-term benchmark for the Yieh Phui Companies.

## **VIII. 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 Countervailable**

#### **1. Provision of Cold-Rolled Steel and Hot-Rolled Steel for Less Than Adequate Remuneration (LTAR)**

The Department is investigating whether the TA provided cold-rolled steel and hot-rolled steel to producers of corrosion-resistant steel for LTAR. Specifically, the Department is investigating whether CSC, by virtue of the TA's ownership in the company, acted as an "authority" during the POI when selling CRS and HRS to the mandatory respondents. The Prosperity and Yieh Phui Companies purchased cold-rolled steel and hot-rolled steel from CSC during the POI.

According to information from the TA, CSC became a state-owned enterprise in 1977. The TA started to privatize CSC in 1989.<sup>45</sup> According to the TA, it has not been a majority shareholder of CSC since April 1995. During the POI, the Ministry of Economic Affairs (MOEA) owned 20 percent of CSC's shares with other TA entities owning an additional 3.66 percent of CSC's shares.<sup>46</sup> Institutional investors and private parties owned the remaining 76.34 percent of CSC's shares during the POI.<sup>47</sup>

According to CSC's articles of incorporation (AOI), each common shareholder has one vote per share in shareholder meetings.<sup>48</sup> Shareholders of CSC nominate candidates to serve on the company's board of directors. CSC board members are elected by means of a majority vote by the shareholders. The board, in turn, elects the board chairman by majority vote.<sup>49</sup> During the POI, three members of CSC's board of directors were nominated by the MOEA, including the chairman. Of the remaining eight board members, one represents CSC's employee union. The TA indicates that these eight board members were not government officials, and there is no other information on the record indicating that these individuals had any connection to the TA.<sup>50</sup>

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<sup>45</sup> See TA's initial questionnaire response dated September 17, 2015 (TA PQR) at 10.

<sup>46</sup> The other TA entities include Bureau of Labor Insurance, Chunghwa Post Co., Ltd., and Public Service Pension Fund Management Board. See the TA PQR at 31.

<sup>47</sup> *Id.*, at 32.

<sup>48</sup> See the TA PQR at page 32 and Exhibit A-2-1 at Article 18 of the AOI.

<sup>49</sup> *Id.*, at Exhibit A-2-1 at Article 30 of the AOI.

<sup>50</sup> *Id.*, at 50-51.

According to CSC's AOI, actions taken by the board, including the operation of the company, require a majority vote by the board of directors.<sup>51</sup> Pursuant to its AOI, CSC's shareholders are required to elect three supervisors whose primary responsibility is the execution of the business operations of the company. Additionally, per its AOI, CSC's board elects the company's senior executives.<sup>52</sup> Information from the TA indicates that none of CSC's three supervisors or senior executives was a TA official during the POI, and there is no information indicating that these individuals had any connection with the TA.<sup>53</sup>

We have stated that the relevant question in determining whether an entity is an "authority" within the meaning of section 771(5)(B) of the Act is whether the "entity possesses, exercises or is vested with government authority."<sup>54</sup> The evidence on record here does not suggest that CSC possesses, exercises or is vested with government authority. Though the TA is CSC's largest shareholder, its holdings (*e.g.*, the 20 percent held by the MOEA plus the 3.66 percent held by government-owned pension funds) do not exceed 24 percent of CSC's outstanding shares. Further, the structure of CSC's AOI requires a majority vote for actions taken by its board and, thus, we find that there is no means by which the three board members who were nominated by the MOEA could exert meaningful control over the company's operations during the POI such that CSC would be considered to possess or exercise government authority.<sup>55</sup> Further, none of CSC's senior executives, who are appointed by a majority vote of the board, are government officials.<sup>56</sup> Additionally, our review of CSC's board meeting minutes from the POI does not indicate any involvement on behalf of the TA in regards to the company's operation.<sup>57</sup> Rather, the board meeting minutes as well as proprietary correspondence between the senior executive pricing team and CSC's customers reflect that CSC was conscious of maintaining its ability to compete with its competitors in terms of price and availability.<sup>58</sup> Additionally, minutes from meetings of CSC's Governance Committee indicate no involvement on behalf of the TA.<sup>59</sup>

As discussed in greater detail below in Comment 1, at verification the Department examined the TA's level of ownership in CSC, reviewed the provisions of CSC's AOI, examined its corporate governance structure, reviewed board meeting minutes, reviewed how CSC set prices for cold-rolled steel and hot-rolled steel during the POI, and met the individual who served as CSC's Board Chairmand during the POI.<sup>60</sup> The information examined at verification matched the information concerning CSC that was contained in the TA's questionnaire responses.

Accordingly, we find that CSC is not an authority within the meaning of section 771(5)(B) of the Act; and thus determine that CSC's sales of cold-rolled steel and hot-rolled steel to the respondents during the POI did not confer countervailable subsidies.

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<sup>51</sup> See the TA PQR at pages 35-36.

<sup>52</sup> *Id.*, at 35-36 and Exhibit A-2-1 at Article 31 of the AOI.

<sup>53</sup> *Id.*, at 52; see also the TA's first supplemental questionnaire dated October 14, 2015 (1SQR) at 14.

<sup>54</sup> See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*2013 Review of Citric Acid from the PRC*) and accompanying Issues and Decision Memorandum (2013 Review of Citric Acid from the PRC Decision Memorandum) at Comment 3.

<sup>55</sup> See TA PQR at Exhibit A-2-1 at Article 16 and 17 of the AOI.

<sup>56</sup> *Id.*, at 52; see also the TA 1SQR at 14.

<sup>57</sup> See TA PQR at Exhibits A-2-12 and A-2-13a.

<sup>58</sup> *Id.*, at Exhibits A-2-11a, A-2-11b, A-2-12, and A-2-13a.

<sup>59</sup> See the TA 1SQR at Exhibit S1-11.a.

<sup>60</sup> See TA Verification Report at 2-5.

## 2. Tariff Exemption for Imported Equipment Program

In its initial September 17, 2015, questionnaire response, the TA reported that the purpose of this program is to revitalize non-technology-related industries in Taiwan by allowing certain manufacturers and technical service providers to receive tariff exemptions on the machinery and equipment that they import.<sup>61</sup> The applicant is required to submit a tariff exemption application to the authority overseeing the industry to which the machinery, equipment or instrument is related before the delivery of the goods or within four months after the arrival of the goods. Yieh Phui, Synn, and Shin Yang of the Yieh Phui Companies<sup>62</sup> and PT of the Prosperity Companies reported receiving exemptions under this program during and prior to the POI.<sup>63</sup>

We examined this program in *NOES from Taiwan*.<sup>64</sup> In that investigation, we found that the tariff exemptions provided under the program constituted a financial contribution in the form of revenue foregone within the meaning of section 771(5)(D)(ii) of the Act and conferred a benefit in the amount of exemptions and reimbursements of customs duties on capital equipment in accordance with section 771(5)(E) of the Act and 19 CFR 351.510(a).<sup>65</sup> Based on information provided by the TA in the instant investigation, we find there is no basis to change our prior findings with regard to this program as it pertains to financial contribution and benefit.<sup>66</sup>

Regarding specificity, in *NOES from Taiwan*, we determined that there was no basis to conclude that the program was specific on a *de jure* basis to any industry or enterprise, as described under section 771(5A)(D)(i) of the Act.<sup>67</sup> In this investigation, we continue to find that this program is not *de jure* specific. Thus, consistent with section 771(5A)(D)(iii) of the Act, we examined whether the program was *de facto* specific by analyzing whether the actual recipients of the tariff exemptions provided under this program are limited in number, whether an enterprise or industry is a predominant user or receives disproportionately large amounts of the tariff exemptions, or whether the tariff exemptions are otherwise provided in a discretionary manner. Based on our analysis and our verification findings, we determine that the actual recipients are not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. To analyze predominance and disproportionality under section 771(5A)(D)(iii)(II)-(III) of the Act, we utilized usage information from the TA to compare the tariff exemptions received by PT and the respective members of the Yieh Companies to the average tariff exemptions that all other Taiwanese companies received under the program. Under this analysis, we find that the tariff exemptions received by PT were less than the average and, thus, that PT was not a predominant user and did not receive a disproportionately large amounts of benefit under the program. Concerning the Yieh Phui Companies, they received benefit amounts that were above and below the average

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<sup>61</sup> See TA PQR at Exhibit Q – 1 page 159.

<sup>62</sup> The Yieh Phui Companies reported the Tariff Exemption for Imported Equipment Program under the “Other Subsidies” category, and they labeled it as “Innovative Technology Applications and Services Program.”

<sup>63</sup> See Yieh Phui Companies PQR at 28, Synn PQR at 19, and Shin Yang PQR at 19; *see also* PT PQR at 50.

<sup>64</sup> See *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) (*NOES from Taiwan*) and accompanying Issues and Decision Memorandum (*NOES Final Decision Memorandum*) at 13 and Comment 1.

<sup>65</sup> See *NOES Final Decision Memorandum* at 13.

<sup>66</sup> See TA PQR at Exhibit Q-1.

<sup>67</sup> *Id.*

during the period 2011 through 2014. However, taken in totality, we find under section 771(5A)(D)(iii)(II)-(III) of the Act that the tariff exemptions received by the Yieh Phui Companies were neither predominant nor disproportionately large.<sup>68</sup> Further, we find there is no evidence on the record indicating that the tariff exemptions received by PT and the Yieh Phui Companies were specific under section 771(5A)(D)(iii)(IV) of the Act. Therefore, we determine that this program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. There also is no basis to find this program regionally specific under section 771(5A)(D)(iv) of the Act. Accordingly, we determine that the benefits the mandatory respondents received under this program are not specific and, thus not countervailable.

### 3. Income Tax Credit for Upgraded Equipment

Pursuant to Paragraphs 1 and 2 of Article 6 of the *Statute for Upgrading Industries*, the TA will provide income tax credits for upgrading equipment.<sup>69</sup> The purpose of this program was to encourage the use of automation equipment, replacement of old equipment and research and development. The Income Tax Credits for Upgraded Equipment program has two components: (1) tax credits for expenses incurred in connection with investment in upgraded technology/equipment; and (2) tax credits for R&D and personnel training expenses.<sup>70</sup> This program took effect in 1991 and was abolished on December 31, 2009, due to the expiration of the *Statute for Upgrading Industries*. However, companies are allowed to allocate the use of the tax credit within five years of the year in which the equipment was delivered. Because residual benefits continue to be provided under this program, we find that program-wide changes do not exist.<sup>71</sup> PT and Yieh Phui indicated that they received benefits under this program; however Yieh Phui did not receive benefits under this program based upon the tax return filed during the POI, which we confirmed at verification.<sup>72</sup> Therefore, we continue to limit our analysis below to PT.

We determine that this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and confers a benefit equal the amount of tax savings under the program as provided under section 771(5)(E) of the Act and 19 CFR 351.509(a). Regarding specificity, we find that the *Statute for Upgrading Industries* does not expressly limit the program to any enterprise, industry, or geographical location, and thus, we determine that benefits under this program are not specific under section 771(5A)(D)(i) of the Act.<sup>73</sup> Our findings in this regard are consistent with *NOES from Taiwan*.<sup>74</sup>

Consistent with section 771(5A)(D)(iii) of the Act, we next examined whether there was a basis to conclude that the program was specific on a *de facto* basis by analyzing whether the actual recipients of the income tax credits were limited in number, whether an enterprise or industry

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<sup>68</sup> See Prosperity Companies Preliminary Calculation Memorandum; see also Yieh Phui Companies Preliminary Calculation Memorandum.

<sup>69</sup> See TA PQR at Exhibit C-1 page 55.

<sup>70</sup> *Id.*, at Exhibit Q – 1 pages 161, 167 and 168.

<sup>71</sup> See 19 CFR 351.526(d)(1).

<sup>72</sup> See Prosperity Companies' PQR at 34, and Yieh Phui's PQR at 13, respectively. See also Yieh Phui Verification Report.

<sup>73</sup> See TA PQR at Exhibit C-1.

<sup>74</sup> See NOES Final Decision Memorandum at 14.

was a predominant user or received disproportionately large amounts of the income tax credits, or whether the income tax credits were otherwise provided in a discretionary manner. Based on our analysis and our verification findings, we determine that the actual recipients are not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. To analyze predominance and disproportionality under section 771(5A)(D)(iii)(II)-(III) of the Act, we utilized usage information from the TA to compare the income tax credits received by PT to the average tax credits that all other Taiwanese companies received under the program. Under this analysis, we find that PT received tax credit amounts that were above and below the average during the period 2009 through 2013.<sup>75</sup> Taken in totality, we find under section 771(5A)(D)(iii)(II)-(III) of the Act that PT was not a predominant user and that the tariff credits received by PT were not disproportionately large.<sup>76</sup> Further, we find there is no evidence on the record indicating that the tax credits received by PT were specific under section 771(5A)(D)(iii)(IV) of the Act. Therefore, we determine that this program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we determine that this program is not specific and, thus not countervailable.

## **B. Programs Determined Not To Confer a Benefit During the POI**

### **1. Loan Financing by the National Development Fund (NDF)**

Pursuant to the *Act for Industrial Innovation and Regulations Governing the Application of Investment Tax Credits for Research and Development Expenditures of Companies*, the NDF has launched several financing programs to assist enterprises in applying for financing through financial institutions, in which the NDF teams up with banks to operate these financing programs by means of joint contribution and service charges.<sup>77</sup> The preferential loans that the NDF offers are “to support for industries’ capital needs in response to trade liberalization, assist the industries to adjust their business operation, improve the industrial structure, and to promote the competitiveness of the industries.”<sup>78</sup> According to the TA, PT applied for loan financing under this program and received funding from the Export-Import Bank of the Republic of China.<sup>79</sup> After confirming with the Taiwan Government, Yieh Phui reported that it received a loan<sup>80</sup> and Shin Yang reported that it received two loans<sup>81</sup> from the NDF through a bank under this program.<sup>82</sup>

To determine whether a benefit exists, we compared the interest rates that PT, Yieh Phui, and Shin Yang respectively paid on the loan provided under this program to the interest payments

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<sup>75</sup> Note, tax credits corresponding to tax year 2013 were reflected in the tax return filed during the 2014 POI.

<sup>76</sup> See Prosperity Companies Preliminary Calculation Memorandum; see also Yieh Phui Companies Preliminary Calculation Memorandum.

<sup>77</sup> See the TA PQR at Exhibit L-1.

<sup>78</sup> *Id.*, at Exhibit L-1-2.

<sup>79</sup> *Id.*, at Exhibit L-1.

<sup>80</sup> See Yieh Phui’s supplemental PQR at 7 and Exhibit 8.

<sup>81</sup> The loans that Shin Yang received are under the following two programs entitled “Preferential Financing Program for Liberalization of Trade and Industrial Development,” and “Special Loan for Revitalization of Traditional Industries.” See Yieh Phui’s supplemental PQR at 10 and Exhibit 9.

<sup>82</sup> See Yieh Phui’s supplemental PQR at 7 and 10, and Exhibits 8 and 9; see also Yieh Phui Companies Preliminary Calculation Memorandum.

each of these companies would have paid on a similar, commercial loan. In conducting this comparison, we used the benchmark interest rate described in the “Subsidy Valuation” section of this decision memorandum.

Pursuant to section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we determine that the interest payments PT made on this loan during the POI are greater than the interest payments that would have been paid under the benchmark interest rate.<sup>83</sup>

Concerning Yieh Phui and Shin Yang, we determine that the interest payments they made under the program were less than what would have been paid on a comparable commercial loan and, thus, we find that the companies received a benefit. Therefore, we divided the benefit Yieh Phui received under the loan program by the total sales of Yieh Phui and Synn, net of intra-company sales, and we divided the benefit Shin Yang received under the loan program by the total sales of Yieh Phui, Synn, and Shin Yang, net of intra-company sales. The sum of the total net subsidy rate attributable to the Yieh Phui Companies is less than 0.005 percent *ad valorem*. Consistent with the Department’s practice, we find that this net subsidy is not numerically significant and, thus, we have not included it in the total net subsidy for the Yieh Phui Companies.<sup>84</sup> Because we find that this program does not confer a benefit, we have not analyzed financial contribution or specificity.

## 2. Provision of Land for LTAR for Eligible Firms Located in the Pingtung Industrial Park – a New Subsidy Allegation<sup>85</sup>

This program was included in AK Steel’s New Subsidy Allegation. On October 2, 2015, we issued a new subsidy questionnaire to the Yieh Phui Companies, Prosperity Companies and the TA.<sup>86</sup> The Yieh Phui Companies, the Prosperity Companies, and the TA submitted their respective NSA questionnaire responses on October 16, 19, and 20, 2015, respectively.<sup>87</sup> In the *Preliminary Determination*, we determined that we did not have sufficient time to fully analyze these responses. We further determined that more information from respondents is necessary for our analysis.

After the *Preliminary Determination*, on November 18, 2015, we issued a supplemental questionnaire to the TA in order to solicit additional information regarding potential land price benchmarks from the TA with regard to this program. However, in its response, the TA indicated that it was not able to provide any additional information concerning potential land benchmarks.<sup>88</sup>

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<sup>83</sup> See Prosperity Companies’ Preliminary Calculation Memorandum.

<sup>84</sup> See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 64 FR 18521 (April 4, 2011) and accompanying Issues and Decision Memorandum at Section F and footnote 5.

<sup>85</sup> See the Department’s Memorandum to Erin Begnal, “Certain Corrosion-Resistant Steel (CORE) Products from Taiwan: Decision Memorandum on New Subsidy Allegations,” dated October 1, 2015 (NSA Initiation Decision Memorandum). See also AK Steel’s new subsidy allegations (NSA), dated September 10, 2015 (NSA Submission).

<sup>86</sup> See the Department’s NSA Questionnaire to Yieh Phui (Yieh Phui NSAQ), Prosperity Tieh (PT NSAQ) and the TA (TA NSAQ) dated October 2, 2015.

<sup>87</sup> See the Yieh Phui Companies, Prosperity Companies, and TA’s NSAQR.

<sup>88</sup> See the Department’s letter, “New Subsidy Allegations Supplemental Questions for Taiwan Authority (TA),” dated November 18, 2015, and see Letter to the Department from TA, “Certain Corrosion-Resistant Steel Products



On February 3, 2016, based on our analysis of the NSA questionnaire responses submitted by the Yieh Phui Companies, the Prosperity Companies and the TA, we preliminarily determined that this program did not confer a benefit on either the Yieh Phui Companies or the Prosperity Companies.<sup>89</sup>

Specifically, we found that the Pingtung Industrial Park is administered by the TA's Industrial Development Bureau (IDB), which is part of the Ministry of Economic Affairs.<sup>90</sup> In its response, the Yieh Phui Companies indicated that they operate on three land plots located in the Pingtung Industrial Park: Sinping Section 163, Sinping Section 163-7, and Sinping Section 164.<sup>91</sup>

With respect to land plots "Sinping Sections 163 and 163-7," the Yieh Phui Companies indicate that these two plots were purchased by their wholly-owned affiliate, Shin Phui Steel Corporation (Shin Phui) in 1990, from a private entity named Meiho Enterprise Co., Ltd. (Meiho).<sup>92</sup> The Yieh Phui Companies state that Shin Phui has leased these two land plots to Yieh Phui since 1997.<sup>93</sup> We attempted to solicit additional information from the TA concerning potential benchmark land prices in Taiwan. However, the TA stated that other than the price data which had already been submitted, there was no private-to-private pricing data with regard to land sales available from the year 2000 in the Pingtung Industrial Park or in any other industrial zones in Taiwan. The TA also indicated that there were no records of auction sales of land, nor was there any integrated system to register land sales data in 2000 for retrieval.<sup>94</sup>

Based on information submitted by the Yieh Phui Companies and the information collected at the verification of the Yieh Phui Companies,<sup>95</sup> we determine that Shin Phui acquired the two land plots in question from Meiho, a private party,<sup>96</sup> and, thus, that Shin Phui's acquisition and subsequent leasing of the land plots do not constitute a financial contribution within the meaning of section 771(5)(B) of the Act.<sup>97</sup>

With respect to the land plot "Sinping Section 164," which Yieh Phui purchased from the IDB in 2000, we determine that this transaction did not confer a benefit within the meaning of section 771(5)(E)(iv) of the Act. Specifically, having determined that Meiho operated as a private party when it sold Sinping Sections 163 and 163-7 to Shin Phui in 1990, we have, in accordance with 19 CFR 351.511(a)(2)(i), used the unit price that Meiho charged for the two land plots as our tier-one benchmark when determining whether the IDB sold Sinping Section 164 to Yieh Phui

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from Taiwan: New Subsidy Allegations Questionnaire Response," dated December 1, 2015 (NSAQR).

<sup>89</sup> See Post-Prelim NSA Memorandum and the accompanying Post Prelim Calc. Memorandum Regarding Land LTAR.

<sup>90</sup> See TA NSAQR at 2.

<sup>91</sup> See the Yieh Phui Companies NSAQR at 2.

<sup>92</sup> *Id.*, at 2-4; see also TA NSAQR at 2.

<sup>93</sup> See Yieh Phui Companies NSAQR at 2.

<sup>94</sup> See TA's supplemental response dated December 1, 2015, in which the TA noted that it did not implement a centralized reporting and registration regime until the December 30, 2011 enactment of an amendment to Article 47 of the Equalization of Land Rights Act.

<sup>95</sup> See "Verification of the Questionnaire Responses of Yieh Phui Companies," dated January 27, 2016 (Yieh Phui Verification Report) at 8-9, and see Exhibit VE-14.

<sup>96</sup> See the Yieh Phui Companies NSAQR at 4.

<sup>97</sup> See *id.* at 2-3.

for LTAR. Because the benchmark land prices stem from a transaction that occurred in 1990, we indexed the benchmark land unit price to the year 2000 using the Taiwanese Producer Price Index. Next, we compared the benchmark land unit price (in 2000 Taiwanese Dollars) to the land unit price the IDB charged Yieh Phui for Sinping Section 164. Based on this comparison, we determine that the price the IDB charged Yieh Phui was greater than the benchmark land price and, therefore, that the transaction did not confer a benefit within the meaning of section 771(5)(E)(iv) of the Act.<sup>98</sup>

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

Based on the case record and our verification findings, we determine that the following alleged subsidy programs were not used by either the Prosperity Companies or the Yieh Phui Companies.<sup>99</sup>

1. Income Tax Credits for Investment in Designated Regions
2. Shareholder's Investment Tax Credit for Participation in Infrastructure Projects
3. Building and Land Value Tax Deduction for Supplying to Major Infrastructure Projects
4. Grants to Promote Industrial Innovation (also referred to as Innovative Technology Applications and Services Program)
5. Grants for International Development Activities
6. Grants for Traditional Industry Technology Development (also referred to as Conventional Industry Technology Development)
7. Industrial Technology Development Program
8. Strengthen the Ability of Emerging Development Program
9. Subsidies for Companies Located in Industrial Parks and Economic Pilot Zones: Discounted Lease Rates
10. Subsidies for Companies Located in Industrial Parks and Economic Pilot Zones: Exemptions from Taxes and Fees
11. Subsidies for Companies Located in Industrial Parks and Economic Pilot Zones: Technology Royalties
12. Subsidies for Companies Located in Environmental Science and Technology Parks: Discounted Land
13. Subsidies for Companies Located in Environmental Science and Technology Parks: Production and Research Subsidies
14. Major Infrastructure Projects – Land Lease Program
15. Self-Evaluation Service
16. Innovative Technology Applications and Services (ITAS) Program
17. Kaohsiung City Subsidies to Promote Industrial Development
18. Preferential Tax Treatment for Eligible Firms Located in the Pingtung Industrial Park
19. Preferential Lending for Eligible Firms Located in the Pingtung Industrial Park
20. Grants for Eligible Firms Located in the Pingtung Industrial Park

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<sup>98</sup> For additional information, *see* Post-Prelim NSA Memorandum and the accompanying Post Prelim Calc. Memorandum Regarding Land LTAR.

<sup>99</sup> The alleged programs include those contained in the Petition and in AK Steel's New Subsidy Allegations. *See Initiation Notice* and the accompanying initiation checklist. *See also* the Department's NSA Initiation Decision Memorandum.

## 21. Grants to Private Firms for Upgrading Industrial Zones.

### IX. ANALYSIS OF COMMENTS

#### **Comment 1:** Whether CSC is a Government Authority Capable of Providing a Financial Contribution

##### *AK Steel's Case Brief*

- The Department applies a five factor test when determining whether an entity is a government authority capable of providing a financial contribution. These factors are: 1) government ownership, 2) government presence on the entity's board, 3) government control over the entity's activities, 4) the entity's pursuit of government policies and interests, and 5) whether the entity is created by statute.<sup>100</sup> The first four of the five factors support a determination that CSC is an authority.
- Proper application of the five factors in the instant investigation demonstrates that CSC is a government authority whose sale of steel inputs constitutes a financial contribution.
- The TA's Ministry of Economic Affairs (MOEA) is CSC's largest shareholder and owned 20 percent of CSC during the POI. The TA has additional ownership of CSC through other public bodies. Together, the MOEA and other TA bodies owned 23.66 of CSC during the POI.
- No other shareholder comes close to the MOEA's ownership level. For example, the largest non-government entity owned less than two percent of CSC during the POI.
- The Department has previously determined that enterprises with little government ownership can be government authorities if the government exerts meaningful control over them.<sup>101</sup>
- The Department has further determined that a firm's commercial behavior is not dispositive in determining whether that firm is a government authority.<sup>102</sup>
- CSC is only one of six "direct investment businesses" owned by the MOEA under the State-Owned Enterprise Commission.<sup>103</sup>
- The MOEA's website demonstrates that the TA seeks to maintain its control over CSC, because it says that "after the privatization of state-owned enterprises, the government will still be the largest shareholder."<sup>104</sup> Further, the Department verified that the MOEA monitors its investment in CSC, including the company's profitability and also has direct contact with CSC's management through the MOEA's representatives on the board of directors.<sup>105</sup>

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<sup>100</sup> See *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30954 (July 13, 1992) (Magnesium from Canada).

<sup>101</sup> See *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1315 (CIT 2015) (Borusan), citing *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (OCTG from Turkey) and accompanying Decision Memorandum (OCTG from Turkey Decision Memorandum) at the "Provision of HRS for LTAR" section.

<sup>102</sup> See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Line Pipe from Turkey*) and accompanying Decision Memorandum (*Line Pipe from Turkey Decision Memorandum*) at section A.1 and Comment 2.

<sup>103</sup> See AK Steel's October 20, 2015, submission (AK Steel Pre-Preliminary Comments) at Exhibit 1.

<sup>104</sup> *Id.*

<sup>105</sup> See Memorandum to the File from Joy Zhang, Case Analyst, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan," (January 27, 2016) (TA Verification Report) at 2.

- Taiwan Ratings, a Standard and Poor's rating partner, recognizes that CSC has a "strong link with the Taiwanese government" and the level of government support provided to the company is likely "extraordinary."<sup>106</sup>
- The MOEA controls CSC through CSC's Board Chairman and other Board Members. The MOEA appointed CSC's Board Chairman. Further, the verification did not indicate that any private shareholder nominated a potential chairman or member of the Board of Directors. As a result, the MOEA's candidate was assured to be elected to the position of Board Chairman.
- An article from the Wall Street Journal indicates that the TA usually appoints top managers at companies in which it owns a controlling stake.<sup>107</sup> This pattern holds in the case of the MOEA's appointment of CSC's Board Chairman.<sup>108</sup>
- Information from the TA indicates that the MOEA nominated the only candidate for Board Chairman for the period covering the POI.<sup>109</sup>
- The position of Board Chairman is a vital position. Taiwan's generally accepted accounting principles indicate that Board Chairmen typically act as the "chief operating decision maker."<sup>110</sup> Further, Articles 20 and 24 of CSC's AOI state that the Board Chairman shall preside at shareholders' meetings and serve as the "external representative" for the company.<sup>111</sup>
- CSC's Board Chairman exerts influence throughout the company by virtue of appointments. Article 35 of the AOI gives the Board Chairman the authority to appoint assistant vice presidents and first echelon supervisors.<sup>112</sup>
- Additionally, Article 3 of the AOI provides that CSC's Board Chairman nominates members of the company's governance committee.<sup>113</sup>
- CSC's AOI requires that the company have nine to 15 board members. During the POI, CSC had two MOEA representatives on its board in addition to the Chairman.<sup>114</sup>
- The TA suggests that many shareholders can nominate individuals for the board and that CSC's board is independent of the TA.
- CSC's actual nomination process indicates otherwise. According to Article 192-1 of the Company Act, only shareholders that own one percent or more common shares may nominate directors.<sup>115</sup>
- There are only eight shareholders whose holdings exceeded one percent during the POI, of which only three were private entities. The remaining five entities were entities directly or indirectly owned/controlled by the TA.<sup>116</sup>

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<sup>106</sup> Further, Dow Jones has described CSC as being "government-controlled." *See also* AK's submission "Certain Corrosion-Resistant Steel Products From Taiwan: Factual Information To Clarify The Taiwan Authority's Questionnaire Response," (September 30, 2015) (AK Steel Factual Comments) at Exhibit 2.

<sup>107</sup> *See* AK Steel Pre-Preliminary Comments at Exhibit 8.

<sup>108</sup> *Id.* at Exhibits 4 and 8.

<sup>109</sup> *See* the TA's September 17, 2015, Initial Primary Questionnaire Response (TA PQR) at 50; *see also* the TA Verification Report at Exhibit 2.

<sup>110</sup> *See* TA PQR at Exhibit GEN-2.

<sup>111</sup> *Id.*, at Exhibits A-2-1 and A-2-8.

<sup>112</sup> *Id.*, at Exhibit A-2-1.

<sup>113</sup> *Id.*, at Exhibit A-2-9.

<sup>114</sup> *Id.*, at 52.

<sup>115</sup> *Id.*, at 52; *see also* the TA's October 14, 2015 Supplemental Questionnaire Response (TA 1SQR) at 12.

<sup>116</sup> *Id.*, at 35.

- Further, the TA has stated that “as a practical matter,” all nominees to the board were “guaranteed to be elected to the board of directors” during shareholder meetings.<sup>117</sup>
- The record demonstrates that the three private shareholders did not nominate any board members that served during the POI. Thus, it is reasonable to conclude that the MOEA and other TA entities accounted for all board member nominations.
- Evidence indicates that the TA controls CSC’s operations. For example, the TA managed CSC “in accordance with the relevant stipulations of the Executive Yuan’s National Audit Office and the Ministry of Economic Affairs.”<sup>118</sup> Further, the Legislative Yuan passed a law requiring that the MOEA retain a minimum 20 percent ownership of CSC, thereby ensuring the TA’s continued control of CSC.<sup>119</sup>
- The TA’s control over CSC is reflected in the financial support the company has received from the TA. CSC’s 2014 annual report indicates that CSC has received government funds in connection with “issuance and maintenance expenses.”<sup>120</sup>
- CSC pursues government policies and interests. For example, record evidence indicates that CSC operates a dual pricing scheme for cold-rolled steel and hot-rolled steel – a domestic price and an export price.<sup>121</sup>
- The TA has not denied the existence and, in fact, has recognized its existence by only reporting information regarding domestic prices.<sup>122</sup>
- Information provided by AK Steel indicates that CSC regularly lowers the domestic price of steel, including cold-rolled steel and hot-rolled steel, which accounts for 70 percent of CSC’s production.<sup>123</sup>
- Further, at the end of the POI, CSC decided to “lower domestic steel prices to enhance competitiveness of downstream clients.”<sup>124</sup>
- This information demonstrates that CSC prices its products to the benefit of its downstream customers and at the expense of CSC’s bottom line. These price increases demonstrate that the CSC implements government policy.
- News reports support the conclusion that CSC carries out TA policy goals. In 2008 the Metal Pioneer News reported that CSC cooperated with government policies to strengthen the competitiveness of downstream steel producers.<sup>125</sup>
- Despite the TA’s claims that the “Two Two-Thousand Plan” is merely a phrase created by the Taiwanese press, the plan is, in fact, a TA policy whose aim is to assist downstream producers.
- Additionally, the TA’s 2010 Iron and Steel Industry Evaluation Report states under “key policy points” that “future domestic steel supply should give priority to the domestic

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<sup>117</sup> See the TA 1SQR at 12.

<sup>118</sup> See AK Steel Pre-Preliminary Comments at Exhibit 1.

<sup>119</sup> See the TA PQR at 48.

<sup>120</sup> *Id.*, at 48 and Exhibit A-2-3b at 61.

<sup>121</sup> *Id.*, at 42; see also *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from Taiwan*, 50 FR 53363 (December 31, 1985) (*Line Pipe from Taiwan*).

<sup>122</sup> See the TA PQR at 42; TA 1SQR at Exhibit S1-14, AK Steel Factual Comments at Exhibit 1, and AK Steel Pre-Preliminary Comments at Exhibit 1.

<sup>123</sup> See AK Steel Factual Comments at Exhibit 4.

<sup>124</sup> *Id.*, at Exhibit 4. CSC repeated its price decreases after the POI.

<sup>125</sup> *Id.* at Exhibit 1, which references the company’s cooperation with the TA’s Industrial Development Bureau and the implementation of the “Two Two-Thousand Plan.”

demand.”<sup>126</sup> The report further states that the steel industry shall “ensure the stability of materials supply and the competitiveness on price.”<sup>127</sup>

- The Department should determine that CSC operated as a government authority during the POI and that its sale of cold-rolled steel and hot-rolled steel to respondents constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

#### *The TA’s Rebuttal Arguments*

- That the TA is the largest single shareholder of CSC does not change the fact that other shareholders own more than three-quarters of CSC’s shares.
- AK Steel’s claim that CSC’s characterization as a “direct invested business” demonstrates that CSC is controlled by the TA is unfounded. In making this argument, AK Steel misread a page from a government website. In fact, the webpage noted by AK Steel refers to CSC and several other companies in which the TA’s State-Owned Enterprise Commission (SOEC) has a minority ownership as “our fellow enterprises” without explaining the nature of the TA’s ownership of them or the TA’s role with respect to them.
- Further, a separate page from the TA’s website identifies four subordinate enterprises, none of which are CSC. Rather, CSC is listed separately as being one of six “direct invested businesses.”<sup>128</sup>
- Additionally, information from the SOEC website indicates that the SOEC only has supervisory responsibility over six companies, none of which is CSC.
- AK Steel incorrectly claims that the TA managed CSC “in accordance with the relevant stipulations of the Executive Yuan’s National Audit Office and the Ministry of Economic Affairs.” The National Audit Office is under the Control Yuan, not the Executive Yuan. Further, the TA manages shares, not the companies that issued those shares.<sup>129</sup> Nothing in the language cited by AK Steel indicates that the TA managed CSC.
- AK Steel mischaracterizes statements made by ratings agencies to assert that the TA controls CSC. In fact, Standard & Poor’s stated that there is only a “moderate likelihood of extraordinary government support” to CSC.<sup>130</sup> In any event, the possibility of future government support of CSC does not indicate current government control of the company.
- AK Steel mischaracterizes the background and facts surrounding CSC’s Board Chairman. The Department verified that the Board Chairman, Mr. Jo-Chi Tsou, was a long-time CSC employee who rose to be a vice-president and director of the company more than a decade ago. Mr. Tsou then left CSC to work with other private companies in the steel industry before being nominated to serve on CSC’s board in 2010.<sup>131</sup>
- This individual was nominated to CSC’s board not as a “representative” of the TA or any government agency, but instead as a “representative” of a private investor, Chiun Yu Investment Corporation. When the previous board chairman resigned, Mr. Tsou was elected to the position of Board Chairman by a unanimous vote of CSC’s board.<sup>132</sup>

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<sup>126</sup> See AK Steel Pre-Preliminary Comments at Exhibit 9.

<sup>127</sup> *Id.*

<sup>128</sup> See TA’s October 26, 2016, submission (TA Pre-Preliminary Comments) at Exhibit S3-1.

<sup>129</sup> *Id.* at S3-4.

<sup>130</sup> See AK Steel Pre-Preliminary Comments at Exhibit 2

<sup>131</sup> See TA Verification Report at 3.

<sup>132</sup> *Id.*

- The TA did not appoint CSC's top managers, as claimed by AK Steel. In fact, the TA Verification Report states that none of CSC's top managers were appointed by the TA or were otherwise TA employees/representatives. Rather, the verification report indicates that CSC's board members appointed senior management.<sup>133</sup>
- Further, at verification, CSC officials explained how managers, below the level of vice-president, are selected. Specifically, CSC's President reviews recommendations received from company staff, makes a recommendation to the Board Chairman, and the Board Chairman appoints the individuals to the position. The verification demonstrated that CSC's Board Chairman makes these personnel decisions based on the recommendation received from the company president.<sup>134</sup>
- CSC's AOI indicates that the Board Chairman does not have unilateral authority to appoint higher-level officials. Rather, CSC's AOI indicates that such personnel decisions are subject to majority vote by the board members.<sup>135</sup>
- AK Steel falsely argues that the TA controls CSC through the company's governance committee. The Board Chairman lacks the ability to unilaterally appoint members of the governance committee. CSC's corporate governance documents indicate that such members are subject to approval by the board members and that the committee shall include at least one independent director who shall serve as the chairman of the governance committee.<sup>136</sup>
- During the POI, the governance committee consisted solely of individuals who do not represent the TA. Two of three members represented private shareholders while the third member was an independent director.<sup>137</sup>
- During the POI, only three of CSC's board members are representatives of the TA. These three board members are outnumbered by three independent directors, a fourth board member who represents the labor union, plus an additional four board members who represent the interests of private shareholders.
- During verification, the Department noted at least one instance in which an action proposed by Mr. Tsou was opposed by the other board members that represent the TA. Despite the opposition of these two board members, the proposed action was approved. This demonstrates that the board members operated independently of the TA.<sup>138</sup>
- AK Steel misinterprets Taiwan's Corporate Act to incorrectly assert that the TA is able to control the nomination of CSC's board members. Under the Corporate Act, a group of shareholders that individually own less than one percent of the shares of a public company may nevertheless jointly nominate a candidate for the board if, in the aggregate, they own one percent or more of the company's shares.<sup>139</sup>
- AK Steel's claim that the TA was solely responsible for the nomination of CSC's board member is false. For example, Mr. Tsou, CSC's Board Chairman during the POI, was first nominated to serve on CSC's board by a private investor.<sup>140</sup>

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<sup>133</sup> See TA Verification Report at 4.

<sup>134</sup> *Id.*; see also TA IPQR at Exhibit A-2-1, Article 35 of CSC's AOA.

<sup>135</sup> See TA Verification Report at Exhibit 2; see also TA PQR at Exhibit A-2-1 and A-2-8.

<sup>136</sup> See TA PQR at Exhibit A-2-9, which contains the Governance Committee Foundation Principles.

<sup>137</sup> See TA ISQR at 5; see also TA PQR at 50-51.

<sup>138</sup> See TA Verification Report at 4.

<sup>139</sup> See TA Pre-Preliminary Comments at Exhibit S3-5.

<sup>140</sup> See TA Verification Report at 3.

- The fact that the Taiwan’s Legislative Yuan blocked the MOEA’s efforts to reduce its shares in CSC below 20 percent does not demonstrate that the TA controls CSC. As discussed at verification, the Legislative Yuan’s actions stemmed from concerns from CSC’s labor union that “corporate raiders” might “gut” CSC’s workforce.<sup>141</sup>
- AK Steel wrongly claims that government assistance received by CSC demonstrates that the firm was controlled by the TA. The assistance CSC received from the TA for certain share issuance costs occurred in 1997, 1998, and 2003. CSC has not received any such assistance since 2003.<sup>142</sup> Further, the MOEA’s role in privatizing CSC more than a decade ago does not constitute evidence that the MOEA controlled CSC during the POI.
- CSC does not follow TA direction in terms of pricing. CSC sets its prices solely on commercial considerations. CSC’s board minutes, as reviewed at verification, support this fact.<sup>143</sup>
- The “Two Two-Thousand Plan,” as referenced by AK Steel, is merely a repackaging for press purposes of investments that CSC had decided to make in the years prior to the POI.
- The purported “key policy points” from the Taiwan Iron and Steel Industry Development Policy, as cited by AK Steel, do not indicate that CSC carries out policies on behalf of the TA. In fact, the report, which was merely a draft report, states that an affiliate of CSC should complete its capacity expansion plan “as soon as possible to ensure that there is no problem with future steel supply.”<sup>144</sup>
- Additionally, when read in context, it is clear that the Taiwan Iron and Steel Industry Development Policy report addresses the environmental impact of the Taiwanese steel industry and has nothing to do with the TA’s financial assistance to industries.<sup>145</sup>
- Record evidence demonstrates that CSC operates in a manner that is consistent with market principals. CSC is listed on the Taiwanese stock exchange and, thus, is governed by the Company Act and Securities and Exchange Act, whose provisions require that CSC act in the best interest of its shareholders.<sup>146</sup>
- CSC is governed by a board where nine of 11 directors as well as three supervisors have no connection to the TA.<sup>147</sup>
- CSC’s board meeting minutes do not contain any evidence that CSC lowered prices or took any other actions as a result of government pressure or control.
- Record evidence demonstrates that CSC’s prices are set by its executives based on market information.<sup>148</sup>
- The evidence, therefore, demonstrates that CSC did not act as a government authority during the POI and, thus, its sales of cold-rolled steel and hot-rolled steel to the respondent firms did not constitute a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

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<sup>141</sup> See TA Verification Report at 5; *see also* TA 1SQR at 8-10.

<sup>142</sup> See TA PQR at 46-47; *see also* TA 1SQR at Exhibit S2-1.h at 364 and 400.

<sup>143</sup> See TA Verification Report at 5.

<sup>144</sup> See AK Steel Pre-Preliminary Comments at Exhibit 13.

<sup>145</sup> See TA Pre-Preliminary Comments at Exhibit S3-10.

<sup>146</sup> See TA PQR at 37.

<sup>147</sup> See TA 1SQR at 14; *see also* TA PQR at 50-51.

<sup>148</sup> See TA PQR at 42; *see also* TA 1SQR at S1-14.



### *Prosperity's Rebuttal Arguments*

- In addition to echoing the arguments of the TA, Prosperity makes the following rebuttal arguments.
- Section 771(5)(B) of the Act states that a subsidy is bestowed when an “authority” provides a financial contribution to a person and a benefit, which is specific as described in the statute, is conferred. The statute provides that the term “authority” means a government of a country or any public entity within the territory of the country.
- The WTO defines a “public body” as an entity that “is vested with or exercises governmental authority” and that evidence of government ownership, by itself, is not evidence of meaningful control.<sup>149</sup>
- Accordingly, the Department has defined meaningful control as “control related to the possession or exercise of governmental authority and governmental functions.”<sup>150</sup>
- Application of the five factors, as referenced above by AK Steel, demonstrates that CSC is not a government authority.
- Only 24 percent of CSC is held by TA institutions, with the rest held by private shareholders.
- Unlike in *Borusan*, in which the Department found that the government owned a majority of the company’s shares and that there were other indicia of government control, the instant record demonstrates that there is minority government ownership and no other indicia of control.<sup>151</sup>
- AK Steel’s claims concerning a government-sponsored dual pricing scheme are inaccurate. The source information relied on by AK Steel to make its dual pricing claim merely refers to the prices set in CSC’s domestic pricing meetings.<sup>152</sup> This information does not establish the existence of a dual pricing scheme. *Line Pipe from Taiwan*, as cited by AK Steel in support of a dual pricing scheme, undercuts AK Steel’s claims. In *Line Pipe from Taiwan*, an investigation that dates back to 1985, the Department found that the domestic price in question was higher than the export price, a fact pattern that does not bolster AK Steel’s claim in the instant investigation that TA policy forces firms like CSC to sell inputs in the domestic market for LTAR.<sup>153</sup>
- CSC was not created by statute and, thus, CSC does not meet the fifth factor of the five-factor test the Department has used to determine whether an entity is a government authority.

### *Yieh Phui's Rebuttal Arguments*

- The TA possess none of the requisite indicia of control over CSC, and CSC cannot be considered a government authority under section 771(5)(B) of the Act.<sup>154</sup>
- Substantial record evidence demonstrates that CSC did not provide cold-rolled steel and hot-rolled steel to Yieh Phui for LTAR.<sup>155</sup>

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<sup>149</sup> See United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011) (DS 379) at 345-346.

<sup>150</sup> See *Borusan*, 61 F. Supp. 3d at 1318-1319.

<sup>151</sup> *Id.*, at 1321-1322.

<sup>152</sup> See TA PQR at 42.

<sup>153</sup> See *Line Pipe from Taiwan*, 50 FR 53363.

<sup>154</sup> See Yieh Phui’s Rebuttal Brief at 1.

<sup>155</sup> *Id.*, at 2.

- In *Kitchen Shelving and Racks*, the Department stated that it has examined the five-factor authority analysis in the past only “where it was unclear whether a firm was an authority based on ownership information alone.”<sup>156</sup>
- The TA and other public bodies own less than 24 percent of CSC's shares. Substantial record evidence demonstrates the ownership held by the TA over CSC is simply insufficient for the TA to exercise meaningful control over CSC.<sup>157</sup>
- AK Steel alleges that CSC is one of the six direct invested businesses owned by the MOEA under the State-owned Enterprise Commission (SOEC), through which MOEA exercises control over CSC because SOEC monitors its investment in CSC through the MOEA representatives on the board of directors.<sup>158</sup> However, none of AK Steel’s assertions indicates that the MOEA or SOEC takes actions beyond those which a reasonable, profit-driven investor would take in order to protect its interest in a company.<sup>159</sup>
- The TA’s ownership level over CSC allowed the TA to nominate only three out of the eleven total board members. The number of board members allegedly controlled by the TA thus is simply insufficient for the TA to exercise meaningful control over CSC under CSC's legal structure.
- The TA is not capable of exercising any meaningful control over CSC during the POI through CSC’s Chairman, Mr. Jo-Chi Tsou,. The Chairman was nominated by CSC’s three government-appointed board members and was, in turn, elected by CSC's board of directors as the chairman mainly because of his educational background in material science and his prior professional experiences in the steel industry.<sup>160</sup> His main responsibilities as the board Chairman were to make sure that CSC was profitable, and no record evidence indicates that he was responsible for carrying out any other government policy goals or interests.<sup>161</sup>
- The record demonstrates that CSC’s board acts independently from the government and its board members vote of their own free will when exercising the power vested in each board member by CSCs AOI.<sup>162</sup>
- Record evidence does not indicate that CSC sets its prices under the government’s control or influence. Instead, CSC sets its prices based on evaluation of the market intelligence" and "posts those prices {openly} on the CSC's website."<sup>163</sup> AK Steel cites no evidence that CSC follows the TA’s policies for non-commercial reasons.<sup>164</sup>
- It is undisputed that CSC is not an entity that was created by statute.<sup>165</sup>

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<sup>156</sup> See *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) and the accompanying Issues and Decision Memorandum at Comment 4 (*Kitchen Racks from China*). See also Yieh Phui’s Rebuttal Brief at 3.

<sup>157</sup> See Yieh Phui’s Rebuttal Brief at 3.

<sup>158</sup> See AK Steel’s Case Brief at 7-8.

<sup>159</sup> See Yieh Phui’s Rebuttal Brief at 4.

<sup>160</sup> See TA Verification Report at 3.

<sup>161</sup> *Id.*

<sup>162</sup> For example, Mr. Jo-Chi Tsou, CSC's former chairman, once proposed an amendment to CSC's AOI to abolish the position of CEO. The other two MOEA board representatives did not consent to such an amendment, but the amendment nonetheless passed upon a majority vote of the board. See TA Verification Report at 4.

<sup>163</sup> See TA Verification Report at 5.

<sup>164</sup> See Yieh Phui’s Rebuttal Brief at 6.

<sup>165</sup> *Id.*

**Department’s Position:** Section 771(5)(B) of the Act defines “authority” as a “government of a country or any public entity within the territory of a country.” We disagree with AK Steel that CSC was an “authority” during the POI and, thus, we determine that CSC’s sales of cold-rolled steel and hot-rolled steel to the respondent firms did not constitute financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

Interested parties point to a five-factor test<sup>166</sup> to support their arguments concerning whether CSC is an “authority” whose sales of cold-rolled steel and hot-rolled steel constitute a financial contribution AK Steel argues that the first four of these factors apply to CSC. As an initial matter, although the Department has found the five-factor test instructive in some proceedings, we do not agree that the Department is compelled to apply the five-factor test in this instance.<sup>167</sup> In fact, in recent proceedings, we have analyzed whether an entity possesses, exercises, or is vested with government authority in order to determine whether it is an “authority” under section 771(5)(B) of the Act.<sup>168</sup> As we stated in *Citric Acid from China*, “the relevant question” in determining whether an entity is an “authority” is whether the “entity possesses, exercises or is vested with government authority.”<sup>169</sup> Based on our analysis, the answer to that question in this case is no. Nonetheless, we address parties’ arguments regarding the five factors below and find that even under the factor test, the Department concludes that CSC is not an “authority” as described under section 771(5)(B) of the Act.

With regard to government ownership, as explained above, the MOEA is the largest shareholder of CSC (20 percent) along with an additional 3.66 percent held by the three TA-owned entities.<sup>170</sup> While the Department has found entities with relatively low levels of government ownership to be government authorities (e.g. *Sheet and Strip from Korea*), the facts surrounding such findings hinge on more than mere ownership.<sup>171</sup> Similarly, in *Borusan* the Department determined that enterprises with minority government ownership can be government authorities if the government exercises meaningful control over them.<sup>172</sup> The Department has adopted the same approach in recent proceedings involving Turkey. In the litigation for the investigation on *OCTG from Turkey*, the investigation of *Lined Pipe from Turkey*, and the 2013 review of *Pipe*

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<sup>166</sup> See also *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>167</sup> See, e.g., *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying Issues and Decision Memorandum at Comment 6; see also *Oman Nails* at Comment 3.

<sup>168</sup> See *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>169</sup> See 2013 Review of *Citric Acid from the PRC* Decision Memorandum at Comment 3.

<sup>170</sup> In addition to MOEA, other TA-owned entities include the Bureau of Labor Insurance (1.47 percent), Chunghwa Post Co., Ltd. (1.27 percent), and Public Service Pension Fund Management Board (0.92 percent).

<sup>171</sup> See *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea (Sheet and Strip from Korea)*, 67 FR 62102 (October 3, 2002) and accompanying IDM at Comment 1, where the Department noted that the Korean Government directly appointed government officials to the company’s board, government-imposed restrictions on shareholder voting that gave disproportionate weight to shares held by the government, and the Korean Government’s special designation of the company as a “public company,” etc.

<sup>172</sup> See *Borusan*, citing *OCTG from Turkey* and *OCTG from Turkey* Decision Memorandum at the “Provision of HRS for LTAR” section.

*and Tube from Turkey*,<sup>173</sup> the Department found a Turkish HRS producer that was 49 percent owned by a government pension fund to be a government authority. However, in reaching this determination, the Department did not rely solely on the percentage of shares held by the Turkish Government; rather, the Department cited additional factors. For example, the Department noted that (1) statements in the annual report of the HRS producer indicated that it undertook corporate operations that were in line with the Turkish Government's policy goals, (2) the Turkish Government held the veto power over any decisions related to the closedown, sale, merger, or liquidation of the Turkish HRS producer, (3) the government pension fund had members on the board of the HRS producer, and (4) the government pension fund was able to effectively decide the composition of the majority of the HRS producer's board.<sup>174</sup>

The instant investigation is distinct from the cases discussed above. During the POI, three individuals, who were nominated by the MOEA, sat on CSC's board. These three individuals were not members of or employed by the TA during the POI. Concerning the remaining board members, which comprised two-thirds of CSC's board, none were employed by the TA and there is no evidence on the record that they were nominated by the TA.<sup>175</sup> In addition, the structure of CSC's AOI requires a majority vote for actions taken by its board. We also note that none of CSC's senior executives, who are appointed by a majority vote of the board, are government officials. Thus, we find there is no means by which the three board members who were nominated by the TA could exert meaningful control over the company's operations during the POI such that CSC would be considered to possess or exercise government authority.<sup>176</sup>

Further, we find no information in CSC's AOI or in the meeting minutes of its board, governance committee, or pricing committee meetings that suggests that the TA had any means to exert meaningful control over CSC during the POI such that it would be considered to possess or exercise government authority. Thus, none of the additional factors cited by the Department in prior proceedings, such as those discussed above, are present with regard to CSC.<sup>177</sup>

AK Steel argues that the MOEA exercises meaningful control over CSC.<sup>178</sup> To support its argument, it cites to a website which describes CSC as one of six "direct invested business" owned by the MOEA under the State-Owned Enterprise Commission (SOEC),<sup>179</sup> AK Steel also asserts that the SOEC works with the MOEA representatives in CSC, which includes the Chairman, to monitor CSC's profitability.

We find that AK Steel's argument is based on a misreading of a page from the website of the SOEC of MOEA that was taken out of context. As noted in TA's Rebuttal Brief, the specific page cited by AK Steel refers to CSC and several other companies in which the TA has a

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<sup>173</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015) and the accompanying Decision Memorandum at Comment 7.

<sup>174</sup> See *Line Pipe From Turkey and Line Pipe from Turkey Decision Memorandum at A.I. Provision of HRS for LTAR* and Comment 2.

<sup>175</sup> See TA PQR at 50-52. See also TA 1SQR at 10-14.

<sup>176</sup> *Id.*

<sup>177</sup> See TA Verification Report at 2-5.

<sup>178</sup> *Id.*, at 2.

<sup>179</sup> See AK Steel's Case Brief at 6. See also AK Steel Pre-Preliminary Comments at Exhibit 1.

minority interest as “our fellow enterprises,” without explaining the nature of the TA’s ownership of them or the SOEC’s role with respect to them.<sup>180</sup> Furthermore, a separate page of the SOEC’s website does not include CSC as one of the “subordinate enterprises” of the MOEA.<sup>181</sup> Instead, it is listed on a separate page that describes “6 Direct Invested businesses owned by MOEA.”<sup>182</sup> In addition, we note that the page from the SOEC website that describes the SOEC’s responsibilities indicates that the SOEC only has supervisory responsibility over six companies, but this list does not include CSC.<sup>183</sup> Moreover, we find that none of AK Steel’s assertions indicates that the MOEA or SOEC takes actions beyond those which a reasonable, profit-driven investor would take in order to protect its interest in a company.<sup>184</sup>

With respect to AK Steel’s reference to a Taiwanese rating agency’s statement that CSC has a “strong link” with the Taiwan government, we note that the ratings agency only indicated that there was a “moderate likelihood of extraordinary government support” and that this likelihood is based on the fact that the government maintains a 20 percent ownership share.<sup>185</sup> This statement does not, in and of itself, support a conclusion of government control, much less a conclusion that CSC possesses, exercises or is vested with government authority.

With respect to AK Steel’s reference to the MOEA website which states that “the management of government stocks will be in accordance with relevant stipulations of the Executive Yuan’s National Audit Office and . . .,” we find that the passage referenced by AK Steel explicitly refers to management of the *shares* owned by the TA, not the management of the companies that issued those shares.<sup>186</sup> Moreover, we note that nothing in the language quoted by AK Steel indicates that the TA managed CSC in any manner.

We address parties’ arguments with regard to the remaining factors below.

#### *Government Presence on the Entity’s Board*

AK Steel contends that the Chairman of CSC during the POI, Mr. Jo-Chi Tsou, was nominated by the MOEA and “represents the MOEA.” We find that AK Steel’s statement is misleading. At verification, we found that Mr. Tsou was a long-time CSC employee who rose to be a vice-president and director of the company more than a decade ago.<sup>187</sup> He then left CSC to work with other private companies in the steel industry, before being nominated to re-join CSC’s Board in 2010, as a “representative” of a private investor, Chiun Yu Investment Corporation. When the previous Chairman of CSC announced his resignation, Mr. Tsou was elected to be the new Chairman by the unanimous vote of CSC’s board.<sup>188</sup> Thus, while being nominated to the position of board chairman by the MOEA, the record evidence indicates that Mr. Jo-Chi Tsou

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<sup>180</sup> See TA’s Rebuttal Brief at 4.

<sup>181</sup> *Id.*; see also TA’s Pre-Preliminary Comments at Exhibit S3-1.

<sup>182</sup> *Id.*; see also TA’s Pre-Preliminary Comments at Exhibit S3-2.

<sup>183</sup> See TA’s Rebuttal Brief at 4.

<sup>184</sup> See Yieh Phui’s Rebuttal Brief at 4.

<sup>185</sup> See AK Steel Pre-Preliminary Comments at Exhibit 2.

<sup>186</sup> *Id.* at 4-5.

<sup>187</sup> See TA Verification Report at 3.

<sup>188</sup> *Id.*

has not served as a member or employee of the TA and that he was initially appointed to CSC's board by a private investor.

Furthermore, at verification the Manager of Human Resources, Mr. Hsi-Chou Chung, confirmed that Articles 33 to 36 of the AOI stipulates the role of managerial personnel and that none of the CSC senior managers are or have been government officials.<sup>189</sup> Mr. Chung also indicated that for managers below the level of Vice President, CSC's Chairman will appoint the new managers in accordance with the recommendation of CSC's President.<sup>190</sup> Moreover, under Article 33 of CSC's AOI, the appointment, discharge and remuneration of President, Executive Vice President, and Vice Presidents managerial personnel shall be pursuant to Article 29 of the Company Law, *i.e.*, by a resolution to be adopted by a majority vote of the directors at a meeting of the board of directors attended by at least a majority of the entire directors of the company.<sup>191</sup>

Regarding AK Steel's suggestion that the TA can exercise control over CSC through CSC's Governance Committee, we also disagree. According to Paragraph 2, Article 3 of CSC's Governance Committee Foundation Principle, the chairman can only nominate the members of the Governance Committee for the approval by the Board of Directors, and the Governance Committee must have at least one independent director which shall serve as the chairman of that Committee.<sup>192</sup> During the POI, CSC's Governance Committee was composed solely of directors who do not represent the TA. Two of the three members of that committee represent private shareholders, while the third, who acts as the chairman of the Committee, is an independent director.<sup>193</sup>

Given the structure of CSC's AOI, which requires a majority vote for actions taken by its board, we find there is no means by which the three board members who were appointed by the MOEA could exert meaningful control over the company's operations during the POI such that CSC would be considered to possess or exercise government authority.<sup>194</sup>

We also disagree with AK Steel's claim that the TA somehow controls CSC's Board of Directors. The record indicates that key decisions require a majority vote by the board of directors, but only three of CSC's 11 directors were nominated to their current board positions by the MOEA. Each board member has only a single vote.<sup>195</sup> Further, at verification, we found that CSC's Board of Directors acts independently from the government and its board members vote of their own free will when exercising the power vested in each board member by CSC's Articles of Incorporation. Specifically we found one instance in which an action proposed by CSC's chairman was opposed by the two other board members who were nominated by the MOEA, but nevertheless approved by the Board of Directors over that opposition.<sup>196</sup>

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<sup>189</sup> *Id.* at 4.

<sup>190</sup> *Id.*; *see also* TA PQR at 38.

<sup>191</sup> *See* TA Verification Exhibit 2 at 17-18. *See also* TA PQR at Exhibits A-2-1 and A-2-8.

<sup>192</sup> *See* TA PQR at Exhibit A-2-9 (Governance Committee Foundation Principles).

<sup>193</sup> *See* TA 1SQR at 5. *See also* TA PQR at 50-51.

<sup>194</sup> *See* Article 27 and Article 16 of the AOI. *See also* TA Verification Report at 4.

<sup>195</sup> *See* TA PQR at 39, 44, and 51-52. *See also* TA Verification Report at 4.

<sup>196</sup> *See* TA Verification Report at 4, which describes an instance where Mr. Jo-Chi Tsou, CSC's former chairman, once proposed an amendment to CSC's AOI to abolish the position of CEO. The other two MOEA board

In addition, we find that AK Steel incorrectly asserts that provisions of the Company Act, which allow shareholders who own more than one percent of the outstanding shares of a company to nominate directors, effectively precludes all but a few of CSC's shareholders from nominating directors.<sup>197</sup> The record evidence indicates that CSC's "shareholders are allowed to combine their shares until they reach the one percent threshold to nominate a member," and no record evidence indicates that there are any restrictions which prohibit CSC's shareholders from doing so.<sup>198</sup> Thus, contrary to AK Steel's claims, there is a means by which private shareholders owning less than one percent of CSC may, nonetheless, nominate individuals to serve on CSC's board.

*Government Control Over the Entity's Activities:*

AK Steel suggests that the TA's control of CSC is evidenced by the fact that the Taiwanese legislature blocked efforts by MOEA to reduce its shareholdings in CSC below 20 percent of CSC's total outstanding shares.<sup>199</sup> Regardless of the intentions behind the Taiwanese legislature's decision to keep the MOEA's level of investment at 20 percent, as discussed above the fact remains that during the POI private investors held approximately 76 percent of the company's shares, none of CSC's board members were members of the TA, there is no information linking the nomination of eight of CSC's 11 board members to the TA, and CSC's AOI and corporate governance rules provide no means by which a minority of board members may exert unilateral control over the firm.

With respect to AK Steel's assertion that there is evidence that the MOEA incurred share issuance costs on behalf of CSC,<sup>200</sup> we note that AK Steel's claim is based on expenses incurred before CSC was privatized. While the MOEA did incur certain share issuance costs for CSC in 1997, 1998 and 2003, it has not incurred such expenses in connection with CSC's share issuances since that time.<sup>201</sup> Further, to the extent the MOEA bore CSC's issuance costs, such activity goes to the issue of subsidization and does not, by itself, demonstrate the TA's control over CSC. Further, the TA's alleged actions in this regard occurred over a decade ago and, thus, do not provide information as to the TA's involvement with CSC immediately preceding or during the POI.

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representatives did not consent to such an amendment, but the amendment nonetheless passed upon a majority vote of the board.

<sup>197</sup> See AK Steel's Case Brief at 12-13.

<sup>198</sup> See TA Verification Report at 2 and 5. See also a copy of a ruling by Taiwan's Department of Commerce confirming this interpretation of the Company Act which was provided in Exhibit S3-5 of the TA Pre-Preliminary Comments.

<sup>199</sup> See AK Steel's Case Brief at 15.

<sup>200</sup> *Id.*, at 15-16.

<sup>201</sup> See TA PQR at 46-47; see also TA 1SQR at Exhibit S2-1.h, at pp. 364 and 400. Information on CSC's issuance of shares (in particular, Global Depository Receipts or "GDRs") is provided in the TA's September 17 Submission and in CSC's 2012 Operations Report. As indicated in that report, CSC has to date issued tranches of GDRs on May 28, 1992, February 10, 1997, October 22, 2003, and August 1, 2011. The expenses of the first three issuances were borne by the MOEA because the GDRs were issued for MOEA's shares, which were part of TA's privatization of CSC. The expenses of the fourth issuance in 2011 were borne by CSC, because the GDR were issued for CSC's new shares.

### *The Entity's Pursuit of Government Policies and Interests:*

AK Steel asserts that the TA controls CSC because the CSC “pursues governmental policies and interests.” In support of this claim, AK Steel points to instances in which CSC allegedly ignored commercial considerations in order to implement government policies and interests, including (1) the alleged maintenance of a dual-pricing system “to enhance competitiveness of downstream clients” and (2) the alleged participation by CSC in the “Two Two Thousand” plan to cooperate with government policies.

We find that AK Steel’s claims are not supported by the record evidence. First, the evidence regarding CSC’s pricing policies is clear: CSC sets its prices based solely on commercial considerations, in order to meet competition. At verification, we inquired as to how CSC sets its steel prices. CSC officials stated that the management team meets and, based on evaluation of the market intelligence, sets prices and then posts those prices on the CSC’s website. We reviewed all pricing meeting minutes held during the POI and noted no inconsistencies with the pricing meeting minutes on the record.<sup>202</sup> With respect to AK Steel’s claim that CSC employed a dual pricing scheme, we find that the evidence cited by AK Steel merely refers to a meeting held by the domestic sales team and, thus, does not constitute evidence that CSC operated a dual pricing scheme designed to benefit downstream purchasers of cold-rolled steel and hot-rolled steel in the domestic market.<sup>203</sup>

Second, we find that the “Two Two-Thousand” plan, which AK Steel identifies as evidence of CSC’s cooperation with government policies, was simply a repackaging for press purposes of investments that CSC had decided to make years earlier. Contrary to AK Steel’s claims, CSC did not adopt the “Two Two-Thousand” plan in 2007 to “cooperate with the government policies.” Instead, the activities that made up the “Two Two-Thousand” plan were actually disclosed in CSC’s 2004 Operations Report and relate to investments made in one of its affiliated steel companies.<sup>204</sup> Thus, we find this information does not constitute evidence that CSC was operating pursuant to policies and industrial plans of the TA.

Thus, we continue to find that CSC did not act as an “authority” within the meaning of section 771(5)(B) of the Act during the POI<sup>205</sup> and, thus, that CSC’s sales of cold-rolled steel and hot-rolled steel to the Taiwanese respondents did not constitute financial contributions under section 771(5)(D)(iii) of the Act.

### **Comment 2: Whether the Department Should Use A “Tier Two” Benchmark to Measure the Benefit for Cold-Rolled Steel and Hot-Rolled Steel**

#### *AK Steel’s Case Brief*

- The Taiwan cold-rolled steel and hot-rolled steel markets are distorted.

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<sup>202</sup> See TA Verification Report at 5.

<sup>203</sup> See TA ISQR at Exhibit S-1-14.

<sup>204</sup> See CSC 2004 Operations Report at 3 and 13. See also TA ISQR at 1 and 2 and Exhibits S2-1b, c, d and e thereof for the investments in the “Two Two-Thousand” Plan. “CSC Group’s future deployment and development strategy in the iron and steel business will focus on its active leading role in the expansion project of Dragon Steel. This expansion means a giant stride forward for the Group’s upstream iron and steel capacity.”

<sup>205</sup> See *Preliminary Determination* and accompanying Issues and Decision Memorandum at 11.



- Tier two benchmark data are on the record of this investigation.
- The Department should adjust the cold-rolled steel and hot-rolled steel benchmark prices to include delivery charges.
- The provision of cold-rolled steel and hot-rolled steel for LTAR is specific.

*Prosperity's Rebuttal Arguments:*

- Even if CSC is treated as a government authority, there is no basis to use a tier-two benchmark in this investigation. The Department should rely on Prosperity's purchases from private domestic suppliers and imports of cold-rolled steel and hot-rolled steel as a tier-one benchmark to determine if there is any benefit.
- If the Department uses a tier-two benchmark, it should use the tier-two pricing data and ocean freight submitted by Prosperity. Additionally, it should simple average the tier-two pricing data with the Department's GTA data.
- The provision of cold-rolled steel and hot-rolled steel is not specific.

*Yieh Phui's Rebuttal Arguments:*

- If the Department determines that CSC is an authority, then the Department should use a "tier-one" benchmark to measure the benefit for cold-rolled steel and hot-rolled steel.

**Department's Position:** As discussed *supra*, we do not find that CSC is an authority within the meaning of section 771(5)(B) of the Act, and thus the provision of cold-rolled steel and hot-rolled steel is not a financial contribution. The benchmark issue is rendered moot.

**Comment 3:** Whether the Department Should Further Investigate and Collect the Information Requested by AK Steel

*AK Steel's Case Brief*

- The Department spent less than three months investigating the information regarding CSC provided by the TA before closing the record at the start of verification. If the Department does not agree that record evidence demonstrates that CSC is an authority that provided steel to the respondents for LTAR, then it should conduct further investigations to clarify the gaps in the record.


*Prosperity's Rebuttal Arguments:*

- The Department conducted a thorough investigation that included the issuance of an initial questionnaire, two supplemental questionnaires, and a new subsidy questionnaire to the TA. These questionnaires included extensive and detailed questions regarding CSC and the provision of cold-rolled steel and hot-rolled steel.
- The Department also conducted a complete verification of the government authority issue, which included verification meetings at the State-Owned Enterprise Commission, MOEA, CSC, including an interview with Mr. Jo-Chi Tsou, the former Chairman of CSC's board of directors, and the Taiwan Steel & Iron Industries Association.
- The Department's investigation has been conducted in accordance with its regulations and deadlines, and there is no basis for taking the extraordinary measure of reopening the record at this late juncture.


**Department's Position:** We disagree with AK Steel that there is an evidentiary gap in the record and that we should have reopened the record and further investigated the issue of whether CSC is an "authority." We did not find the record deficient after closely examining all the information on the record, including all the comments provided by AK Steel.<sup>206</sup> We asked extensive and detailed questions regarding CSC and the provision of cold-rolled steel and hot-rolled steel for LTAR in our two supplemental questionnaires after the initial questionnaire.<sup>207</sup> We also conducted a complete verification of the government authority issue.<sup>208</sup> We did not find any evidence at verification that is contrary to our findings *Preliminary Determination* regarding the ownership, operation, and corporate governance of CSC.

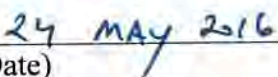
## X. CONCLUSION

We recommend approving all the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
(Date)

<sup>206</sup> See AK Steel submission "Certain Corrosion-Resistant Steel Products From Taiwan: Comments On The Taiwan Authority's Questionnaire Response," dated 9/24/2015. See also AK Steel Factual Comments, AK Steel Pre-Preliminary Comments, AK Steel Post-Preliminary Comments, and AK Steel Pre-Verification Comments...

<sup>207</sup> See TA IQR; TA 1SQR; TA2SQR; and TA NSAQR.

<sup>208</sup> See TA Verification Report.