

March 22, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea; 2010

I. Summary

On September 21, 2012, the Department of Commerce (Department) published the *Preliminary Results* in this countervailing duty (CVD) administrative review.¹ On October 25, 2013, the Department extended the deadline for the final results by 60 days until March 20, 2013.² As explained in a memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012 and extended all deadlines in this segment of the proceeding by two days. The revised deadline for the final results is March 22, 2012.³

From January 16 through January 25, 2013, the Department conducted verifications of information submitted in questionnaire responses by the respondents Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO Ltd. (HYSCO), Pohang Iron & Steel Co. Ltd. (POSCO), and the Government of the Republic of Korea (GOK). The verification reports were issued in February.

¹ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 77 FR 58512 (September 21, 2012) (*Preliminary Results*).

² See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through Melissa G. Skinner, Office Director, Antidumping and Countervailing Duty Operations 3, from Gayle Longest, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations 3, titled “Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,” (October 25, 2012).

³ See the October 31, 2012 Memorandum For the Record from Paul Piquado, Assistant Secretary for Import Administration, titled “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane.”

United States Steel Corporation (U.S. Steel) is a petitioner. Nucor Corporation (Nucor) is a domestic interested party.

The “Analysis of Programs” and “Subsidies Valuation Information – Benchmarks and Discount Rates” sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. In addition, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs.⁴ The “Analysis of Comments” section below contains summaries of these comments and the Department’s positions on the issues raised in the briefs. Based on our analyses of these comments, we have made certain modifications to the *Preliminary Results*. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this administrative review for which we received case briefs and rebuttal briefs from interested parties:

Comment 1: Whether Two Additional R&D Projects for Which Information Was Collected during POSCO’s Verification Should be Included in the Benefit Calculation for the Industrial Technology Innovation Promotion Act (ITIPA) Program

Comment 2: Whether HYSCO’s Sales to Cross-Owned Affiliates Should be Included in the Sales Denominators

Comment 3: Whether to Apply Adverse Facts Available (AFA) with Regard to HYSCO’s Document Acceptance (D/A) Financing under KEXIM’s Trade Rediscount Program and HYSCO’s D/A Loans Issued by the KDB and Other Government-Owned Banks

Comment 4: Whether Three of HYSCO’s R&D Grants are Tied to Non-Subject Merchandise

Comment 5: Whether HYSCO’s Overseas Development Loans are Tied to Non-Subject Merchandise

II. Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review (POR), is January 1, 2010, through December 31, 2010.

III. Scope of the Order

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, 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 or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or

⁴ Nucor, POSCO, and HYSCO filed case briefs. Nucor, U.S. Steel, and HYSCO filed rebuttal briefs. Dongbu and the GOK did not file cases briefs or rebuttal briefs.

greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.60.0000, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.9030, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

IV. 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) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) there is cross-ownership between an input supplier and a downstream producer and production of the input is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

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. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

Pursuant to 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Dongbu and HYSCO to the firms' respective sales. Concerning HYSCO, see Comment 2. Concerning POSCO, it reported Daewoo International, a trading company that does not produce subject merchandise, as a cross-owned affiliate. During the POR, Daewoo International exported a portion of POSCO sales of subject merchandise to the United States. POSCO submitted a questionnaire response on behalf of Daewoo International. Pursuant to 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by POSCO to sales made by POSCO. Daewoo International did not report using any programs during the POR.

V. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable. Thus, in this administrative review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over 15-years.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

VI. Subsidies Valuation Information – Benchmarks and Discount Rates

A. Benchmarks for Short-Term Financing

For those programs requiring the application of a won-denominated, short-term interest rate benchmark, in accordance with 19 CFR 351.505(a)(2)(iv), we used as company-specific benchmarks the weighted average of the interest rates of each company's comparable commercial won-denominated loans. This approach is in accordance with 19 CFR 351.505(a)(3)(i) and the Department's practice.⁵ For those programs requiring the application of a foreign currency denominated short-term interest rate benchmark, we used as company-specific benchmarks the weighted average of the interest rates of each company's comparable commercial loans denominated in the foreign currency.

B. Benchmark for Long-Term Loans

During the POR, HYSCO, POSCO AND DONGBU received subsidies that require the use of a won-denominated long-term benchmark. For such programs, we used, where available, the company-specific interest rates on the company's comparable commercial, won-denominated loans. If such loans were not available, we used, where available, the company-specific corporate bond rate on the company's public and private bonds, as we have determined that the GOK did not control the Korean domestic bond market after 1991.⁶ The use of a corporate bond rate as a long-term benchmark interest rate is consistent with the approach the Department has

⁵ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) (*Final Results of CORE from Korea 2006*), and accompanying Issues and Decision Memorandum (CORE from Korea 2006 Decision Memorandum) at "Benchmarks for Short-Term Financing."

⁶ See, e.g., *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) (*Stainless Steel Investigation*) and "Analysis Memorandum on the Korean Domestic Bond Market" (March 9, 1999).

taken in several prior Korean CVD proceedings.⁷ Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for won-denominated loans in Korea because it is widely accepted as the market rate in Korea.⁸ Where company-specific rates were not available, we used the national average of the yields on three - year, won-denominated corporate bonds, as reported by the Bank of Korea (BOK). This approach is consistent with 19 CFR 351.505(a)(3)(ii) and our practice.⁹

In addition, HYSCO had countervailable long-term loans denominated in foreign currency outstanding during the POR.

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. Promotion of Specialized Enterprises for Parts and Materials

Under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials (Promotion of Specialized Enterprises Act), the GOK shares the costs of research and development (R&D) projects with companies or research institutions. The goal of the program is to support technology development for core parts and materials necessary for technological innovation and improvement in competitiveness. The program is administered by the Ministry of Knowledge Economy (MKE) and Korea Evaluation Institute of Industrial Technology (KEIT).

In accordance with Articles 3 and 4 of the Promotion of Specialized Enterprises Act, MKE prepares a base plan and a yearly execution plan for the development of the parts and materials industry.¹⁰ Under the execution plan, MKE announces to the public a detailed business plan for the development of parts and materials technology.¹¹ This business plan includes support areas, qualifications, and the application process.¹² According to the GOK, any person or company can participate in the program by preparing an R&D business plan that conforms to the requirements set forth in the MKE business plan.¹³ The completed application must then be

⁷ See *id.*; see also *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*H Beams Investigation*), and accompanying Issues and Decision Memorandum at “Benchmark Interest Rates and Discount Rates” and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS Investigation*), and accompanying Issues and Decision Memorandum at “Discount Rates and Benchmark for Loans.”

⁸ See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338, 37345-37346 (July 9, 1993) (*Steel Products from Korea*).

⁹ See, e.g., CORE from Korea 2006 Decision Memorandum at “Benchmark for Long Term Loans.”

¹⁰ See GOK’s November 30, 2011, initial questionnaire response (GOK Initial QR) at Exhibit P-1.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

submitted to KEIT, which evaluates the application and selects the projects eligible for government support.¹⁴ After the selected application is finally approved by MKE, MKE and the participating companies enter into an R&D agreement and then MKE provides the grant.¹⁵

R&D project costs are shared by the GOK and companies or research institutions as follows: 1) When the group of companies involved in the research is made up of a ratio above two-thirds small to medium-sized companies, the GOK provides a grant up to 75 percent of the project cost; 2) When the group of companies involved in the research is made up of a ratio below two-thirds small to medium-sized companies, the GOK provides a grant up to one-half of the project cost.¹⁶

Upon completion of the project, if the GOK evaluates the project as “successful,” the participating companies must repay 40 percent of the R&D grant to the GOK over five years.¹⁷ However, if the project is evaluated by the GOK as “not successful,” the company does not have to repay any portion of the grant to the GOK.¹⁸

In the *Final Results of CORE from Korea 2008* the Department determined that the Promotion of Specialized Enterprises Act was *de jure* specific under section 771(5A)(D)(i) of the Act, because it is expressly limited to (1) enterprises specializing in components and materials and (2) enterprises specializing in development of technology for components and materials.¹⁹ No information on the record of this review leads us to reconsider that determination and, thus, we continue to find, preliminarily, that this program is *de jure* specific within the meaning of 771(5A)(D)(i) of the Act. We also preliminarily find that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK’s payments constitute a direct transfer of funds.²⁰

HYSCO reported that it has been involved in one R&D project under this program. See HYSCO’s initial QR at 17. In the *Final Results of CORE from Korea 2008*, we treated the portion of the subsidy that does not have to be repaid as a grant and the remaining portion of the subsidy that may have to be repaid as a long-term, interest-free contingent liability loan.²¹ This approach is consistent with the Department’s regulation and practice.²² We have used the same approach for these final results.

To determine the total combined benefit that HYSCO received under this program, we treated the portions of the GOK’s assistance to HYSCO that HYSCO does not have repay as grants to HYSCO. In accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from these grants over a 15-year AUL by dividing the total grant

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ See GOK Initial QR, Exhibit P-1.

¹⁷ See GOK Initial QR, Exhibit P-1 at 2.

¹⁸ *Id.*

¹⁹ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 76 FR 3613 (January 20, 2011) (*Final Results of CORE from Korea 2008*), and accompanying Issues and Decision Memorandum (CORE 2008 Decision Memorandum) at “The Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials.”

²⁰ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745, 55750 (September 14, 2010).

²¹ See *Final Results of CORE from Korea 2008*, 76 FR at 3613 and CORE 2008 Decision Memorandum at “The Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials.”

²² See 19 CFR 351.505(d)(1); see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at “Export Promotion Capital Goods Scheme (EPCGS).”

amount received each year by the company's total sales in the year of approval. Because the grant amount received each year was less than 0.5 percent of the company's total sales in the year the grants approved, we expensed the grants to the years of receipt. The grant amounts received in 2008 were expensed in 2008, the grant amounts received in 2009 were expensed in 2009, and the grant amounts received in 2010 were expensed in 2010.

With respect to the portions of the subsidies that we are treating as a long-term, interest-free contingent liability loans, pursuant to 19 CFR 351.505(d)(1), we find the benefit to be equal to the interest that HYSCO would have paid during the POR had it borrowed the full amount of the contingent liability during the POR. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of a contingent liability interest-free loan because the event upon which repayment of the duties depends (*i.e.*, the completion of the R&D project) occurs at a point in time more than one year after the date in which the grant was received. Specifically, we used the long-term benchmark interest rates as described in the "Subsidies Valuation" section above.

To calculate the total net subsidy amount for this program, we summed the two benefits received during the POR. Next, to calculate the net subsidy rate, we divided the total benefit amount during the POR by HYSCO's total free on board (f.o.b.) sales for 2010.²³ On this basis, we determine the net subsidy rate under this program to be 0.01 percent *ad valorem* for HYSCO. Dongbu and POSCO did not receive benefits under this program during the POR.

B. Restriction of Special Taxation Act (RSTA) Article 26

Under RSTA Article 26, a company can claim a tax credit equal to a certain percentage of its investments in its facilities.²⁴ According to the GOK, the goal of this program is to boost general national economic activity.²⁵ In its response to the Department's October 5, 2011 questionnaire, the GOK submitted information which indicated that these tax credits are expressly limited to a corporation's investments in facilities located outside the "Overcrowding Control Region" of the Seoul Metropolitan Area (SMA).²⁶ Specifically, the GOK provided a complete translation of Article 23(1) of the Enforcement Decree of the RSTA in its November QR eligibility for the program is limited to investments made outside the Overcrowding Control Region of the SMA.²⁷ Moreover, the GOK also stated that corporate investments in facilities located within the Overcrowding Control Region of the SMA are not eligible for credits under this tax program.²⁸

Because information provided by the GOK indicates that the tax credit under this program is limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, we find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Tariff Act of 1930, as amended (the Act).²⁹ The tax credit is a financial contribution in the form of revenue foregone

²³ See 19 CFR 351.525(b)(3).

²⁴ See GOK Initial QR at Exhibit B-3.

²⁵ *Id.*

²⁶ *Id.* at Exhibit B-4.

²⁷ *Id.*

²⁸ *Id.* at Exhibit B-3.

²⁹ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at "Provision of Electricity for Less than Adequate Remuneration" (where eligibility for a program was limited to

by the government within the meaning of section 771(5)(D)(ii) of the Act, which provides a benefit to the recipient equal to the difference between the taxes actually paid and the taxes otherwise payable in the absence of this program within the meaning of 19 CFR 351.509(a)(1). These findings are consistent with the determinations in *Bottom Mount Refrigerators from Korea*, and the Post-Preliminary Analysis Memorandum issued with regard to HYSCO, the results of which were unchanged in the *Final Results of CORE from Korea 2009*.³⁰

HYSCO and POSCO claimed tax credits under RSTA Article 26 during the POR. To calculate the subsidy rate for HYSCO and POSCO, we divided each company's benefit, which is the tax credit claimed by the company under this program in its tax return filed in 2010, by the company's total sales during the POR. On this basis, we determine the net subsidy rate under this program to be 0.04 percent *ad valorem* for HYSCO and 0.08 percent *ad valorem* for POSCO. Dongbu did not received benefits under this program during the POR.

C. Asset Revaluation (TERCL Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL))

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. The Department has previously found this program to be countervailable. For example, in the *CTL Plate Investigation*, the Department determined that this program was *de facto* specific under section 771(5A)(D)(iii) of the Tariff Act of 1930, as amended (the Act), because the actual recipients of the subsidy were limited in number and the basic metal industry was a dominant user of this program.³¹ We also determined that a financial contribution was provided in the form of tax revenue foregone pursuant to section 771(5)(D)(ii) of the Act.³² The Department further determined that a benefit was conferred within the meaning of section 771(5)(E) of the Act on those companies that were able to revalue their assets under TERCL Article 56(2) because the revaluation resulted in participants paying lower taxes than they would otherwise pay absent the program. *Id.* No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. Evidence on the record indicates that in 1989 POSCO made an asset revaluation that increased its depreciation expense. To calculate the benefit to POSCO, we multiplied the amount of additional depreciation during the POR which

users outside the Bangkok metropolitan area, we found the subsidy to be regionally specific under section 771(5)(a)(D)(iv) of the Act).

³⁰ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 76 FR 55044 (September 6, 2011) unchanged in *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*); see also Memorandum to Ronald K. Lorentzen from Melissa G. Skinner, Re: 2009 Review of the Countervailing duty Order on Corrosion-Resistant Carbon Steel Flat Products from Korea: Post Preliminary Analysis Memorandum for Hyundai HYSCO Ltd. (September 27, 2011) unchanged in *Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Administrative Review*, 77 FR 13093 (March 5, 2012) (*Final Results of CORE from Korea 2009*).

³¹ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73183 (December 29, 1999) (*CTL Plate Investigation*).

³² *Id.*

resulted from the company's asset revaluation by the tax rate applicable to the tax return filed during the POR. We then divided the resulting benefit by POSCO's total f.o.b. sales.³³ On this basis, we determine the net subsidy rate for this program to be 0.01 percent *ad valorem* for POSCO. Dongbu and HYSCO did not receive benefits under this program during the POR.

D. Exemption of VAT on Imports of Anthracite Coal

Under Article 106 of Restriction of Special Taxation Act (RSTA), imports of anthracite coal are exempt from the value added tax (VAT). In the *Cold-Rolled Investigation*, we determined that the program is *de jure* specific under section 771(5A)(D)(i) of the Act. Because the GOK allows for only a few items to be exempt from VAT, the items allowed to be imported without paying VAT are limited.³⁴ We also determined that the VAT exemptions under the program constitute a financial contribution under section 771(5)(D)(ii) of the Act, as the GOK is not collecting revenue otherwise due, and that the exemptions confer a benefit under section 771(5)(E) of the Act equal to the amount of the VAT that would have otherwise been paid if not for the exemption. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited, constitutes a financial contribution in the form of forgone revenue under section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the revenue foregone within the meaning of 771(5)(E) of the Act.

During the POR, POSCO imported anthracite coal during the POR and, therefore, received a benefit in the amount of the VAT that it should have otherwise paid if not for the exemption. To determine POSCO's benefit from the VAT exemption on these imports, we calculated the amount of VAT that would have been due absent the program on the total value of anthracite coal POSCO imported during the POR. We then divided the amount of this tax benefit by POSCO's total f.o.b. sales. Based on this methodology, we determine the net subsidy rate to be 0.07 percent *ad valorem* for POSCO. Dongbu and HYSCO did not receive benefits under this program during the POR.³⁵

E. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under Harbor Act

1. Provision of Land

As explained in the *Cold-Rolled Investigation*, the GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan.³⁶

³³ See 19 CFR 351.525(b)(3)

³⁴ See Cold-Rolled Decision Memorandum at "Exemption of VAT on Imports of Anthracite Coal."

³⁵ See HYSCO's November 23, 2011, initial questionnaire response (HYSCO Initial QR) at 14 and Dongbu's November 28, 2011, initial questionnaire response (Dongbu Initial QR) at 14.

³⁶ See *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Cold-Rolled Investigation*), and accompanying Issues and Decision Memorandum (Cold-Rolled Decision Memorandum) at "Provision of Land at

The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.³⁷

In the *Cold-Rolled Investigation*, we verified that the GOK, in setting the price per square meter for land at the Kodai Industrial Estate, removed the 10 percent profit component from the price charged to Dongbu.³⁸ In the *Cold-Rolled Investigation*, we further explained that companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. However, in the case of Dongbu, we found that the GOK provided an adjustment to Dongbu's final payment to account for "interest earned" by the company for the pre-payments.³⁹ HYSCO and POSCO reported that their companies did not use this program.⁴⁰

In the *Cold-Rolled Investigation*, we determined that the price discount and the adjustment of Dongbu's final payment to account for "interest earned" by the company on its pre-payments were countervailable subsidies. Specifically, the Department determined that they were specific under section 771(5A)(D)(iii)(I) of the Act, as they were limited to Dongbu.⁴¹ Further, the Department found the price discount and the price adjustment for "interest earned" constituted financial contributions in the form of grants under section 771(5)(D)(i) of the Act and conferred benefits in the amount of grants within the meaning of section 771(5)(E) of the Act. *Id.* No new information, evidence of changed circumstances, or comments from interested parties was presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is limited to Dongbu, constitutes a financial contribution in the form of grants under sections 771(5)(D)(i), and confers a benefit in the amount of the price discount and the price adjustment within the meaning of 771(5)(E) of the Act.

Consistent with the *Cold-Rolled Investigation*, we have treated the land price discount and the interest earned refund as non-recurring subsidies.⁴² In accordance with 19 CFR 351.524(b)(2), because the grant amounts were more than 0.5 percent of the company's total sales in the year of receipt, we applied the Department's standard grant methodology, as described under 19 CFR 351.524(d)(1), and allocated the subsidies over a 15-year allocation period. *See* the "Average Useful Life" section above. To calculate the benefit from these grants, we used as our discount rate the rates described above in the "Subsidies Valuation Information" section. We then summed the benefits received by Dongbu during the POR. We calculated the net subsidy rate by dividing the total benefit attributable to the POR by Dongbu's total f.o.b. sales for the POR. On this basis, we determine a net countervailable subsidy rate for Dongbu of 0.10 percent *ad valorem* for the POR. HYSCO and POSCO did not receive benefits under the program during the POR.

Asan Bay."

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See* HYSCO Initial QR at 15 and POSCO's November 30, 2011, initial questionnaire response (POSCO Initial QR) at 17.

⁴¹ *Id.*

⁴² *Id.*

2. Exemption of Port Fees Under the Harbor Act

Under the Harbor Act, companies are allowed to construct infrastructure facilities at Korean ports; however, these facilities must be deeded back to the government. Because the ownership of these facilities reverts to the government, the government compensates private parties for the construction of these infrastructure facilities. Because a company must transfer its infrastructure investment to the government under the Harbor Act, the GOK grants the company free usage of the facility and the right to collect fees from other users of the facility for a limited period of time. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure.

In the *Cold-Rolled Investigation*, the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port.⁴³ The Department also determined that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program.⁴⁴

In the *Cold-Rolled Investigation*, the Department found the exemption from the fees to be a countervailable subsidy. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Thus, we continue to find that the program is countervailable and is specific under section 771(5A)(D)(iii)(I) of the Act because the excessive exemption period of 70 years is limited to Dongbu. Moreover, we determine that the GOK is foregoing revenue that it would otherwise collect by allowing Dongbu to be exempt from port charges for up to 70 years and, thus, the program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, we determine that the exemptions confer a benefit under section 771(5)(E) of the Act in the amount of the port charges that were not collected.

In the *Cold-Rolled Investigation*, the Department treated the program as a recurring subsidy and determined that the benefit is equal to the average yearly amount of harbor fee exemptions provided to Dongbu.⁴⁵ For purposes of these final results, we have employed the same benefit calculation. To calculate the net subsidy rate, we divided the average yearly amount of exemptions by Dongbu's total f.o.b. sales for the POR. On this basis, we determine that Dongbu's net subsidy rate under this program is 0.02 percent *ad valorem*.

F. Document Acceptance (D/A) Financing Provided Under KEXIM's Trade Rediscount Program and D/A Loans issued by the KDB and Other Government-Owned Banks

Under section 771(5)(B)(iii) of the Act, a subsidy can be found whenever the government "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution . . . to a person and a benefit is thereby conferred." In the *CFS Investigation*, we determined that KEXIM's trade bill rediscount program constitutes a payment to a funding mechanism because the rediscount ceiling KEXIM provides to banks participating under the program is contingent on banks subsequently lending

⁴³ See Cold-Rolled Decision Memorandum at "Dongbu's Excessive Exemptions under the Harbor Act."

⁴⁴ *Id.*

⁴⁵ *Id.*

the funds to exporters.⁴⁶ Section 771(5)(B)(iii) of the Act also states that financial contributions from funding mechanisms can be a subsidy only if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by the government. This is the “government subsidy function” prong of an indirect financial contribution. As determined in the *CFS Investigation*, under this program banks are performing a government subsidy function and, therefore, their loans can qualify as subsidies.⁴⁷

Therefore, we find that loans from banks under the rediscount program constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and confer a benefit upon exporters, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of the loans is contingent upon export performance, we also determine that KEXIM’s rediscount program is specific within the meaning of section 771(5A)(B) of the Act.

In the *CFS Investigation*, we further determined that D/A Loans issued by the KDB and other government-owned banks constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.⁴⁸ In addition, we determined that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market.⁴⁹ Because receipt of D/A loans is contingent upon export performance, we also determined that D/A loans from the KDB and other government-owned banks are specific within the meaning of section 771(5A)(B) of the Act.⁵⁰

In the *CFS Investigation*, we further found that subsidies on the loans under KEXIM’s trade bill rediscount program are tied to sales of subject merchandise to the United States in accordance with 19 CFR 351.525(b)(4) and (5).⁵¹ Accordingly, we limited our benefit calculations to D/A financing issued on sales of subject merchandise to the United States.⁵² We determine that there is no information on the record that warrants a reconsideration of the Department’s prior findings.

During the POR, Dongbu and HYSCO received short-term D/A financing from commercial banks that participated in KEXIM’s Trade Rediscount Program and D/A Loans issued by the KDB and other government-owned banks. To calculate the benefits under these programs, we compared the interest paid on D/A financing from banks that participated in the KEXIM Trade Rediscount Program and the interest paid on D/A loans issued by the KDB and other government-owned banks paid during the POI with the amounts of interest that would have been paid at the weighted-average of the interest rates of the companies’ comparable commercial loans.⁵³ Because loans under these programs are discounted (*i.e.*, interest is paid up front at the

⁴⁶ See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS Investigation*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum) at “Export Loans by Commercial Banks Under KEXIM’s Trade Bill Rediscounting Program.”

⁴⁷ See CFS Decision Memorandum at “Export Loans by Commercial Banks Under KEXIM’s Trade Bill Rediscounting Program.”

⁴⁸ See CFS Decision Memorandum at “D/A Loans Issued by the KDB and Other Government-Owned Banks.”

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See 19 CFR 351.505(a)(2)(iv).

time the loans are received), the effective rate paid by respondents on their D/A financing and D/A loans is a discounted rate. To calculate the net subsidy rate, we divided the benefit by the company's total export sales of subject merchandise to the United States during the POR. The net subsidy rate for Dongbu is less than 0.005 percent *ad valorem*. With regard to HYSCO, we determine that its net subsidy rates for the D/A Financing Under KEXIM Trade Rediscount Program and the D/A Loans Issued by the KDB and Other Government-owned Banks program are 0.05 percent *ad valorem* and 0.09 percent *ad valorem*, respectively. For further discussion regarding HYSCO's use of these programs, see Comment 3 below.

POSCO did not have D/A financing or D/A loans under these programs outstanding during the POR.⁵⁴

II. Programs Determined Not To Confer a Benefit During the POR

A. Research and Development Grants Under the Industrial Technology Innovation Promotion Act (ITIPA)

The GOK's Industrial Technology Innovation Promotion Act program is designed to foster future new industries and enhance the competitiveness of primary industries through fundamental technology development.⁵⁵ The program is administered by MKE and KEIT.⁵⁶

Under the ITIPA, the GOK provides R&D grants to support the areas of transportation system, industrial materials, robots, biomedical equipment, clean manufacturing foundation, knowledge services and industry convergence technology.⁵⁷ Pursuant to Article 11 of the ITIPA, KEIT prepares a basic plan for the development of technology, on behalf of MKE.⁵⁸ This plan includes the R&D projects that are eligible, describes the application process, and designates the supporting documentation required.⁵⁹ The plan is announced to the public.⁶⁰ According to the GOK, any person who wishes to participate in the program prepares an R&D business plan that meets the requirements set forth in the basic plan and then submits the application to the GOK's Application Review Committee, which then evaluates the application to determine if it conforms to the terms and conditions set forth in the basic plan.⁶¹ If the application is approved, MKE and the company enter into an R&D agreement and then MKE provides the grant.⁶²

The costs of the R&D projects under this program are shared by the company (or research institution) and the GOK.⁶³ Specifically, the grant ratio for project costs are as follows: (1) for projects with one small/medium-sized enterprise (SME), the GOK provides grants up to 75 percent of the project costs, (2) for projects with one conglomerate, the GOK provides grants up to 50 percent of the project costs, (3) for projects with more than two participants of which

⁵⁴ See HYSCO Initial QR at 16 and POSCO Initial QR at 18.

⁵⁵ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 54209, 54213 (August 31, 2011) (*Preliminary Results of CORE from Korea 2009*) unchanged in *Final Results of CORE from Korea 2009*, 77 FR at 13093.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

SMEs comprise more than two-thirds of the participant ratio, the GOK provides up to 75 percent of the project costs, and (4) for projects with more than two participants of which SMEs comprise less than two-thirds of the participant ratio, the GOK provides up to 50 percent of the project costs.⁶⁴ When the project is evaluated as “successful” upon completion, the participating companies must repay 40 percent of the R&D grant to the GOK over five years.⁶⁵ However, when the project is evaluated as “not successful,” the company does not have to repay the GOK any portion of the grant.⁶⁶

Prior to and during the POR, HYSCO and POSCO received grants under the ITIPA for R&D projects in which the companies participated with other companies.⁶⁷ Concerning HYSCO, the nature of the projects for which it received the grants is business proprietary and cannot be discussed in this public notice.⁶⁸ Based upon our review of program documents submitted in the response, we determine that one grant received is related to the second step of the project discussed in the section “Research and Development Grants Under the Industrial Development Act (IITPA)” in *Preliminary Results of CORE from Korea 2009*, in which the Department determined that grants received for this particular project under this program are attributable to non-subject merchandise.⁶⁹ Upon review of the information submitted by HYSCO and the GOK, we find that the terms and conditions of this grant project remain unchanged from the *Preliminary Results of CORE from Korea 2009* and determine that this grant pertains specifically to production of a product that is not subject merchandise.⁷⁰ Therefore, consistent with 19 CFR 351.525(b)(5) and our past practice, we determine that this grant was bestowed in connection with the production of a product that is not subject merchandise, and, therefore, we have not included it in our benefit calculations.

In addition, HYSCO received assistance for a project that is being performed under the ITIPA that we find constitutes an untied subsidy.⁷¹ We treated the portions of the subsidy that do not have to be repaid as grants and the remaining portions of the subsidy that may have to be repaid as a long-term, interest-free contingent liability loans.⁷² As explained above, this approach is consistent with the Department’s regulation and practice.⁷³

In accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from these grants over a 15-year AUL by dividing the total grant amount received each year by the company’s total sales in the year of approval. Because the grant

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *Preliminary Results of CORE from Korea 2009*, 76 FR at 54213 and HYSCO Initial QR at Exhibit Q-4.

⁶⁷ See GOK Initial QR at 16 and Q-1, HYSCO Initial QR at 17, Q-1, Q-2, and Q-3, and POSCO Initial QR at Exhibit Q-2.

⁶⁸ See Memorandum to the File titled “HYSCO’s R&D Grants Under the ITIPA”, (August 30, 2012), of which a public version is on file in IA Access.

⁶⁹ See *Preliminary Results of CORE from Korea 2009*, in which the Department found the grant in question to be tied to the production of non-subject merchandise, unchanged in *Final Results of Core from Korea 2009* and HYSCO’s Initial QR at Exhibit Q-4.

⁷⁰ See Memorandum to the File titled “HYSCO’s R&D Grants Under the ITIPA” (August 31, 2012), of which a public version is on file in IA Access.

⁷¹ See HYSCO Initial QR at 18.

⁷² See *Final Results of CORE from Korea 2008*, 76 FR at 3613 and CORE 2008 Decision Memorandum at “The Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials.”

⁷³ See 19 CFR 351.505(d)(1); see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at “Export Promotion Capital Goods Scheme (EPCGS).”

amount received each year was less than 0.5 percent of the company's total sales in the year the grants approved, we expensed the grants to the years of receipt.

With respect to the portions of the subsidies that we are treating as a long-term, interest-free contingent liability loans, pursuant to 19 CFR 351.505(d)(1), we find the benefit to be equal to the interest that HYSCO would have paid during the POR had it borrowed the full amount of the contingent liability during the POR. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of a contingent liability interest-free loan because the event upon which repayment of the funds depends (*i.e.*, the completion of the R&D project) occurs at a point in time more than one year after the date in which the grant was received. Specifically, we used the long-term benchmark interest rates as described in the "Subsidies Valuation" section above.

To calculate the total net subsidy amount for this program, we summed the two benefits received by HYSCO during the POR. Next, to calculate the net subsidy rate, we divided the total benefit amount during the POR by HYSCO's total f.o.b. sales for 2010.⁷⁴ On this basis, we determine HYSCO's net subsidy rate under this program to be less than 0.005 percent *ad valorem*. Consequently, we determine that it is not necessary for the Department to make a finding with regard to the countervailability of this grant.

In its questionnaire responses, POSCO also reported receiving grants under the ITIPA prior to and during the POR.⁷⁵ At the outset of verification, as minor corrections to the questionnaire responses, POSCO reported receiving two additional grants under the ITIPA during the POR. Our treatment of these two grants is discussed below in Comment 1. To determine the total combined benefit that POSCO received under this program, we employed the same benefit methodology discussed above. To calculate the total net subsidy amount, we summed the two types of benefits received during the POR. Next, to calculate the net subsidy rate, we divided the total benefit amount during the POR by POSCO's total f.o.b. sales for 2010.⁷⁶ On this basis, we determine the net subsidy rate under this program to be less than 0.005 percent *ad valorem*.⁷⁷ Consequently, consistent with the Department's practice, we determine that it is not necessary for the Department to make findings with regard to the countervailability of the grants POSCO received under this program.

We will further examine grants provided under ITIPA in the next administrative review.

B. R&D Grants Under the Act on the Promotion of the Development, Use, and Diffusion of New and Renewable Energy

The GOK's Development of Use, and Diffusion of New and Renewable Energy program (formerly the Development of Alternative Energy program) is reportedly designed to contribute to the preservation of the environment, the sound and sustainable development of the national economy, and the promotion of national welfare by diversifying energy resources through promoting technological development, the use and diffusion of alternative energy, and reducing the discharge of gases harmful to humans or the environment by activating the new and

⁷⁴ See 19 CFR 351.525(b)(3).

⁷⁵ See POSCO Initial QR at Exhibit Q-2.

⁷⁶ See 19 CFR 351.525(b)(3).

⁷⁷ See, *e.g.*, CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit" and *Preliminary Results of CORE from Korea 2009*, 76 FR at 54213.

renewable energy industry.⁷⁸ The program is administered by the MKE, Korea Energy Management Corporation (KEMCO), and the Korea Institute of Energy Technology Evaluation and Planning (KETEP).⁷⁹

Under the Act on the Promotion of the Development, Use, and Diffusion of New and Renewable Energy (New and Renewable Energy Act), the GOK provides R&D grants to support the following businesses: (1) Electric and Nuclear Power Development, (2) Energy and Resources Technology Development, and (3) New and Renewable Energy Technology Development.⁸⁰ Pursuant to Articles 5 and 6 of the New and Renewable Energy Act, MKE prepares a base plan and a yearly execution plan for the development of new and renewable energy.⁸¹ The base and execution plans are announced to the public.⁸² According to the GOK, any person who wishes to participate in the program prepares an R&D business plan and then submits the application to the KETEP, which then evaluates the application and selects the projects eligible for government support.⁸³ After the MEK finally approves the selected application, KEMCO and the general supervising institute of the consortium enter into an R&D agreement, after which MKE provides the grant through KEMCO.⁸⁴

The costs of the R&D projects under this program are shared by the company (or research institution) and the GOK.⁸⁵ Specifically, the grant ratio for project costs are as follows: (1) for large companies, the GOK provides grants up to one-half of the project costs, (2) for small/medium-sized companies, the GOK provides grants up to three-fourths of the project costs, (3) for a consortium,⁸⁶ the GOK provides grants up to three-fourths of the project costs, and (4) for others, the GOK provides grants up to one-half of the project costs.⁸⁷ When the project is evaluated as “successful” upon completion, the participating companies must repay 40 percent of the R&D grant to the GOK.⁸⁸ However, when the project is evaluated as “not successful”, the company does not have to repay any portion of the grant to the GOK.⁸⁹

During the POR, HYSCO received an energy-related grant under the New and Renewable Energy Act for a project in which the company participated with other firms.⁹⁰ HYSCO reported that the R&D grants under the New and Renewable Energy Act are provided with respect to specific projects, which are generally multi-year projects where the amount of funds to be provided by the GOK is set out in the project contract.⁹¹ The cost of R&D projects under this program is shared by the participating companies and the GOK.⁹² HYSCO points to the Department’s prior decision concerning this project in *Preliminary Results of CORE from*

⁷⁸ See *Preliminary Results of CORE from Korea 2009*, 76 FR at 54209, 54213-54214, unchanged in *Final Results of CORE from Korea 2009*.

⁷⁹ *Id.* at 54214.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ If the ratio of small to medium-sized companies in a consortium is above two-thirds, the GOK provides grants up to one-half of the project costs. See GOK’s November QR, Exhibit R-1.

⁸⁷ *Preliminary Results of CORE from Korea 2009*, 76 FR at 54214.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See GOK Initial QR at 17-18 and Exhibit R-1.

⁹¹ See HYSCO Initial QR at Exhibit R-3.

⁹² *Id.*

Korea 2009, and reiterates its claim that the project for which the grant was received from the government was not related to subject merchandise.⁹³

Upon review of the information from HYSCO and the GOK, we determine that the grant was bestowed specifically in connection with production of a product that is not subject merchandise and is related to the project examined in the prior administrative review.⁹⁴ Therefore, consistent with 19 CFR 351.525(b)(5) and our past practice, we determine that this grant is tied to non-subject merchandise. Hence, we determine that the New and Renewable Energy Act did not confer a benefit during the POR.

C Overseas Resource Development Program: Loan from Korea Resources Corporation (KORES)

In *Final Results of CORE from Korea 2006*, the Department found that the GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources.⁹⁵ Pursuant to Article 11 of this Act, MKE annually announces its budget and the eligibility criteria to obtain a loan from MKE.⁹⁶ Any company that meets the eligibility criteria may apply for a loan to MKE.⁹⁷ The loan evaluation committee evaluates the applications, selects the recipients and gets approval from the minister of MKE.⁹⁸ For projects related to the development of strategic mineral resources, the Korean Resources Corporation (KORES) lends the funds to the company for foreign resources development.⁹⁹

During the POR, as in the prior administrative review, HYSCO had outstanding loans from KORES for investment in a copper mine in Mexico.¹⁰⁰ Based upon examination of the loan documents and our prior determination concerning these loans, we determine that the KORES loans are tied to copper, which is non-subject merchandise.¹⁰¹ Further, we find that

⁹³ *Id.* at 19 citing to *Preliminary Results of CORE from Korea 2009*, 76 FR at 54214, in which the Department found the grant in question to be tied to non-subject merchandise, unchanged in the *Final Results of CORE from Korea 2009*; see also Memorandum to the File titled “HYSCO’s R&D Grants under the Act on the Promotion of the Development, Use and Diffusion of New and Renewable Energy” (August 24, 2011), submitted as Exhibit R-4 of HYSCO Initial QR.

⁹⁴ See Memorandum to the File titled “HYSCO’s R&D Grants under the Act on the Promotion of the Development, Use, and Diffusion of New and Renewable Energy” (August 31, 2012) (*HYSCO New and Renewable Energy Grant Memorandum*), of which a public version is on file in IA Access.

⁹⁵ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 52315, 52326, (September 9, 2008) (*Preliminary Results of CORE from Korea 2006*), unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) (*Final Results of CORE from Korea 2006*), and accompanying Issues and Decision Memorandum at “Programs Determined To Be Not Used”.

⁹⁶ See GOK Initial QR at Exhibit S-1.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See HYSCO Initial QR at 20, Exhibit 8 at 15 and HYSCO’s March 30, 2012, questionnaire response (HYSCO March QR) at Exhibits 15 and 16.

¹⁰¹ *Preliminary Results of CORE from Korea 2009*, 76 FR at 54214-54215, unchanged in *Final Results of CORE from Korea 2009*.

copper is not an input primarily dedicated to the production of subject merchandise.¹⁰² On this basis, we find that the KORES loans are tied and attributable to non-subject merchandise.¹⁰³ Therefore, we determine that HYSCO did not receive a benefit from this program with respect to the subject merchandise during the POR. We will continue to examine this program in next administrative review.

D. Overseas Resource Development Program: Loan from Korea National Oil Corporation (KNOC)

In *Final Results of CORE from Korea 2007*, the Department found that the GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources.¹⁰⁴ Pursuant to Article 11 of this Act, the MKE annually announces its budget and the eligibility criteria to obtain a loan from MKE.¹⁰⁵ Any company that meets the eligibility criteria may apply for a loan to MKE.¹⁰⁶ For projects that are related to petroleum and natural gas, the Korea National Oil Corporation (KNOC) lends the funds to the company for foreign resources development.¹⁰⁷ An approved company enters into a borrowing agreement with KNOC for the development of the selected resource.¹⁰⁸ Two types of loans are provided under this program: “General loans” and “success-contingent loans.” For a success-contingent loan, the repayment obligation is subject to the results of the development project. In the event that the project fails, the company will be exempted for all or a portion of the loan repayment obligation. However, if the project succeeds, a portion of the project income is payable to KNOC.¹⁰⁹

During the POR, HYSCO had outstanding loans from KNOC related to petroleum exploration projects.¹¹⁰ Based upon examination of the loan documents and our determinations concerning these loans in the prior administrative review, we determine that the KNOC loans are tied to petroleum exploration, which does not involve subject merchandise.¹¹¹ On this basis, we find that the KNOC loans are tied and attributable to non-subject merchandise.¹¹² Therefore, we determine that HYSCO did not receive a benefit from this program with respect to the subject merchandise during the POR. We will continue to examine this program in next administrative review.

¹⁰² *Id.*

¹⁰³ See 19 CFR 351.525(b)(5).

¹⁰⁴ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 74 FR 46100, 46107-46108 (September 8, 2009) (*Preliminary Results of CORE from Korea 2007*), and unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 55192 (October 27, 2009) (*Final Results of CORE from Korea 2007*).

¹⁰⁵ See GOK Initial QR at Exhibit T-1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See HYSCO Initial QR at 20 and Exhibit 8 at 16 and HYSCO March QR at 11 and Exhibit 17.

¹¹¹ *Preliminary Results of CORE from Korea 2009*, 76 FR at 54215 unchanged in *Final Results of CORE from Korea 2009*.

¹¹² See 19 CFR 351.525(b)(5).

E. Pre-1992 Direct Credit

During the POR, POSCO was the only respondent company that had pre-1992 long-term loans outstanding during the POR.¹¹³ Assuming *arguendo* that the benefit under this program is equal to the sum of POSCO's total interest payments made during the POR, the resulting net subsidy rate would be less than 0.005 percent *ad valorem* when attributed to POSCO's total sales. Thus, consistent with the Department's practice, we are excluding this amount from the net countervailable subsidy rate.

F. R&D Grants Under the Special Act on Balanced National Development

During the POR, HYSCO reported that it received a R&D grant under the Special Act on Balanced National Development (National Development Act).¹¹⁴ Upon review of the information submitted by HYSCO and the GOK, we determine that the grant pertains specifically to the production of a product that is not subject merchandise.¹¹⁵ Therefore, consistent with 19 CFR 351.525(b)(5), we determine that the National Development Act did not confer a benefit to the production or export of subject merchandise during the POR. We will continue to examine this program in next administrative review.

G. Subsidies Related to HYSCO's 2004 Purchase of Hanbo Steel (Hanbo)

In January 1997, Korea's then-second largest steelmaker, Hanbo Steel, collapsed under enormous debt and entered into bankruptcy proceedings, falling into the receivership of the Seoul Central District Bankruptcy Court (Bankruptcy Court). Petitioner alleged that from 1996 to 2000, the GOK provided credit, and also compelled Korean banks to provide credit, to Hanbo at a time when Hanbo was uncreditworthy.¹¹⁶ According to petitioner, these loans continue to benefit HYSCO during the POR. Petitioner further alleged that in the aftermath of Hanbo's collapse, the GOK paid off Hanbo's debts to its small- and medium-sized creditors in order to save them from going into bankruptcy themselves, resulting in debt forgiveness to Hanbo. In September 2004, Hanbo was purchased by a consortium consisting of HYSCO and INI Steel Co. (INI) through a public auction under the Bankruptcy Court's supervision.¹¹⁷ As a result of this sale, HYSCO acquired Hanbo's cold-rolled facility.¹¹⁸ Petitioner alleged that the Korea Asset Management Corporation, a GOK entity, held the majority of Hanbo's debt at the time of its sale. Petitioner further alleged that the 2004 acquisition was not an arm's-length, fair-market-value transaction. Specifically, petitioner alleged that the transaction was contingent upon HYSCO/INI agreeing to retain Hanbo's workers for three years. Petitioner pointed out that under the Department's change-in-ownership methodology, there is a rebuttable presumption that allocable subsidies to a company will continue to benefit the purchaser of the company or its

¹¹³ See GOK Initial QR at 3 and POSCO Initial QR at 9.

¹¹⁴ See HYSCO March QR at 2 and 5. See also GOK's August 7, 2012, questionnaire response (GOK August QR) at Exhibit V-1.

¹¹⁵ The exact nature of the project for which the R&D grant was received is business proprietary information. See Memorandum to the File titled "HYSCO's R&D Grants under the Act on the Promotion of the Special Act on Balanced National Development" (August 31, 2012) of which a public version is on file in IA Access.

¹¹⁶ See Petitioner's December 20, 2011, submission at 12.

¹¹⁷ See HYSCO's June 19, 2012, submission at 2 – 3.

¹¹⁸ *Id.* at 7.

assets if the sales transaction was not at arm's length and for fair market value. Consequently, petitioner alleged that the 2004 transaction did not extinguish the benefit from the debt forgiveness that had been provided to Hanbo, resulting in an allocable benefit to HYSCO during the POR.

The Department initiated an investigation of petitioner's allegations.¹¹⁹ The Department's examination covered any GOK debt forgiveness to Hanbo from 1996 (the beginning of the 15-year AUL for this review) through September 2004 (the time of Hanbo's purchase), which conceivably could have resulted in benefits allocable to the 2010 POR, as well as any GOK loans to Hanbo that were still outstanding during the POR, to the extent such loans were assumed by HYSCO.

With regard to petitioner's loan allegations, the record information indicates that INI/HYSCO's 2004 purchase of Hanbo was an asset-only purchase and, thus, no liabilities were transferred to INI and HYSCO as part of the sale, *i.e.*, HYSCO did not assume any of Hanbo's debts.¹²⁰ Therefore, we find that to the extent that Hanbo may have received GOK or GOK-directed loans, any subsidy from such loans did not benefit HYSCO during the POR.

With regard to petitioner's debt forgiveness allegations, the record information indicate that none of Hanbo's debt, including debt owed to suppliers and small- and medium-sized companies, was forgiven in 1996.¹²¹ Thus, we find that the only debt forgiveness at issue is any debt forgiveness resulting from Hanbo's bankruptcy beginning in 1997. Concerning the period 1997 until Hanbo's purchase in 2004, the record information indicates that Hanbo's debt was restructured pursuant to a court-supervised bankruptcy proceeding in accordance with Korea's Corporate Reorganization Law.¹²² For example, effective January 31, 1997, the bankruptcy judge forbade Hanbo from liquidating any of its outstanding debt, transferring ownership, or engaging in any settlement or waiver.¹²³ During its bankruptcy, Hanbo was overseen by a court-approved trustee.¹²⁴ Further, the Bankruptcy Court's approval was required for all of Hanbo's major actions.¹²⁵ Finally, the 2004 sale of Hanbo through public auction was an integral part of the bankruptcy process and thus, as with all the other elements in the bankruptcy, also subject to court approval. At verification, we reviewed the information on the record regarding Hanbo's 2004 sale with GOK officials and HYSCO officials, and we did not find any reason to conclude otherwise.

Concerning the terms of the bankruptcy itself, Hanbo's final reorganization plan, as approved by the Bankruptcy Court, indicates that for the purposes of restructuring Hanbo's debts, Hanbo's creditors were divided into five categories depending on the type of creditor and existence of security: secured creditors, unsecured creditors, SME creditors, tax creditors, and related-party creditors.¹²⁶ The documents further indicate that the repayment terms varied depending on the creditor group, but repayment terms were applied equally to creditors within

¹¹⁹ See Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from Gayle Longest, Case Analyst, regarding New Subsidy Allegations (April 24, 2012).

¹²⁰ Questionnaire responses further indicate that Hanbo received operating financing between 1998 and 2002, under court supervision, but that the debt was gradually paid down by 2002 with operating income.

¹²¹ See HYSCO's August 2, 2012, submission at 1 – 2; *see also* the GOC's August 15, 2012, submission at 1.

¹²² See HYSCO's June 19, 2012, submission at 1 – 4.

¹²³ *Id.* at Exhibit 3.

¹²⁴ *Id.* at 2.

¹²⁵ *Id.*

¹²⁶ See HYSCO's June 19, 2012, submission at Exhibit 2; *see also* HYSCO's August 2, 2012, submission at 1 and Exhibit 21.

the same creditor group.¹²⁷ As a result of this debt restructuring, Hanbo's debts were repaid at a discount with proceeds from the sale of assets.

The Department addressed the issue of debt forgiveness in the context of bankruptcy proceedings in the final results of *Stainless Steel from Korea*, in which the Department explained that, in assessing the countervailability of the debt forgiveness, it examines whether: (1) the bankruptcy protection is generally available in the country in question, and (2) the bankruptcy in question was inconsistent with the typical practice in the country.¹²⁸ In *Stainless Steel from Korea*, the Department found that where bankruptcy proceedings are conducted pursuant to law and are generally available to all companies, and the particular company received no special or differential treatment in its bankruptcy process, debt forgiveness resulting from the bankruptcy procedures is not specific and, thus, not countervailable.¹²⁹ There is no information on the record of the current proceeding that warrants reconsideration of the Department's finding that bankruptcies are generally available to all companies in Korea.

In the case of Hanbo's bankruptcy, we find that it was conducted through legal proceedings generally available to all Korean companies.¹³⁰ As noted above, Hanbo entered into bankruptcy pursuant to Korea's Corporate Reorganization Law, under court receivership at the Bankruptcy Court, with its management and operations subject to supervision by a court-approved trustee. Further, there is no evidence that Hanbo received special or differential treatment in its bankruptcy process.

At verification, we reviewed the information on the record regarding Hanbo's debt in 1996, the bankruptcy of Hanbo, bankruptcy procedures in Korea, the purchase of Hanbo by HYSCO, and the partial repayment of Hanbo's creditors. We did not find any reason to conclude that the information on the record was incomplete or inaccurate.

Accordingly, the Department finds that Hanbo's debt restructuring was not subject to government influence resulting in subsidies.¹³¹ Consequently, in accordance with the Department's practice, we find that to the extent the bankruptcy restructuring plan for Hanbo resulted in debt forgiveness, such debt forgiveness was not specific, as described under section 771(5A)(D) of the Act and, thus, not countervailable.

¹²⁷ *Id.*

¹²⁸ See *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*Stainless Steel from Korea*), and accompanying Issues and Decision Memorandum (*Stainless Steel from Korea Memorandum*) at Comment 4; see also *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 6.

¹²⁹ *Id.*

¹³⁰ We find that the Hanbo bankruptcy, which was essentially a liquidation process, differed from debt workouts that the Department has examined in other Korean CVD proceedings (e.g., *DRAMS from Korea Investigation and the CFS Investigation*), which involved out-of-court corporate restructuring agreements (CRAs) implemented by a body of creditors dominated by government-owned or controlled entities. The Department found those workouts to have been subject to government influence resulting in subsidies specific to the company or industry. See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS from Korea Investigation*), and accompanying Issues and Decision Memorandum (*DRAMS Decision Memorandum*) at "Hynix Financial Restructuring and Recapitalization;" see also CFS Decision Memorandum at "Poognman Restructuring."

¹³¹ See *DRAMS Decision Memorandum* at "Hynix Financial Restructuring and Recapitalization"; see also CFS Decision Memorandum at "Poognman Restructuring."

Therefore, absent any subsidy benefits that would be allocable to the POR, there is no need for the Department to analyze whether the 2004 sale of Hanbo was an arm's-length, fair-market-value transaction pursuant to the Department's change-in-ownership methodology.

H. RSTA 22: Corporation Tax Exemption on Dividend Income from Investment in Overseas Resource Development

Under RSTA Article 22, a domestic corporation whose income for each business year ending before December 31, 2009, includes any dividend income from its investment in overseas resource development projects as prescribed by Presidential Decree (Enforcement Decree), is exempt from corporate tax for the portion of such dividend income that is exempted from the tax of the host country where the investment occurred. Article 19 of the Enforcement Decree of the RSTA prescribes the following investment projects as being eligible for this tax exemption: Agricultural products, Animal products, Fishery products, Forest products, and Mineral products.

POSCO reported that it had investments in overseas resource development projects as prescribed by the Enforcement Decree and received tax exemptions in the host country for these investments.¹³² The tax exemptions were reflected in the tax return that POSCO filed during the POR. Dongbu and HYSCO reported that they did not use this program.

We determine that the tax exemptions POSCO received under this program constitute a financial contribution in the form of revenue forgone as described under section 771(5)(D)(ii) of the Act and confer a benefit as described under section 771(5)(E) of the Act and 19 CFR 351.509(a). Further, we determine that tax exemptions received under this program are specific under section 771(5A)(D)(1) because benefits are limited to firms with investment projects concerning agricultural, animal, fishery, forest, and mineral products.

Under this program, the benefit is equal to the amount of added income taxes that POSCO would have paid absent the program. The benefits POSCO received were less than 0.005 percent of its total f.o.b. sales, which is not numerically significant. Therefore, we determine the net subsidy rate under this program to be 0.00 percent *ad valorem* for POSCO.

I. Reduction in Taxes for Operation in Regional and National Industrial Complexes¹³³

Under Article 46 of the Industrial Cluster Development and Factory Establishment Act (Industrial Cluster Act), a state or local government may provide tax exemptions as prescribed by the Restriction of Special Taxation Act.¹³⁴ In accordance with this authority, Article 276 of the Local Tax Act provides that an entity that acquires real estate in a designated industrial complex for the purpose of constructing new buildings or enlarging existing facilities is exempt

¹³² See POSCO's December 2, 2011, questionnaire response at 12; see also GOK initial QR at 6.

¹³³ In the *Preliminary Results*, we treated the Reduction in Taxes for Operation in Regional and National Industrial Complexes program as being distinct from the Corporate Tax Reduction for Facilities Located in the Godae Complex program. We find that the former program, in fact, encompasses the later program.

¹³⁴ Pursuant to the petitioner's new subsidy allegations, the Department initiated an investigation of property, acquisition and registration tax exemptions allegedly received by POSCO, Dongbu, and HYSCO for their respective facilities in various locations. The information submitted by the respondent firms and the GOK indicates that these tax exemptions were received pursuant to a program under Article 276 of the Local Tax Act, which the Department has previously examined and found to be countervailable.

from the acquisition and registration tax. In addition, the entity is exempt from 50 percent of the property tax on the real estate (*i.e.*, the land, buildings, or facilities constructed or expanded) for five years from the date the tax liability becomes effective. The exemption is increased to 100 percent of the relevant land, buildings, or facilities that are located in an industrial complex outside of the SMA. The GOK established the tax exemption program under Article 276 in December 1994, to provide incentives for companies to relocate from populated areas in the SMA to industrial sites in less populated parts of the country. The program is administered by the local tax officials of the county where the industrial complex is located.

During the POR, pursuant to Article 276 of the Local Tax Act, HYSCO received exemptions from the acquisition tax, registration tax, and property tax based on the location of its manufacturing facilities, Suncheon Works, in the Yulchon Industrial Complex, and its facilities in the Ulsan Works industrial complex designated under the Industrial Cluster Act.¹³⁵ During the POR, POSCO received property reductions in connection with their facilities located in the Gwangyang Industrial Complex and the Pohang Industrial Complex. Dongbu received similar property reductions in connection with its facilities in the Godae Industrial Complex. In addition, HYSCO, POSCO, and Dongbu received an exemption from the local education tax during the POR. The local education tax is levied at 20 percent of the property tax. The property tax exemption, therefore, results in an exemption of the local education tax.

We determine that the tax reductions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and a benefit under section 771(5)(E) and 19 CFR 351.509(a). We further determine that the property tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act because benefits are limited to enterprises located within designated geographical regions. Our findings in this regard are consistent with the Department's practice.¹³⁶

To calculate the benefit, we subtracted the amount of taxes paid by the firms from the amounts that would have been paid absent the program. To calculate the net subsidy rate, we divided the total benefit received during the POR by the company's total f.o.b. sales. For Dongbu, HYSCO, and POSCO, each of the resulting net subsidy rates was less than 0.005 percent *ad valorem*. Therefore, consistent with the Department's practice, we determine the net subsidy rate under this program to be 0.00 percent *ad valorem* for Dongbu, HYSCO, and POSCO.¹³⁷

Programs Determined To Be Not Used

The following programs were included in the petitioner's new subsidy allegations on which the Department initiated an investigation.¹³⁸ Based on the information submitted by the GOK and the respondents, we determine that these programs were not used during the POR.

- Income Tax Reduction for Facilities Located in the Godae Complex
- Cash Grants for Employees Working at Facilities in Jeollanamdo

¹³⁵ See HYSCO Initial QR at Exhibit H-2 and HYSCO's May 25, 2012, questionnaire response (HYSCO's May QR) at 4 and Exhibit H-4.

¹³⁶ See, e.g., *CFS Investigation* and CFS Decision Memorandum at "Reduction in Taxes for Operation in Regional and National Industrial Complexes," 72 FR 60639 (October 25, 2007).

¹³⁷ See, e.g., CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit."

¹³⁸ See Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from Gayle Longest, Case Analyst, regarding New Subsidy Allegations (April 24, 2012).

- Training and Education Subsidies at Facilities in Jeollanamdo
- Support for New Investments in Facilities in Jeollanamdo
- Reduction in Rent for Facilities Located in Industrial Complexes
- Employment Subsidies for Large-Scale Investment in Ulsan
- Special Support for Large-Scale Investments in Ulsan
- Technology Development Loans for Facilities in Gwangyang Complex
- Foundation Loans for Facilities in Gwangyang Complex

The Department included the following programs in its October 5, 2011, initial questionnaire. We determine that these programs were not used by the reviewed companies during the POR.

- Reserve for Research and Manpower Development Fund Under RSTA Article 9 (TERCL Article 8)
- RSTA Article 11: Tax Credit for Investment in Equipment to Development Technology and Manpower (TERCL Article 10)
- Reserve for Export Loss Under TERCL Article 16
- Reserve for Overseas Market Development Under TERCL Article 17
- Reserve for Export Loss Under TERCL Article 22
- Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
- Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 42-45)
- Tax Credits for Specific Investments Under TERCL Article 71
- RSTA Article 94: Equipment Investment to Promote Workers Welfare (TERCL Article 88)
- Electricity Discounts Under the Requested Loan Adjustment Program
- Electricity Discounts Under the Emergency Load Reductions Program
- Export Industry Facility Loans and Specialty Facility Loans
- Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
- Industrial Base Fund
- Excessive Duty Drawback
- Private Capital Inducement Act
- Scrap Reserve Fund
- Special Depreciation of Assets on Foreign Exchange Earnings
- Export Insurance Rates Provided by the Korean Export Insurance Corporation
- Loans from the National Agricultural Cooperation Federation
- Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act
- Short-term Export Financing
- Research and Development Grants Under the Industrial Development Act (IDA)

Analysis of Comments

Comment 1: Whether Two Additional R&D Projects for Which Information was Collected

during POSCO's Verification Should be Included in the Benefit Calculation for the Industrial Technology Innovation Promotion Act (ITIPA) Program

POSCO

- The two additional R&D grant projects it submitted with its minor corrections at verification do not relate to subject merchandise and thus should not be found countervailable in the final results. POSCO received both grants under the Industrial Technology Innovation Promotion Act (ITIPA).
- The evidence collected at verification, which includes the contracts and business plans for these projects, indicate that they are tied to non-subject merchandise.
- If the Department does find these two R&D projects to be countervailable, any benefit is not numerically significant and should not be included in the benefit calculations.

US STEEL AND NUCOR

- No comments were provided on this issue.

Department's Position: We have determined that one of these additional R&D grant projects, for which the Department collected information at verification, is tied to non-subject merchandise. Therefore, we find that this grant received by POSCO for this project is not countervailable, and we have excluded it from the final results calculations. With regard to the other grant, we are including it in the benefit calculation for this program, along with other grants reported by POSCO. Due to the business proprietary information involved, a more detailed discussion can be found in the Memorandum to the File titled, "POSCO's Research and Development Grants for which Information was Collected at Verification," March 22, 2013.

For these final results, we have determined that the total benefit from these R&D grants to be less than 0.005 percent *ad valorem*. Therefore, it is not necessary for the Department to determine whether or not these grants are tied to non-subject merchandise.

Comment 2: Whether HYSCO's Sales to Cross-Owned Affiliates Should be Included in the Sales Denominators

HYSCO

- In its initial questionnaire response, HYSCO followed the instructions in the Department's questionnaire and reported its total sales figures, its total sales figures to non-cross-owned affiliates, and its total sales net of sales to non-cross-owned affiliates on an f.o.b. basis. In the *Preliminary Results*, the Department calculated HYSCO's subsidy using the f.o.b. sales denominator net of sales to non-cross-owned affiliates.
- As part of its minor corrections submission at verification, HYSCO provided a revised sales chart that separately reported the f.o.b. sales figures and included HYSCO's sales to its non-cross-owned affiliates. The Department verified that these sales figures matched the sales revenue stated in HYSCO's non-consolidated financial statements and that HYSCO's sales to affiliates were invoiced and paid by its affiliates in the same manner as sales to unaffiliated customers.

- For sales to affiliated parties, the Department's standard practice is to exclude sales to cross-owned affiliates from the sales denominator. Since HYSCO did not have any cross-owned affiliates, the Department should use the f.o.b. sales figures provided in HYSCO Verification Exhibit 1 to calculate any benefit in the final results. This sales figure ties to HYSCO's non-consolidated sales figure and includes all of its sales – including its sales to non-cross-owned affiliates.
- Since HYSCO's D/A financing is tied to its exports of all products to the United States (subject and non-subject), the Department should calculate any benefit HYSCO may have received using HYSCO's total exports to the United States as the sales denominator.
- Using HYSCO's exports to the United States net of HYSCO's sales to its non-cross-owned affiliates as the sales denominator would vastly overstate the benefit because only a very small percentage of HYSCO's total exports to the United States were sold to non-affiliated U.S. importers. Using this sales denominator would also be inconsistent with the benefit calculation for Dongbu, where the Department used a sales denominator for D/A financing that is not net of sales to non-cross-owned affiliates.

NUCOR

- For the final results, the Department should calculate HYSCO's subsidy margin using an f.o.b. sales denominator that excludes transactions between affiliates, which is consistent with the Department's practice in prior reviews of the order on CORE from Korea.
- Based on HYSCO's initial questionnaire response, the Department preliminarily calculated HYSCO's subsidy using an f.o.b. sales denominator that excluded of transactions between affiliates. This calculation is consistent with the Department's prior practice, since HYSCO consistently reported its total sales net of sales to affiliates in prior segments of this proceeding.
- HYSCO's new sales data submitted for the first time at verification is untimely filed new factual information that cannot be used in the final results. The purpose of verification is to verify the accuracy and completeness of submitted factual information. Typically, the Department does not accept new factual information at verification.
- The new sales chart that HYSCO provided at verification is untimely filed new factual information for which the deadline had passed, and should have been rejected pursuant to 19 CFR 351.302(d)(1)(i). HYSCO's new sales figures are not a "minor correction," because they do not constitute a minor modification to previously submitted information that HYSCO discovered in the course of preparing for verification. Further, given HYSCO's untimely submission of revised sales data, HYSCO denied the Department and petitioner the opportunity to determine whether its affiliates are cross-owned, and has failed to establish that its affiliates are non-cross-owned.
- Even if none of HYSCO's affiliates are cross-owned, excluding these sales from its sales denominator is appropriate because it serves an important enforcement function by discouraging price manipulation. Otherwise, a respondent that exercised control over its affiliates would have incentives to inflate its sales prices between affiliates in order to increase the sales denominator and minimize its subsidy margin. This risk is significant in an administrative review, where a respondent has the opportunity to manipulate its prices in order to lower its duty margin.

US STEEL

- In the *Preliminary Results*, the Department's use of HYSCO's reported sales values net of affiliate sales was consistent with its practice in all prior administrative reviews of HYSCO. This past practice accords with the statute and the regulations regarding the exclusion of affiliate sales from the sales value used as the denominator when calculating a respondent's *ad valorem* subsidy rate.
- Despite what it provided in its questionnaire response, HYSCO now claims that new sales values inclusive of sales to affiliates should be used to calculate its subsidy rate because HYSCO "did not have any cross-owned affiliates" during the POR. However, HYSCO's audited financial statements show that HYSCO owns and controls 100 percent of several affiliates, such as Hyundai HYSCO USA, which meets the definition of cross-ownership in the Department's regulations.
- Aside from these computational issues, the new sales data that HYSCO waited to submit until verification is untimely new information. Verification serves as a check on timely-submitted responses of interested parties, not an opportunity for interested parties to submit new information after the deadlines have passed. The Department may accept "minor" corrections that arise from clerical or other inadvertent errors at verification, but HYSCO's new sales data is neither minor nor does it arise from clerical or other inadvertent errors contained in its previous questionnaire responses. HYSCO submitted this revised sales data solely to argue that the Department should change its calculation of HYSCO's *ad valorem* subsidy rate.
- Even if one were to assume that using HYSCO's new sales values is consistent with the statute, regulations and the Department's past practice, the party that seeks a favorable adjustment to its countervailing duty rate bears a burden of submitting information within the deadlines set by the Department. Here, HYSCO has failed to timely submit evidence that it is entitled to any favorable adjustment, although it had an opportunity to do so in its initial and supplemental questionnaire responses.
- Accordingly, the Department should reject HYSCO's claimed adjustments and should instead continue to use the sales values reported by HYSCO in its questionnaire responses to calculate HYSCO's *ad valorem* subsidy rate for the final results.

Department's Position: We disagree with the contention by U.S. Steel and Nucor that HSYCO provided untimely new factual information at verification that should be rejected. In its initial questionnaire response, HYSCO provided its sales figures inclusive of sales to affiliates, a breakdown of its sales to its affiliates, and its freight and insurance expenses. The only new piece of information included in the minor corrections exhibit pertained to HYSCO's sales of services in the domestic market and, thus, did not affect the export sales data HYSCO previously reported to the Department. The verification team performed its standard verification procedures with regard to data provided in both of these sales charts and found no discrepancies.¹³⁹

US Steel and Nucor are correct to note that the Department calculates net subsidy rates based on sales denominators that are exclusive of intra-company sales between cross-owned firms. Importantly, the purpose of this approach is to prevent the sales denominator from being unduly inflated by double-counted sales values (*e.g.*, a denominator that consists of a sales price from the manufacturer to the trading company plus the sales price charged by the trading

¹³⁹ See HYSCO Verification Report at 4 – 5.

company to the end-user).

Thus, the issue here is whether the export sales denominator proposed by HYSCO results in double-counting or is otherwise inflated. We find that there is no information on the record indicating that the sales figures proposed by HYSCO include values that are double-counted or inaccurate. HYSCO's sales processes were reviewed at verification. HYSCO issues invoices and is paid by all of its affiliates in the same manner, including by companies that are wholly-owned by HYSCO.¹⁴⁰ HYSCO sells the merchandise to the trading company, and then the trading company issues a separate invoice to an end-user or other reseller at a marked-up price.¹⁴¹ Therefore, the sales figures provided in the revised sales charts do not include both the intra-company transfer price and the price charged by the trading company to the unaffiliated end-user or reseller. In fact, the sales figures proposed by HYSCO are smaller than the price ultimately charged the end-user because they do not include the value of the mark-up charged by HYSCO's affiliates. We also note that the sales figures proposed by HYSCO are consistent with the methodology used by Dongbu and POSCO when reporting their sales figures to the Department.

Finally, with regard to HYSCO's D/A financing and D/A loans, it would be inaccurate to use sales figures that are net of sales to HYSCO's affiliates as the sales denominator in the subsidy rate calculation because HYSCO's sales of subject merchandise to the United States are conducted entirely through its U.S. affiliates – Hyundai HYSCO USA Inc. and HYSCO America. Co.¹⁴² Therefore, if the Department were to use as a denominator a sales value that is exclusive of HYSCO's exports to its affiliates in the United States, the resulting *ad valorem* rate would overstate the benefit to HYSCO because the numerator, which includes benefits received on exports of subject merchandise to the United States, would be attributed to a sales denominator that is entirely absent of HYSCO's sales of subject merchandise to the United States, resulting in a mismatch between the numerator and the denominator.

Comment 3: Whether to Apply Adverse Facts Available with Regard to HYSCO's D/A Financing Under KEXIM's Trade Rediscount Program and HYSCO's D/A Loans Issued by the KDB and Other Government-Owned Banks

HYSCO

- During verification, the Department requested and verified a list of all of HYSCO's D/A financing outstanding during the POR, which included D/A financing on sales of subject and non-subject merchandise to the United States and to third country markets. The Department also received and verified a list of HYSCO's D/A financing from two foreign non-government-owned banks that did not participate in the KEXIM trade bill rediscount program. The Department should use the D/A financing from these two foreign banks as the benchmark for measuring any benefit. This benchmark is also appropriate because it is consistent with the company-specific benchmark used for Dongbu in the *Preliminary Results* as well as previous investigations such as *CFS Paper from Korea*.
- The Department should limit its calculations to the D/A financing used for exports to the U.S., and only from banks that either participated in the KEXIM trade bill rediscount program or are government banks. Further, since HYSCO's D/A financing relates to its

¹⁴⁰ See HYSCO Verification Report at 4.

¹⁴¹ *Id.*

¹⁴² See HYSCO Verification Report at 4.

U.S. exports of both subject and non-subject merchandise, any benefit should be calculated using the sales denominator for HYSCO's *total* exports to the United States.

- As a result of a credible and verifiable change in HYSCO's accounting standards, HYSCO's accounting treatment of D/A financing changed, resulting in the minor oversight in not originally reporting its D/A financing in its questionnaire responses. Specifically, prior to 2011, HYSCO followed the Korean GAAP accounting standards, which accounted for D/A financing in the account for "Loss on Disposition of Accounts Receivable." In 2011, HYSCO adopted the Korean International Financial Reporting Standards ("K-IFRS"), which changed the accounting treatment of D/A financing such that it was accounted for in the "Short-term loan" account.
- There is need to resort to an AFA rate based on secondary information in order to calculate a subsidy for HYSCO from this program. HYSCO has been fully cooperative in this review, and the Department fully investigated and verified HYSCO's use of D/A financing and the benchmark. HYSCO in no way impeded that investigation or denied the Department's ability to investigate. The purpose of AFA is to fill gaps in the record that arise out of non-compliance, and to provide respondents with an incentive to cooperate by increasing the respondent's estimated rate as a deterrent to non-compliance. Applying AFA to HYSCO does not satisfy any of these purposes, since HYSCO has fully cooperated and will continue to cooperate in the future (including the ongoing 19th review).
- In the past, the Department has used information first disclosed at verification and has not resorted to AFA. In *Refrigerators from Korea*, the Department discovered an R&D program at verification that had not been reported, but still rejected the petitioner's request for AFA. In *DRAMs from Korea*, another case in which the Department declined to apply AFA, the respondent disclosed an additional grant it received at verification, arguing that it did not previously report the grant because of how it accounted for the program in its accounting system. In *Coated Paper from China*, the Department did not apply AFA after the Department discovered at verification that a respondent and its affiliate had used a program that was covered by the Department's investigation and questionnaire.
- In addition, this situation is not one in which the Department discovered a new, previously unknown program at verification, which may require more time to investigate.
- The fact that HYSCO participated in previous reviews in which D/A financing was investigated is moot because prior reviews occurred before the change to K-IFRS in 2011, and HYSCO would have checked the account in which D/A financing was accounted for under the old Korean GAAP system.
- Petitioner's cited cases are inapposite to this case. *OCTG from China* is distinguishable because there, the Department applied AFA for certain loans that were identified at verification because it did not have a complete understanding of the loans and was unable to request further information.¹⁴³ In this case, however, the Department has a complete understanding of HYSCO's D/A financing. *Aluminum Extrusions from China* is distinguishable because the Department was considering the inclusion of newly alleged subsidy programs and programs self-reported by the voluntary respondents in the total

¹⁴³ See *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from China*) and accompanying Issues and Decision Memorandum at 6.

AFA rate assigned to non-cooperative mandatory respondents.¹⁴⁴ Here, the issue is whether the Department should reject HYSCO's verified D/A financing information and apply AFA to HYSCO. *Bags from Vietnam* is also inapplicable, since that case involved the application of AFA to a respondent who was unable to report accurate information either during the investigation or at verification.¹⁴⁵ Here, the Department verified HYSCO's D/A financing and tied it to HYSCO's trial balance and unconsolidated financial statements.

- Instead of the highest calculated program-specific rate determined for a cooperating respondent, Nucor's suggested AFA rate is itself an AFA rate. There is absolutely no basis or precedent for the Department to use the highest AFA rate for a non-cooperating respondent as the basis for selecting an AFA rate to use in another proceeding. Further, Nucor's suggested 1.64 percent rate is not only for a different program but also for a different type of program (the rate calculated for Samsung under the K-SURE short-term export insurance program) and not for a loan program such as D/A financing.
- To the extent the Department looks to *Refrigerators from Korea*, it should use the 0.01% rate that was calculated for Samsung for the D/A financing program in that investigation, not an AFA rate from a different program.

NUCOR

- The Department should apply AFA to HYSCO's receipt of D/A loans because HYSCO failed to cooperate to the best of its ability in providing the Department with necessary information regarding its use of this program, regardless of whether this was an inadvertent error.
- Despite what it stated in its November 23, 2011 questionnaire response, at verification, HYSCO disclosed for the first time that it used D/A financing. Therefore, HYSCO failed to cooperate to the best of its ability in complying with the Department's request for necessary information because it withheld information requested by the Department, failed to provide information in a timely manner or in the form requested, and significantly impeded the proceeding.
- HYSCO effectively denied the Department and petitioner the opportunity to fully investigate the company's use of this program and calculate an accurate benchmark.
- The Department's previous findings in *OCTG from China*, *Extrusions from China*, and *Bags from Vietnam* support Nucor's contention that the Department should use of AFA for purposes of deriving the benefit under the program.
- The Department should apply a subsidy rate of 1.64 percent as AFA, which is a program-specific AFA rate that was applied to an uncooperative respondent in *Refrigerators from Korea*. This rate is sufficiently adverse to induce respondents to provide the Department with complete and accurate information and to ensure that respondents do not obtain a more favorable result by failing to cooperate to their best ability than they would obtain through cooperation.

¹⁴⁴ *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Extrusions from China*) and accompanying Issues and Decision Memorandum at Comment 8.

¹⁴⁵ See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) (*Bags from Vietnam*) and accompanying Issues and Decision Memorandum at Comment 13.

- Given HYSCO's failure to cooperate to the best of its ability in providing information on its D/A financing program, the Department also should reject HYSCO's proposed benchmark.

US STEEL

- HYSCO waited to provide information concerning its D/A financing program until its claim of non-use was selected by the Department for verification. Given these circumstances, and pursuant to section 776 of the Act, the loans provided to HYSCO by commercial lenders cannot be used as benchmarks to measure HYSCO's benefit from its D/A financing program.
- HYSCO failed to submit information about its D/A financing within the deadlines established by the Department for responses to the initial and supplemental questionnaires. HYSCO also failed to provide any information about its D/A financing and commercial loans within the deadline for the submission of new factual information.
- Contrary to HYSCO's claims, AFA is required under these circumstances pursuant to section 776(a) of the Act. HYSCO failed to timely disclose any information about its use of the D/A financing program during the POR. HYSCO also denied that it used D/A financing in direct contradiction of information in its own books and records. This constitutes clear evidence that HYSCO failed to act to the best of its ability in responding to the Department's requests for information, and AFA is clearly warranted under section 776(b) of the Act.

Department's Position: The Department has the necessary information on the record with regard to all of HYSCO's D/A financing during the POR. Accordingly, we have calculated the benefit based on the record evidence. We find that the prior cases to which petitioner cites are inapposite. In *Bags from Vietnam*, *OCTG from China* and *Aluminum Extrusions from China*, the Department dealt with situations in which the information examined and collected at verification was incomplete or inaccurate. In the instant review, the Department verified the accuracy and completeness of HYSCO's D/A financing data collected. Therefore, we are not applying AFA with regard to HYSCO's D/A financing.

Comment 4: Whether Three of HYSCO's R&D Grants are Tied to Non-Subject Merchandise

HYSCO

- The three R&D grants that the Department found not countervailable in the *Preliminary Results* are tied to non-subject merchandise, and thus the Department should continue to find the projects to be not countervailable for the final results. HYSCO received these three R&D grants under the following three programs: (1) R&D Grants under the ITIPA; (2) R&D Grants Under the Act on the Promotion of the Development, Use, and Diffusion of New and Renewable Energy; and (3) R&D Grants Under the Special Act on Balanced National Development.
- During verification, the Department verified that these projects were indeed tied to the production of non-subject merchandise and collected supporting documentation.

US STEEL AND NUCOR

- No comments were provided on this issue.

Department's Position: We agree with HYSCO. As explained above in the each of the sections regarding the program under which the relevant grant was provided, we have determined that these three grants were received for projects that are tied to non-subject merchandise.

Comment 5: Whether HYSCO's Overseas Development Loans are Tied to Non-Subject Merchandise

HYSCO

- Consistent with the *Preliminary Results* and prior administrative reviews, the Department should continue to find that the loans HYSCO received from KORES and KNOC are tied to non-subject merchandise and thus, are not countervailable.
- At verification, the Department reviewed materials and confirmed that these loans were tied to the development of non-subject merchandise. In the case of the KORES loans, the Department verified that they were related to an investment in a copper mine in Boleo, Mexico, and that the KNOC loan related to petroleum projects in Taranaki, New Zealand and Zambil, Kazakhstan.

US STEEL AND NUCOR

- No comments were provided on this issue.

Department's Position: We agree with HYSCO. As explained above in the “Overseas Resource Development Program: Loan from Korea Resources Corporation (KORES)” and “Overseas Resource Development Program: Loan from Korea National Oil Corporation (KNOC)” sections, we have determined that the loans HYSCO received under these programs were received for projects that are tied to non-subject merchandise.

RECOMMENDATION

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review in the *Federal Register*.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

Date