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Investigation
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DATE: October 5, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Welded Line Pipe from the
Republic of Korea: Issues and Decision Memorandum for the Final
Negative Determination

I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are not being provided to producers and exporters of welded line pipe from the Republic of Korea (Korea), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are SeAH Steel Corporation (SeAH), NEXTEEL Co., Ltd. (NEXTEEL), and the Government of Korea (GOK). The petitioners are American Cast Iron Pipe Company, Energex (a division of JMC Steel Group), Maverick Tube Corporation (Maverick), Northwest Pipe Company, Stupp Corporation (a division of Stupp Bros., Inc.), Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA (collectively, the petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Electricity for Less Than Adequate Remuneration (LTAR)

- A. Whether Korean Electricity Prices Are Set In Accordance with Market Principles
- B. Whether the GOK Cooperated to the Best of its Ability in Providing Requested Electricity Price/Cost Data
- C. Whether the GOK Cooperated With Respect to Providing Electricity Generation Costs
- D. Whether the Department Should Apply Adverse Facts Available in its Benefit Analysis
- E. Use of Third-Country Prices as Tier-Three Benchmarks
- F. Specificity

Comment 2: Unreported Subsidies

Comment 3: Specificity of RSTA Tax Programs

Comment 4: Special Rural Development Tax



Comment 5: Husteel as a Mandatory or Voluntary Respondent

II. BACKGROUND

A. Case History

On March 20, 2015, we published the Preliminary Determination for this investigation.¹ On May 11, 2015, we issued a post-preliminary analysis memorandum.² We conducted verifications of the questionnaire responses submitted by SeAH, NEXTEEL, Daewoo International Corporation (DWI), and the GOK, between June 1 and June 12, 2015.³ We received case briefs from Maverick (the petitioner), SeAH, NEXTEEL, the GOK, and Husteel Co. Ltd. (Husteel) on August 26, 2015. We received rebuttal briefs from the petitioner, SeAH, NEXTEEL/DWI, and the GOK on August 31, 2015. We held a public hearing on September 10, 2015.

B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation covers circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

¹ See Welded Line Pipe From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 14907 (March 20, 2015) (Preliminary Determination) and Memorandum to Paul Piquado, “Countervailing Duty Investigation of Welded Line Pipe from the Republic of Korea: Decision Memorandum for the Preliminary Negative Determination” (March 16, 2015) (Preliminary Decision Memorandum).

² See Memorandum to Paul Piquado, “Post-Preliminary Analysis in the Countervailing Duty (CVD) Investigation of Welded Line Pipe from the Republic of Korea (Korea)” (May 11, 2015).

³ See Memoranda to the File, “Verification of the Questionnaire Responses of SeAH Steel Corporation” (August 11, 2015) (SeAH VR); “Verification of the Questionnaire Responses of NEXTEEL Co., Ltd.” (August 11, 2015) (NEXTEEL VR); “Verification of the Questionnaire Responses of Daewoo International Corporation” (August 11, 2015) (DWI VR); “Verification of the Questionnaire Responses of the Government of the Republic of Korea (Korea)” (August 17, 2015) (GOK VR).

IV. USE OF FACTS OTHERWISE AVAILABLE

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, use the “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Because the Department found at verification that SeAH did not report its use of the Local Education Tax exemption, we are relying on the facts otherwise available pursuant to section 776(a)(2)(B) of the Act.

In the Preliminary Determination we found that SeAH’s benefits under the Restriction of Special Taxation Act (RSTA) Article 120, “Exemption of the Acquisition Tax” and the Restriction of Special Local Taxation Act (RSLTA) Article 78, “Reduction and Exemption for Industrial Complexes” constituted countervailable subsidies. At SeAH’s verification, we verified the information SeAH reported for these two programs. Additionally, during the course of verification, we found that SeAH also benefited from an exemption under the Local Education Tax.⁴ While we did not gather additional information on this exemption at verification from SeAH, the GOK provided information on this exemption in its initial questionnaire response, including the formula used to calculate the amount of tax levied.⁵ According to the GOK, the Local Education Tax is levied at 20 percent of property and acquisition taxes.⁶ As discussed further below and consistent with our past practice, we applied facts available, thereby increasing SeAH’s benefits under RSTA Article 120 and RSLTA Article 78 by 20 percent.⁷

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.⁸ The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.⁹ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly.

⁴ See SeAH VR, at 2.

⁵ See GOK’s January 21, 2015, Initial Questionnaire Response (GIQR), at Exhibit C-1.

⁶ Id.

⁷ See Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012) (LRWs from Korea), and accompanying Issues and Decision Memorandum (IDM), at 15-17.

⁸ See 19 CFR 351.524(b).

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

NEXTEEL reported that it made some export sales of welded line pipe to the United States through an unaffiliated trading company, DWI, during the POI. DWI argued that, as a trading company, it should be subject to a 9-year AUL period based on the IRS Table for asset class 57.0—Distributive Trades and Services.¹⁰ In our February 9, 2015, supplemental questionnaire, we informed DWI that it may calculate a company-specific AUL by responding to the AUL Appendix contained in the original questionnaire. DWI did not provide the data necessary to perform an AUL calculation in its supplemental questionnaire response, however, stating that such data is not applicable, as the AUL Appendix is for companies that wish to argue that the IRS Tables do not reasonably reflect the company-specific AUL. To the contrary, DWI argued, it concurred with the use of an AUL period derived from the IRS Tables that is applicable to a trading company.¹¹ DWI's argument is based upon an incorrect reading of the countervailing duty (CVD) regulations. 19 CFR 351.524(d)(2) is clear that the IRS Table for assets used by the Department for the AUL is the table selected for the "industry under investigation," which is welded line pipe. Therefore, if DWI believed that the IRS Table for this industry's assets does not reasonably reflect its company-specific AUL, then DWI was required to provide its company-specific AUL. Because DWI did not provide a calculated company-specific AUL, the 15-year AUL period is applicable to DWI.

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

B. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

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.¹²

¹⁰ See DWI's January 21, 2015, Initial Questionnaire Response (DIQR), at 9; DWI's March 2, 2015, Supplemental Questionnaire Response (DSQR) at 1.

¹¹ See DSQR, at 1 and Exhibit 10.

¹² See Fabrique de Fer de Charleroi SA v. United States, 66 F. Supp. 2d 593, 603 (CIT 2001).

SeAH

SeAH reported that it was not a majority-owned subsidiary of any other company during the AUL, and that none of its affiliates produced subject merchandise, supplied an input product to SeAH for production of a downstream product, or received a subsidy and transferred it to SeAH during the AUL. Accordingly, SeAH responded to the Initial Questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by SeAH to the sales of SeAH.

In March 2012, SeAH Steel acquired the plants and facilities of the Korean pipe producer SPP Steel Pipe. As a result of this transaction, SPP Steel Pipe no longer exists as an ongoing entity. SeAH reported that SPP Steel Pipe did not receive benefits from any of the alleged subsidies in this investigation during the POI or AUL period.

NEXTEEL

NEXTEEL reported that it was not a majority-owned subsidiary of any other company during the AUL, and that during the POI and the AUL period, none of its affiliates produced subject merchandise, supplied an input product to NEXTEEL for production of a downstream product, or received a subsidy and transferred it to NEXTEEL.

NEXTEEL reported that it made some export sales of welded line pipe to the United States through an unaffiliated trading company, DWI, during the POI. In accordance with the Department's questionnaire, DWI submitted a complete questionnaire response and responded to a supplemental questionnaire.

Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we cumulated the benefits from subsidies received by DWI with the benefits from subsidies received by NEXTEEL based on the ratio of DWI's exports to the United States of subject merchandise produced by NEXTEEL during the POI to DWI's total sales during the POI (based on value).

C. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

D. Loan Benchmarks and Interest Rates

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

Short-Term Korean Won-Denominated Loans

NEXTEEL reported receiving Korea Trade Insurance Corporation (K-SURE) export credit guarantees for loans that were outstanding during the POI,¹³ as well as short-term loans from the Korean Development Bank (KDB), and loan guarantees from the Technical Credit Guarantee Fund and the Credit Guarantee Fund.¹⁴ We calculated a short-term weighted-average benchmark interest rate using information NEXTEEL provided for its short-term loans from commercial banks.

Long-Term Korean Won-Denominated Loans

NEXTEEL reported receiving long-term loans from the KDB.¹⁵ As a benchmark for these loans, we relied on data from the International Monetary Fund’s (IMF’s) International Financial Statistics for the year in which the terms of the loan were agreed upon.

As we noted in the Preliminary Determination, we determine that under DWI’s debt workout program, the restructured debt from K-SURE is being provided to DWI interest free. Because the workout program for DWI was terminated on December 30, 2003,¹⁶ we relied on 2004 as the year of agreement between DWI and K-SURE for its restructured debt. Under the terms of the loan agreement, DWI makes quarterly installments to repay this debt over a period of 12 years.¹⁷ Accordingly, a long-term Korean Won (KRW)-denominated benchmark from this time period is required to calculate the benefit from this countervailable liability. Because DWI did not provide any comparable loans for use as a benchmark, we relied on data from the IMF’s International Financial Statistics for the year in which the terms of the loan were agreed upon.¹⁸ After the Preliminary Determination, DWI provided additional information concerning debt-to-equity conversions that resulted from its debt workout program.¹⁹ As a benchmark for DWI’s debt-to-equity conversions, we relied on International Financial Statistics data for 2000 and 2001 to identify bond interest rates representing yields to maturity of bonds that would indicate longer term rates.

¹³ See NEXTEEL’s January 23, 2015, Partial Initial Questionnaire Response (NIQR2), at 4 and Exhibit B-5.

¹⁴ See NSQR2, at 1-4.

¹⁵ Id.

¹⁶ See DIQR, at 5.

¹⁷ See DSQR, at 7-8.

¹⁸ See Memorandum from Terre Keaton Stefanova, International Trade Compliance Analyst, AD/CVD Operations, Office II, to the File, “External Benchmarking Source Data” (March 16, 2015).

¹⁹ See DWI April 2, 2015, Supplemental Questionnaire Response (DSQR2), at 1-7.

Pursuant to 19 CFR 351.524(d), we used these interest rates as discount rates to allocate over the AUL, the benefit DWI received from its debt-to-equity conversions. This is consistent with the approach we took most recently in NOES from Korea.²⁰

Additionally, as described further below, we find that the Research and Development (R&D) Grant, under the Industrial Technology Innovation Promotion Act (ITIPA), results in a loan that is being provided to SeAH interest free. Because SeAH did not provide loan information to be used for benchmark purposes, we relied on data from the IMF's International Financial Statistics for the year in which the funds were approved.²¹

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following:

A. Programs Determined to Be Countervailable

1. R&D Grants under ITIPA

This program, administered by the Ministry of Trade, Industry and Energy (MOTIE) and the Korea Evaluation Institute of Industrial Technology (KEIT), was designed to promote new industries and enhance the competitiveness of Korea's national economy through the development of industrial technologies. Under the ITIPA program, the GOK provides grants to support technological development in certain industries, including industrial materials.²²

The program is operated pursuant to Article 11 of the ITIPA. To implement the program, KEIT prepares and publicly announces the basic plan which may encompass multiple projects that the KEIT forecasts will support the development of the Korean national economy. According to the GOK, any party wishing to participate in the program prepares a business plan that meets the requirements set forth in the basic plan and then submits the application to the MOTIE Review Committee, which then evaluates the application to determine if it conforms to the terms and conditions set forth in the basic plan. If the application is approved, the company enters into an R&D agreement with KEIT, and KEIT announces the amount of the grant to be provided.²³

The costs of the R&D projects under this program are shared by the company (or research institution) and KEIT. Specifically, the grant ratio for project costs are as follows: (1) for projects with one small/medium-sized enterprise (SME), KEIT provides grants of up to 75 percent of total project costs; (2) for other companies, KEIT grants 50 percent of total project costs; (3) for projects with

²⁰ See Non-Oriented Electrical Steel From the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 79 FR 61605 (October 14, 2014) (NOES from Korea), and accompanying IDM, at 4-6; see also LRWs from Korea, and accompanying IDM, at 6.

²¹ See SeAH's January 21, 2015, Initial Questionnaire Response (SIQR), at Exhibit 7-D.

²² See GIQR, at I-4.

²³ Id., and Appendices Volume at 5-6.

more than one participant, KEIT grants 75 percent of the total project cost if two thirds of the participants are SMEs; (4) otherwise, KEIT provides 50 percent of project costs.²⁴

When the project is evaluated as “successful” upon completion, the participating companies typically must repay 40 percent of the R&D grant to the GOK over five years. However, when the project is evaluated as “not successful,” the company does not have to repay the GOK any of the grant amounts.²⁵

The GOK and SeAH reported that SeAH received grants under the ITIPA program prior to, and during the POI. We verified that two of the four grants SeAH received were bestowed specifically in connection with the production of non-subject merchandise.²⁶ Therefore, consistent with 19 CFR 351.525(b)(5), we determine that these two grants are tied to non-subject merchandise. Thus, we did not include these grants in our subsidy calculations.

Regarding the remaining grants, we are treating the portions of the subsidy that do not have to be repaid as grants, and the remaining portion of the subsidy that may have to be repaid as a long-term, interest-free contingent liability loan. This approach is consistent with the Department’s regulations and practice.²⁷

We determine this program to be de jure specific under section 771(5A)(D)(i) of the Act because it is limited to projects in the basic plan that KEIT forecasts will support the development of the Korean national economy. For the portion of the subsidy that does not have to be repaid, we 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, and a benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a). For the portion of the subsidy that may have to be repaid, we 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 through loans, and a benefit exists under section 771(5)(E)(ii) of the Act in the amount of the interest the recipient would have paid on a comparable commercial loan.

With respect to the portion of the subsidy that we are treating as a long-term, interest-free contingent liability loan, pursuant to 19 CFR 351.505(d)(1) for the reasons described above, we find the benefit to be equal to the interest that SeAH would have paid during the POI had it borrowed the full amount of the contingent liability loan during the POI. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of the 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 funds were

²⁴ Id., and Appendices Volume at 3-5.

²⁵ See SIQR, at Appendix 7-B.

²⁶ See SIQR, at Appendix 7-D.

²⁷ 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 IDM at “Export Promotion Capital Goods Scheme (EPCGS);” and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011, 78 FR 55241 (September 10, 2013), and accompanying Preliminary Decision Memorandum (PDM), at 6.

received. Specifically, we used the long-term benchmark interest rates as described in the “Subsidies Valuation” section of this memorandum.

We determine that the grants provided under this program are non-recurring, in accordance with 19 CFR 351.524(c), which provides that the Department will normally treat grants as non-recurring subsidies. For the portion of this subsidy we are treating as a grant, in accordance with 19 CFR 351.524(b)(2), we determine whether to allocate the non-recurring benefit from the grants over a 15-year AUL by dividing the GOK-approved grant amount by the company’s total sales in the year of approval. Because the approved amount was less than 0.5 percent of the company’s total sales, we expensed the amounts received under the grants in the year received. To calculate the total net subsidy amount for this program, we divided the portion of SeAH’s benefit expensed in the POI by SeAH’s total sales. On this basis, we determine that SeAH received a countervailable subsidy rate of 0.01 percent ad valorem under this program.²⁸

2. Sharing of Working Opportunities/Employment Creating Incentives

The purpose of this program is to increase job opportunities for people through innovations and improvements. This program is part of the employment promotion policy of the Ministry of Employment and Labor (MOEL) and is managed by the Korea Labor Foundation (KLF).²⁹ It provides incentives in the form of support for labor costs for companies that create new employment opportunities.³⁰ Article 20 of the Employment Insurance Act, and Articles 12 and 17 of its Enforcement Decree form the legal basis of this program. The Implementation Guideline for the Employment Creation Assistance Program also applies.³¹ NEXTEEL received benefits under this program in 2013. The language of the implementing provisions for this program does not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. However, only 61 companies were approved for the assistance under this program in 2012, and 69 companies were approved for assistance in 2013.³² As such, we determine that this program is de facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Furthermore, a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a).

Worker assistance is treated as a recurring subsidy under 19 CFR 351.524(c). To calculate the subsidy, we divided the amount of the benefit received by NEXTEEL by its total sales during the POI. On this basis, we determine that NEXTEEL received a countervailable subsidy rate of 0.05 percent ad valorem under this program.³³

²⁸ See SeAH Final Calculation Memorandum, dated concurrently with this memorandum (SeAH Final Calc Memo).

²⁹ See GOK’s March 4, 2015, Supplemental Questionnaire Response (GSQR), at Exhibit GR2S-5.

³⁰ See NEXTEEL’s February 26, 2015 Supplemental Questionnaire Response (NSQR), at Exhibit O-6.

³¹ See GSQR, at Exhibit GR2S-SWO-1.

³² See GSQR, at Exhibit GR2S-5.

³³ See NEXTEEL Final Calculation Memorandum, dated concurrently with this memorandum (NEXTEEL Final Calc Memo).

3. RSTA Article 26: GOK Facilities Investment Support

Article 26 was first introduced through the RSTA in 1982 to encourage companies to make investments “out of the overcrowding control region of the Seoul Metropolitan Area” in their respective fields of business by providing them with tax incentives.³⁴ Eligible companies are able to claim a tax credit of up to five percent in eligible investments in facilities.³⁵ The GOK states that Article 26 was revised on December 27, 2010, adding job creation as a requirement for companies to qualify for tax deductions for facilities investments, and that the article has been renamed “tax credit for employment creating investments.”³⁶ NEXTEEL, DWI, and SeAH reported receiving tax benefits through RSTA Article 26.

The relevant law authorizing the credit, RSTA Article 26, and the implementing law, Article 23 of the Enforcement Decree of the RSTA, limit this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy. Accordingly, we determine that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act. This finding is consistent with our determination in LRWs from Korea.³⁷ The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

To calculate the subsidy received by NEXTEEL in connection with its own use of this program, we divided the amount of the benefit by NEXTEEL’s total sales during the POI. In addition, we divided the amount of the benefit received by DWI by its total sales during the POI. Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we cumulated the benefits from subsidies received by DWI with the benefits from subsidies received by NEXTEEL based on the ratio of DWI’s exports to the United States of subject merchandise produced by NEXTEEL during the POI to DWI’s total sales during the POI (based on value). On this basis, we determine that NEXTEEL received a countervailable subsidy rate of 0.23 percent ad valorem under this program.³⁸

To calculate the subsidy received by SeAH in connection with this program, we divided the amount of the benefit by SeAH’s total sales during the POI. On this basis, we determine that SeAH received a countervailable subsidy rate of 0.11 percent ad valorem under this program.³⁹

³⁴ See GIOR Appendices Volume, at 79.

³⁵ Id., at 89.

³⁶ Id., at 77.

³⁷ See LRWs from Korea, and accompanying IDM, at 14; upheld in Samsung Electronics Co., Ltd. v. United States, 973 F. Supp. 2d 1321, 1329 (CIT 2014) (Samsung Electronics).

³⁸ See NEXTEEL Final Calc Memo; see also DWI Final Calculation Memorandum, dated concurrently with this memorandum (DWI Final Calc Memo).

³⁹ See SeAH Final Calc Memo.

4. RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development

Introduced in 1982 under the Tax Exemption and Reduction Control Law, this program aims to facilitate Korean corporate investment in research and development activities through a reduction of taxes payable for eligible expenditures.⁴⁰ The tax reduction is administered by the National Tax Service, under the direction of the Ministry of Strategy and Finance (MOSF), and manifests itself as either 40 percent of the difference between the eligible expenditures in the tax year and the average of the prior four years, or a maximum of six percent of the eligible expenditures in the current tax year.⁴¹ Article 10(1)(3) of the RSTA is the law authorizing the reduction, which is implemented through Article 9(3) of the Enforcement Decree of the RSTA.⁴² DWI and SeAH reported receiving tax benefits through RSTA Article 10(1)(3).

The tax credits provided under this program constitute financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and this program provides a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1). Based on the information provided by the GOK in this investigation, consistent with our determination in NOES from Korea,⁴³ we continue to find this program de facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number, as only 3.26 percent of corporate tax payers used this program.⁴⁴ Therefore, we find this program countervailable.

To calculate the subsidy, we divided the amount of the benefit received by SeAH by its total sales during the POI. On this basis, we determine that SeAH received a countervailable subsidy rate of 0.02 percent ad valorem under this program.⁴⁵

We divided the amount of the benefit received by NEXTEEL by NEXTEEL's total sales during the POI. Then, consistent with the methodology described with respect to trading companies in the "Attribution of Subsidies" section above, we cumulated the subsidies DWI received under this program with subsidies, received by NEXTEEL under this program in accordance with 19 CFR 351.525(c). On this basis, the calculation of the subsidy from this tax program results in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁴⁶ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.⁴⁷

⁴⁰ See GIQR Appendices Volume, at 117.

⁴¹ Id., at 121-122.

⁴² Id., at 119.

⁴³ In NOES from Korea, where only 3.01 percent of Korean corporate tax filers used this program, we found the program de facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. See NOES from Korea, and accompanying IDM, at 13.

⁴⁴ The GOK reported that 15,714 companies received benefits under this program. See GIQR Appendices Volume, at 98. Table 8.1.1 of Exhibit GR2S 3 indicates that 482,657 corporate tax returns were filed.

⁴⁵ See SeAH Final Calc Memo.

⁴⁶ See DWI Final Calc Memo.

⁴⁷ See, e.g., Large Residential Washers, and accompanying IDM at 11.

5. RSLTA Article 78: Reduction and Exemption for Industrial Complexes; and Local Education Tax

SeAH reported receiving a partial exemption from local acquisition taxes and local property taxes under paragraph (4) of RSLTA Article 78.⁴⁸ Article 78 provides that any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax. In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 50 percent on the real estate for five years from the date the tax liability becomes effective. The tax exemption is increased to 100 percent if the relevant land, buildings, or facilities are located in an industrial complex outside of the Seoul Metropolitan Area (SMA). The program is administered by the local governments in Korea. The purpose of the program is to promote the development of the underdeveloped areas in Korea and to appropriately allocate the industries nationwide.⁴⁹

During the POI, pursuant to Article 78 of the RSTLA, SeAH received exemptions from the local acquisition tax and local property tax from the Pohang, Gunsan, and Suncheon tax authorities.⁵⁰ We determine that the tax reductions constitute a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act, and a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a). We further determine that the 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.⁵¹

To calculate the subsidy, we first increased the amount of the benefit received by SeAH by 20 percent to account for the Local Education Tax exemption, and then divided this total by SeAH's total sales during the POI. On this basis, we determine that SeAH received a countervailable subsidy rate of 0.14 percent ad valorem under this program.⁵²

6. RSTA Article 120: Exemption of the Acquisition Tax; and Local Education Tax

SeAH reported an exemption from local acquisition taxes under paragraph (2) of RSTA Article 120.⁵³ The purpose of this program is to promote the national economy through strong and sound companies taking over insolvent companies. Paragraph (2) of RSTA Article 120 provides a partial exemption from local acquisition taxes for property acquired through a merger through December 31, 2014.⁵⁴ The program is administered by local governments. Article 116 of the Enforcement Decree of the RSTA states that a "merger prescribed by the Enforcement Decree" means a merger

⁴⁸ See SeAH's February 25, 2015, Supplemental Questionnaire Response (SSQR), at Appendix S-6-B.

⁴⁹ See GOK's March 9, 2015, Supplemental Questionnaire Response (GSQR3), Appendix Volume, at 1-7.

⁵⁰ Id.; and SSQR, at Appendix S-6-B.

⁵¹ See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012, 79 FR 16283 (March 25, 2014) (Steel Plate from Korea), and accompanying PDM, at 6-7 (unchanged in Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 46770 (August 11, 2014), and accompanying IDM).

⁵² See SeAH Final Calc Memo.

⁵³ See SSQR, at Appendix S-6-A.

⁵⁴ Id.; see also GSQR3, Appendix Volume, at 17-21.

between corporations that have continued running a business for at least one year except for the consumptive service business. In such cases, where a corporation that has continued running the consumptive service business for at least one year has been extinguished by a merger, and the merging corporation does not run the consumptive service business, such merger shall be included.⁵⁵ The GOK claims that this program has been terminated as of December 31, 2014, that tax benefits under this program are not available after 2016, and that there are no replacement programs.⁵⁶

The language of the implementing provisions for this program does not limit eligibility to a specific enterprise or industry or group thereof in accordance with section 771(5A)(D)(i) of the Act. The GOK submits that 265 companies were approved for the assistance under this program in 2012, and 325 in 2013.⁵⁷ As such, we determine that this program is de facto specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Furthermore, the tax exemption constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and provides a benefit to the recipient equal to the amount of additional taxes the recipient would have paid in the absence of the program, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a).

To calculate the subsidies, we first increased the amount of the benefit received by SeAH by 20 percent to account for the Local Education Tax exemption, and then divided this total by SeAH's total sales during the POI. On this basis, we determine that SeAH received a countervailable subsidy rate of 0.16 percent ad valorem under this program.⁵⁸

B. Programs Determined Not to Have Conferred a Benefit

1. Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR

The petitioners alleged that KEPCO, a state-owned entity, provides electricity to the Korean steel industry, including producers of the subject merchandise, for LTAR. KEPCO was established under the Korea Electric Power Corporation Act and its Enforcement Decree.⁵⁹ KEPCO is an integrated electric utility company engaged in the transmission and distribution of substantially all of the electricity in Korea. In addition, through its six wholly-owned generation subsidiaries, KEPCO generates the substantial majority of electricity produced in Korea.⁶⁰ KEPCO is under the general supervision of MOTIE.⁶¹ MOTIE also has the authority to regulate and supervise the electricity business in Korea.⁶² Under Korean law, the Government of Korea is required to own, directly or indirectly, at least 51 percent of KEPCO's capital which allows the GOK to control the approval of corporate matters relating to KEPCO.⁶³

⁵⁵ See GSQR3, Appendix Volume at 19-21.

⁵⁶ Id., at 25.

⁵⁷ Id., at 24.

⁵⁸ See SeAH Final Calc Memo.

⁵⁹ See GIQR at 30.

⁶⁰ See KEPCO Form 20-F Filing with the U.S. Securities and Exchange Commission (SEC) at 23, provided as Exhibit E-1 to the GIQR.

⁶¹ Id., at 22.

⁶² See GIQR at 31.

⁶³ See KEPCO Form 20-F Filing with the SEC at 22, provided as Exhibit E-1 to the GIQR.

The GOK has traditionally maintained low electricity tariffs for industry. While the retail rates of electricity in Korea are set by the standard principle of rate of return regulation, it is generally accepted that the rates for agricultural and industrial users are set below cost, while those for other users are above cost. This rate structure generated cross-subsidization where residential and commercial consumers paid higher electricity tariffs in order to subsidize agricultural and industrial consumers. Industrial consumers represent up to half of Korea's total power consumption. This cross-subsidization provided incentives to Korean industry to rely heavily upon high electricity consumption. This is a legacy of an export-driven policy which provided manufacturers with a wide range of subsidies. Cheap power significantly helped the export-led growth of the Korean economy, while nurturing an industry structure which consumes too much power and which cannot survive with a price that would recover costs.⁶⁴

As the CEO of KEPCO stated during a 2013 interview, KEPCO has been supporting industries with cheap power in order to make them a growth engine for the economy. The KEPCO CEO also stated that the electricity rates have not been determined solely by the market and that the current rates are too low.⁶⁵ In its latest report on the Energy Policies of Korea released in 2012, the International Energy Agency (IEA) stated that in 2009, the GOK announced plans to introduce a new electricity pricing system that moves in line with global energy commodity prices and would allow KEPCO to pass fuel costs on to consumers; however, the new tariff system was suspended by the government before its application to customers.⁶⁶ Despite increasing electricity sales, KEPCO has continued to incur losses mainly owing to government policy and a lower level of tariffs compared to the costs of producing electricity.⁶⁷ The IEA concluded that a significant problem is that the mechanisms for calculating wholesale and retail electricity prices do not reflect the full cost of electricity production, nor do they reflect its market value; in other words, there is a direct subsidy in place in the form of the sale of electricity at prices below costs.⁶⁸ The recovery rate of electricity price, which is the unit price as a share of the total unit cost, is lower for the industrial sectors than for general and residential users.⁶⁹

Korea's National Assembly issued a report in 2013 on KEPCO and concluded that there is a need to review the electricity tariffs charged to the industrial sector. The National Assembly Report stated that KEPCO has incurred huge losses because of discounted tariff charges to Korea's 100 largest corporations on industrial electricity usage. While these companies are currently consuming up to 49 percent of Korea's electricity, the tariffs charged to these companies are lower than the lowest rates for electricity amongst the OECD nations.⁷⁰ The National Assembly report covered KEPCO's cost recovery for the 100 largest companies in Korea. This report did not include electricity usage and costs for our two respondents, SeAH and NEXTEEL.

⁶⁴ See Electricity in Korea – Paper submitted by Seoul National University to the May 16, 2011, Symposium on APEC's New Strategy for Structural Reform at 15.2.3, provided as Exhibit IV-45 of the petition.

⁶⁵ See Interview with Cho Hwan-eik, CEO of KEPCO, with Korea Joongang Daily, dated September 4, 2013, provided as Exhibit IV-48 of the petition.

⁶⁶ See Energy Policies of IEA Countries The Republic of Korea 2012 from the IEA at 86, provided as Exhibit IV-43 of the petition.

⁶⁷ *Id.*

⁶⁸ *Id.*, at 90.

⁶⁹ *Id.*, at 87.

⁷⁰ See 2013 National Assembly Report, provided as Exhibit E-4 to the GIQR.

There were three different electricity tariff schedules in effect during the POI. The first tariff schedule was applicable through January 13, 2013; the second tariff schedule was in effect from January 14 through November 20, 2013; and the third tariff schedule became effective on November 21, 2013.⁷¹ In order to change (increase or decrease) electricity tariffs, KEPCO first makes an application to MOTIE. When MOTIE receives the application, it consults with MOSF to discuss how the change will affect the national consumer price index and to make adjustments as necessary. After the consultations with MOSF, MOTIE makes a request to the Electricity Regulatory Commission for a review of KEPCO's application which reflects the results of the consultation with MOSF. After the Commission's review, MOTIE will determine whether to issue an approval for KEPCO's application.⁷²

The electricity tariffs that are charged by KEPCO are regulated and approved by the GOK. In addition, the GOK exercises significant control over KEPCO through its majority ownership and, as described above, pursues government policy objectives through KEPCO's business and operations.⁷³ Accordingly, we find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act. Therefore, we determine that a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act is being provided to producers of the subject merchandise. We next reviewed whether a benefit was provided to SeAH and NEXTEEL within the meaning of section 771(5)(E)(iv) of the Act.

Under 19 CFR 351.511(a)(2), the Department determines whether electricity is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country such as electricity tariffs from private parties (referred to as a Tier 1 Benchmark); (ii) comparing the government price to a world market price where it would be reasonable to conclude that such a world market price is available to electricity consumers in the country in question (referred to as a Tier 2 Benchmark); or (iii) if no world market price is available then the Department will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles (referred to as a Tier 3 Benchmark).

With respect to a Tier 1 Benchmark, KEPCO is the primary utility company in Korea providing electricity to Korean consumers, and the GOK regulates the rates that KEPCO charges for electricity; therefore, we determine that a Tier 1 Benchmark (a price within the country) is not available. KEPCO's Form 20-F Filing with the U.S. Securities and Exchange Commission (SEC) does state that a minimal amount of electricity is supplied directly to consumers on a localized basis by independent power producers.⁷⁴ However, if the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market, as in this case, the Department determines that prices within the country are distorted and cannot be used for benchmark purposes.⁷⁵

⁷¹ See GOK March 6, 2015 Supplemental Questionnaire Response on Electricity (GSQRE) at 2.

⁷² See GIQR at 31.

⁷³ See, e.g., KEPCO Form 20-F Filing with the SEC at 7, provided as Exhibit E-1 to the GIQR.

⁷⁴ See GIQR, at Exhibit E-1 (KEPCO Form 20-F Filing with the SEC, at 11).

⁷⁵ See Countervailing Duties: Final Rule, 63 FR 65348, 65377 (November 25, 1998) (CVD Preamble): We normally do not intend to adjust such prices to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial

The next alternative in the benchmark hierarchy is to use world market prices. However, under 19 CFR 351.511(a)(2)(ii), the Department will only use world market prices if the good or service is actually available to the purchaser in the country under investigation. With respect to electricity, the Department has stated that electricity prices from countries in the world market are normally not available to purchasers in the country under investigation.⁷⁶ The GOK has stated that there is no cross-border transmission or distribution of electricity in Korea;⁷⁷ therefore, we determine that we cannot rely on world market prices to determine whether electricity is provided for LTAR.

The final alternative in the benchmark hierarchy set forth under 19 CFR 351.511(a)(2)(iii) is to determine whether the government price is consistent with market principles.⁷⁸ Therefore, as in the preliminary determination, we continue to use a Tier 3 Benchmark to determine whether the KEPCO electricity tariffs are set for LTAR. Under a Tier 3 Benchmark analysis, the Department will assess whether the prices charged by KEPCO are set in accordance with market principles through an analysis of such factors as KEPCO's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.⁷⁹ We did not put these factors in any hierarchy, and we may rely on one or more of these factors in any particular case.⁸⁰

portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.

⁷⁶ See CVD Preamble at 65377: Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. (Emphasis added.)

⁷⁷ See GIQR, at 33.

⁷⁸ See CVD Preamble at 65378:

Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992) (Magnesium from Canada) and Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod, 62 FR 55014, 55021-22 (October 22, 1997).

⁷⁹ In Magnesium from Canada, the Department was analyzing electricity contracts that were provided to 14 companies which purchased such large amounts of electricity that the rates set in the tariff schedule were not applicable. We stated in Magnesium from Canada:

As a general matter, the first step the Department takes in analyzing the potential preferential provision of electricity – assuming a finding of specificity – is to compare the price charged with the applicable rate on the power company's non-specific rate schedule. If the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism applicable to such companies. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, we would probably not find a countervailable subsidy.

Therefore, the Department will examine the standard pricing mechanism used by the utility company to establish the electricity rates set forth in the tariff schedule. If the rate charged to our respondent is lower than the rates charged to

For purposes of this final determination, under our Tier 3 Benchmark analysis, we assessed whether the prices charged by KEPCO are set in accordance with market principles through an analysis of KEPCO's price-setting philosophy. With respect to KEPCO's price-setting philosophy, the Department stated in Magnesium from Canada that we will examine the electricity rates charged to our investigated respondents to determine whether the price charged is consistent with the power company's standard pricing mechanism. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other companies and industries which purchase comparable amounts of electricity, then there is no benefit.⁸¹

We verified that the electricity tariff for KEPCO is developed based upon the utility company's annual cost data. At the end of each fiscal year, KEPCO hires an independent accounting firm to audit its cost and calculate the annual cost of electricity. These figures are then used by KEPCO to calculate the tariff for each customer classification.⁸² The standard methodology for setting electricity tariffs are set forth in the Detailed Approval Standards for Power Generation Business, Standards for Calculation of Electricity Charges, Tolerance of Electricity Meters and Electricity Power System Operation (Standards for Calculation of Electricity Charges) from the Ministry of Knowledge Economy.⁸³

To develop the electricity tariff schedules that were applicable during the POI, KEPCO first calculated its overall cost including an amount for investment return. This cost includes the operational cost for generating and supplying electricity to the consumers as well as taxes. The cost for each electricity classification was calculated by (1) distributing the overall cost according to the stages of providing electricity (generation, transmission, distribution, and sales); (2) dividing each cost into fixed cost, variable cost, and the consumer management fee; and (3) then calculating the cost by applying the electricity load level, peak level, and the patterns of consuming electricity. Each cost was then distributed into the fixed charge and the variable charge. KEPCO then divided each cost taking into consideration the electricity load level, the usage pattern of electricity, and the volume of the electricity consumed. Costs were then distributed according to the number of consumers for each classification of electricity.⁸⁴

We verified that KEPCO applied this same price-setting philosophy or standard pricing mechanism to determine the electricity tariffs for each tariff classification including the industrial tariff that was

other users but the rates set for the other users as well as the rate charged to our respondent are set using the same "standard pricing mechanism," then the lower rate charged to our respondent would not normally be found countervailable. The principle of the standard pricing mechanism recognizes the commercial and market practices and conditions for the provision of electricity; *i.e.*, that it may be cheaper to provide electricity to very large consumers such that the rates established for those large consumers may be lower than the rates established for other electricity consumers. While the rates may be lower for one type of consumer compared to other types of consumers, if the rates are established using the same standard pricing mechanism, then the lower rate does not necessarily provide a countervailable subsidy.

⁸⁰ See CVD Preamble, at 65378.

⁸¹ See discussion of Magnesium from Canada at footnote 100.

⁸² See GOK VR, at 8-9.

⁸³ See GOK VR, at 8-9, and Exhibit 3.

⁸⁴ See GOK's March 6, 2015, Supplemental Questionnaire Response (GSQR2), at 3-7.

paid by the respondents during the POI. In addition, we find that there is no information on the record that SeAH and NEXTEEL are treated differently from other industrial users of electricity that purchase comparable amounts of electricity.⁸⁵ Therefore, consistent with 19 CFR 351.511 and Magnesium from Canada, we determine that this program provides no benefit to SeAH and NEXTEEL because the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO's standard pricing mechanism. DWI did not use this program because it is not an industrial user of electricity.

2. K-SURE Export Credit Guarantees

NEXTEEL reported that it received loan guarantees under this program during the POI.⁸⁶ However, the calculation of the benefits from this loan results in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

3. K-SURE Interest-Free Loan to DWI

DWI reported that during the POI it had an outstanding balance on a loan from K-SURE that was related to a restructuring of debt that took place in 2003.⁸⁷ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent ad valorem, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁸⁸ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

4. Energy Savings Program: Demand Adjustment Program of Designated Period

NEXTEEL and SeAH reported that they utilized this program. However, the calculation of the benefits for each respondent resulted in rates that are less than 0.005 percent. As such, this program does not have an impact on SeAH's and NEXTEEL's overall subsidy rates. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL or SeAH.

5. Energy Savings Program: Demand Adjustment Program of Emergency Load Reduction

SeAH reported that it utilized this program. However, the calculation of the benefits resulted in a rate that is less than 0.005 percent. As such, this program does not have an impact on SeAH's overall subsidy rate.⁸⁹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for SeAH.

⁸⁵ For example, while the National Assembly Report provides KEPCO's cost recovery for the 100 largest companies in Korea, SeAH and NEXTEEL are not included in this Report.

⁸⁶ See NIQR2, at 4.

⁸⁷ See DSQR, at 6-8, and Exhibit B-12.

⁸⁸ See DWI Final Calc Memo.

⁸⁹ See SeAH Final Calc Memo.

6. RSTA Article 22: Investments for Overseas Resource Development

DWI reported receiving tax benefits through RSTA Article 22.⁹⁰ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁹¹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

7. RSTA Article 24: Tax Credit for Investment in Productivity Increase Facilities

SeAH reported receiving tax benefits through RSTA Article 24.⁹² However, the calculation of the benefits resulted in a rate that is less than 0.005 percent and, as such, does not have an impact on SeAH's overall subsidy rate.⁹³ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for SeAH.

8. RSTA Article 25: Tax Credit For Investment in Facilities for Environment or Safety

DWI reported receiving tax benefits through RSTA Article 25.⁹⁴ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁹⁵ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

9. RSTA Article 25(3): Investments in Facilities for Environmental Conservation

DWI reported receiving tax benefits through RSTA Article 25(3).⁹⁶ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁹⁷ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

10. RSTA Article 104(14): Tax Credits for Logistical Cost of Third Party

DWI reported receiving tax benefits through RSTA Article 104(14).⁹⁸ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.⁹⁹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

⁹⁰ See DSQR, at Exhibits G-5 and G-6.

⁹¹ See DWI Final Calc Memo.

⁹² See SIQR, at 35, and Appendices 13-A and 13-B.

⁹³ See SeAH Final Calc Memo.

⁹⁴ Id.

⁹⁵ See DWI Final Calc Memo.

⁹⁶ Id.

⁹⁷ See DWI Final Calc Memo.

⁹⁸ See DSQR, at Exhibit G-11.

⁹⁹ See DWI Final Calc Memo.

11. KDB Loans

NEXTEEL reported that it received both short-term and long-term loans from the KDB.¹⁰⁰ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰¹ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

12. Technical Credit Guarantee Fund and Credit Guarantee Fund

NEXTEEL reported that it received loans guaranteed by the Technical Credit Guarantee Fund and the Credit Guarantee Fund, which is controlled by the GOK.¹⁰² However, the calculation of the benefits resulted in a rate that is less than 0.005 percent, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰³ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.¹⁰⁴

13. DWI's Debt-to-Equity Conversions Under the Debt Workout Program

DWI reported that it participated in debt-to-equity conversions during the AUL period as a result of its debt workout program.¹⁰⁵ However, the calculation of the benefits resulted in a rate that is less than 0.005 percent ad valorem, and, as such, does not have an impact on NEXTEEL's overall subsidy rate.¹⁰⁶ Consistent with our past practice, we did not include this program in our net subsidy rate calculations for NEXTEEL.

14. Grants from the Ministry of Employment and Labor

At NEXTEEL's verification, Department officials noted that NEXTEEL received grants from several different programs administered by the MOEL that the company had not reported in its questionnaire response. However, the calculations of the benefits from each of these separate programs result in rates that are less than 0.005 percent, and, as such, do not have an impact on NEXTEEL's overall subsidy rate. Consistent with our past practice, we did not include these programs in our net subsidy rate calculations for NEXTEEL.

C. Programs Determined To Be Not Used

1. K-SURE Short-Term Export Credit Insurance

The GOK, SeAH, NEXTEEL and DWI reported that the three companies purchased export credit insurance from K-SURE during the POI; however, none of them made any insurance claims or

¹⁰⁰ See NEXTEEL's April 9, 2015, Supplemental Questionnaire Response (NSQR2), at 1-3..

¹⁰¹ See NEXTEEL Final Calc Memo.

¹⁰² See NSQR, at 5; NEXTEEL's April 28, 2015, Supplemental Questionnaire Response (NSQR3), at 1-2 and Exhibits B-12 and B-13.

¹⁰³ See NEXTEEL Final Calc Memo.

¹⁰⁴ See NEXTEEL Final Calc Memo.

¹⁰⁵ See DSQR2, at 1-7.

¹⁰⁶ See DWI Final Calc Memo.

received payments on insurance claims with respect to exports of the subject merchandise.¹⁰⁷ Therefore, we verified that the respondents' use of this program during the POI was tied to non-subject merchandise.

2. Korean Export-Import Bank (KEXIM) Export Factoring

DWI reported that it used export factoring that was tied to the export of non-subject merchandise to third countries, and provided sample transaction documents in support of this assertion.¹⁰⁸ We verified that DWI's use of this program during the POI was tied to non-subject merchandise.

3. KDB and Industrial Bank of Korea Short-Term Discounted Loans for Export Receivables

DWI reported that it received short-term discounted loans for export receivables (e.g., documents against acceptance (D/A) loans) from the KDB related to the export of non-subject merchandise. DWI provided documentation relevant to these loans, including sample loan contracts and a list of transactions to which it applied this financing during the POI.¹⁰⁹ We verified that DWI's use of this program during the POI was tied to non-subject merchandise.

4. Promotion of Regional Specialized Industry

NEXTEEL reported that it received benefits under this program for non-subject merchandise only, and provided copies of the R&D reports it filed with the Korea Institute for the Advancement of Technology, which administers this program.¹¹⁰ We verified that NEXTEEL's use of this program was tied to non-subject merchandise.

5. Korea National Oil Corporation (KNOC) and Korean Resources Corporation (KORS) Loans

DWI reported that it received loans pursuant to the Overseas Resources Development Act. However, these loans are tied to non-subject merchandise.¹¹¹ We verified that DWI's use of this program during the POI was tied to non-subject merchandise.

6. KEXIM Guarantee Obligations

DWI reported that it had certain guarantee obligations related to KEXIM loans for which it served as a co-signer/guarantor for other companies.¹¹² DWI provided a listing of the projects for which these companies received the loans to show that they are tied to non-subject merchandise. We verified that DWI's use of this program during the POI was tied to non-subject merchandise.

We also determine that NEXTEEL, DWI and SeAH did not apply for or receive countervailable benefits during the POI under the following programs:

¹⁰⁷ See GIQR Appendices Volume, at 58; NIQR2, at 1; SIQR at 26, and; DIQR, at 19.

¹⁰⁸ See DIQR, at 11-13, and Exhibits B-1 and B-2.

¹⁰⁹ See DIQR, at 14 and Exhibits B-4 through B-7.

¹¹⁰ See NSQR, at 2-3, and Exhibits O-9 and O-10.

¹¹¹ See DSQR, at 2-3.

¹¹² See DSQR, at 2, and Exhibit B-11.

- KEXIM Short-Term Export Credits
- KEXIM's Trade Bill Rediscounting Program
- KEXIM Export Loan Guarantees
- KEXIM Import Financing
- KEXIM Shared Growth Program
- Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
- RSTA Article 25(2) Tax Deductions for Investments in Energy-Economizing Facilities
- Subsidies to Companies Located in Free Economic Zones (FEZs):
 - Tax Reductions and Exemptions
 - Exemptions and Reductions of Lease Fees
 - Grants and Financial Support
- Modal Shift Program
- Grants to HYSCO and Husteel
- Power Business Law

VII. ANALYSIS OF COMMENTS

Comment 1: Electricity for LTAR

A. Whether Korean Electricity Prices Are Set In Accordance with Market Principles

The petitioner asserts that the record demonstrates that Korean electricity tariffs are not set in accordance with market principles. Rather, the GOK intervenes directly and extensively in the market in order to provide below-cost energy throughout the economy, including and especially to Korean steel producers, as the Department recognized in the Preliminary Determination.

The petitioner claims that the Department's preliminary price discrimination analysis fails to capture the full benefit of subsidized electricity to Korean steel producers, which the Korean National Assembly itself recognizes as a substantial competitive advantage. Because of the pervasive price distortions throughout the Korean electricity market, the petitioner argues that an analysis of possible price discrimination simply compares one distorted and subsidized price to another, and perhaps more importantly, would be based on contradictory and unverifiable information. Consequently, any comparison of the relative benefits among the various classes of consumer would be based on unverified data and would call into question the reliability of the results.

Finally, the petitioner contends that, despite its suggestions prior to verification, the Department failed to gather information pertaining to the operations of KEPCO's generating subsidiaries. As a result, the record is devoid of any evidence that could allow the Department to conduct a meaningful tier-three benchmark analysis. Therefore, the Department should select a third-country electricity price to use as a benchmark in the final determination.

Department's Position

The petitioner misinterprets 19 CFR 351.511 regarding the benefit analysis of the government provision of a good or service. 19 CFR 351.511(a)(2)(iii) provides that in situations where the government is clearly the only source available to consumers in the country, the Department normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. These factors are not subject to any hierarchy and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely.¹¹³ The petitioner focuses on only one of the factors that may be used by the Department to examine whether a GOK price for the provision of electricity is set in accordance with market principles, and ignores the factor regarding the government's price-setting philosophy.

With respect to the factor regarding the government's price-setting philosophy, the Department stated in Magnesium from Canada that to determine whether there is a benefit conferred in the rate for electricity that is charged to a respondent, we will examine whether the price is consistent with the utility company's standard pricing mechanism. Consistent with Magnesium from Canada, we found that KEPCO applied a standard pricing mechanism to determine the industrial tariff paid by the respondents, SeAH and NEXTEEL. Therefore, we determine that this program did not confer a benefit to these respondents. Determining whether a government-set price for electricity is in accordance with market principles by examining whether the electricity prices are set using the utility company's standard pricing is consistent with our regulations and precedent.¹¹⁴ The Department was able to fully verify KEPCO's standard pricing mechanism and its application in the setting of industrial electricity tariffs.¹¹⁵

The petitioner also raises the issue of price discrimination by citing to the National Assembly Report and the statement within that report that references the steel industry's "exceeding use" of electricity.¹¹⁶ The reference to the steel industry within the National Assembly Report as used in the Preliminary Determination was relevant only to the issue of specificity, not to the issue of whether a benefit is conferred under this program. Because we determine that no benefit was provided to SeAH and NEXTEEL under this program, the issue of specificity is moot.

The petitioner is correct that we did not request the cost information from KEPCO's generating subsidiaries. This information was not requested because the information from the generating subsidiaries was not relevant to our analysis. Electricity generators, including subsidiaries of

¹¹³ See CVD Preamble, at 65378.

¹¹⁴ See e.g., CVD Preamble, at 65378; Magnesium from Canada, at 30954.

¹¹⁵ See e.g., GOK VR, at 8-9.

¹¹⁶ The National Assembly Report was based on the 100 largest corporations in Korea and KEPCO provided the names of these corporations and their electricity usage and costs. Information of electricity usage and costs for SeAH and NEXTEEL are not included in the data that KEPCO provided to the National Assembly. (See GSQR2, at 2, and Exhibit SR-Elec-1.)

KEPCO, sell electricity to the Korea Power Exchange (KPX) and KEPCO purchases the electricity that it distributes to all of its customers from KPX. KEPCO purchases most of the electricity that it supplies to its customers through the KPX except for the electricity provided as a universal service to remote areas.¹¹⁷ Therefore, the cost of this electricity is identical for all the tariff classes (residential, general, industry, etc.) within Korea. The cost of electricity is based upon the purchase price of electricity from the KPX; therefore, this is the cost that is relevant for determining whether KEPCO's industrial tariff schedule is developed using a standard pricing mechanism. We also note that the cost data underlying the tariff rate calculations were prepared by an independent accounting firm.¹¹⁸

B. Whether the GOK Cooperated to the Best of its Ability in Providing Requested Electricity Price/Cost Data

The petitioner asserts that, because of the GOK's evasive and contradictory questionnaire responses and its failure to support the information in those responses at verification, the record is essentially devoid of evidence to support the GOK's explanations of the price-setting process. The petitioner argues that, while the GOK initially refused to provide any information with respect to the costs of generating and supplying electricity, once provided in the form of Exhibit SR-Elec-3, the GOK's explanation of the relevance of this data was, at best, misleading. While the GOK's supplemental questionnaire response implied that the data submitted in Exhibit SR-Elec-3 was provided to MOTIE in support of one of KEPCO's requests for a tariff revision during the POI, after the Preliminary Determination, it became apparent that this data was actually full-year 2013 data that was submitted to MOTIE *after the POI*. The petitioner also argues that, in direct contrast with its previous statement that "{t}he costs for providing service to each . . . tariff class are generally submitted in order to discuss and set the electricity rate for each class," the GOK's April 14, 2015, supplemental questionnaire response explained that, in fact, "at the time when KEPCO applies an increase of electricity tariffs to MOTIE, KEPCO does not submit the data analysis on electricity tariff by each classification." Rather, according to the GOK, KEPCO's electricity tariff increase requests are based only on a broader market forecast involving various factors; however, the impact of those factors (such as fuel prices) on the actual cost of producing electricity and/or KEPCO's requests for tariff revisions were never explained.

The petitioner argues that the GOK never clarified the relationship between the annual cost data submitted to MOTIE and the market forecast data which serve as the basis of KEPCO's tariff increase requests, other than to say that the annual data is "retrospective" and may be used to develop "General Terms and Conditions which sets the electricity tariff rate table."

The petitioner asserts that at verification it was disclosed for the first time that the annual cost data was retrieved from KEPCO's financial statements as well as from the KEPCO Data Network (KDN). The petitioner claims the Department could verify only part of the data because KEPCO told the Department that the remaining data was unavailable because it was sourced from the KDN and "any associated correspondence no longer exists, either in hard copy or electronically, as these events took place several years ago." The petitioner does not find credible KEPCO's reasons for not producing

¹¹⁷ See GSQR2, at 11.

¹¹⁸ See e.g., GOK VR, at 8.

the KDN data at verification because the GOK was able to produce the exhibit containing the data (Exhibit GSQ5RE-2) as recently as May 19, 2015, in its supplemental questionnaire response. The petitioner alleges the likelihood that the GOK destroyed or otherwise concealed the information to prevent the Department from viewing it at verification, and either fabricated the data in Exhibit GSQSRE-2 or intentionally misled the Department at verification.

The petitioner also finds implausible the GOK's explanations at verification for its inability to provide documentation supporting the roles of the various GOK ministries involved in the tariff setting process, as Korean law requires KEPCO and its subsidiaries to maintain detailed accounting materials related specifically to the calculation of electricity tariffs for verification by the GOK. The petitioner contends that the GOK's explanations at verification are little more than excuses for a conscious refusal to provide critical information both at verification and in response to the Department's questionnaires because this information will show that Korean electricity prices are not set in accordance with market principles.

The respondents argue that no benefit was conferred by this program because the verified record information demonstrates that KEPCO set its electricity rates based on ordinary market principles in all three tariff schedules applicable during the 2013 POI. Although the Department applied facts available in the Preliminary Determination because it determined that it did not have the cost and tariff information for the tariff schedules in effect prior to November 21, 2013,¹¹⁹ the respondents contend that the Department now has complete and verified record information for the entire 2013 POI showing that KEPCO's electricity rates were set in accordance with market principles. Specifically, the verified data substantiate the fact that KEPCO applied a standard price setting philosophy that takes into account its costs and a reasonable rate of investment return, and show that industrial consumers were treated in a manner consistent with, or even less favorable than, other consumers with respect to its tariff schedules.

The GOK points out that it has submitted to the Department multiple datasets pertaining to KEPCO's cost, sales, and recovery rates for the various tariff classifications which support the conclusion that KEPCO did not provide any benefit under 19 CFR 351.511 to industrial electricity consumers as compared to other classes of electricity consumers. The GOK asserts that the data presented in Exhibit SR-Elec-3 is the most appropriate source to use to evaluate whether electricity was provided for LTAR, as this data reflects KEPCO's actual costs and sales during the POI. The GOK adds that it explained in its January 21, 2015, questionnaire response at page I-35, that KEPCO was required to apply the principles set out in Article 7 of the Presidential Decree of the Electricity Business Law when calculating tariffs for purposes of filing each of the three tariff rate change applications that it filed with MOTIE during the POI. Therefore, the price setting philosophy, or standard pricing mechanism that the Department noted in the Preliminary Determination with respect to the November 21, 2013, tariff rate revision, was also applied with respect to the revisions that took place in August of 2012 and January of 2013. Consequently, the GOK concludes, it is evident that the rates for electricity supplied to the mandatory respondents during the POI did not provide any benefit, since these rates were not for LTAR.

¹¹⁹ See Preliminary Decision Memorandum, at 20.

NEXTEEL believes the tier-three benchmark methodology the Department used in the Preliminary Determination was reasonable and consistent with previous determinations.¹²⁰ NEXTEEL points out that the Department verified NEXTEEL's and its unaffiliated trading company's reported electricity and "observed no inconsistencies with the information reported in their questionnaire responses."¹²¹ NEXTEEL concludes that, just as the Department found that NEXTEEL received no benefit for its electricity purchases after November 20, 2013, the Department should find that NEXTEEL received no benefit at all during the POI.

Department's Position

As detailed in the Department's position to Comment 1.D below, the GOK adequately responded to all of the Department's detailed questions relating to the examination of whether the GOK provided electricity to the two respondents, SeAH and NEXTEEL, for LTAR. Therefore, we disagree with the petitioner's assertion that the GOK consciously withheld or refused to provide the information requested in our questionnaires for this program. We also disagree with the petitioner's assertion that the GOK refused to provide the cost information used by KEPCO to develop and support the tariff schedules that were applicable to the POI.

As noted earlier in this memorandum, we analyzed whether there was a benefit from this program based upon whether KEPCO applied a standard pricing mechanism to develop the published tariff schedule applicable to the two respondents. Based on this examination, we determine that SeAH and NEXTEEL did not benefit from the provision of electricity.

Under the CVD regulations, the Department may rely on either the use of a standard pricing mechanism ("price-setting philosophy") or a utility company's costs to determine whether government-set electricity prices are established in accordance with market principles.¹²² The reliance on either of these two factors, or the factor of possible price discrimination, can change in any particular case.¹²³ Because the information on the record demonstrated that both SeAH and NEXTEEL paid the industrial tariff applicable to other industrial companies with comparable electricity consumption, and absent any information regarding possible price discrimination, we relied upon the policy set forth in Magnesium from Canada of determining whether there is a benefit by examining whether the utility company applies a standard pricing mechanism to develop its electricity tariffs.

While we agree with the petitioner that a portion of the cost used by KEPCO in the cost documents submitted to MOTIE and provided as Exhibit SR-Elec-2 and Exhibit SR-Elec-3 could not be traced through the KDN, this fact relates to the issue of the verification of KEPCO's costs. The Department did, however, verify KEPCO's standard pricing mechanism and that this standard pricing mechanism was used to develop the tariffs that were applicable to SeAH and NEXTEEL during the POI. The fact that all the costs could not be traced through the KDN did not affect the

¹²⁰ See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014, 55021-22 (October 22, 1997); Magnesium from Canada.

¹²¹ See NEXTEEL VR, at 9; DWI VR, at 6.

¹²² See CVD Preamble, at 65378.

¹²³ Id.

Department's ability to verify the standard pricing mechanism used by KEPCO to set its electricity tariffs. The Department may use either a standard pricing mechanism or costs to determine whether a government-set electricity price is consistent with market principles. Consistent with 19 CFR 351.511(a)(2)(iii), we relied upon the application of a standard pricing mechanism to determine that no benefit was conferred upon SeAH and NEXTEEL under this program.

C. Whether the GOK Cooperated With Respect to Providing Electricity Generation Costs

The petitioner argues that information regarding actual generation costs and transactions at the KPX was readily available to the GOK, which opted to leave these aspects of the market hidden behind KEPCO's financial curtain. The petitioner adds that KEPCO clearly knows its subsidiaries' generating costs because it requested tariff increases largely on the basis of these costs, and that KEPCO regularly provides this information to the GOK; nevertheless, the GOK never attempted in its questionnaire responses to provide cost data from KEPCO's generating subsidiaries or transaction data from the KPX, nor was any such information provided at verification. By failing to provide this information, the petitioner contends, the GOK prevented the Department from confirming how electricity rates were derived and the degree to which they are based on market principles. The petitioner adds that the GOK should have explained in the initial questionnaire response, not at verification, that the cost data underlying the rate calculations was prepared by an independent accounting firm, which would have allowed the Department to request access to the accountants' worksheets.

Department's Position

The petitioner argues that neither the GOK nor KEPCO provided the cost data for KEPCO's generating subsidies and that the role of KPX was hidden from the Department. To the contrary, the Department had full understanding of the KPX in the electricity market in Korea based upon the GOK's responses to our detailed questions on KPX.¹²⁴ Electricity generators, including subsidiaries of KEPCO, sell electricity to the KPX and KEPCO purchases the electricity that it distributes from the KPX.¹²⁵ KEPCO purchases most of the electricity that it supplies to its customers through the KPX except for the electricity provided as a universal service to remote areas.¹²⁶ Therefore, the cost of this electricity is identical for all the tariff classes (residential, general, industry, etc.) within Korea. Although the petitioner is correct that the GOK did not provide the individual generating costs for KEPCO's generating subsidiaries, the Department did not request this information. The costs for electricity are based upon the purchase price of electricity from the KPX; therefore, this is the cost that is relevant for determining whether KEPCO's industrial tariff schedule is developed using a standard pricing mechanism.

The petitioner also argues that the GOK's explanation during verification that the costs underlying its tariff rate calculations are prepared by an independent accounting firm hindered the Department's verification. We disagree. First, it is the Department's normal practice not to request the accountant's worksheets from independent accounting firms. For example, as a matter of course,

¹²⁴ See e.g., GSQR2, at 10-12.

¹²⁵ See e.g., GSQR2, at 10-11.

¹²⁶ See GSQR2, at 11.

while the Department requires respondents in our CVD investigations to submit their financial statements, we do not request access to, nor do we verify, the worksheets used by the independent accounting firm that prepared the financial statements. Second, the fact that the underlying costs used in the calculation of the tariff rates are from an independent accounting firm would serve to support the accuracy of these calculations because these costs are determined by an independent accounting firm and not by the respondent.

D. Whether the Department Should Apply Adverse Facts Available in Its Benefit Analysis

The petitioner argues that the use of adverse facts available (AFA) is appropriate because throughout this investigation the GOK has prevented the Department from collecting and verifying the detailed information pertaining to KEPCO's costs and price-setting philosophy necessary to conduct a "tier three" assessment of whether the government price is consistent with market principles in accordance with 19 C.F.R. 351.511(a)(2)(iii). Among many examples of such conduct, the petitioner cites to the GOK's failure to provide sufficient responses to the Department's questions, its failure to provide the data underlying key pieces of cost information, and its failure to make key personnel with knowledge of cost information available during verification. As a result, the petitioner argues, the record is inadequate for the Department to conduct a tier-three assessment of Korean electricity prices in accordance with its regulations and practice.

The petitioner argues that the GOK incorrectly claimed that it had not retained the POI records supporting KEPCO's underlying cost data or the POI records documenting the internal consultations required by Korean law. The petitioner also claims that the GOK provided incomplete and contradictory information throughout the investigation in response to the Department's questionnaires. Thus, the petitioner believes that the GOK has failed to act to the best of its ability (i) by not maintaining records that any reasonable respondent would know were relevant to the Department's investigation and (ii) by failing to put forth its maximum effort to retrieve those records.

The GOK contends that through its questionnaire responses, it has fully and consistently explained the process that KEPCO follows in setting tariff rates, including the applicable laws and regulations, KEPCO's cost and sales data for supplying electricity, which includes the appropriate amount of investment return. The GOK also maintains that it fully cooperated with the Department at verification, and that the Department verified all the data the GOK submitted, even though the GOK was unable to show the Department certain email trails the Department's verifiers requested. The GOK adds that during verification KEPCO submitted to the Department documents related to the internal deliberations behind the 2013 tariff rate increase, which detailed the various factors that the GOK considered in making its determination.

SeAH and NEXTEEL argue that the GOK fully cooperated to the best of its ability, as evidenced by the documentation the GOK submitted in response to the Department's questionnaires, containing narrative responses supported by voluminous exhibits that detailed the rate setting philosophy, recovery rates by classification of customer, and investment return and profit information.

With respect to the issues the petitioner characterizes as problems at verification, NEXTEEL asserts that there is no basis to question the veracity of the explanations the GOK provided for why it was

unable to provide certain information. Moreover, citing to the Court of International Trade's (CIT's) recent decision in Borusan, NEXTEEL asserts that it would be an abuse of discretion for the Department to apply AFA in this case.¹²⁷ SeAH adds that, although the Department's verification report suggests that the Department was not able to review the detailed data underlying the relevant calculations within the limited amount of time available at verification, there was no dispute that the information provided to the Department represented the information relied upon by the GOK in accordance with its normal practices. SeAH points out that the information in question related to a time prior to the investigation period, and agrees with the GOK that all of the information the Department needs to analyze the GOK's pricing practices during the investigation period is part of the record and has been verified.

Department's Position

Under section 776(b) of the Act, the Department may use facts available with adverse inferences only when it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this investigation, the Department finds that the GOK has not failed to cooperate by not acting to the best of its ability. Accordingly, the use of facts available with adverse inferences is not warranted.

The analysis of whether electricity tariffs are provided to an enterprise or industry for LTAR is complicated, especially in situations where the government is clearly the only source available to consumers in the country. Where the government is the sole provider of electricity, the Department will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting analysis, costs, or possible price discrimination.¹²⁸ In order to undertake the analysis required under 19 CFR 351.511, the Department developed an extensive number of questions for the GOK regarding the electricity market in Korea, the provision of electricity within Korea, and the costs and methodology used in setting electricity prices and establishing electricity tariffs in Korea.

The GOK adequately responded to all of the Department's extensive and detailed questions in its responses of January 21, 2015, March 6, 2015, March 11, 2015, April 14, 2015, and May 19, 2015. Our detailed supplemental questions on electricity were not the general result of the GOK's unwillingness to respond to our questions but rather, were due to the complicated nature of an analysis of market principles required under the 19 CFR 351.111(a)(2)(iii). Therefore, we disagree with the petitioner's argument that the GOK has prevented or forestalled the Department's attempt to collect the appropriate information to conduct an analysis under 19 CFR 351.111(a)(2)(iii). As we noted above, an analysis of whether electricity prices are set in a manner consistent with market principles can be undertaken by such factors as (1) the government's price-setting philosophy; (2) costs; or (3) possible price discrimination. The Department has not placed these factors in any hierarchy, and we may rely on one or more of these factors in any particular case.¹²⁹

¹²⁷ See Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States, 61 F. Supp. 3d 1306, 1348-9 (CIT 2015) (Borusan) (holding that the Department abused its discretion in applying AFA).

¹²⁸ See CVD Preamble, at 65378.

¹²⁹ Id.

As stated earlier, we analyzed whether the GOK's pricing of electricity is consistent with market principles by examining the GOK's (KEPCO's) price-setting philosophy by determining, consistent with Magnesium from Canada, whether the price charged to our respondents was based upon a standard pricing mechanism. The GOK provided the necessary information to be used in our analysis as to whether the prices are in accord with a standard pricing mechanism.¹³⁰ Furthermore, we verified this information.¹³¹

Based upon the facts on the record of this case, and consistent with 19 CFR 351.111(a)(2)(iii), we determine that the analysis of whether KEPCO's prices are in accordance with market principles should be based upon whether KEPCO used a standard pricing mechanism to develop its industrial tariffs. While there may have been issues with respect to tying all of KEPCO's costs through the KDN,¹³² the Department was able to fully verify KEPCO's standard pricing mechanism and its application in the setting of industrial electricity tariffs.¹³³ Further, the GOK did not withhold information that was requested of it, did not fail to meet deadlines, and did not significantly impede the proceeding. We find that the GOK cooperated to the best of its ability in this investigation. Therefore, the use of AFA, as advocated by the petitioner, is not warranted.

E. Use of Third-Country Prices as Tier-Three Benchmarks

The petitioner argues that the Department must select a benchmark electricity price that will not only ensure that the GOK does not benefit from its failure to cooperate in this investigation, but that will also ensure that the GOK cooperates in other investigations. To this end, the petitioner asserts, the Department should compare the per kWh industrial electricity prices that KEPCO charged the respondents during the POI to the 2013 industrial electricity price in Italy. According to the petitioner, it is not unreasonable to infer that, absent pervasive GOK intervention, Korean electricity prices would closely resemble Italian prices because both Italy and Korea are resource-poor peninsular countries that rely on imports of fossil fuels to generate the majority of their electricity.

If the Department decides that the application of AFA is not warranted, the petitioner contends that the Department must nonetheless resort to facts otherwise available in its tier-three benchmark analysis. Because of the distortions throughout the Korean electricity market and because the GOK failed to verify KEPCO's cost data, the Department should look to a third-country price. The petitioner suggests that Japan is similar to Korea in geography, energy resources, reserves, and level of industrialization; thus Japanese prices are more reflective of the prices that Korean industrial consumers would pay for electricity in a market environment.

To the extent that the Department decides that it must rely on in-country information for its benchmark analysis, the petitioner asserts that the Department must adjust the benchmark to ensure that the price covers not only the costs of supplying electricity but also an amount for profit. The petitioner notes that it has provided information regarding the transactions of private electricity

¹³⁰ See e.g., GSQR2, at 3-7.

¹³¹ See e.g., GOK VR, at 8-9.

¹³² While we could not trace all of KEPCO's costs through the KDN, the cost data underlying the tariff rate calculations were prepared by an independent accounting firm. (See GOK VR, at 8.)

¹³³ See e.g., GOK VR, at 8-9.

generators with the KPX in the Korean market from which the Department could derive an appropriate benchmark.

SeAH and NEXTEEL argue that there is no lawful basis to select an out-of-country tier-three benchmark as either AFA or FA, as such an approach is inconsistent with the Department's established practice and the Preamble to the Department's CVD regulations.¹³⁴ Moreover, NEXTEEL believes that there is no basis for making any such adjustment as the petitioner recommends as an alternative, because the standard rate setting method applied by KEPCO takes into account not only its costs, but also an amount for profit. Both respondents argue that, if the Department concludes that it was unable to fully verify any of the information, or that there are otherwise any gaps in the record information, it should apply the same facts available methodology that it used in the Preliminary Determination for calculating any benefit.

Department's Position

We addressed the petitioner's arguments with respect to the application of AFA above.

With respect to using either Italy or Japan as a benchmark, we determine that it would be inappropriate to rely on world market prices including prices from Italy and Japan to determine whether electricity is provided for LTAR. Although we do not foreclose the possibility that prices in third countries can be used as benchmarks under Tier 3, in this investigation we are able to adhere to the guidance in the CVD Preamble and consider one of the following factors: the government's price-setting philosophy, costs, or possibly price discrimination. There is no basis to resort to a "facts available" third country price when the government participated and provided sufficient information to evaluate whether there is a benefit under Tier 3.

Finally, as fully explained above, we based our analysis of whether a benefit was conferred to the respondents under 19 CFR 351.511 by examining whether the electricity rates they paid were set in accordance with a standard pricing mechanism. We determine that, because the rates the respondents paid were consistent with KEPCO's standard pricing mechanism, they received no benefit. Thus, the petitioner's argument in favor of adjusting a benchmark price with information on transactions between private electricity generators and the KPX is irrelevant, as we did not use this type of cost analysis in the final determination. In addition, as explained above, the cost of electricity is based upon the purchase price of electricity from the KPX.

¹³⁴ See CVD Preamble; see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 2011, 79 FR 108 (January 2, 2014), and accompanying IDM, at Comment 13. E; Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013), and accompanying IDM, at Comment 13; Fine Furniture (Shanghai) Ltd., et al., v. United States, 865 F. Supp. 2d 1254, 1262 (CIT 2012).

F. Specificity

Interested parties raised comments regarding whether the provision of electricity is specific.¹³⁵ Because we found that this program does not provide a benefit to SeAH and NEXTEEL, there is no need to address the issue of specificity and the parties' comments regarding specificity.

Comment 2: Unreported Subsidies

The petitioner argues that, in its initial questionnaire response, SeAH reported that it did not apply for, use, or benefit from short-term discounted loans from the KDB; however, at verification, the Department discovered unreported usance loans issued by the KDB that were outstanding during the POI. The petitioner contends that the Department has countervailed usance credits in the past; therefore, AFA is warranted in this case because SeAH failed to put forth the maximum effort to extract the information on usance loans from its records. As there are no same or similar loan programs in this proceeding with above de minimis rates, the petitioner argues that the Department should apply the rate of 3.59 percent calculated in Structural Steel Beams to SeAH as adverse facts available for its unreported "usance" program.¹³⁶

The petitioner further argues that the Department discovered at NEXTEEL's verification that NEXTEEL failed to report grants it received from the MOEL.¹³⁷ The petitioner adds that grants must be reported to the Department whether they are included in the list of alleged subsidies or not in response to the Department's requirement in the initial questionnaire that respondents report "any other forms of assistance" provided by the GOK.¹³⁸ As there are no same or similar grant programs in this proceeding with rates above de minimis, the petitioner recommends that the Department use the 3.59 percent rate calculated in Structural Steel Beams from Korea¹³⁹ as AFA for this grant.

Additionally, the petitioner contends that at SeAH's and DWI's verifications, the Department discovered that both entities had failed to report having been granted RSTA Article 104(6) tax exemptions.¹⁴⁰ The petitioner contends that SeAH and DWI should have reported this tax exemption as "any other forms of assistance" as requested in the Department's initial questionnaire. The petitioner adds that this program appears to be a "red-light" subsidy in the form of an export subsidy (i.e., foreign tax exemptions to encourage exports). Because no similar rates have been calculated in this investigation, the petitioner asserts that the Department's practice supports using the rate of 1.83 percent calculated in DRAMs from Korea,¹⁴¹ which is the highest rate calculated in any Korean case for such a program.

¹³⁵ See GOK Case Brief, dated August 26, 2015, at 6-8; GOK Rebuttal Brief, dated August 31, 2015, at 9-10; NEXTEEL Case Brief, dated August 26, 2015, at 2-6; SeAH Case Brief, dated August 26, 2015, at 11-17; SeAH Rebuttal Brief, dated August 31, 2015, at 14-15; and Maverick Rebuttal Brief, dated August 31, 2015, at 3-14.

¹³⁶ See Final Affirmative Countervailing Duty Determination: Structural Steel Beams, 65 FR 41051 (July 3, 2000) (Structural Steel Beams from Korea), and accompanying IDM, at cmt. I.A.2.

¹³⁷ See NEXTEEL VR, at 2.

¹³⁸ See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 76962 (December 23, 2014) (Solar II from China), and accompanying IDM, at Comment 15.

¹³⁹ See Steel Beams from Korea, and accompanying IDM, at cmt. I.A.2.

¹⁴⁰ See SeAH VR, at 2; DWI VR, at 2.

¹⁴¹ See Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Countervailing

Finally, the petitioner argues that the Department discovered at SeAH's verification that SeAH failed to report a program pertaining to local education taxes.¹⁴² The petitioner adds that grants must be reported to the Department whether they are included in the list of alleged subsidies or not in response to the Department's requirement in the initial questionnaire that respondents report "any other forms of assistance" provided by the GOK.¹⁴³ Because no similar rates have been calculated in this investigation, the petitioner asserts that the Department's practice supports using the rate of 1.83 percent calculated in DRAMs from Korea,¹⁴⁴ which is the highest rate calculated in any Korean case for such a program.

The respondents argue that there is no legal authority for the Department's practice of requesting that responding companies voluntarily disclose, under penalty of AFA, "other forms of assistance" received from the government in their questionnaire response. The respondents point to the statute¹⁴⁵ and regulatory practice¹⁴⁶ to support their contention that this practice not only expands the scope of the investigation, thereby invalidating the petition and initiation standards, but also imposes unreasonably burdensome requirements on responding companies. Even so, the respondents contend that they each put forth their maximum effort to fully cooperate in this investigation – they even voluntarily reported additional forms of assistance. NEXTEEL and DWI also cite to decisions to support their argument that applying AFA to unreported programs discovered at verification, as suggested by the petitioner, is unreasonable, inappropriate, and an abuse of the Department's discretion.¹⁴⁷

Accordingly, NEXTEEL and DWI contend that the Department should, consistent with the statute and past practice, use record evidence to calculate any resulting benefit from their unreported programs – NEXTEEL's receipt of grants from the MOEL, and DWI's tax credits under RSTA Article 104(6) for foreign taxes paid.¹⁴⁸ Conversely, NEXTEEL and DWI argue that should the Department determine that the application of AFA is warranted, consistent with the statute and past practice, rates for similar/comparable programs in the instant proceeding should be used.¹⁴⁹

Duty Administrative Review, 76 FR 2336 (January 13, 2011) (DRAMs from Korea), and accompanying IDM, at I.

¹⁴² See SeAH VR, at 2.

¹⁴³ See Solar II from China, and accompanying IDM, at Comment 15.

¹⁴⁴ See DRAMs from Korea, and accompanying IDM, at I.

¹⁴⁵ See Sections 701(b) and 775 of the Act.

¹⁴⁶ See 19 CFR 351.311.

¹⁴⁷ See NEXTEEL and DWI Rebuttal Brief, dated August 31, 2015 (NEXTEEL/DWI Rebuttal Brief), at 15-16 (citing Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003), and F. Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

¹⁴⁸ See NEXTEEL/DWI Rebuttal Brief, at 23-26 (citing Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination, 79 FR 61602 (October 14, 2014), and accompanying IDM, at 8 (quoting Section 782(e) of the Act); Certain Steel Nails From Malaysia: Final Negative Countervailing Duty Determination, 80 FR 28968 (May 20, 2015), and accompanying IDM, at Comment: Countervailability of Sales Tax Exemptions; Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 17410 (March 26, 2012) (Refrigerator-Freezers from Korea), and accompanying IDM, at Comment 18; and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of the Countervailing Duty Administrative Review; 2010, 78 FR 19210 (March 29, 2013), and accompanying IDM, at Comment 3).

¹⁴⁹ See Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination, 78 FR 50389 (August 19, 2013), and accompanying IDM, at 12; see also section 776(d)(1) and (2) of the Act.

SeAH contends that there is no basis for concluding that the programs discovered at its company verification –Local Education Tax Exemption, Short-Term Usance Loans, and RSTA Article 104(6) Exemptions – constitute a countervailable subsidy to the company. According to SeAH, Local Tax Exemption provides no tax deductions, credits, or exemptions not previously reported by the company. Moreover, SeAH argues that the Department has previously found that usance financing is not specific,¹⁵⁰ and stated that it will not countervail tax provisions that exempt income earned on foreign operations from domestic income taxes.¹⁵¹

Department's Position

We disagree with the petitioner that the use of AFA is warranted with respect to the respondents' unreported programs for the following reasons.

With respect to usance loans, we note that we previously found that usance loans do not constitute a countervailable subsidy because they are not specific under section 771(5A) of the Act, and thus we would not expect SeAH to report these loans.¹⁵²

Regarding the assistance NEXTEEL received from MOEL, we find that AFA is not warranted because the amount of assistance is on the record and there is no lack of necessary information with which to assess these grants. As described in Section V, "Analysis of Programs" above, based on the information collected at verification, we determine that the grants received from MOEL did not confer a measurable benefit.

With respect to the tax exemption under RSTA Article 104(6), we note that the use of this tax credit was reported in the respondents' respective tax returns filed in their original questionnaire responses, and has been on the record since the beginning of this investigation. In its case brief, the petitioner argues for the first time that the Department should use AFA for this tax credit. However, the respondents did not fail to provide any information, and disclosed this tax credit in their original questionnaire responses to the extent that information was requested. Thus, we find there is no basis to use AFA for this tax credit.

Finally, with respect to SeAH's exemption from the Local Education Tax, as described above, we find that the use of facts available is warranted. But we also find that adverse inferences are not warranted, because the necessary information required to calculate the benefit from the exemption of the local education tax was provided by both SeAH and the GOK. In our preliminary determination, we countervailed partial exemptions from the local acquisition tax and the local property tax provided under Art. 120 of the RSTA and Art. 78 of the RSLTA received by SeAH. At verification, we found that SeAH also benefited from exemptions from the local education tax program under Art. 120 of RSTA and Art. 78 of the RSLTA. While we did not gather additional information on the calculation of the benefit conferred by this local education tax exemption at verification, the GOK

¹⁵⁰ See Steel Plate from Korea, and accompanying PDM, at 11-12; see also Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea), and accompanying IDM at Comment 16.

¹⁵¹ See Countervailing Duties, 63 FR 65348, 65376 (November 25, 1998).

¹⁵² See Steel Plate from Korea, and accompanying PDM, at 11-12; see also CFS from Korea, and accompanying IDM, at Comment 16.

provided information on this exemption in its initial questionnaire response, including the formula used to calculate the local education tax. The local education tax exemption accompanies other exemptions under Art. 120 and Art. 78 and is levied at 20 percent of the acquisition and property taxes, respectively. We verified the amount of exemptions of the acquisition and property taxes under Art. 120 and Art. 78 received by SeAH, to which the 20 percent local education tax would be levied in order to calculate the additional benefit conferred by the exemption of the education tax. Because SeAH failed to provide information on this exemption by the deadline, we relied on the facts available under section 776(a)(2)(B) of the Act. Consistent with our past practice in cases such as LRWs from Korea, we used the verified information regarding acquisition and property tax exemptions to calculate the benefits received under the local education tax exemption.¹⁵³

Comment 3: Specificity of RSTA Tax Programs

The GOK argues that the tax credit programs under the RSTA do not constitute a countervailable subsidy as they fail to satisfy the specificity requirement provided for in the Act. More specifically, the GOK contends that RSTA Article 26 is not regionally specific and that tax deductions under the RSTA are not de facto specific. According to the GOK, RSTA Article 26 is not regionally specific in terms of its application, and is intended to encourage investments in Korea regardless of region. The GOK further states that RSTA Article 26 is limited in its application to the area outside of the Seoul Metropolitan Area for population control and not economic reasons. With respect to RSTA tax programs generally, the GOK argues that the Department should make its specificity determination by considering the number of companies that could possibly use the program, rather than on the basis of the ratio between the number of companies that used the program and the total number of corporations that filed tax returns.

The petitioner disagrees with the GOK, and contends that consistent with the Department's findings in NOES from Korea¹⁵⁴ and LRWs from Korea¹⁵⁵ we should continue to reject the GOK's specificity arguments. The petitioner further argues that the GOK has offered no new information that would compel the Department to change its preliminary determinations with respect to RSTA Article 26, and RSTA tax programs generally.

Department's Position

Regarding the GOK's comment that RSTA Article 26 is not regionally specific, consistent with Refrigerators from Korea¹⁵⁶ and LRWs from Korea,¹⁵⁷ we continue to find that this program is regionally specific under section 771(5A)(D)(iv) of the Act. The CIT sustained our findings on this issue in the Large Residential Washers investigation.¹⁵⁸ It is clear from the text of Article 23 of the

¹⁵³ See LRWs from Korea, and accompanying IDM, at 15-17.

¹⁵⁴ See NOES from Korea, and accompanying IDM, at Comment 3.

¹⁵⁵ See LRWs from Korea, and accompanying IDM, at 6; Samsung Electronics.

¹⁵⁶ See Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 17410 (March 26, 2012) (Refrigerators from Korea), and accompanying IDM, at Comment 3.

¹⁵⁷ See LRWs from Korea, and accompanying IDM, at Comment 9.

¹⁵⁸ See Samsung Electronics Co. v. United States, 973 F. Supp. 2d 132, 1329 (CIT 2014) ("Because access to Art. 26 tax credits was conditioned upon investment in a 'designated geographical region,' Commerce's regional specificity determination was reasonable.") (Internal citations omitted.)

Enforcement Decree that benefits provided under RSTA Article 26 are limited to enterprises located within a designated geographical region.¹⁵⁹ That designated region is all parts of the Korean territory outside of the SMA. The geographic size of the land mass outside of the SMA in Korea is not relevant, so long as the GOK designates a geographical region (*i.e.*, the SMA) that it intends to exclude from these benefits. The percentage or respective size of land mass bears no relationship to regional specificity, or to the percentage of economic activities excluded under this specific program. Thus, consistent with long-standing practice,¹⁶⁰ we continue to find that the GOK established a designated geographical region to which this program is available, and that subsidies under this program are specific within the meaning of section 771(5A)(D)(iv) of the Act.

Regarding the GOK's argument concerning the *de facto* specificity determination made with respect to RSTA tax programs generally, section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Section 771(5A) of the Act further states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA notes: "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."¹⁶¹ Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy.

The RSTA tax incentives at issue in this investigation are tax incentives that are available to all types of businesses and corporations in Korea. Thus, it is appropriate to include all corporate tax returns in our analysis of *de facto* specificity. Therefore, in order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy as contemplated by the SAA, we examined both the nominal number of recipients of each of these RSTA tax incentives, other than those determined to be either regionally specific or *de jure* specific, and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns.

Comment 4: Special Rural Development Tax

According to SeAH, the Department should offset the company's tax exemptions from the other programs under investigation pursuant to section 771(6) of the Act because the GOK imposes a "Special Rural Development Tax" that is equal to 20 percent of the value "of any tax credits received under other provisions of Korean law granting tax credits." The petitioner disagrees, arguing instead that the Department should continue to calculate the benefit for SeAH's tax programs as it did in the Preliminary Determination. According to the petitioner, the Department

¹⁵⁹ See GIQR, Appendices Volume at 79.

¹⁶⁰ See, *e.g.*, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Portland Hydraulic Cement and Cement Clinker From Mexico, 48 FR 43063 (September 21, 1983).

¹⁶¹ See, SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act..." 19 USC 3512(d).

has rejected such an argument in past proceedings,¹⁶² and is under no obligation to trace the funds received or freed up through a respondent's accounting system to determine how those funds were used.

Department's Position

We previously found that the "Special Rural Development Tax" does not meet the statutory requirement to be recognized as an offset.¹⁶³ More specifically, we stated that:

The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit conferred from a countervailable subsidy program, the Department does not consider the tax consequences of the benefit.¹⁶⁴

Accordingly, we continued to calculate the tax benefits received by SeAH as we did in our Preliminary Determination.

Comment 5: Husteel as a Mandatory or Voluntary Respondent

Husteel argues that the Department should have selected and investigated it as a mandatory or, in the alternative, a voluntary respondent in this investigation. Husteel asserts that section 777A(e)(1) of the Act sets forth a general requirement that the Department shall determine individual countervailing subsidy rates for each known exporter and producer of the subject merchandise, with exceptions to be made only in cases where there are too many exporters and producers to individually investigate. According to Husteel, the Department did not explain why the number of Korean exporters and producers eligible for individual examination constituted such a "large" number. Although Husteel acknowledges that the statute does not define specifically the number of producers/exporters that constitutes a "large" number, it maintains that the CIT has held that the statutory term "large" cannot plausibly be construed by the Department as encompassing any number larger than two.¹⁶⁵

In addition, Husteel contends that the Department's determination of what constitutes a large number of exporters or producers based on resource constraints has been rejected by the CIT. Husteel claims that the resource constraints identified by the Department in the instant investigation are almost identical to those offered and rejected by the court in the cases it cites in its case brief in support of

¹⁶² See LRWs from Korea, and accompanying IDM, at Comment 10; Refrigerator-Freezers from Korea, and accompanying IDM, at 23-24.

¹⁶³ See LRWs from Korea, and accompanying IDM, at 16, and Comment 10.

¹⁶⁴ Id.

¹⁶⁵ See Carpenter Tech. Corp. v. United States, 662 F. Supp 2d 1337, 1342 (CIT 2009).

its claim.¹⁶⁶ Husteel submits that, just as in those cases, in this case the Department has exceeded its statutory authority by limiting the number of mandatory respondents based on its own resource constraints.

Furthermore, Husteel argues that if the Department limits the number of mandatory respondents, section 782 of the Act directs that it also examine voluntary respondents who submit timely questionnaire responses in accordance with section 782(a)(2) of the Act. Husteel contends that the CIT has found that section 782 of the Act sets a higher standard than section 777A of the Act and requires examination of voluntary respondents unless the Department finds that this review would be unduly burdensome.¹⁶⁷ Husteel asserts that the Statement of Administrative Action accompanying the Uruguay Round Agreements (SAA) requires that “Commerce, consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and will endeavor to investigate all firms that voluntarily provide timely response in the form required”¹⁶⁸ Husteel adds that it was the only entity in this investigation to request voluntary status and it timely submitted all required questionnaire responses.

Moreover, Husteel maintains that the burdens identified by the Department as reasons for refusing to accept voluntary respondents do not rise to the level of “unduly burdensome” because they are only those normally encountered by the Department in an investigation. Further, Husteel claims that it only received benefits under two programs during the POI. As such, Husteel argues that the burden associated with examining Husteel would be relatively low. In addition, Husteel contends that the Department did not even address whether the number of voluntary respondents was so large as to be unduly burdensome, and submits that one voluntary respondent is not large in the context of this, or any, investigation. Husteel emphasizes that it has complied with the Department’s requests and policies throughout the investigation (*i.e.*, timely filing responses to the Department’s questionnaire) in an effort to be individually examined and receive its own subsidy rate.

Finally, Husteel reasons that because the Department’s determination not to accept voluntary respondents in this investigation was made on February 27, 2015, this investigation is not impacted by the Trade Preferences Extension Act of 2015,¹⁶⁹ which applies to determinations made on or after August 6, 2015. However, even if the Department were to retroactively apply the amendments to the voluntary respondent determination in this investigation,¹⁷⁰ Husteel believes that the Department’s determination would still be unlawful because examining Husteel as a voluntary respondent would not be “unduly burdensome.”

¹⁶⁶ See *e.g.*, Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States, 637 F. Supp. 2d 1260, 1263-64 (CIT 2009) (Zhejiang Native Produce), where the court stated that Commerce may not rely upon its workload caused by other antidumping proceedings in assessing whether the number of exporters or producers is “large,” and thus deciding that individual determinations are impracticable.

¹⁶⁷ See, *e.g.*, Grobest & I-Mei Indus. Vietnam Co. v. United States, 853 F. Supp. 2d 1352 (CIT 2012) (Grobest).

¹⁶⁸ See SAA at 872.

¹⁶⁹ See Trade Preferences Extension Act of 2015 (TPEA), Pub. L. 114-27, 129 Stat. 362, 386-387. The Department “shall establish . . . an individual weighted average dumping margin . . .” for any exporter or producer that submits a timely voluntary response and may limit the number of voluntary respondents investigated only if the number of exporters or producers subject to the investigation is so large as to be unduly burdensome to the Department and inhibit the timely completion of the investigation.

¹⁷⁰ Id.

The petitioner contends that the Department's decision not to examine Husteel as a mandatory or voluntary respondent was reasonable. The petitioner argues that the statute is clear in granting the Department broad discretion in determining the number of mandatory respondents that it may reasonably investigate. Moreover, the petitioner states that pursuant to the Trade Preferences Extension Act of 2015, the Department has greatly expanded discretion to reduce its burden by reducing the number of voluntary respondents.

Department's Position:

Section 777A(e)(2) of the Act permits the Department to limit its examination of all known exporters and producers of subject merchandise to a reasonable number of exporters or producers, if it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters or producers involved. Under section 777A(e)(2)(A)(i) and (ii) of the Act, the Department may limit its examination to (1) a sample of exporters or producers that it determines is statistically valid based on the information available to it at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. The SAA interprets these provisions to mean that the authority to select respondents, whether by using a "statistically valid" sample or by examining respondents accounting for the largest volume of subject merchandise, rests exclusively with the Department.¹⁷¹

As we stated in the Respondent Selection Memorandum,¹⁷² we found it not practicable to examine each producer/exporter of subject merchandise. The petitioners had previously identified thirteen producers and/or exporters of welded line pipe from Korea, and data from U.S. Customs and Border Protection placed on the record by the Department indicated as many as 39 possible producers and/or exporters of the subject merchandise during the POI.¹⁷³ Although Husteel cites to various CIT decisions to support its contention that the Department erred in determining that the investigation involved a "large" number of companies, its reliance is misplaced. For instance, all of the cases cited by Husteel involved challenges to the Department's final results of administrative reviews, not investigations, which present unique and complex issues for the Department.¹⁷⁴ Specifically, investigations involve products, industries, and companies which may not have been previously analyzed by the Department and require significant additional research and analysis under more rigid statutory deadlines, all of which must factor in the Department's determination of what constitutes a "large" number of companies. Furthermore, the cases cited by Husteel involved different factual circumstances than those present here. In Zhejiang Native Produce, for instance, the Department began with a pool of four companies, two of which subsequently withdrew from the proceeding.¹⁷⁵ Here, the Department is conducting an investigation with as many as 39 possible producers and/or exporters.

¹⁷¹ See SAA at 872.

¹⁷² See Memorandum to Gary Taverman, "Respondent Selection for the Countervailing Duty Investigation of Welded Line Pipe from the Republic of Korea," (November 26, 2014).

¹⁷³ Id.

¹⁷⁴ See Zhejiang Native Produce, 637 F. Supp. 2d at 1261; Carpenter Tech, 662 F. Supp. 2d at 1338.

¹⁷⁵ See Zhejiang Native Produce, 637 F. Supp. 2d at 1261-62.

Accordingly, we limited our investigation to two producers/exporters. As we explained in that memorandum, the Department was faced with analyzing the corporate structure, financial records, and participation of the mandatory respondents in the alleged subsidy programs on which the Department initiated an investigation, including a complex electricity for LTAR program, as well as resource constraints. The individual examination of more than two companies would have placed greater pressure on the Department to complete its determinations under the tight deadlines established by law.

In determining whether to examine voluntary respondents, pursuant to section 782(a) of the Act, the Department considers whether examination of the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation. *Husteel* cites *Grobest* and *Zhejiang Native Produce* for the proposition that the selection of voluntary respondents in this case would not constitute an undue burden. However, both cases pertained to reviews rather than investigations. This case by contrast involves an investigation, which the CIT recently observed requires Commerce to “initially familiarize itself with the product and respondents,” verify all information it relies upon, complete the administrative proceeding within shortened statutory deadlines, and handle concurrent investigations (in this case, e.g., concurrent AD and CVD investigations of welded line pipe from Turkey and Korea).¹⁷⁶ In *Grobest*, the Court remanded to the Department its decision not to review a voluntary respondent due to the administrative burden of reviewing the number of mandatory respondents selected.¹⁷⁷ The Court held that “Commerce {must} separately determine whether reviewing the voluntary respondents ‘would be unduly burdensome and inhibit the timely completion of the investigation.’” Because of the resources required to investigate an additional company as a voluntary respondent, the Department must consider its available resources before doing so, i.e., the Department must examine its current and anticipated workload and any deadlines coinciding with the segment of the proceeding in question. Therefore, individual examination of a voluntary respondent, which typically requires multiple rounds of supplemental questionnaires and extensive analysis in order to calculate a countervailable subsidy rate, would have been unduly burdensome given the Department’s resource availability. Moreover, because of the significant workload throughout all of Enforcement and Compliance (E&C), we were not able to obtain additional resources from elsewhere in E&C to devote to this CVD investigation. Additionally, examination of another company requires a separate verification, extending the time required for overseas travel, as well as the accompanying verification reports. Each of these requirements would place greater pressure on the Department to complete this investigation under the tight deadlines established by law, and would be unduly burdensome and inhibit the timely completion of the investigation.

Furthermore, on June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act.¹⁷⁸ Under the current language of that provision,

¹⁷⁶ See *Husteel Co., Ltd., et al., v. United States*, Slip Op. 15-100 at 30-31 (CIT 2015).

¹⁷⁷ See *Grobest*, 815 F.Supp. 2d 1342, 1362 (CIT 2012).

¹⁷⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of

when the Department limits the number of producers and/or exporters examined in an investigation, section 782(a) of the Act directs the Department to calculate individual antidumping duty margins for companies not initially selected for examination who voluntarily provide information if: 1) the information is submitted by the due date specified for producers and/or exporters initially selected for examination, and 2) the number of producers and/or exporters subject to the investigation is not so large that any additional individual examination of such companies would be unduly burdensome to the Department and inhibit the timely completion of the investigation. Husteel argues that the amendments to section 782(a) should not apply to the Department's determination not to accept voluntary respondents in this investigation because it came before the August 6, 2015, effective date of the amendments. However, the amendments to section 782(a) of the Act apply to "determinations made on or after August 6, 2015" and, therefore, apply to the disposition of this issue in the final determination of this investigation.¹⁷⁹

Notwithstanding the effective date of the amendment, the amendment "*compliments* {sic} the Department's voluntary respondent analysis and does not require parties...to submit additional information or argument."¹⁸⁰ Specifically, under section 782(a) of the Act as amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent under the revised section 782(a) of the Act, the Department may consider: (A) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; (B) any prior experience of the administering authority in the same or similar proceedings; (C) the total number of investigations and reviews being conducted by the administering authority as of the date of the determination; and (D) other factors relating to the timely completion of each such investigation and review as the administering authority considers appropriate. The number and complexity of issues (e.g., provision of electricity for LTAR) throughout this proceeding has required the Department to expend significant time and resources in order to thoroughly analyze the issues. In addition, since the initiation of this investigation, the office to which this investigation is assigned has been responsible for administering numerous proceedings. Finally, we note that Husteel's assertion that it has only used two programs is wholly unsupported. The purpose of an investigation is to determine which programs were used, and we do not make "use" determinations in order to select voluntary respondents. For these reasons, pursuant to section 782(a) of the Act, it would be unduly burdensome to examine Husteel as a voluntary respondent.

Accordingly, for the reasons discussed above, we declined to accept additional mandatory or voluntary respondents in this investigation.

Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015).

¹⁷⁹ *Id.*, at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁸⁰ *Id.* (emphasis added).

VIII. RECOMMENDATION

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

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 OCTOBER 2015
Date