



C-580-882

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July 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Cold-Rolled Steel
Flat Products from the Republic of Korea

I. Summary

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled) from the Republic of Korea (Korea), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). This investigation covers two producer/exporter entities: POSCO and Hyundai Steel Co., Ltd.

- Comment 1: Whether the Department Should Apply Adverse Facts Available (AFA) to the Provision of Electricity for Less Than Adequate Remuneration (LTAR)
- Comment 2: Whether the Department Should Find That the Provision of Electricity for LTAR is a Countervailable Subsidy
- Comment 3: Whether the Department Should Use Other submitted Data to Measure the Adequacy of Remuneration of Electricity
- Comment 4: Whether the Department Should Find the Provision of Natural Gas for LTAR Countervailable
- Comment 5: Application of AFA to POSCO and Treatment of POSCO's Unreported Affiliates
- Comment 6: Whether to Apply AFA to POSCO Global Research and Development (R&D) Center
- Comment 7: Whether to Apply AFA to Certain Loans Submitted at Verification
- Comment 8: Whether to Apply AFA to Hyundai Steel for Use of Certain Foreign Economic Zones (FEZs)
- Comment 9: Whether Certain Loans at the Korean Export Import Bank (KEXIM) Were Verified
- Comment 10: The Department's Treatment of Unalleged Programs and Verification of Non-Use



- Comment 11: Whether to Apply AFA to the Government of Korea (GOK) for Restriction of Special Taxation Agreement (RSTA) Article 120
- Comment 12: Whether to Apply AFA to the GOK for Daewoo International Corporation (DWI's) Debt Workout
- Comment 13: Whether the Department Finds Tax Programs *de facto* Specific
- Comment 14: Whether the Department Should Determine that the Local Tax Exemption Hyundai Steel Received Under RSTA Article 120 is Related to the Cold-Rolling Assets Purchased From Hyundai HYSCO and is, Therefore, Attributable to Subject Merchandise
- Comment 15: Whether the Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant Under RSLTA 78

II. Background

A. Case History

On December 22, 2015, we published the *Preliminary Determination* of this countervailing duty (CVD) investigation.¹ Concurrently, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we aligned the final CVD determination with the final antidumping duty (AD) determination.² We preliminarily calculated a *de minimis* rate for POSCO and Hyundai Steel, the mandatory respondents.

On March 4, 2016 and March 11, 2016, Nucor Corporation (Nucor) submitted pre-verification comments on the record to this investigation.³ Between March 14, 2016, and March 25, 2016, we conducted verifications of the questionnaire responses submitted by the GOK, POSCO, and Hyundai Steel. We released verification reports on April 29, 2016.⁴ On June 17, 2016, we held a hearing.⁵

On May 16, 2016, Nucor, the GOK, POSCO, and Hyundai Steel submitted timely case briefs,⁶ and also submitted timely rebuttal briefs on May 25, 2016 and May 26, 2016.⁷

¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 76567 (December 22, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*

³ See Letter from Nucor, "Certain Cold-Rolled Steel Flat Products from Korea: Pre-Verification Comments," (March 4, 2016); "Certain Cold-Rolled Steel Flat Products from Korea: Pre-Verification Comments for POSCO and Hyundai Steel," dated March 11, 2016.

⁴ See Memoranda to Scot Fullerton, Director, AD/CVD Operations, Office VI, "Verification Report: The Government of the Republic of Korea" (April 29, 2016) (GOK VR); "Verification Report: Hyundai Steel" (April 29, 2016) (Hyundai Steel VR); "Verification Report: POSCO and Daewoo International Corporation," dated April 29, 2016, (POSCO VR).

⁵ See Letter from the Department to all Interested Parties, dated May 31, 2016.

⁶ See Letter from Nucor, Re: Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief of Nucor Corporation, dated May 16, 2016 (Petitioners Case Brief); see also Letter from POSCO, Re: Certain Cold-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-882: POSCO's Case Brief, dated May 16, 2016 (POSCO Case Brief); see also Letter from Hyundai Steel, Re: Certain Cold-Rolled Steel Flat Products from

B. Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2014, through December 31, 2014.

III. Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances.⁸ The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

the Republic of Korea Case No. C-580-882: Hyundai Steel’s Case Brief, dated May 16, 2016 (Hyundai Steel Case Brief); *see also* Letter from the GOK, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Korea—Case Brief, dated May 16, 2016 (GOK Case Brief).

⁷ *See* Letter from Nucor, Re: Cold-Rolled Steel Flat Products from the Republic of Korea: Nucor Corporation’s Rebuttal Brief Regarding POSCO and DWI, dated May 25, 2016 (Petitioners Rebuttal Brief-POSCO); *see also* Letter from Nucor, Re: Cold-Rolled Steel Flat Products from the Republic of Korea: Nucor Corporation’s Rebuttal Brief Regarding Hyundai Steel, dated May 25, 2016 (Petitioners Rebuttal Brief-Hyundai Steel); *see also* Letter from POSCO, Re: Certain Cold-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-882: POSCO’s Rebuttal Brief, dated May 25, 2016 (POSCO Rebuttal Brief); *see also* Letter from Hyundai Steel, Re: Certain Cold-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-882: Hyundai Steel’s Rebuttal Brief, dated May 25, 2016 (Hyundai Steel Rebuttal Brief); *see also* Letter from the GOK, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Korea—Rebuttal Brief of the Government of Korea, dated May 26, 2016 (GOK Rebuttal Brief).

⁸ Since the *Preliminary Determination*, eight interested parties (*i.e.*, JFE Steel Corporation, Electrolux Home Products, Inc., Electrolux Home Care Products, Inc., ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation) commented on the scope of the investigation. The Department reviewed these comments and made no changes. *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Cold-Rolled Steel Products From Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision,” dated May 11, 2016.

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

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

- Ball bearing steels;⁹
- Tool steels;¹⁰
- Silico-manganese steel;¹¹
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.¹²
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.¹³

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580,

⁹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹⁰ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹¹ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

¹² *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

¹³ *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to this investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

IV. Subsidies Valuation

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of allocation period and the methodology used for these final results, *see the Preliminary Determination*.¹⁴

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b), the Department attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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

¹⁴ See PDM at 8.

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.¹⁵

As a result of verification and issues raised by Petitioners and POSCO in case briefs regarding POSCO's input suppliers, we have revised POSCO's preliminary attribution of subsidies to include certain cross-owned input suppliers within the meaning of 19 CFR 351.525(vi). For further discussion, *see* Comment 5 below.

The Department has also made a change to the methodologies used in the *Preliminary Determination* for attributing subsidies received by DWI to POSCO. In the *Preliminary Determination*, we stated we were attributing subsidies received by DWI to POSCO pursuant to 19 CFR 351.525(c), however we did not employ the trading company methodology in cumulating the subsidies received by the trading company with the subsidy benefits received by the producer, POSCO. We have corrected this in this final determination. In addition, we are also only calculating rates for programs used by the trading companies that are not otherwise included in POSCO's AFA calculation.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the final calculation memoranda prepared for this final determination.¹⁶

V. Benchmarks and Discount Rates

The Department has made no changes to benchmarks or discount rates used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding benchmarks or discounts rates. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Determination*.

VI. Use of Facts Otherwise Available And Adverse Inferences

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails

¹⁵ *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁶ *See* Memorandum to Brian C. Davis from Yasmin Bordas, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination Calculations for Hyundai Steel Co., Ltd., dated July 20, 2016 (Hyundai Steel Final Calculation Memorandum); *see also* Memorandum to Brian C. Davis from Emily Maloof, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination Calculations for POSCO, dated July 20, 2016 (POSCO Final Calculation Memorandum).

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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁸

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁹ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.²⁰

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²¹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²²

¹⁷ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (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 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 International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“*Applicability Notice*”). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁸ See *Applicability Notice*, 80 FR at 46794-95.

¹⁹ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²⁰ See also 19 CFR 351.308(c).

²¹ See also 19 CFR 351.308(d).

²² See SAA at 870 (1994).

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.²³ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁴

As discussed below, we find the application of AFA is warranted with respect to POSCO’s responses for its failure to provide information for certain cross-owned affiliated companies, failure to report certain loans,²⁵ and with respect to Hyundai Steel’s and POSCO’s responses for their failure to report their respective locations in an FEZ.²⁶

A. POSCO

As discussed further in Comment 5 below, POSCO did not provide responses for certain cross-owned input suppliers. In its questionnaire response, when asked by the Department to specify whether affiliated companies supply inputs to POSCO’s production process, POSCO stated that no affiliated companies located in Korea provided inputs used in the production of subject merchandise.²⁷ When asked again by the Department to provide a complete questionnaire response for a cross-owned company that supplies an input for production of the downstream product produced by POSCO, POSCO replied that there were no cross-owned companies located in Korea that provided inputs to POSCO’s production of subject merchandise.²⁸ The Department then issued a supplemental questionnaire to confirm that POSCO provided responses for all cross-owned companies that fell within 19 CFR 351.525(b)(6); in response, POSCO replied that it had already responded to this question.²⁹

On the first day of verification, in response to our inquiries, POSCO confirmed that no affiliated and/or cross-owned companies provided inputs that were used in the production of subject merchandise. However, while verifying the affiliation information submitted by POSCO, we discovered that additional companies listed in POSCO’s affiliation chart provided raw material inputs that reportedly were used in production of cold-rolled.³⁰ When asked why the company did not report purchases from the input suppliers, POSCO stated that only minimal trace amounts

²³ See section 776(d)(1) of the Act; *see also* TPEA, section 502(3).

²⁴ See section 776(d)(3) of the Act; *see also* TPEA, section 502(3).

²⁵ See Comment 7 below.

²⁶ See Comment 6 below with regard to POSCO’s use of the FEZ program.

²⁷ See Letter from POSCO, Re: Certain Cold-Rolled Steel Flat Products from Korea, Case No. C-580-882: Affiliated Companies Response dated September 30, 2015 (POSCO AQR) at 4.

²⁸ *Id.*, at 5.

²⁹ See Letter from POSCO, Re: Certain Cold-Rolled Steel Flat Products from Korea, Case No. C-580-882: Second Supplemental Questionnaire Response, dated November 12, 2015 (POSCO SQR) at 1.

³⁰ See POSCO Verification Exhibit-3 (VE-3) at 65-72.

were used in subject merchandise production; therefore, the companies were not reported as input suppliers in POSCO's questionnaire responses.³¹

Accordingly, given the information reported in its questionnaire responses, and the conflicting information discovered at verification, we determine that POSCO withheld requested necessary information during the course of the investigation, impeded the proceeding, and through its actions prevented the Department from being able to verify that information. Therefore, the Department determines that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A), (C), & (D) of the Act is warranted in determining the existence of cross-owned affiliates that provided inputs used in the production of subject merchandise.

We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Despite repeated requests, POSCO failed to identify or provide necessary information as to its respective cross-owned companies. As a result, we find that POSCO did not act to the best of its ability in this investigation. Accordingly, we find that an adverse inference that POSCO and its cross-owned input suppliers received certain subsidies, benefitted from those subsidies, and that those subsidies were specific, is warranted in this case. For further discussion, *see* Comment 5 below.

B. Hyundai Steel – Subsidies to Companies Located in Certain Economic Zones

As discussed further in Comment 8, the Department initiated a program investigation to determine whether subsidies, including tax reductions and exemptions, exemptions and reductions of lease fees, grants and financial support, and acquisition and property tax benefits, were being provided to companies located in certain economic zones.³² In its initial questionnaire response, Hyundai Steel stated that it was “not located in an economic zone,” and thus, did not provide a response to the Standard Question Appendix for each of the programs identified in the economic zones subsidies allegation.³³ Hyundai Steel's claim that it was not in an economic zone was found to be incorrect at Hyundai Steel's verification.³⁴ Consequently, we determine that Hyundai Steel withheld necessary information during the course of the investigation, impeded the proceeding, and through its actions prevented the Department from being able to verify that information. Therefore, the Department determines that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A)(C) & (D) of the Act is warranted and that the Department must rely on “facts available” in making our final determination.

Moreover, because Hyundai Steel failed to provide necessary information concerning program use, despite the Department's request that it do so, we find that Hyundai Steel failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining that the subsidy was provided, a benefit was bestowed, and the subsidy was regionally specific.

³¹ See POSCO AQR at 4-5.

³² See Korea CVD Cold-Rolled Steel Flat Products Investigation Initiation Checklist, dated August 17, 2015.

³³ See Letter from Hyundai Steel, Re: Certain Cold-Rolled Steel Flat Products from Korea, Case NO. C-580-882: Section III Initial Questionnaire Response, dated October 30, 2015 (HS October QR) at 35.

³⁴ See Hyundai Steel VR at 2.

Relying on AFA, we find, as discussed below under Comment 8, that Hyundai Steel received a countervailable benefit of 1.65 percent *ad valorem* for exemptions and reductions of lease fees and 1.65 percent *ad valorem* for grants and financial support. Because we verified tax reduction and exemptions reported by Hyundai Steel, including those Hyundai Steel received pursuant to its location in the industrial complex in the economic zone, we are not applying AFA to measure the benefit of tax benefits associated with the economic zones program. For further discussion, see Comment 8 below.

C. Other Programs

As referenced above under “POSCO,” and in Comments 5, 6, and 7, we are applying adverse facts available to POSCO for its failure to report certain cross-owned input suppliers, the discovery at verification of facilities located in a FEZ, and for DWI’s failure to report certain loans. As AFA, we determine that POSCO benefitted from the majority of programs in the current investigation, as noted below in Section VII, “Analysis of Programs.”

While the GOK provided sufficient information for most of these programs to allow the Department to analyze whether these program are specific within the meaning of section 771(5A) of the Act and provide a financial contribution as defined under section 771(5)(D) of the Act, it did not provide complete questionnaire responses for the programs listed below.³⁵ The GOK stated that none of the mandatory respondents in this investigation used the respective programs, and, accordingly, responses were not required. For this final determination, we are including the programs in our AFA determination, as the unreported cross-owned companies could have reasonably benefitted from the programs alleged. Furthermore, pursuant to section 776(b) of the Act, we determine that each of the programs below provides both a financial contribution under section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We note that we have previously found each of these programs countervailable based on information supplied by the GOK in prior investigations. These programs are therefore included in POSCO’s overall subsidy rate.

- Sharing of Working Opportunities/Employment Creating Incentives³⁶
- Loans from the Industrial Base Fund³⁷
- GOK Subsidies for “Green Technology R&D” and its Commercialization³⁸
- Support for Small and Medium-Sized Enterprises (SME) “Green Partnerships”³⁹
- Various Grants Contained in Financial Statements⁴⁰

³⁵ See GOK PQR at 82, 95, and 112-113; see also GOK SQR at 91.

³⁶ See *Welded Line Pipe From the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea*), and accompanying IDM at 9.

³⁷ See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007), and accompanying Issues and Decision Memorandum (IDM) at 15.

³⁸ See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at 17.

³⁹ *Id.*, at 21.

⁴⁰ *Id.*, at 22.

Selection of the AFA Rate

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.⁴¹ Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.⁴²

In applying AFA to Hyundai Steel and POSCO, we are guided by the Department's methodology detailed above. Because Hyundai Steel failed to report its location in an FEZ, as discussed above, we made an adverse inference that Hyundai Steel benefitted from the exemption and reduction of lease fees and grants and financial support available to companies located within the FEZ.

Using the methodology described above, we have applied an AFA rate to Hyundai Steel for each of the following programs:

- Exemptions and Reductions of Lease Fees in FEZs⁴³
- Grants and Financial Support in FEZs⁴⁴

As POSCO failed to act to the best of its ability in this investigation, we made an adverse inference that certain cross-owned companies, as discussed in the "POSCO" section above and Comment 5 below, provided inputs that could have been used in the production of the

⁴¹ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

⁴² *Id.*; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

⁴³ 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 12.

⁴⁴ *Id.*

downstream product. Therefore, we determine that the aforementioned companies benefitted from all programs under investigation. We are, however, excluding programs determined to be not countervailable.

Using the methodology described above, we have applied an AFA rate to POSCO for each of the following programs:

- Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)⁴⁵
- Energy Savings Program: Electricity Savings for Designated Period Program⁴⁶
- Energy Savings Program: Electricity Savings through General Management Program⁴⁷
- Energy Savings Program: Electricity Savings through the Bidding Process Program⁴⁸
- Energy Savings Program: Electricity Savings upon an Emergency Reduction Program⁴⁹
- Energy Savings Program: In Accordance with Prior Announcement⁵⁰
- Energy Savings Program: Intelligent Electricity Savings⁵¹
- Energy Savings Program: Utilization of Capability of the Private Sector⁵²
- Exemptions and Reductions of Lease Fees in Free Economic Zones⁵³
- GOK Facilities Investment Support under RSTA Article 26⁵⁴
- GOK purchases electricity from Cold-Rolled Producers for MTAR⁵⁵
- Grants and Financial Support in Free Economic Zones⁵⁶
- Green Subsidies: Support for SME “Green Partnerships”⁵⁷
- Green Subsidies: GOK Subsidies for “Green Technology R&D” and its Commercialization⁵⁸
- Industrial Base Fund Loans⁵⁹
- KEXIM Export Factoring⁶⁰
- KEXIM Export Loan Guarantees⁶¹
- KEXIM Import Financing⁶²
- KEXIM Overseas Investment Credit Program⁶³

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See *Washers from Korea*, and accompanying IDM at 15.

⁵⁵ See *Refrigerators from Korea*, and accompanying IDM at 12.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

- KEXIM Short-Term Export Credits⁶⁴
- KEXIM Trade Bill Rediscounting Program⁶⁵
- Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables⁶⁶
- Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee
- Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)⁶⁷
- Modal Shift Grants⁶⁸
- Power Generation Price Difference Payments⁶⁹
- Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA)⁷⁰
- RSLTA Article 9: Reserve for Research and Human Resources Development⁷¹
- RSTA Article 10(1)(1): Research, Supply, or Workforce Development Investment Tax Deduction for “New Growth Engines”⁷²
- RSTA Article 10(1)(2): Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies”⁷³
- RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development⁷⁴
- RSTA Article 104(14): Tax Payment for Third-Party Logistics Operations⁷⁵
- RSTA Article 104(15): Special Taxation for Investment in Development of Overseas Resources⁷⁶
- RSTA Article 104(5): Special Tax Credit for Payment Records⁷⁷
- RSTA Article 11: Tax Credit for Investment in Facilities for Research and Manpower⁷⁸
- RSTA Article 120: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes⁷⁹
- RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development⁸⁰
- RSTA Article 24: Tax Credit for Investment in Productivity Increase Facilities⁸¹

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See Washers from Korea*, and accompanying IDM at 15.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Calculated for Hyundai Steel in this investigation.

⁷⁵ *See Washers from Korea*, and accompanying IDM at 15.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Calculated for Hyundai Steel in this investigation.

⁸⁰ *See Washers from Korea*, and accompanying IDM at 15.

⁸¹ Calculated for Hyundai Steel in this investigation.

- RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety⁸²
- RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities⁸³
- RSTA Article 25(3): Tax Deduction for Investment in Environmental and Safety Facilities⁸⁴
- RSTA Article 30: Tax Program for Special Depreciation⁸⁵
- RSTA Article 78(4): Tax Reduction and Exemption for Industrial Complexes⁸⁶
- Sharing of Working Opportunities/Employment Creating Incentives⁸⁷
- Various Grants Contained in Financial Statements⁸⁸

Section 776(c)(1) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. However section 776(c)(1) does not require corroboration when the information relied upon for adverse inferences is derived from the petition, a final determination in the investigation, any previous review under section 751 of the Act or determination under section 753 of the Act, or any other information placed on the record.

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁸⁹

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates, which were calculated in this investigation or previous Korea CVD investigations or administrative reviews. Therefore, the corroboration exercise of section 776(c)(1) of the Act is inapplicable for purposes of this investigation.

⁸² See *Washers from Korea*, and accompanying IDM at 15.

⁸³ Calculated for Hyundai Steel in this investigation

⁸⁴ *Id.*

⁸⁵ See *Washers from Korea*, and accompanying IDM at 15.

⁸⁶ Calculated for Hyundai Steel in this investigation.

⁸⁷ See *Refrigerators from Korea*, and accompanying IDM at 12.

⁸⁸ *Id.*

⁸⁹ See section 776(d)(3) of the Act.

Hyundai Steel

Program	AFA Percent Subsidy Rate
Exemptions and Reductions of Lease Fees in FEZs	1.65%
Grants and Financial Support in FEZs	1.65%
Partial AFA Rate Sub-Total for Hyundai Steel	3.30%

POSCO

Program	AFA Percent Subsidy Rate
Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)	1.65%
Energy Savings Program: Electricity Savings for Designated Period Program	1.65%
Energy Savings Program: Electricity Savings through General Management Program	1.65%
Energy Savings Program: Electricity Savings through the Bidding Process Program	1.65%
Energy Savings Program: Electricity Savings upon an Emergency Reduction Program	1.65%
Energy Savings Program: In Accordance with Prior Announcement	1.65%
Energy Savings Program: Intelligent Electricity Savings	1.65%
Energy Savings Program: Utilization of Capability of the Private Sector	1.65%
Exemptions and Reductions of Lease Fees in Free Economic Zones	1.65%
GOK Facilities Investment Support under RSTA Article 26	1.05%
GOK Purchases Electricity from Cold-Rolled Producers for MTAR	1.65%
Grants and Financial Support in Free Economic Zones	1.65%
Green Subsidies: Support for SME "Green Partnerships"	1.65%
Green Subsidies: GOK Subsidies for "Green Technology R&D" and its Commercialization	1.65%
Industrial Base Fund Loans	1.65%
KEXIM Export Factoring	1.65%
KEXIM Export Loan Guarantees	1.65%
KEXIM Import Financing	1.65%
KEXIM Overseas Investment Credit Program	1.65%
KEXIM Short-Term Export Credits	1.65%
KEXIM Trade Bill Rediscounting Program	1.65%
Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables	1.65%
Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee	1.65%

Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)	1.65%
Modal Shift Grants	1.65%
Power Generation Price Difference Payments	1.65%
Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA)	1.65%
RSLTA Article 9: Reserve for Research and Human Resources Development	1.05%
RSTA Article 10(1)(1): Research, Supply, or Workforce Development Investment Tax Deduction for “New Growth Engines”	1.05%
RSTA Article 10(1)(2): Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies”	1.05%
RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development	0.03%
RSTA Article 104(14): Tax Payment for Third-Party Logistics Operations	1.05%
RSTA Article 104(15): Special Taxation for Investment in Development of Overseas Resources	1.05%
RSTA Article 104(5): Special Tax Credit for Payment Records	1.05%
RSTA Article 11: Tax Credit for Investment in Facilities for Research and Manpower	1.05%
RSTA Article 120: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes	0.22%
RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development	1.05%
RSTA Article 24: Tax Credit for Investment in Productivity Increase Facilities	0.01%
RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety	1.05%
RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities	0.15%
RSTA Article 25(3): Tax Deduction for Investment in Environmental and Safety Facilities	0.11%
RSTA Article 30: Tax Program for Special Depreciation	1.05%
RSTA Article 78(4): Tax Reduction and Exemption for Industrial Complexes	0.09%
Sharing of Working Opportunities/Employment Creating Incentives	1.65%
Various Grants Contained in Financial Statements	1.65%
AFA Rate Sub-Total for POSCO	58.36%

VII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

The Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs, except for the programs used by POSCO and Hyundai Steel that are included in the AFA rate as described above and in Comment 5.⁹⁰ For the descriptions, analyses, and calculation methodologies of the unchanged programs, *see the Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding the unchanged programs. The final program rates are as follows:

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

Hyundai Steel: 0.03 percent *ad valorem*

2. RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹¹ As explained in the “Adverse Facts Available” section above and in Comment 5, we are applying, as AFA, a rate of 1.05 percent *ad valorem* for this final determination.

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

Hyundai Steel: 0.01 percent *ad valorem*

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

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹² As explained in the “Adverse Facts Available” section above and in Comment 5, we are applying, as AFA, a rate of 1.05 percent *ad valorem* for this final determination.

Hyundai Steel: Less than 0.005 percent.

⁹⁰ See POSCO Final Calculation Memorandum at 4-7 and Hyundai Steel Final Calculation Memorandum at 7.

⁹¹ See PDM at 15.

⁹² *Id.*, at 16-17.

5. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities

Hyundai Steel: 0.15 percent *ad valorem*

6. RSTA Article 25(3): Tax Credit for Investment in Environmental and Safety Facilities

Hyundai Steel: 0.11 percent *ad valorem*

7. RSTA Article 26: GOK Facilities Investment Support

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹³ As explained in the “Adverse Facts Available” section above and in Comment 5, we are applying, as AFA, a rate of 1.05 percent *ad valorem* for this final determination.

8. RSTA Article 120: Exemption of the Acquisition Tax

Hyundai Steel: 0.22 percent *ad valorem*

9. Local Tax Exemptions: Article 276 of Local Tact Act (LTA) and Article 78(4) of the Reduction of Special Local Tax Act (RSLTA) for Reduction and Exemption for Industrial Complexes

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹⁴ As explained in the “Adverse Facts Available” section above and in Comment 5, we are applying, as AFA, Hyundai Steel’s calculated rate at 0.09 percent *ad valorem* for this final determination.

Hyundai Steel: 0.09 percent *ad valorem*⁹⁵

10. Korea Export Import Bank’s (KEXIM) Overseas Investment Credit Program

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹⁶ As explained in the “Adverse Facts Available” section above and in Comment 5, we are applying, as AFA, a rate of 1.65 percent *ad valorem* for this final determination.

11. Long-Term Loans from the KORES and the KNOC

In the *Preliminary Determination*, we found that POSCO received a measureable benefit from this program.⁹⁷ As explained in the “Adverse Facts Available” section above and in

⁹³ *Id.*, at 19.

⁹⁴ *Id.*, at 21.

⁹⁵ Unchanged from the *Preliminary Determination*.

⁹⁶ *Id.*, at 21.

⁹⁷ *Id.*, at 23-24.

Comment 7, we are applying, as AFA, a rate of 1.65 percent *ad valorem* for this final determination.

12. DWI's Debt Workout

As noted above in the “Attribution of Subsidies” section, we have modified the sales value used to calculate the benefit for this program.⁹⁸ In addition, as stated in the “Attribution of Subsidies” section, we have employed the trading company methodology to determine the cumulated benefit to POSCO under this program. As such, we have recalculated this program for the final determination. Using this methodology, the calculated benefit is less than 0.005 percent *ad valorem*, and as such, this rate does not have an impact on POSCO's overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for POSCO.

13. Energy Savings Program: Electricity Savings for Designated Period Program

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because neither Hyundai Steel nor POSCO received measureable benefits under this program. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus we now have a respondent that received a measureable benefit under this program. In its response, the GOK provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

This is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 of the Electric Business Law in 2001.⁹⁹ The Korean Electric Power Corporation (KEPCO) and Korean Power Exchange (KPX) operate the program under the supervision of the Ministry of Trade, Industry & Energy (MOTIE), and funding is provided by the Electrical Industry Foundation Fund. Companies are required to enter into an agreement with KEPCO in advance, committing the company to reduce electricity consumption when requested by KEPCO by the higher of (1) a specified percentage of a predetermined “base load” for the user, or (2) 3,000 kilowatt-hours. Customers that comply with these requirements receive a discount of 120 KRW for each kilowatt-hour of demand reduction. Users that are charged for electricity under the “Industrial Service/High Voltage” tariff schedule, the standard reduction percentage is 30 percent. Customers may request modifications to the standard reduction requirements and discount schedule by submitting a written request to KEPCO five days prior to the usage reduction period. Participants are paid through either KEPCO or the KPX.¹⁰⁰ KPX is wholly-owned by KEPCO.

⁹⁸ See POSCO Final Calculation Memorandum at “Denominators,” and “DWI Debt Workout.”

⁹⁹ See Letter from GOK, “Response of the Government of Korea to Section II of the Department’s September 16, 2015 Questionnaire,” dated October 30, 2015 (GOK PQR), at Exhibit E-5 and E-22.

¹⁰⁰ See GOK PQR at 38 and Appendix A.3.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁰¹ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined that KEPCO is an “authority” within the meaning of section 771(5)(B) of the Act.¹⁰² To calculate the benefit to Hyundai Steel, we divided the amount of rebates it received during the POI under this program by its total sales. Using this methodology, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel’s overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

14. Energy Savings Program: Electricity Savings through the Bidding Process Program

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because Hyundai Steel did not receive measureable benefits under this program. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus, we now have a respondent that received a measureable benefit under this program. In its response, the GOK provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

As reported by the GOK, this is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 of the Electric Business Law in 2001.¹⁰³ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. As noted, KPX is wholly-owned by KEPCO. Under this sub-program, KPX solicits offers from registered companies to reduce their electricity consumption by a specified amount for a specified price per kilowatt-hour of reduction. KPX then accepts offers, starting from the lowest price, until the required demand reduction is met. In order to apply and qualify for the program, companies must be able to reduce their electric power consumption by 300 kilowatts or more. Companies are compensated when they reduce their average electric power load for a pre-determined 30 minute period below its standard electric power load, during an electricity load adjustment period. The compensation a company receives is according to the unit price of the electricity generated, as determined through a bidding process.¹⁰⁴

¹⁰¹ See GOK PQR at Appendix A.3, 146.

¹⁰² See PDM 30.

¹⁰³ See GOK PQR at Exhibit E-5 and E-22.

¹⁰⁴ See Letter from the GOK, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea (C-580-882): The Republic of Korea’s Response to Countervailing Duty Second Supplemental Questionnaire, dated January 12, 2016 (GOK 2SQR) at 39-40.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁰⁵ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹⁰⁶ To calculate the benefit to Hyundai Steel, we divided the amount of rebates it received during the POI under this program by its total sales. Using this methodology, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel’s overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

15. Energy Savings Program: Electricity Savings upon an Emergency Reduction Program

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because neither Hyundai Steel nor POSCO received measureable benefits under this program. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus we now have a respondent that received a measureable benefit under this program. In its response, the GOK provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

This is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 the Electric Business Law in 2001.¹⁰⁷ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. Companies must enter into an agreement with KEPCO in advance, committing the company to reduce electricity consumption by a specified percentage of its baseline upon receipt of notice of the emergency from KEPCO. Participants in this program receive (1) a fixed annual discount from KEPCO based on the number of kilowatt-hours by which the participant agrees to reduce its demand in response to an emergency request, and (2) a variable discount that depends on the number of kilowatt-hours by which the participant actually reduced its consumption in response to KEPCO’s emergency requests and the ratio of that reduction to the total reduction that the participant had committed to achieve.

Further, participants are classified as either Type A, applicants consuming electricity with output over 22.9 kilovolts, or Type B, applicants with output less than or equal to 22.9 kilovolts. For Type A participants, the fixed annual discount rate is 1,000 KRW per kilowatt-hour of the committed amount of emergency reduction, while for Type B

¹⁰⁵ See GOK PQR at Appendix A.3, 146.

¹⁰⁶ See PDM at 30.

¹⁰⁷ See GOK PQR at Exhibit E-5 and E-22.

participants the fixed annual discount rate is 500 KRW per kilowatt-hour of the committed amount of emergency reduction.¹⁰⁸

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁰⁹ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹¹⁰ To calculate the benefit to Hyundai Steel, we divided the amount of rebates it received during the POI under this program by its total sales. Using this methodology, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel’s overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

16. Energy Savings Program: Electricity Savings through General Management Program

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because Hyundai Steel did not receive measureable benefits under this program. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus, we now have a respondent that received a measureable benefit under this program. In its response, the GOK provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

As reported by the GOK, this is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 of the Electric Business Law in 2001.¹¹¹ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. Under this program, companies are compensated for reducing their electricity during a peak electricity consumption period by more than a pre-set level. This sub-program can be used by a company that is supplied with high-voltage electricity and whose electricity usage can be remotely monitored, if: (1) the company’s hourly average electricity power load can be reduced either by 10 to 50 percent of its base load or by 3,000 kilowatts or more in case of industrial electricity; or (2) the company’s hourly average electricity power load can be reduced either by five to 50 percent of its base load or by 3,000 kilowatts or more in case of electricity other than industrial electricity. In order to participate in this sub-program, the company must enter into an agreement with KEPCO. For each day in a week, KEPCO announces, in advance, the hours of electricity demand adjustment and the amount of reduction in electricity consumption.

¹⁰⁸ *Id.*, at 41-42, and Appendix A.3.

¹⁰⁹ See GOK PQR at Appendix A.3, 146.

¹¹⁰ See PDM at 30.

¹¹¹ See GOK PQR at Exhibit E-5 and E-22.

Participating companies inform KEPCO of their intent to reduce and the amount the companies will reduce their electricity consumption the day prior. The annual payment companies receive is calculated by multiplying the agreed-upon amount of reduction in electricity consumption (in kilowatts) by an agreed-upon amount per kilowatt.¹¹²

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹¹³ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹¹⁴ To calculate the benefit to Hyundai Steel, we divided the amount of rebates it received during the POI under this program by its total sales. Using this methodology, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel’s overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus we are including this program in POSCO’s overall subsidy rate.

17. KEXIM Import Financing

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because Hyundai Steel did not receive measureable benefits under this program. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus we now have a respondent that received a measureable benefit under this program. The GOK in its response provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

The import financing program of the KEXIM was introduced in 1976 in order to assist companies that import essential goods or natural resources that are important to Korea’s national economy. Under this program, KEXIM extends loans of up to 80 percent of the transaction value for a period of up to two years.¹¹⁵

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹¹⁶ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of loans provided to companies participating in this program. In our *Preliminary Determination*, we determined KEXIM to be an “authority” within the meaning of section 771(5)(B) of the Act.¹¹⁷ To calculate the

¹¹² *Id.*, 42-43.

¹¹³ *Id.*, at Appendix A.3, 146.

¹¹⁴ *See* PDM at 30.

¹¹⁵ *See* GOK PQR at 174.

¹¹⁶ *Id.*, at 182.

¹¹⁷ *See* PDM at 22.

benefit to Hyundai Steel, we calculated the interest that the company would have paid on a comparable commercial loan during the POI and divided that benefit by total sales. Using this methodology, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel's overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

18. KDB and Other Policy Banks' Short-Term Discounted Loans for Export Receivables

In the *Preliminary Determination*, we did not analyze whether this program was countervailable because neither Hyundai Steel nor POSCO received measureable benefits under this program. However, as explained in the "Adverse Facts Available" section above, and in Comment 5, we are applying an AFA rate to POSCO in this final determination; thus we now have a respondent that received a measureable benefit under this program. The GOK in its response provided sufficient information to analyze whether this program is specific and provides a financial contribution; therefore, we are now analyzing whether this program is countervailable.

Under this program, the GOK, through the KDB, provides support to producers and exporters of cold-rolled by offering short-term export financing. This financing is designed to meet the needs of KDB clients for early receipt of discounted receivables prior to their maturity. Exporters pay the bank a "fee" that is effectively a discount rate of interest for the advance payment. In this arrangement, the bank is repaid when the importer pays the bank directly the full value of the invoice; the exporter no longer bears the liability of non-payment from the importer.

In our *Preliminary Determination*, we determined KDB be an "authority" within the meaning of section 771(5)(B) of the Act.¹¹⁸ We find that the receipt of short-term discounted loans under this program is contingent upon export performance. As such, we find that short-term loans from KDB are specific within the meaning of sections 771(5A)(A) and (B) of the Act. The loans offered by KDB constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Using the methodology described in the *Preliminary Determination*, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel's overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

¹¹⁸ *Id.*, at 26.

B. Other Programs Found to be Countervailable as AFA

As mentioned in the “Adverse Facts Available” section above, we are applying AFA to POSCO for this final determination. In the *Preliminary Determination*, we did not analyze whether the programs listed below were countervailable because either the programs did not provide measureable benefits to any of the respondents or the programs were not used. However, as explained in the “Adverse Facts Available” section above, and in Comment 5, we are applying AFA to POSCO in this final determination. The GOK in its response provided sufficient information to analyze whether these programs are specific and provide a financial contribution; therefore, we are now analyzing whether these programs are countervailable.

For each program that we determined not used or not measureable in the Preliminary Determination, and from which POSCO could have reasonably received benefits, we have provided an analysis below.

*Energy Savings Programs*¹¹⁹

1. Energy Savings Program: Utilization of Capability of the Private Sector

This is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 the Electric Business Law in 2001.¹²⁰ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. Companies are eligible for this program if they have electrical generation capacity that was not scheduled to be supplied to KEPCO through KPX, and the companies must enter into an agreement with KEPCO in advance. When KEPCO determines that the demand load is likely to exceed supply, KPX will request that the participant in this program commit to supply additional electricity to the system. In response, the participant informs KPX of the amount and duration of electricity that it will supply. The supplier is then paid for the number of kilowatt hours supplied. For companies that have large-capacity generators, the fee paid for electricity supplied under this sub-program is 350 KRW per kilowatt-hour. For companies that have smaller-capacity generators, the fee paid for electricity supplied under this sub-program is 500 KRW per kilowatt-hour.¹²¹

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹²² Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the funds provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹²³ In the Preliminary

¹¹⁹ We initiated on a program titled Power Business Law Subsidies. However as reported by the GOK, assistance under the referenced Articles of the Power Business Law (or Electricity Business Law) is provide under the Energy Savings Programs. As such, we have not included this program separately in POSCO’s overall subsidy rate. See GOK PQR at 36-37.

¹²⁰ See GOK PQR at Exhibit E-5 and E-22.

¹²¹ *Id.*, at 40-41, and Appendix A.3.

¹²² See GOK PQR at Appendix A.3, 146.

¹²³ See PDM at 30.

Determination, we found that POSCO received no measureable benefit from this program. However, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

2. Energy Savings Program: In Accordance with Prior Announcement

As reported by the GOK, this is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 the Electric Business Law in 2001.¹²⁴ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. Companies must enter into an agreement with KEPCO, committing the company to reduce electricity consumption within five days after a request by KEPCO. The agreed reduction in electricity consumption is the higher of a specified percentage of a predetermined "base load" for the user (five percent for general consumers and ten percent for industrial class users) or 3,000 kilowatt hours. Companies receive a discount for each kilowatt-hour of demand reduction.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹²⁵ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act.¹²⁶ As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

3. Energy Savings Program: Intelligent Electricity Savings

As reported by the GOK, this is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 the Electric Business Law in 2001.¹²⁷ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. In order to participate, companies must register with KPX in advance. An "Intelligent Load Management Company" (a private company) enlists small and medium-size electricity consumers (electricity demand sources), to participate in a load management program using smart grid technologies. The Intelligent Load Management Companies are compensated for managing electricity demands. Companies that are able to reduce electric power consumption by 100 kilowatts or more and an "electricity demand source" that can reduce its electric power consumption by 3000 kilowatts or less may participate in this program. If a consumer reduces its average electric power load for one hour period below its standard electric power load, as agreed, and the reduction occurs within 30 minutes of the request, the consumer is compensated according to

¹²⁴ See GOK PQR at Exhibit E-5 and E-22.

¹²⁵ *Id.*, at Appendix A.3, 146.

¹²⁶ See PDM at 30.

¹²⁷ See GOK PQR at Exhibit E-5 and E-22.

the amount determined in an auction process, within the range of 35,000 to 64,000 KRW per kilowatt per year.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹²⁸ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of rebates provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹²⁹ As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

4. Energy Savings Program: Support for Instruments with High Energy Efficiencies

As reported by the GOK, this is a sub-program of the Management of Electricity Factor Load Program, established through Articles 48 and 49 the Electric Business Law in 2001.¹³⁰ KEPCO and KPX operate the program under the supervision of MOTIE, and funding is provided by the Electrical Industry Foundation Fund. Companies participating in this program are provided monetary assistance when they install a high efficiency freezer. A company that is supplied with electricity from either KEPCO, a community power generator under the Electric Utility Act, or an island independent power facility operated by a local government under the Act on the Promotion of Electrification in Agricultural and Fishing Villages may apply for this program if the company installs or produces high efficiency freezers that are certified by the relevant administrative authority. The amount of assistance is determined by this authority, and is paid by either KEPCO or the KPX.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹³¹ Furthermore, a financial contribution under section 771(5)(D)(i) from the GOK exists in the form of grants provided to companies participating in this program. In our *Preliminary Determination*, we determined KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act.¹³² As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

KEXIM Export Loan Programs

5. Short-Term Export Credits
6. Export Factoring
7. Export Loan Guarantees
8. Trade Bill Rediscounting Program

¹²⁸ *Id.*, at Appendix A.3, 146.

¹²⁹ *See* PDM at 30.

¹³⁰ *See* GOK PQR at Exhibit E-5 and E-22.

¹³¹ *Id.*, at Appendix A.3, 146.

¹³² *See* PDM at 30.

Under each of these four programs, KEXIM extends short-term export financing, export loan guarantees, or the discounting of trade bills for exporters.¹³³ Therefore, each of these programs provides a financial contribution as defined under section 771(5)(D)(i) of the Act. Furthermore, each of these programs are contingent upon export performance and are therefore specific under section 771(5A)(A) and (B) of the Act. In our *Preliminary Determination*, we determined KEXIM to be an “authority” within the meaning of section 771(5)(B) of the Act.¹³⁴ In the *Preliminary Determination* we determined that K-SURE was an “authority” within the meaning of 771(5)(B) of the Act.¹³⁵ Therefore, as AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

Korea Trade Insurance Corporation (K-SURE) – Export Insurance and Export Credit Guarantees

9. Korea Trade Insurance Corporation (K-SURE) Export Credit Guarantees

The Korea Export Insurance Corporation, the predecessor of K-SURE, was established in 1992. In 2010, when the Export Insurance Act was replaced by the Trade Insurance Act,¹³⁶ the name was changed accordingly. K-SURE provides both pre-shipment and post-shipment export credit guarantee programs.¹³⁷ Therefore, this program provides a financial contribution as defined under section 771(5)(D)(i) of the Act. In addition, this program is contingent upon export performance and is therefore specific under section 771(5A)(A) and (B) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

Income Tax Programs

10. Research, Supply, or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)

This program was first introduced in 2010 for the purpose of facilitating Korean corporations’ investments in their respective R&D activities relating to the New Growth Engine program. The statutory basis for this program is Article 10(1)(1) of the RSTA. Paragraph 1 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(1) of the RSTA and Appendix 7 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program. The goal of the New Growth Engine program is to boost general national economic activities. RSTA Article 10(1)(1) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to eligible

¹³³ See GOK PQR at 166-173,

¹³⁴ See PDM at 22.

¹³⁵ *Id.*, at 26.

¹³⁶ *Id.*, at Exhibit K-SURE-1.

¹³⁷ See GOK PQR at 218.

technologies listed in Appendix 7 of the Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.¹³⁸

The language of the implementing provisions and related appendices for this tax program limits eligibility for the use of this program to a limited list of “new growth engines.”¹³⁹ Therefore, we find that the provision of this tax benefit is *de jure* specific, pursuant to 771(5A)(D)(i) of the Act to enterprises investing in “new growth engines” technology.

Tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

19. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)

This program was first introduced in 2010 for the purpose of facilitating Korean corporations’ investments in their respective R&D activities relating to the Core Technologies program. The statutory basis for this program is Article 10(1)(2) of the RSTA. Paragraph 2 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA, and Appendix 8 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program. The goal of the Core Technologies program is to boost general national economic activities. RSTA Article 10(1)(2) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to “core technologies” listed in Appendix 8 of the Enforcement Decree and for samples, parts, and raw materials used in the course of such R&D activities.¹⁴⁰

The language of the implementing provisions and related appendices for this tax program limits eligibility for the use of this program to a limited list of “core technologies.”¹⁴¹ Therefore, we find that the provision of this tax benefit is *de jure* specific, pursuant to 771(5A)(D)(i) of the Act to enterprises investing in “core technology.”

Tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

¹³⁸ See GOK PQR at Appendix I.1 and Exhibit RSTA-1.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

20. Asset Revaluation Under Article 56(2) of the TERCL

As the GOK states, under the Asset Revaluation Act, Korean companies are normally permitted to revalue their assets only when the price index has risen by more than 25 percent since the last revaluation. Alternately, under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL), a company making an initial public offering could revalue its assets even if the changes in the price index since its last revaluation were less than 25 percent. This program was enacted in 1987 and terminated in 1990. In order for a company to revalue its assets, it had to file a notice and revaluation report with the respective regional NTS. Upon reviewing the documents, the NTS would issue a notice of approval of the plan.¹⁴² The GOK notes that no companies applied for or received permission to revalue their assets under Article 56(2) of TERCL within the last three years, however, pursuant to 19 CFR 351.524, the Department will allocate benefits received corresponding to the 15-year AUL of renewable physical assets.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁴³ This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

21. Technical Development Fund (RSTA Article 9, formerly TERCL Article 8)

Under Article 9 of the RSTA, a corporation that has accumulated reserves for research and human resources development may deduct the reserves up to an amount equal to three percent of its net income for the tax year, independent of the actual expenditures for research and development and human resources during the tax year. Corporations that claim this provision and deduct all or part of its accumulated reserves, subsequently, must recognize income in future years.¹⁴⁴

The language of the implementing provisions and related appendices for this tax program limits eligibility for the use of this program to "necessary expenses for independent research and development in case of research and development for the development of new service and service delivery systems."¹⁴⁵ Therefore, we find that the provision of this tax benefit is *de jure* specific, pursuant to 771(5A)(D)(i) of the Act to enterprises incurring the specified expenses.

Tax deductions are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act. As AFA, we have determined that

¹⁴² See GOK 2SQR at 224-231.

¹⁴³ *Id.*

¹⁴⁴ See GOK 2SQR at Exhibit SR-1-TAX-1.

¹⁴⁵ *Id.*

POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

22. RSTA Article 11: Tax Credit for Investment in Facilities for Research and Manpower

Under this program, companies receive tax deductions for facility investments on research and development. As stated by the GOK, the purpose of these deductions is to improve the competitive power of business and to create positive growth of the economy, through expansion of research and manpower.¹⁴⁶ The deduction amount received by companies is determined based on company size.¹⁴⁷

Information provided by the GOK demonstrates that only a limited number of companies claimed this tax credit in 2014.¹⁴⁸ Accordingly, we determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

23. RSTA Article 30: Special Depreciation Tax Credit

Under Article 30 of the RSTA, a company that acquires certain fixed assets for use for business purposes may deduct depreciation costs related to those assets based on useful lives that differ from those used to calculate depreciation for financial accounting reporting purposes. Although Article 30 was revoked in 2010, taxpayers that applied for special deduction prior to 2010 for assets acquired before June 30, 2004 are able to continue applying this special appreciation on these assets in accordance with Article 4 of the Addenda to RSTA.¹⁴⁹ Companies that meet the meet the aforementioned requirements under Article 4 of the addenda to RSTA automatically receive this tax reduction. This program is administered by the NTS, under the direction of MOSF.

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁵⁰ This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

¹⁴⁶ See GOK PQR at 259.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, at 266 and Exhibit TAX-13, Table 8-1-1.

¹⁴⁹ *Id.*, at 150.

¹⁵⁰ *Id.*, at Appendix I.8.

24. RSTA Article 104(14): Third Party Logistics Operation

This tax credit was introduced in 2007, with the purpose of motivating manufacturing companies to outsource logistics business operations to third parties that specialize in logistics by offering a tax incentive for doing so.¹⁵¹ Administered by the NTS, under the direction of the MOSF, Article 104(14) is the law authorizing the tax incentive, which is implemented through Article 104(14) of the Enforcement Decree of the RSTA.¹⁵²

Under this program, where a company used third party distribution companies (*e.g.*, unaffiliated outside trucking company, ocean-shipping company, or loading/unloading company) and paid for distribution expenses, the company may apply for this tax credit if the company meets two requirements prescribed by Article 104(14) of the Enforcement Decree of the RSTA: (1) the third party distribution expense spent for the tax year shall be at least fifty percent or more of the total distribution expense spent by the company for the tax year; and (2) the ratio (*i.e.*, third party distribution expense divided by total distribution expense) for the tax year shall not be lower than that ratio for the previous year.¹⁵³ If the company meets these two requirements, it can apply for a tax credit based on three percent of the increased amount of third party distribution expenses (*i.e.*, the third party expenses spent for tax year minus the third party expenses spent for the previous year).¹⁵⁴ The GOK states that the limit of the tax credit under this program is ten percent of corporate income tax.¹⁵⁵

As indicated in the *Statistical Yearbook for 2014*, there were 517,805 corporate tax returns filed in 2013, 172 of which claimed the Article 104(14) tax deduction.¹⁵⁶ Because only 172 companies in 2013 used this program, we find this program *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. Additionally, we determine that this program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

25. RSTA Article 104(5): Special Tax Credit for Payment Records

Under Article 104(5) of the RSTA, a company will receive a tax deduction when it submits documents directly using the national tax information and communication networks. The GOK states that this program is administered by NTS, which operates under MOSF, and companies automatically receive the tax deduction under this program if all of the

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See GOK PQR, Exhibit TAX-13 at Tables 8-1-1 and 8-3-2.

aforementioned eligibility criteria is met as established by Article 104-5 of the RSTA and Article 104-2 of its Enforcement Decree.¹⁵⁷

We determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number.¹⁵⁸ This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

26. RSTA Article 104(15): Development of Overseas Resources

Under Article 104(15) of the RSTA, when a company specializing in the development of overseas resources makes certain investments or contributions in order to develop mineral resources, the corporate tax of the company shall be reduced by three percent of the amount invested or contributed.¹⁵⁹ Tax deductions are automatically granted to companies if they meet the criteria as established under Article 104(15) of the RSTA and Article 104(15) of its Enforcement Decree.

Information provided by the GOK demonstrates that only a limited number of companies claimed this tax credit in 2014.¹⁶⁰ Accordingly, we determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This program was found countervailable in *Non-Oriented Electrical Steel from Korea*.¹⁶¹ This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

Subsidies to Companies Located in Certain Economic Zones

Under this program, the GOK or local governments in Korea may provide various incentives to companies located in an FEZ. Designation of an area as an FEZ is governed by the Special Act on Designation and Management of Free Economic Zones. Companies located in an FEZ can be approved to receive: (1) Tax Reductions and Exemptions; (2) Exemptions and Reductions of Lease Fees; and (3) Grants and Financial Support. We determine that this program is specific under section 771(5A)(D)(iv) because the program is limited to companies located within a designated geographical region within the jurisdiction of the authority providing the subsidy. We also find that tax exemptions and reductions and

¹⁵⁷ See GOK 2SQR at 163.

¹⁵⁸ *Id.*, at 168.

¹⁵⁹ *Id.*, at 172.

¹⁶⁰ *Id.*, at Exhibit TAX-13, Table 8-3-2.

¹⁶¹ 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), and accompanying IDM at 13-14.

exemptions and reductions of lease fees provide a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone that is otherwise due. In addition, grants provided under this program provide a financial contribution as defined under section 771(5)(D)(i) of the Act. As AFA, we have determined that Hyundai Steel and POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in Hyundai Steel's and POSCO's overall subsidy rates.

Grants

27. R&D Grants under the Industrial Technology Innovation Promotion Act (ITIPA)¹⁶²

This program, administered by 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.¹⁶³

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.¹⁶⁴

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 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.¹⁶⁵

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 amount.¹⁶⁶

¹⁶² We initiated on a program titled Clean Coal Subsidies. However, as reported by the GOK, this program was undertaken pursuant to the Industrial Technology Promotion act (ITIPA). Therefore, we are not including this program separately in POSCO's overall subsidy rate. See GOK PQR at 92.

¹⁶³ See GOK PQR at 109 and Appendix K.1.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

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 determine 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 determine 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. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

28. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector.¹⁶⁷ Through the provision of financial support, the GOK seeks to increase rail and vessel transport, while decreasing motorized vehicle freight, in the hope that this will promote a shift towards a greater use of environment-friendly means of transportation and rebalance the method of transport in the logistics sector.¹⁶⁸ Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport to administering agencies for truck-to-rail "modal shift" entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight "modal shift" entities.¹⁶⁹ The legal framework for this program is Article 21 of the Sustainable Transportation Logistics Development Act (STLDA), Article 24 of its Enforcement Decree, and Articles 14 through 17 of the Regulation on Modal Shift Agreement as promulgated by the MOF.¹⁷⁰

In order to receive this support, companies submit an application to an administering agency, Korean Rail (KORAIL), with their proposal to shift some of their existing transportation by truck to transportation by train, and to another administering agency, the Korea Shipping Association (KSA), related to shifting some of their existing truck transportation to transportation by vessel.¹⁷¹ Subsequently, KORAIL and the KSA approve the application and enter into a modal shift agreement with the respective company.¹⁷²

Based upon the information provided by the GOK, we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number.¹⁷³ Furthermore, a financial contribution from the GOK exists in the form

¹⁶⁷ *Id.*, at 111 and Appendix K.2.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

of a direct transfer of funds under section 771(5)(D)(i) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

Purchases for More Than Adequate Remuneration (MTAR)

29. The GOK Purchases Electricity from Cold-Rolled Steel Producers for MTAR

In the Preliminary Determination, we found that POSCO received non-measurable benefits from its sales through KPX during the POI.¹⁷⁴ As established by the Electricity Business Law and its Enforcement Decree (EBL) under Article 31, sales and purchases of electricity from electricity generators in Korea may be made only through KPX. The legal framework that governs the electricity transactions of companies with electricity generation capability is established by Article 31(2) of the EBL and Article 19 of the EBL's Enforcement Decree. Further, companies are able to sell excess electricity to KEPCO through the KPX if the companies meet the criteria established under KPX's Rules on the Operation of the Electric Utility market.¹⁷⁵ In order to participate in the market, companies must first register with the KPX.

We find that for this final determination, this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number.¹⁷⁶ Moreover, a financial contribution from the GOK exists in the form of the purchase of goods pursuant to section 771(5)(D)(iv) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

30. Power Generation Price Difference Payments (PGPDP)

In the Preliminary Determination, we found that POSCO received non-measurable benefits from the Electricity Industry Foundation Fund.¹⁷⁷ As noted in the GOK response, pursuant to Article 49 of the EBL, companies that provide new or renewable energy may be eligible for these benefits.¹⁷⁸ We determine this program *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited in number.¹⁷⁹ Moreover, the payments received under this program provide a financial contribution from the GOK pursuant to section 771(5)(D)(i) of the Act. As AFA, we have determined that POSCO received this subsidy during the POI, and that it benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

¹⁷⁴ See PDM at 37.

¹⁷⁵ See GOK PQR at Appendix B.

¹⁷⁶ *Id.*, at 162.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*, at 153-162.

¹⁷⁹ *Id.*, at 162.

C. Programs Determined To Be Not Countervailable

1. Provision of Electricity for LTAR
See Comments 1 through 3.
2. VAT Exemption for Purchases of Anthracite Coal
3. K-SURE Short-Term Export Credit Insurance

As guided by the Trade Insurance Act, K-SURE administers import and export insurance programs.¹⁸⁰ The GOK states that K-SURE's export insurance policies cover (1) political risks, such as war, revolution or rebellion, limitations imposed on importation or foreign currency exchange, declaration of moratorium, and the like in the importing countries, and (2) commercial risks, such as default of export receivables due to importer's poor credit, bankruptcy, payment refusal, and the like.¹⁸¹ Specifically, the agency's short-term export insurance provides insurance to exporters to lessen default risks relating to export transactions that have a payment period of less than two years.¹⁸²

Under 19 CFR 351.520(a), in the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program. Pursuant to 19 CFR 351.520, we determine that this program did not confer a countervailable benefit upon analyzing K-SURE's long-term operating costs, as reported by the GOK, since the premiums charged under the program covered the program's long-term operating costs and losses.¹⁸³ As such, we have not included this program in POSCO's overall AFA rate.

D. Programs Determined To Be Not Used, or to Not Confer a Measureable Benefit, During the POI

1. Reimbursements on Construction Costs for Facilities at Incheon Harbor

Using the methodology described in the *Preliminary Determination*, Hyundai Steel received a benefit of less than 0.005 percent, and as such, this rate does not have an impact on Hyundai Steel's overall subsidy rate. Consistent with our past practice, we have not included this program in our net subsidy calculations for Hyundai Steel. Because this is a program that is limited to Hyundai Steel, we have not included an AFA rate for POSCO for this program.

¹⁸⁰ *Id.*, at 83.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*, at 84. See also Initiation Checklist at 16-17.

2. Provision of Liquefied Natural Gas (LNG) for LTAR

The Korea Gas Corporation (KOGAS) imports LNG. KOGAS then distributes through pipelines natural gas in gaseous form, not liquid form.¹⁸⁴ KOGAS sells and distributes natural gas only in the wholesale market in Korea which is comprised primarily of the 33 urban gas suppliers. Industrial companies can only purchase natural gas from the urban gas suppliers and may not purchase gas from KOGAS.¹⁸⁵ Because POSCO did not use this program and its cross-owned input suppliers cannot purchase LNG from KOGAS, we have not included an AFA rate for POSCO for this program. Also *see* Comment 4

3. Dongbu Debt Restructuring

Dongbu was not selected as a mandatory respondent therefore this program is not used. Because this is a program that is limited to Dongbu, we have not included an AFA rate for POSCO for this program.

XII. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Should Find Apply AFA to the Provision of Electricity for LTAR

Petitioners argue:

- The GOK has failed to provide full responses to the Department's questions and in the manner requested. Therefore, the Department must use facts available. Moreover, the Department should use AFA because the GOK has failed to cooperate to the best of its ability. The Department has applied adverse facts available for similar circumstances in recent proceedings.¹⁸⁶
- Specifically, the GOK failed to provide complete information on the process and documentation for developing and modifying the electricity tariff rate from KEPCO and other government entities. For example, Petitioners note "Marketing (*Sa*) 81402-5122 (September 2013)" was not provided.
- Petitioners further cite to the Corrosion-Resistant Steel Products (*CORE*) Electricity Verification Report (VR)¹⁸⁷ as support for incomplete responses and documentation

¹⁸⁴ See GOK PQR at 44,

¹⁸⁵ *Id.*, at 49.

¹⁸⁶ See *Final Affirmative Countervailing Duty Determination: Boltless Shelving Units Prepackaged for Sales from the People's Republic of China*, 80 FR 51775 (August 26, 2015) (*Boltless Shelving Units*) and accompanying IDM at 7-8. See also, *Final Results of Administrative Review: Certain Pasta from Italy*, 80 FR 11172 (March 2, 2015) (*Pasta from Italy*), and accompanying IDM.

¹⁸⁷ See Letter from GOK, Re: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea (C-580-882): Verification Documents to Proceeding (May 5, 2016) (*CORE* Electricity VR).

regarding the development and modification of electricity tariff rates. Moreover, GOK officials directly involved in certain processes were not present at verification.

- Petitioners also note several documents where the GOK did not provide full translations of documents submitted in response to the Department's requests despite the regulations and questionnaire instructions.¹⁸⁸ The documents were critical to the analysis of the electricity tariff development and modification.
- Whether the GOK's actions were the result of intentional conduct, inadequate record-keeping or insufficient efforts is irrelevant, and the Department should apply AFA because the GOK did not act to the best of its ability. The Court of Appeals for the Federal Circuit (Federal Circuit) has affirmed the Department's application of AFA for more than only intentional conduct.¹⁸⁹
- The Department should select an adverse rate to ensure the GOK does not benefit from its failure to cooperate in this investigation.¹⁹⁰ As such, the Department should use the Italian electricity rate for industrial users in 2014, which is a contemporary and comparative benchmark.

POSCO rebuts:

- The Department's verification report reveals that the GOK fully responded to the Department's questions on the topic of electricity, and fully cooperated in the immediate investigation and the verification of *CORE*.¹⁹¹
- The GOK fully responded to the Department's requests and provided a voluminous amount of information on the electricity tariff setting process, costs, and participated in a comprehensive verification.¹⁹²

¹⁸⁸ See 19 CFR 351.303(e). See, also, Letter from Thomas Gilgunn, Program Manager, to the Government of the Republic of Korea, Re: Certain Corrosion-Resistant Steel Products from the Republic of Korea: Countervailing Duty Questionnaire (July 24, 2015) at Section I, page 5, paragraph 3.

¹⁸⁹ See *Ta Chen Stainless Pipe, Inc. v. United States*, 298 F.3d 1330, 1336 (Fed. Cir. 2002) (*Ta Chen Stainless Pipe*). See, also, *Peer Bearing Co.-Changshaw v. United States*, 766 F.3d 1396 (Fed. Cir. 2014) (*Peer Bearing*).

¹⁹⁰ See *Final Results of Administrative Review: Circular Welded Non-Alloy Steel Pipe from Mexico*, 76 FR 36086 (June 21, 2011) (*Welded Pipe from Mexico*) and accompanying IDM at 18; see also *Preliminary Negative Countervailing Duty Determination and Alignment with the Final Determination of Certain Cold-Rolled Steel Flat Products from the Republic of Korea*, 80 FR 79567 (December 22, 2015) (*Preliminary Determination*); and *Preliminary Negative Countervailing Duty Determination and Alignment with the Final Determination of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 2172 (January 15, 2016) (*Hot-Rolled from Korea Preliminary Determination*).

¹⁹¹ See GOK PQR at 3-35; see also *CORE* Electricity VR and Exhibits and GOK VR at 11-13.

¹⁹² See *CORE* Electricity VR at 21-22.

The GOK rebuts:

- Petitioners have not identified an instance in which the GOK failed to answer a question or provide requested documentation.
- Neither Korean nor U.S. law requires that KEPCO or MOTIE to record informal discussions. As such, the Department cannot find that a subsidy exists due to the GOK not presenting certain documentation of informal discussions.
- As recently determined in *CORE*, the Department should continue to find that the GOK did not provide electricity to Korean steel producers for LTAR.
- Consistent with the *Preamble* as cited in *Line Pipe from Korea*, the Department should continue to find that a comparison of electricity prices with generation costs is irrelevant.¹⁹³
- Petitioners' use of the data provided by the National Assembly has been confirmed by a KEPCO official that it is flawed.¹⁹⁴
- To the extent that the Department analyzes documentation explaining the tariff schedule setting process, the Department should rely on the verified materials,¹⁹⁵ and not the National Assembly committee.

Department's Position:

Pursuant to section 776(a) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available if necessary information is not available on the record of an interested party or any other person: (1) withholds information that has been requested; (2) fails to provide such information by the deadlines or in the form and manner requested, subject to sections 782(c)(1) and 782(e) of the Act; (3) significantly impedes the proceeding; or (4) provides such information but the information cannot be verified. 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, with respect to the alleged provision of electricity for LTAR, the Department finds that the GOK did not withhold information that was requested of it, did not fail to meet deadlines, did not significantly impede the proceeding, and did not provide unverifiable information. Further, we find 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.

¹⁹³ See *Line Pipe from Korea*, and accompanying IDM at 23-24.

¹⁹⁴ See *CORE* Electricity VR at 20.

¹⁹⁵ *Id.*, at 18-20.

The analysis of whether electricity is provided to an enterprise or industry for LTAR is complicated, especially in situations where the government is the only electricity 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 philosophy, costs, or possible price discrimination.¹⁹⁶ In order to undertake the analysis required under 19 CFR 351.511, the Department asked extensive questions of 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.

Petitioners' reliance on *Boltless Shelving Units*¹⁹⁷ and *Pasta from Italy*¹⁹⁸ is misplaced. Unlike the governments at issue in *Boltless Shelving Units* and *Pasta from Italy*, the GOK has timely submitted complete responses to all of the Department's extensive and detailed questions in its responses of September 14, 2015, October 15, 2015, and October 19, 2015. In particular, the GOK provided details on KEPCO's rate setting methodology, cost recovery rates, investment return, and profit information. The GOK also provided usage data on all electricity users, including the top 100 industrial users of electricity. Therefore, we disagree with Petitioners' argument that the GOK failed to provide full responses to our questions in the manner requested by the Department, and, in particular, with regard to the process and documentation for developing and modifying the electricity tariff rate.

We also find that the GOK provided adequate translations of the large and complicated documents submitted on the record. While Petitioners list several documents that were partially untranslated, we find that the GOK provided adequate translations for the documents. In this regard, the Department has the discretion to request additional translations if they are found to be relevant and necessary. Moreover, as noted in *CORE Electricity VR*, the Department conducted an extensive verification of this information in *CORE*, including the data underlying the calculations used by KEPCO to set the electricity prices in effect during the POI.¹⁹⁹ The Department also reviewed relevant documents at verification, obtaining translations where necessary. At verification, the Department was able to fully verify KEPCO's standard pricing mechanism and its application in the setting of industrial electricity tariffs. Finally, we were able to fully analyze this alleged program based upon the information provided by the GOK.²⁰⁰ For all these reasons, the use of AFA, as advocated by Petitioners, is not warranted.

¹⁹⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*Preamble*).

¹⁹⁷ In *Boltless Shelving Units*, the Department twice asked the Government of China (GOC) to provide, for each province where the respondents were located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no province-specific information in response to these questions in its initial questionnaire response and failed to provide the requested information in a supplemental questionnaire response.

¹⁹⁸ In *Pasta from Italy*, the Government of Italy failed to respond or submitted incomplete and untimely responses to the Department's supplemental questionnaires with respect to numerous programs. See IDM at 11-12.

¹⁹⁹ See *CORE Electricity VR*.

²⁰⁰ See PDM at 30-34.

Comment 2: Whether the Department Should Find That the Provision of Electricity for LTAR is a Countervailable Subsidy

Petitioners argue:

- Petitioners state that the GOK concluded in 2013 that the steel industry is subsidized through low electricity costs, and that KEPCO incurs a loss because of the heavily discounted prices benefitting large corporations.²⁰¹
- Petitioners assert 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, especially to Korean steel producers.
- Prices that are not preferential may still be market based, as determined in *Softwood Lumber from Canada*.²⁰²
- Petitioners argue that the Department cannot rely on the preferentiality standard alone to determine adequacy of remuneration. Further, a lack of preferential pricing does not show that prices were market based.
- Record evidence in the immediate investigation demonstrates, according to Petitioners, that KEPCO does not cover its cost for providing electricity to its customers. Citing *Royal Thai Government*, Petitioners claim that while a uniform tariff policy may appear to have been set in accordance with market principles, evidence on the record must demonstrate that marginal costs are met.²⁰³
- Steel producers predominately purchase at off-peak hours from nuclear generation units. The prices assigned to these units are “grossly” understated because nuclear was the lowest cost energy generated in 2014, and the GOK assigned identical capacity prices to “all generation units, regardless of fuel type used.”²⁰⁴
- Petitioners argue that the “merit order” pricing policy, consistent with section 771(5A)(D)(iii) of the Act, is *de facto* specific to certain industrial groups.
- Documentation on the record demonstrates that the GOK has the authority to exercise discretion, consistent with section 771(5A)(D)(iii)(IV) of the Act, in setting electricity tariff rates and can take into consideration nonmarket factors.

²⁰¹ See Petitioners Case Brief 1t 14.

²⁰² See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at 42.

²⁰³ See *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1359-62 (CIT 2006) (*Royal Thai Government*); see also *Certain Steel Wire Rod from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 65 FR 55003 (October 22, 1997) (*Steel Wire Rod from Trinidad and Tobago*).

²⁰⁴ See Petitioners Case Brief at 27-29.

POSCO rebuts:

- Section 771(5)(E)(iv) of the Act does not require any particular methodology in measuring the adequacy of remuneration. Under *Chevron*, the Department has adopted a reasonable method under 19 CFR 351.511(2)(a)(iii). The *Preamble* states that the Department will analyze factors such as the government price setting philosophy, costs, and possible price discrimination to determine whether prices were set according to market principles.²⁰⁵
- The Department's analysis is consistent with the statute, regulations, and the *Preamble*, and Petitioners have not demonstrated the analysis is unreasonable under *Chevron*. Moreover, the Department did not treat the use of a standard pricing mechanism as "dispositive," but determined there was no price discrimination, consistent with the *Preamble*.
- The *Preamble*²⁰⁶ specifically cites to *Magnesium from Canada*²⁰⁷ and indicates that it would consider factors such as the government's price setting philosophy as part of its tier-three analysis. Moreover, in the *Samsung Remand*, the Department linked its standard pricing mechanism to the new LTAR statute.²⁰⁸
- The 2012 cost data as verified by the Department and the 2014 cost data demonstrate that KEPCO covered its costs and enjoyed a reasonable return on investment. There is no indication those cost recovery rates are not accurate. Furthermore, KEPCO's 20-F filed with the U.S. Securities and Exchange Commission states that KEPCO was profitable in both 2013 and 2014 as well as in each segment of its business.²⁰⁹
- Petitioners' assertion that the price paid by KEPCO through KPX to nuclear facilities does not allow these generators to recover their costs is incorrect. The merit order system accounts for its lower costs to produce electricity and, thus, receives a higher premium on its purchase than other types of generators. Moreover, the capacity price must also cover the fixed costs of nuclear facilities as they continue to be built in Korea.²¹⁰
- The fact POSCO operates its production facilities 24 hours a day and consumes large amounts of electricity during the evening hours is more evidence of supply and demand than any preference. Additionally, the merit system is a rational and market based system

²⁰⁵ See *Preamble*, 63 FR at 65378.

²⁰⁶ See *Preamble*, 63 FR at 65378.

²⁰⁷ See *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) (*Magnesium from Canada*),

²⁰⁸ See *Final Results of Redetermination Pursuant to Court Order, Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321 (CIT 2014), *aff'd* 37 F. Supp. 3d 1320 (CIT 2014) (*Samsung Remand*) at 24.

²⁰⁹ See GOK PQR, Exhibit E-3 and E-8.

²¹⁰ *Id.*, POSCO Rebuttal Brief at 53-54.

and the fact that nuclear generators supply electricity at off-peak hours for low cost is not support for any preferential support to POSCO or other large industrial users.

- The National Assembly Report is an inappropriate basis to calculate KEPCO's POI costs because it is based on costs that predate the POI by two years, contains multiple defects, and was prepared on an *ad hoc* basis in response to a request that was political in nature. Moreover, at verification the KEPCO official explained that this report had nothing to do with prices in Korea.

The GOK rebuts:

- As affirmed by the CIT in *Bethlehem Steel*, the fact that the Korean steel industry is a large industrial consumer of electricity is not evidence alone to determine that the subsidy as alleged *de facto* specific.²¹¹
- KEPCO's electricity pricing schedule is applied evenly to all industries. As such, the government's discretion in establishing the pricing schedule is not relevant in determining specificity.

Department's Position:

Consistent with section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we continue to determine that this program provides no benefit to POSCO or Hyundai Steel because the provision of electricity is not for LTAR.

Section 771(5)(E) of the Act states that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided...in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions for sale." Adequate remuneration is defined in 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2)(iii), commonly called "tier three," when there are no private prices, including import prices, for the good or service in the country under investigation, and when there are no available world market prices, the adequacy of remuneration will be measured "by assessing whether the government price is consistent with market principles." Under 19 CFR 351.511(a)(2)(iii), 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 philosophy, cost, or possible price discrimination. These factors are not put in any hierarchy, and we may rely on one or more of these factors in any particular case.²¹²

For purposes of this final determination, under our tier three 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 method. With respect to KEPCO's price-setting method, the Department stated in *Magnesium from Canada* that we will examine the electricity rates charged

²¹¹ See *Bethlehem Steel v. United States*, 140 F. Supp. 2d 1354, 1369-70 (CIT 2001) (*Bethlehem Steel*).

²¹² See *Preamble*, 63 FR at 65378.

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.²¹³

In the instant investigation, POSCO and Hyundai Steel purchased electricity from KEPCO. The GOK reported that a single tariff rate table applied throughout the POI, and that this tariff rate went into effect on November 21, 2013, and was applicable to the respondents in this investigation.²¹⁴ Further, the GOK provided its calculation of electricity costs as well as data showing its cost and investment return pertaining to the POI for the industrial users of electricity.²¹⁵ The GOK provided KEPCO's data that was submitted to MOTIE in 2013 for the tariff in effect during the POI, as well as an explanation of its calculations and recovery costs.²¹⁶ The GOK stated that KEPCO applied this same price-setting method or standard pricing mechanism to determine the electricity tariffs for each tariff classification including the industrial tariff that was paid by the respondents during the POI.²¹⁷ In addition, there is no information on the record that POSCO and Hyundai Steel are treated differently from other industrial users of electricity that purchase comparable amounts of electricity because the rates paid were from the tariff schedule applicable to all industrial users. Therefore, consistent with 19 CFR 351.511 and *Magnesium from Canada*, we continue to find that this program provides no benefit to POSCO and Hyundai Steel because the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO's standard pricing mechanism.

The Standard Pricing Mechanism Developed in Magnesium from Canada Measures Adequacy of Remuneration

Under 19 CFR 351.511(a)(2)(iii), the Department assessed KEPCO's tariffs for large industrial users, the tariff applicable to the respondents under investigation, through an analysis of KEPCO's price-setting philosophy, or standard pricing mechanism, the term used in *Magnesium from Canada*. Petitioners argue that the standard pricing mechanism set forth in *Magnesium from Canada* is not relevant because it focuses on "preferentiality" rather than adequate remuneration; however, this argument misunderstands the nature of adequate remuneration.

Petitioners contend that the Department's application of its standard pricing mechanism, set forth in *Magnesium from Canada*,²¹⁸ is contrary to law because that administrative determination was made pursuant to a prior version of the U.S. countervailing duty law, under which subsidies included the provision of goods or services at preferential rates. Petitioners are incorrect, as demonstrated by the fact that the current CVD regulations that implemented the statutory changes as a result of the Uruguay Round Agreements Act (URAA), and in particular 19 CFR

²¹³ See discussion of *Magnesium from Canada* in PDM at footnote 127.

²¹⁴ See GOK PQR at 15-16 and Exhibit E; see also GOK 2SQR at Exhibit SR1-KEPCO-1 and SRI-KEPCO-2.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*, at 12.

²¹⁸ See Petitioners Case Brief at 12.

351.511, regarding the provision of a good or service, were enacted with reference to the methodology developed in *Magnesium from Canada* to analyze whether the provision of a good or service such as electricity is provided at adequate remuneration.²¹⁹ Indeed, when the *CVD Preamble* mentions the “government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination” as factors the Department may consider under the new law to assess whether a government price is consistent with market principles, it cites *Magnesium from Canada* as a case that includes such analysis.²²⁰ Accordingly, in a tier three analysis, if “the rate charged is consistent with the {utility company’s} 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,” then that fact is sufficient to support a finding that no benefit is conferred.²²¹ The fact that KEPCO adhered to its standard pricing mechanism is significant. The application of a uniform price-setting philosophy is the first factor enumerated in assessing whether the government price was set in accordance with market principles.²²²

Moreover, it is clear that with the concept of a standard pricing methodology, developed in *Magnesium from Canada*, the Department recognized the market conditions for the provision of electricity, which is that electricity tariffs are generally based upon the type and amount of consumption of electricity and that utility rates will vary depending on the size and classification of the electricity consumer. Therefore, the Department developed the standard pricing methodology, codified under 19 CFR 351.511(a)(2)(iii), to account for the commercial market conditions by which electricity is provided to consumers. As such, the standard pricing methodology ensures that adequacy of remuneration for the provision of a good or service is determined in relation to the prevailing market conditions for the good or service being provided as required under 771(5)(E) of the Act.

The URAA’s move away from preferentiality methodology flipped the regulatory hierarchy, with market prices from the country under investigation and world market prices moving up the hierarchy, and other considerations, including price discrimination, remaining potentially relevant only if the preferred data are unavailable.²²³ However, Petitioners’ argument, citing

²¹⁹ *Id.* (“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., *Magnesium from Canada* and *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).”

²²⁰ *Id.*

²²¹ See *Magnesium from Canada*, 57 FR at 30949-50.

²²² See *Preamble*, at 63 FR 65378.

²²³ As explained in *Certain Softwood Lumber Products from Canada Prelim*, the prior methodology that applied under the pre-URAA law provided that Commerce “would measure whether the government provided a good or service at a preferential rate based upon, in order of preference, the following benchmarks: (1) The price the government charges to other parties for the identical or similar good; (2) the price charged by other sellers within the

Softwood Lumber from Canada, that a preferentiality analysis cannot be sufficient to assess adequate remuneration is mistaken. In response to comments to its proposed regulation implementing the new law based on adequate remuneration, the Department addressed concerns “about potentially continuing the use of the preferentiality standard by shifting the focus of {its} inquiry toward whether the government employed market principles in setting prices.”²²⁴ The Department clarified that a price discrimination analysis may still be appropriate under the new law because, in the context of a tier three analysis, “there may be instances where government prices are the most reasonable surrogate for market-determined prices.”²²⁵

Cost Recovery as a Measure of Adequate Remuneration

Petitioners argue that cost recovery is the only basis to measure the adequacy of remuneration; however, this contention is incorrect as a matter of law. As clearly set forth under 19 CFR 351.511(a)(2)(iii), 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 philosophy, cost, or possible price discrimination. These factors are not put in any hierarchy, and we may rely on one or more of these factors in any particular case.²²⁶ Therefore, under the CVD law, the Department may determine the adequacy of remuneration by assessing whether the government price of electricity is in accordance with market prices by analyzing (1) the government’s price-setting philosophy; (2) cost; or (3) possible price discrimination. If the adequacy of remuneration could only be measured by an analysis of an utility company’s cost (or cost recovery), then the Department’s regulations would not have included an analysis of the government’s price-setting philosophy, or, for that matter, possible price discrimination in the description of a “tier three” benefit analysis. Neither section 771(5)(E)(iv) of the Act nor 19 CFR 351.511(a)(2)(iii) requires the Department to measure the adequacy of remuneration solely on an examination of cost and cost recovery.

As also made clear under 19 CFR 351.311(a)(2)(iii), the factors that may be used by the Department in determining whether a government price is consistent with market principles - the government’s price-setting philosophy, cost, or possible price discrimination - are not put in any hierarchy, and the Department may rely on one or more of these factors in any particular case.²²⁷ Therefore, the argument by Petitioners that we may only use cost in assessing the adequacy of remuneration is clearly unsupported by the statute and the regulations governing the provision of a good or service.

same political jurisdiction (*i.e.*, country under investigation); (3) the government’s cost of providing the good or service; or (4) the price paid for that good outside the country under investigation.” See *Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products From Canada*, 57 FR 8801 (March 12, 1992) (*Certain Softwood Lumber Products from Canada Prelim*). This correctly emphasized the priority given to market prices under the new law, but nothing in that decision disturbs the Department’s practice, as set forth in the *CVD Preamble*, with respect to assessing a government price under a “tier three” analysis.

²²⁴ See *Preamble*, 63 FR at 65378.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

In *Hot-Rolled from Thailand*, the Department found the Government of Thailand's provision of electricity to respondents in certain regions outside the Bangkok Metropolitan area to provide a countervailable subsidy.²²⁸ In that case, which involved the application of facts available, the Department used the cost factor to analyze the adequacy of remuneration, based upon the facts on the record regarding the provision of electricity in Thailand. In Thailand, electricity was generated and transmitted through one entity, the Electricity Generating Authority of Thailand (EGAT), while two entities were responsible for distributing electricity: the Metropolitan Electricity Authority (MEA), which distributed electricity in Bangkok and the surrounding areas, and the Provincial Electricity Authority (PEA), which distributed electricity to the rest of the country. While the cost of distribution was greater for the PEA than for the MEA, the Government of Thailand maintained a uniform national tariff policy, whereby consumers in the same customer category would pay the same rate regardless of the area of distribution.²²⁹ Therefore, there was no standard pricing mechanism in setting electricity tariffs because distribution expenses were accounted for in two different methods for electricity provided through the MEA and electricity provided through the PEA.

To maintain the government policy of charging consumers in the same customer category the identical rate, EGAT provided a discount to the PEA and charged the MEA a surcharge on the rates paid on electricity in order to cross-subsidize the higher distribution costs incurred by the PEA. Therefore, the Department determined that this practice constituted a regional subsidy. Accordingly, based on the facts of that case, the Department used the element of cost under 19 CFR 351.311(a)(2)(iii) to assess the adequacy of remuneration and considered the amount of the subsidy to be the amount of the cross-subsidization.²³⁰ Thus, the facts on the record in *Hot-Rolled from Thailand* that led the Department to use the cost factor to assess the adequacy of remuneration are different from the facts of this investigation that support assessing the adequacy of remuneration using the government's price-setting philosophy.

Similarly, Petitioners' citation to *Steel Wire Rod from Trinidad and Tobago* does not support an argument that we should disregard KEPCO's standard pricing methodology and apply a cost recovery standard. The final determination of *Wire Rod from Trinidad and Tobago* was made on October 22, 1997, before the enactment of 19 CFR 351.511 and our current CVD regulations which were implemented on November 25, 1998, and applicable to CVD investigations initiated on the basis of petitions filed after December 28, 1998.²³¹ Therefore, the analysis of adequacy of remuneration cited by Petitioners in *Wire Rod from Trinidad and Tobago* did not involve the assessment of the adequacy of remuneration under 19 CFR 351.511. Moreover, subsequent to the enactment of 19 CFR 351.511, in measuring the adequacy of remuneration from the provision of electricity in *Melamine from Trinidad and Tobago*, the Department assessed the adequacy of remuneration using the government's price-setting methodology under 19 CFR 351.511(a)(2)(iii).²³²

²²⁸ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled from Thailand*), and accompanying IDM at II.B. "Provision of Electricity for Less than Adequate Remuneration."

²²⁹ *Id.*

²³⁰ *Id.*, and accompanying IDM at Comment 12.

²³¹ See *Preamble*, 63 FR at 65348.

²³² See *Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849

Petitioners also argue that electricity tariffs do not include the full cost of generation, including electricity from nuclear generators, because steel producers purchase electricity predominantly during off-hours where electricity is primarily generated from nuclear generation units. However, Petitioners have failed to provide any evidence that the prevailing market conditions for the provision of electricity in Korea are that utility companies have separate tariff rates that are differentiated based upon the manner in which the electricity is generated. The tariff schedule on the record of our investigation does not support this proposition. Petitioners have also failed to adequately support a claim that KEPCO's costs of electricity used in developing its tariff schedule do not fully reflect its actual costs of the electricity that it transmits and distributes to its customers in Korea. In addition, with respect to the costs of the generators, including the nuclear generators, the Department did not request these costs because the costs of electricity to KEPCO are determined by the KPX. Electricity generators sell electricity to the KPX, and KEPCO purchases the electricity it distributes to its customers through the KPX. Thus, the costs for electricity are based upon the purchase price of electricity from the KPX, and this is the cost that is relevant for KEPCO's industrial tariff schedule.²³³

Finally, with regard to the "tier three" benchmark used to determine whether the provision of electricity was for adequate remuneration, KEPCO's standard pricing mechanism used to develop its tariff schedule was based upon its costs. 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.²³⁴ For the POI, KEPCO more than fully covered its cost for the industry tariff applicable to our respondents.²³⁵

The National Assembly Report

Finally, Petitioners argue that the Department should rely on the National Assembly Report because it demonstrates that the steel industry is being charged "less-than-normal electricity costs" and that KEPCO uses the merit system to favor generators using cheaper fuel sources.

The National Assembly Report relied upon by Petitioners is not relevant to our analysis as to whether KEPCO provides electricity to our respondents for LTAR. The National Assembly Report provides information on the electricity consumption pattern of Korea's largest 100

(November 6, 2015) (*Melamine from Trinidad and Tobago*), and accompanying IDM at 13.

²³³ See *Line Pipe from Korea*, and accompanying IDM at 27.

²³⁴ See GOK PQR at 13-15 and GOK 2SQR at 6-9; see also *CORE* Electricity Verification Report at 12-18.

²³⁵ See GOK PQR at Exhibit E-23.

corporations. While the losses incurred by KEPCO as shown in the Report are flawed due to the methodology used to produce the data, *i.e.*, comparing company-specific revenue to aggregated cost, the more important flaw is that the information provided within the Report is from two years prior to our POI, 2014. Since the date of the Report, 2012, KEPCO electricity industrial tariffs have been increased three different times.²³⁶

Under our regulations, we must determine whether the rates paid during the POI, the 2014 calendar year, are for adequate remuneration as set forth under 19 CFR 351.511. Therefore, our analysis was based upon KEPCO's industrial tariffs that were in effect during 2014, not the industrial tariffs that pre-dated the POI by at least two years. Therefore, the information in the National Assembly Report is outdated and not relevant to our POI.

Specificity Comments

We received comments from the interested parties on the issue of whether the provision of electricity is specific. Because we determined that the provision of electricity did not provide a benefit, the issue of specificity is moot.

Comment 3: Whether the Department Should Use Other Submitted Data to Measure the Adequacy of Remuneration for Electricity

Petitioners argue:

- The Department's regulations set forth a hierarchy (*e.g.*, three tiers) for evaluating whether a good is provided for LTAR, pursuant to 19 CFR 351.511(a)(2).
- There are no market-based prices in Korea to evaluate electricity prices, therefore tier "one" is not a viable option.²³⁷
- The provision of electricity generally cannot be evaluated under tier "two" and the Department will measure the adequacy of remuneration under tier "three." However, the regulations do not specify how to conduct a market principles analysis under tier "three."
- In *Laminated Sacks from China*, the Department had a similar situation and used comparable market-based prices in a country "at a comparable level of economic development that is reasonably proximate to, but outside, of China."²³⁸ The Department should use the same methodology for this program, using Japan as the comparable country.²³⁹

²³⁶ See GOK PQR at Exhibit E-3 at page 50-51.

²³⁷ See Petitioners Case Brief at 45 – 46.

²³⁸ See *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Sacks from China*), and accompanying IDM at 17.

²³⁹ See Petitioners Case Brief at 47 – 49.

POSCO rebuts:

- The record demonstrates that electricity prices from other countries are not reasonably available to purchasers in Korea as there is no cross-border transmission or distribution of electricity in Korea. This is in line with the Department's past practice.
- The Department's past practice has also been to resort to a tier three analysis when analyzing electricity. The Department found the electricity supplier did apply its standard pricing mechanism in *Magnesium from Canada* and *Supercalendered Paper from Canada*.²⁴⁰
- The Department needs to analyze the prevailing market conditions in the country under investigation pursuant to section 771(5)(E) of the Act.
- Petitioners' suggested use of KEPCO data provided for the National Assembly Report, in the alternative, should be rejected as it has been discredited by KEPCO and described as inaccurate.
- In the alternative, the Department should follow the methodology used in *Line Pipe from Korea*.²⁴¹

The GOK rebuts:

- Consistent with the Department's regulations, the *Preamble* and the Department's practice, the Department should continue to reject Petitioners' argument that electricity prices from third countries are reasonable benchmarks to determine adequacy of remuneration of electricity services provided in South Korea.²⁴²
- Electricity production in Japan is not comparable to that of Korea, as Japanese electricity prices are not prices available to purchasers in South Korea, and, as such, Petitioners' argument is inconsistent with the Department's regulations.²⁴³
- The sources of electricity generation vary greatly between South Korea and Japan. Therefore, the prices established for electricity in Japan are not comparable to Korean electricity prices.²⁴⁴

²⁴⁰ See *Supercalendered Paper From Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper From Canada*).

²⁴¹ See *Line Pipe from Korea*, and accompanying IDM at 27.

²⁴² See 19 CFR 351.511(a)(2); See e.g. *Citric Acid from the PRC, 2011 Administrative Review*, and accompanying IDM at 88, and *Steel Sinks from the PRC*, and accompanying IDM at Comment 13.

²⁴³ See 19 CFR 351.511(a)(2)(ii).

²⁴⁴ See GOK Rebuttal Brief at 13-14.

Department's Position:

Petitioners have put forth two alternative benchmarks, the use of Japanese electricity prices and the use of “comparable” prices of electricity from countries outside of Korea, such as what we used for land benchmarks in *Laminated Sacks from China*.

The Department examines whether electricity was provided for LTAR and a benefit was thereby conferred, under section 771(5)(E)(iv) of the Act pursuant to the governing regulation, 19 CFR 351.511(a)(2). This provision lists potential benchmarks in hierarchical order of preference: (1) world market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. A “tier one” benchmark, market prices from actual transactions within the country under investigation, was not available because KEPCO was the predominant provider of electricity in the Korean market. A “tier two” benchmark, world market prices, was not available because there was no cross-border transmission or distribution of electricity into Korea. 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.²⁴⁵ With respect to electricity, the Department has stated that electricity prices from countries in the world market are not normally available to purchasers in the country under investigation.²⁴⁶ Because there is no cross-border transmission or distribution of electricity into Korea, electricity from other countries, including from Japan, is not available to electricity consumers in Korea. Therefore, prices from Japan cannot be used as a benchmark.

In *Laminated Sacks from China*, we found under our analysis of the provision of land under 19 CFR 351.511(a)(2)(iii) that based upon the overwhelming presence of government involvement in the land-use rights markets, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land use rights in China was not conducted in accordance with market principles.²⁴⁷ Therefore, under our “tier three” analysis, we resorted to market-based land principles in a country at a comparable level of economic development that is reasonably proximate to, but outside of China. However, the facts on the record in our investigation are different from the facts that were on the record in *Laminated Sacks from China*. In this investigation, we have verified information that the standard pricing mechanism used to determine KEPCO's industrial tariff rates is in accord with market principles as defined under 19 CFR 351.511(a)(2)(iii). Furthermore, if the Department determined that the standard pricing mechanism used by KEPCO was not in accord with market principles, then the Department would still have on the record KEPCO's full cost of providing electricity in order to assess the adequacy of remuneration.

²⁴⁵ 19 CFR 351.511(a)(2)(ii) explicitly states that “the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price *where it is reasonable to conclude that such price would be available to purchasers in the country in question.*” (Emphasis added).

²⁴⁶ See Preamble, 63 FR at 65378.

²⁴⁷ See *Laminated Sacks from China*, and accompanying IDM at 16.

Comment 4: Whether the Department Should Find the Provision of Natural Gas for LTAR is Countervailable

Petitioners argue:

- Given the structure of the original allegation, the investigation of LNG for LTAR also includes natural gases in gaseous form.
- Both products have the same chemical composition and are essentially the same commodity. LNG is simply natural gas that has been liquefied for transport.
- The GOK's state-owned monopoly wholesale gas supplier, KOGAS, defines natural gas to include LNG as well as other gaseous natural gases.
- In prior cases, the Department has not limited its investigation based on different forms or grades of the same commodity and should not do so here, as a similar fact pattern exists in this case.²⁴⁸
- The GOK provides a financial contribution because KOGAS is a government authority that imports LNG and sells and distributes that gas in gaseous form in Korea at a loss.
- KOGAS is responsible for all wholesale sales of natural gas in Korea. KOGAS sells to urban gas suppliers who serve designated regions and effectively have a monopoly on gas supply in their respective regions.
- Prices charged by the urban gas suppliers are also controlled by the GOK through approvals by the regional governments. Therefore, the suppliers are entrusted and directed to provide a financial contribution when providing natural gases to their customers. Thus the provision of LNG or natural gas in gaseous form, is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.
- In measuring the benefit, the use of a "tier two" benchmark is warranted and an average of United Nations (UN) Comtrade data should be used to construct the world market price. Alternatively, a "tier three" benchmark should be used.
- The provision of natural gas for LTAR is specific because the GOK's information indicates that gas distributors favor large scale customers and specifically target steel producers.

²⁴⁸ See *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) (*Citric Acid from the PRC*), and accompanying IDM at Comment 11.

The GOK argues:

- All materials submitted by Petitioners are either outdated or disconnected for the purpose of recognizing financial contribution.
- UN Comtrade data should not be used as the “tier two” benchmark because it is not available to Korean customers and not in accordance with 19 CFR 351.511(a)(2).
- Petitioner’s allegation that gas distributors favor large scale customers and specifically steel producers is unsupported and should be rejected.

POSCO rebuts:

- Petitioners’ allegation in the petition was with regard to LNG and the Department’s initiation and investigation of this program was with regard to the provision of LNG by KOGAS to LNG gas distribution and private power generation companies for LTAR. Now Petitioners are recasting their allegation to be the provision of natural gas in gaseous form by urban gas suppliers (UGSs) based on an entrusts-or-directs theory.
- POSCO does not purchase LNG or natural gas from KOGAS or any other parties within Korea, and thus there is no basis for a financial contribution.²⁴⁹
- The Department never investigated whether KOGAS or any government entity entrusted or directed the UGSs to provide natural gas for LTAR, and therefore there is no factual basis now to find that POSCO received a subsidy from the UGSs.
- There is no useable “tier two” benchmark on the record. UN Comtrade data on the record pertains to LNG, not natural gas in gaseous form.
- Further, POSCO imports all of its natural gas. This has been verified, and Petitioners cannot recast their allegation to cover natural gas (in gas form), as the entire basis of its allegation was that KOGAS was providing LNG for LTAR.

The GOK rebuts:

- KOGAS did not sell either liquefied or vapor natural gas to any Korean steel producers.
- Petitioners’ allegation that the Department should investigate urban gas distributors (UGDs) for the final determination is presented too late in the investigation. Parties have not had adequate time to provide benchmark information for vapor natural gas, and the Department has not requested information related to the UGDs for purposes of performing the appropriate analysis.

²⁴⁹ See POSCO VR at 37.

- The benchmark that Petitioners propose the Department use to examine a benefit received by the respondents is inadequate because it related to the product in a different physical state.
- If the Department were to use an LNG price as the benchmark, it should use the actual price that KOGAS and POSCO paid for their respective imports of the product, as these would have been available to Korean customers that were able to import LNG.²⁵⁰

Department's Position:

We continue to find that the LNG for LTAR program was not used for this final determination. In addition, we will not initiate a new subsidy investigation into whether other forms of natural gas were provided at LTAR, as Petitioners did not make the allegation until its case brief, well after the deadline for alleging new subsidies under our regulations.²⁵¹

In the *Preliminary Determination*, the Department determined that this program was not used.²⁵² There is no information on the record that warrants our reconsideration of this finding. Unlike *Supercalendered Paper from Canada*, in the instant proceeding there is no specific allegation on whether the GOK entrusted or directed the urban gas suppliers to provide natural gas at LTAR, nor did the Department conduct such an investigation.

Petitioners further contend that the provision of natural gas in other forms at LTAR must be found countervailable because, for example, urban gas suppliers have a monopoly on gas supply, are controlled by the GOK and regional governments, and are entrusted or directed to provide a financial contribution when providing gas to customers. However, as noted above, the Department did not investigate whether the urban gas suppliers were entrusted or directed by the GOK. Instead, the allegation in the petition and the program under investigation solely concerned the provision of natural gas by the state-owned entity, KOGAS, which, in contrast to the facts in *Citric Acid from China*, provided LNG to the urban gas suppliers, but not directly to the respondents. Therefore, it is immaterial to examine the forms of natural gas that these urban gas suppliers then provided to their customers.

Furthermore, Petitioners did not timely submit a new subsidy allegation²⁵³ for this program, nor have they argued good cause for accepting an untimely allegation. Therefore, we will not initiate a new subsidy investigation into whether the GOK entrusted or directed the urban gas suppliers through the regional governments to provide natural gas at LTAR (regardless of the form in which that gas is sold), and for the reasons noted above, we need not address Petitioners' arguments on the other forms of natural gas that were supplied by these urban gas suppliers.

²⁵⁰ See Letter from POSCO, Re: Certain Cold-Rolled Steel Flat Products from Korea, Case No. C-580-882: Initial Questionnaire Response, dated October 23, 2015 (POSCO PQR) at Appendix A-12, and GOK 2SQR at 31.

²⁵¹ See 19 CFR 351.301(c)(2)(iv).

²⁵² See PDM at 40.

²⁵³ Pursuant to 19 CFR 351.301(c)(2)(iv)(A), new subsidy allegations are due 40 days before the preliminary determination in an countervailing duty investigation.

Comment 5: Whether the Department Should Apply AFA to POSCO With Regard to Certain Unreported, Affiliated Companies

Petitioners argue:

- The Department was correct to closely examine POSCO's cross-owned affiliates at verification, as Petitioners suspected a response should have initially been required from the cross-owned company, POSCO Energy.
- Citing *Refrigerators from Korea* and *Washers from Korea*,²⁵⁴ Petitioners contend that the regulations do not provide an exhaustive list of circumstances for which the Department should require a company to submit a response. As such, POSCO Energy should have been included in the immediate investigation because it had transactions with POSCO, and produces electricity that is purchased by the GOK.
- Petitioners argue that at verification, the Department discovered that POSCO failed to report full questionnaire responses, for five cross-owned affiliates that meet the Department's standard: POSCO Chemtech Company, Ltd. (POSCO Chemtech), POSCO Plantec, POSCO P&S, POSCO M-Tech Co., Ltd. (POSCO M-Tech), and POS-HiMetal Co., Ltd. (POS-HiMetal).²⁵⁵ Further, Petitioners contend that the Department appropriately did not verify input purchase quantities that POSCO attributed to cold-rolled steel production.²⁵⁶
- Petitioners state that the Department cannot confirm whether these cross-owned affiliates used the programs under investigation, and, as such, should assume that all programs were used. Therefore, the Department should apply an AFA rate of 113.47 percent to each of the five input suppliers, for a total AFA rate of 567.35 percent.²⁵⁷
- Alternately, the Department should assign AFA rates for programs that the Department discovered were used by certain cross-owned affiliates at verification. As such, the Department should assign a rate of 3.59 percent to government grants received by POSCO Chemtech, POSCO Plantec, and POSCO M-Tech, for a total AFA rate of 10.77 percent.²⁵⁸

²⁵⁴ See *Refrigerator-Freezers From Korea*, and accompanying IDM at 93; see also *Washers from the Republic of Korea*, and accompanying IDM.

²⁵⁵ See POSCO VR at 10-14.

²⁵⁶ *Id.*

²⁵⁷ See *Washers from Korea*, 80 FR 55336 (September 15, 2015) (*Washers from Korea*; 2012-13) and accompanying IDM at 12-13.

²⁵⁸ See *Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*Steel Beams from Korea*) and accompanying IDM at section I.A.2.

Petitioners assert that the Department discovered at verification that the following companies meet the criteria for cross-ownership:

- POSCO Chemtech- is affiliated, with 60 percent ownership by POSCO, and produces limestone.
- POSCO Plantec- is affiliated, with 60.84 percent ownership by POSCO, and provides engineering services related to plant construction.²⁵⁹
- POSCO P&S-is affiliated, with 96.01 percent ownership by POSCO, and is a steel sales and service company.²⁶⁰ At verification, POSCO initially stated that scrap was not used in the production of its steel products, but later revised this claim and stated that scrap is involved in the production process.²⁶¹
- POSCO M-Tech- is a packing materials and manufacturing company.²⁶²
- POS-HiMetal- is a steel manufacturing company in which POSCO held a 64.98 percent ownership stake, and produces high purity ferro-manganese. POSCO stated that it purchased ferro-manganese from POS-HiMetal during the POI to produce cold-rolled.²⁶³

POSCO argues:

- Citing the *Preamble* and the Department’s past practice, POSCO contends that any subsidies received by cross-owned affiliates are not attributable to respondents if the input products supplied by these affiliates are not “primarily dedicated” to the production of the downstream product.²⁶⁴ Accordingly, POSCO states, it was not required to provide questionnaire responses for such companies.
- POSCO argues that the record evidence supports its decision not to report the cross-owned affiliates, as the inputs they provided to POSCO are negligible.
- POSCO contends that even if it had identified the cross-owned affiliates as input suppliers, there would have been no impact on the investigation and margin because the subsidies to the input suppliers would not be attributable to POSCO.
- Citing *Softwood Lumber from Canada*, POSCO states that it did not respond for POSCO P&S as the scrap it provided to POSCO was not primarily dedicated to the production of

²⁵⁹ See Petitioners Case Brief at 59-63 and POSCO VR at 10-17.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ See *Preamble*, 63 FR at 65401-2 and *Refrigerators from Korea*, and accompanying IDM at 3-6; see also 19 CFR 351.525(b)(6)(iv).

the downstream product and was not an input that was produced by POSCO P&S, POSCO Chemtech, POSCO Hi-Metal, and POSCO M-Tech.²⁶⁵

- Citing *Nippon Steel*, POSCO contends that it did not withhold the information relating to affiliated companies due to a failure to cooperate to the best of its ability, but rather because it did not believe the companies were relevant to the investigation.²⁶⁶
- POSCO accurately identified its affiliation with each of these companies in its responses, and neither the Department nor Petitioners raised issues with regard to these affiliates during the course of the verification.
- Given the size of POSCO's sales denominator, there is no reasonable basis to assume as AFA that any benefit POSCO may have received from these cross-owned affiliates would result in an above *de minimis* rate.
- The receipt of government grants noted in POSCO Chemtech, POSCO Plantec, POSCO M-Tech, and POSCO Specialty Steel's financial statements have no relevance to POSCO's reporting obligations because there is no evidence that the cross-owned affiliates transferred grants they received from the government to POSCO.²⁶⁷
- There is no information on this record that the government grants are specific, and thus, countervailable.

POSCO asserts that it was not required to provide responses for certain companies the Department discovered at verification:

POSCO argues that the following cross-owned affiliates were listed in its initial response, and that their sales to POSCO were not primarily dedicated to the production of the downstream product produced by POSCO during the POI.²⁶⁸

- POSCO Chemtec sold trace amounts of limestone to POSCO that the verification report demonstrates could be used in the production of subject merchandise.²⁶⁹
- POSCO P&S is a trading company with no production operations.²⁷⁰ POSCO P&S provided steel scrap to POSCO. However, POSCO contends that the raw material sold by POSCO P&S to POSCO was produced by unaffiliated domestic and foreign suppliers,

²⁶⁵ See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: *Certain Softwood Lumber from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at Comment 1.

²⁶⁶ See *Nippon Steel Corp.*, 337 F.3d at 1382-83 (*Nippon Steel*).

²⁶⁷ See 19 CFR 351.525(b)(6)(v).

²⁶⁸ See Letter from POSCO, Re: *Certain Cold-Rolled Steel Flat Products from Korea*, Case NO. C-580-882: Supplemental Questionnaire Response (POSCO AFF-SQR).

²⁶⁹ See POSCO Case Brief at 14.

²⁷⁰ See POSCO AFF-SQR at Exhibit 1.

and, as such, could not have benefitted from any subsidy that would be attributable to POSCO.²⁷¹

- POSCO M-Tech- POSCO owned 48.85 percent of POSCO M-Tech, and, therefore, does not qualify as cross-owned with POSCO.²⁷²
- POS-HiMetal produces high purity ferro-manganese that the verification report demonstrates may be used as an input into the production of subject merchandise.²⁷³

Petitioners rebut:

- POSCO stated in two separate instances that no affiliated companies located in Korea provided inputs to POSCO's production of subject merchandise,²⁷⁴ and later confirmed that it provided responses for all required companies that fall under 19 CFR 351.525(b)(6).²⁷⁵
- POSCO's decision to not report the aforementioned input suppliers was "willful non-compliance" and a conscious decision made by POSCO.
- Consistent with CIT decisions and the Department's practice, the Department alone determines the information that is necessary in order to conduct an investigation, not respondents.²⁷⁶
- Further, the Department cannot base its attribution determination on unverified information that the respondent withholds until verification.
- Unlike the immediate investigation, respondents in *Washers from Korea* and *Refrigerators from Korea* reported their respective cross-owned input suppliers and provided the financial statements of the aforementioned input suppliers in the initial questionnaire response. The Department did not have time to fully analyze the information in the current investigation as it was only provided at verification.²⁷⁷

²⁷¹ See POSCO VE 3-75.

²⁷² See 19 CFR 351.(b)(6)(vi).

²⁷³ See POSCO VR at 14.

²⁷⁴ See POSCO AFF-SQR at 4-5.

²⁷⁵ See POSCO SQR at 1.

²⁷⁶ See, e.g., *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo Componenti*); *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); see also *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 49475 (February 8, 2013), and accompanying IDM at Comment 5;

²⁷⁷ See *Refrigerators from Korea*, and accompanying IDM at 3; see also Memorandum from Gary Taverman, Acting Deputy Assistant Secretary, Re: Countervailing Duty Investigation: Bottom Mount Combination Refrigerator-Freezers (Refrigerators) from the Republic of Korea, Post-Preliminary Analysis of Cross-Ownership (December 21, 2011). Although Petitioners cite to this memorandum, it was not attached to any of their submissions on the record of the immediate investigation.

- Unlike in *OCTG from Turkey*, the Department was not presented with new factual information that contradicted the respondent's questionnaire responses. In the immediate investigation, the Department did not accept the accuracy of the information in the questionnaire response, as upon verifying the information, the Department found the response was incorrect, bringing the accuracy of POSCO's response into question.²⁷⁸
- Including the incorrect information in the verification exhibits is consistent with *Supercalendared Paper from Canada*, and is the Department's attempt to demonstrate the inaccuracy of the response to include in the analysis for the final determination.²⁷⁹
- POSCO's "primarily dedicated" argument is not accurate, as the Department's practice is to analyze inputs that could be used to produce the downstream product, including subject and non-subject merchandise.²⁸⁰ As such, the Department should disregard POSCO's calculation of percentage of inputs used to produce the subject merchandise.²⁸¹
- POSCO's "primarily dedicated" argument is not accurate, as the Department's practice is to analyze inputs that could be used to produce the downstream product, including subject and non-subject merchandise.²⁸² As such, the Department should disregard POSCO's calculation of percentage of inputs used to produce the subject merchandise.²⁸³

POSCO rebuts:

- POSCO reasonably believed that no responses were required for any of its cross-owned affiliates, and as such, it was a purposeful decision to not provide responses on behalf of the aforementioned affiliated companies.
- Citing *Nippon Steel*, as the decision not to report the affiliated companies was purposeful and not due to "inattentiveness" or "carelessness," there is no basis to assume that POSCO did not act to the best of its ability.²⁸⁴
- Petitioners' calculated AFA rate is highly punitive and POSCO had no motivation not to cooperate, considering that its large sales denominator would not have made a more favorable situation by failing to cooperate.

²⁷⁸ See POSCO Case Brief at 14 and 17; see also *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at 55.

²⁷⁹ See *Supercalendared Paper from Canada*, and accompanying IDM at 153-154.

²⁸⁰ See, e.g., *Certain Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50378 (*Shrimp from Thailand*), and accompanying IDM at 28; *Certain Lined Paper Products from Indonesia: Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination*, 71 FR 47174 (*Lined Paper from Indonesia*), and accompanying IDM at 30.

²⁸¹ See POSCO Case Brief at 13-19.

²⁸² See, e.g., *Certain Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50378 (*Shrimp from Thailand*), and accompanying IDM at 28; *Certain Lined Paper Products from Indonesia: Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination*, 71 FR 47174 (*Lined Paper from Indonesia*), and accompanying IDM at 30.

²⁸³ See POSCO Case Brief at 13-19.

²⁸⁴ See *Nippon Steel* at 1382-83.

- The Department must calculate CVD margins as accurately as possible,²⁸⁵ and, as such, if there are gaps in the case record, the Department should fairly apply its three-tiered approach in assigning an AFA rate.²⁸⁶
- Petitioners' proposed AFA rates, specifically applying 3.59 percent to the GOK's credit policies, are not consistent with the Department's practice as the aforementioned policies no longer exist, and thus, the Department cannot apply a rate for a program from which POSCO could not reasonably have benefitted.²⁸⁷
- POSCO argues that the Department should apply the rate calculated in the immediate investigation for the KEXIM Overseas Investment Credit Program, 0.02 percent, to each of the cross-owned affiliates with references to grants in their financial statements.²⁸⁸ In the alternative, the Department could apply the rate calculated for a similar grant program in *Washers from Korea*, 0.02 percent, to each affiliate with grants referenced in the financial statements.²⁸⁹ Both applications of AFA would result in a total AFA rate of 0.06 percent for the unreported cross-owned affiliates.
- Pursuant to section 776(c) of the Act, the Department could apply the rate calculated, 0.09 percent, for POSCO's cross-owned affiliate, DWI, to each of the three cross-owned affiliates that received government grants included in their financial statements.
- POSCO correctly did not submit questionnaire responses for the six companies mentioned by Petitioners.
 - POSCO Energy - The Department specifically excused POSCO Energy from submitting a response, and therefore, POSCO cannot be said to have failed to act to its best ability.²⁹⁰ The *Preamble*, as Petitioners cite, does not provide a basis for requiring a response from POSCO Energy, and merely shows that the Department could have requested a response. Regardless, the relationship between POSCO Energy and POSCO does not reflect that of the *Preamble*, as (1) POSCO Energy is not a financial subsidiary, (2) is a producer of electricity, and (3) the Department determined that POSCO did not benefit from the electricity programs alleged. Further, transactions between POSCO and POSCO Energy did not include input purchases from POSCO Energy.²⁹¹ In addition, attribution rules and the Department's practice do not require a response from a cross-owned company to which the mandatory respondent made sales.²⁹²

²⁸⁵ See, e.g., *NTN Bearing Corp. v. United States* 74 F.3d 1204, 1208 (Fed. Circ. 1995) (*NTN Bearing*).

²⁸⁶ See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination* 78 FR 50389 (August 19, 2013) (*Shrimp from Ecuador*), and accompanying IDM at 9-30.

²⁸⁷ See, e.g., *Steel Beams from Korea*, and accompanying IDM at 22.

²⁸⁸ See *Washers from Korea*, and accompanying IDM at 3.

²⁸⁹ *Id.*, at 22.

²⁹⁰ See section 776(b)(1) of the Act.

²⁹¹ See POSCO AQR at 2 and Exhibit 5.

²⁹² See 19 CFR 351.525(6)(iv).

- POSCO Chemtech - POSCO was not required to submit a questionnaire response for POSCO Chemtech as, pursuant to 19 CFR 351.525(6)(iv), the inputs provided were not primarily dedicated to the production of the downstream product.²⁹³ Consistent with *Washers from Korea*, POSCO Chemtech's sales of limestone are not primarily dedicated to the production of the downstream product.²⁹⁴
- POSCO Plantec - Pursuant to 19 CFR 351.525(b)(6)(iii), the Department only requires a response from a cross-owned affiliate that is a parent or holding company of the mandatory respondent. As such, POSCO Plantec was not required to respond because POSCO is a holding company of POSCO Plantec. Although Petitioners allege that POSCO is the leading source of POSCO Plantec's sales, there is no evidence that these sales to POSCO are inputs used to produce the downstream product. As POSCO Plantec provides engineering services, it did not sell inputs to POSCO used in the production of the downstream product. Consistent with *Softwood Lumber from Canada*, POSCO Plantec's sales do not meet the "primarily dedicated" standard.²⁹⁵ Further, the government grants received by POSCO Plantec are only attributable to POSCO if they were transferred to POSCO.²⁹⁶ However, there is no evidence on the record that POSCO Plantec transferred any grants it received to POSCO.²⁹⁷
- POSCO P&S - Raw materials sold to POSCO are not primarily dedicated to the production of the downstream product. No subsidy received by POSCO P&S would have been attributed to POSCO, as the raw material was not produced by POSCO P&S. Consistent with *Softwood Lumber from Canada*, POSCO P&S was not required to submit a response.²⁹⁸
- POSCO M-Tech - There is no majority ownership interest between POSCO M-Tech and POSCO.²⁹⁹ Consistent with *Softwood Lumber from Canada*, POSCO M-Tech was not required to submit a response.³⁰⁰
- POS-HiMetal - Consistent with *Softwood Lumber from Canada*, POS-HiMetal was not required to submit a response.³⁰¹

²⁹³ See *Refrigerators from Korea*, and accompanying IDM at 2-4.

²⁹⁴ See *Washers from Korea*, and accompanying IDM at 3; see also *Softwood Lumber from Canada*, and accompanying IDM at Comment 1.

²⁹⁵ *Id.*; see also POSCO Rebuttal Brief at 14.

²⁹⁶ See 19 CFR 351.25(b)(6)(v).

²⁹⁷ See POSCO Rebuttal Brief at 14.

²⁹⁸ See *Softwood Lumber from Canada*, and accompanying IDM at Comment 1.

²⁹⁹ See 19 CFR 351.525(b)(6)(vi).

³⁰⁰ See *Softwood Lumber from Canada*, and accompanying IDM at Comment 1.

³⁰¹ *Id.*

Department's Position:

As explained above in the section "Adverse Facts Available," we find that POSCO failed to provide questionnaire responses for certain input suppliers and its statement that no affiliated companies in Korea provided inputs to POSCO's production of subject merchandise was verified to be incorrect.³⁰²

POSCO contends that it was not required to report, or submit a questionnaire response for certain affiliated companies that provided inputs because the materials provided were not "primarily dedicated" to the production of the subject merchandise. The Department disagrees. As upheld in *Ansaldo Componenti* and discussed in the recent *OCTG from China Administrative Review*,³⁰³ it is the Department, and not interested parties, who determines whether a response is required. As such, the respondents cannot unilaterally decide to withhold information from the Department that may require further analysis. Otherwise, the Department would be unable to conduct an accurate and complete investigation, because interested parties would consistently be deciding to provide, or not provide, necessary information based on their own viewpoints and judgment. Indeed, the facts available provisions of Section 776(a) of the Act specifically contemplate the application of facts available when an interested party withholds requested information and allows the Department to take necessary action in response.

In the instant investigation, POSCO did not even initially claim that certain inputs were provided by affiliated companies, but that the inputs were not primarily dedicated. Instead, POSCO chose to respond in the negative, and stated, "no affiliated companies located in Korea provided inputs used in the production of the subject merchandise."³⁰⁴ If POSCO had explained that it was not providing information on certain companies because they were not primarily dedicated in the affiliated questionnaire response, the Department would have had the opportunity to follow-up on this claim.³⁰⁵ Instead, the deliberate action to withhold input provider information precluded the Department from analyzing input supplier information prior to discovering the information at verification.

POSCO failed to satisfy its statutory duty to reply accurately and completely to requests for necessary information regarding its affiliates, pursuant to section 776(a)(1) of the Act. Moreover, pursuant to section 776(a)(2) of the Act, the Department finds that POSCO withheld information that was requested, failed to provide such information by the deadlines for submission, and significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about certain affiliates, and the production of POSCO's subject merchandise. Because POSCO failed to provide responses for cross-owned input suppliers, as required under 19 CFR 351.525(b)(6), the Department was not provided the opportunity to carefully examine the full extent to which POSCO and all of its cross-owned

³⁰² See POSCO AQR at 4-5.

³⁰³ See *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 49475 (February 8, 2013), and accompanying IDM at Comment 5; and *Ansaldo Componenti*, 628 F. Supp. 198 at 2015.

³⁰⁴ See "Use of Facts Otherwise Available and Adverse Inferences" section above, and POSCO AQR at 4-5.

³⁰⁵ See POSCO AQR at 4-5.

entities, including the aforementioned companies, benefitted from subsidies that are attributed to POSCO within the meaning of 19 CFR 351.525(b)(6). Without the complete, accurate and reliable data upon which to attribute the unreported companies' subsidies to POSCO, the Department cannot accurately calculate POSCO's CVD subsidy rate for this final determination. Consequently, we determine that because POSCO withheld necessary information, failed to provide such information by the deadlines for submission, and significantly impeded the investigation, we find that the use of facts available is warranted in accordance with sections 776(a)(1) and (2) of the Act. Further, we find that POSCO did not act to the best of its ability when reporting affiliated companies, and, as such, the application of AFA is warranted, pursuant to section 776(b) of the Act and as discussed above in "Adverse Facts Available."

As discussed in the verification report and raised by both parties in case briefs and rebuttals, we determine that there are four POSCO affiliated input providers: POSCO Chemtech, POSCO P&S, POSCO M-Tech, and POS-HiMetal. We do not find that POSCO Plantec supplied inputs to POSCO during the POI, nor did its operational activities meet any of the attribution criteria set forth under 19 CFR 351.525(b)(6).³⁰⁶ Each of the four aforementioned affiliated companies is listed as providing inputs in the "Inputs for Cold-Rolled" exhibit submitted by POSCO at verification.³⁰⁷ In POSCO's AQR, it lists that three of the four companies are cross-owned within the meaning of 19 CFR 351.525(6)(vi) as POSCO owns at least 60 percent of each company.

With regard to the fourth company, POSCO M-Tech, we find that the *Preamble* to our regulations further clarifies our cross-ownership standards. According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits)...Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between the two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.³⁰⁸

Thus, our regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. In *Fabrique*, the CIT upheld our authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³⁰⁹

³⁰⁶ See POSCO VR at 11.

³⁰⁷ *Id.*, at 73.

³⁰⁸ See *Preamble*, 63 FR at 65401.

³⁰⁹ See *Fabrique*, 166 F. Supp. 2d at 600-604.

At verification, we discovered that POSCO exercises significant control over POSCO M-Tech, in addition to maintaining a 48.85 percent ownership share in POSCO M-Tech.³¹⁰ As such, we determine that POSCO M-Tech is cross-owned and, therefore, POSCO was required to submit a response.

As explained in the “Selection of AFA” section above, it is the Department’s practice to follow its hierarchy when determining the appropriate AFA rate. Petitioners propose multiple rates that the Department should assign as AFA. The Department notes that use of company-specific rates is not consistent with its practice,³¹¹ and, as such, use of the 3.59 percent rate, calculated for Kangwan in *Structural Beams from Korea*, and use of the 1.83 percent rate calculated in *DRAMS from Korea* is not warranted in this case. Under our AFA methodology, we do not use calculated rates for programs that cannot be used by our respondent companies.³¹² The 3.59 percent rate cited by Petitioners is based upon loans received and restructured under a company specific debt restructuring program. Because this rate is based on Kangwon’s debt restructuring, because we are not investigating any debt restructuring programs applicable to our respondent, and because this is a program that cannot be used by our respondent, we are not applying this rate. For the same reason we are not using the rate of 1.83 percent, because that is a rate calculated for a program that is specific to one company, Hynix, which is related to its debt restructuring. See “Adverse Facts Available” section above for further AFA rate selection information.

We disagree with POSCO’s reliance on *Washers from Korea*, *Refrigerators from Korea*, and *OCTG from Turkey*. As discussed by Petitioners, in *Washers from Korea* and *Refrigerators from Korea*,³¹³ the respondents previously reported the cross-owned input suppliers in the Department’s initial questionnaire response. In each of the aforementioned instances, the respondents reported certain companies that the Department could have viewed as meeting the threshold for providing a response. Further, in *OCTG from Turkey*, the information accepted at verification did not contradict questionnaire responses submitted by the mandatory respondent.³¹⁴ In this case, the Department was not able to confirm the accuracy of POSCO’s previous response with regard to its reporting of cross-owned input suppliers.³¹⁵

In addition, the Department disagrees with POSCO’s claims that it accurately identified its affiliation with each of its companies in its responses because the inputs provided are not primarily dedicated to the production of the downstream product. As previously discussed, the Department was impeded from determining whether certain inputs provided by cross-owned affiliates were primarily dedicated prior to verification. It was only near the conclusion of the final day of verification that POSCO provided information that would have allowed the Department to investigate further regarding the inputs provided by the companies.³¹⁶ The team was unable to verify this information, a document that listed inputs used in the production of

³¹⁰ See POSCO Final Calculation Memorandum at 4.

³¹¹ See “Adverse Facts Available” section above.

³¹² See, e.g., Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China at 4 (April 4, 2012).

³¹³ See Petitioners Rebuttal Brief at 6-7.

³¹⁴ See *OCTG from Turkey*, and accompanying IDM at 55.

³¹⁵ See POSCO VR at 5-17.

³¹⁶ *Id.*

cold-rolled and providers of the inputs,³¹⁷ due to the untimely nature and large amounts of data required to fully establish the credibility of the submission.

The determination of whether an input product is primarily dedicated to the production of a downstream product is a decision that can only be made by the Department. Here, POSCO substituted its judgment for the judgment of the Department and willfully precluded the Department from analyzing, and determining, whether POSCO's cross-owned input suppliers met the attribution criteria under 19 CFR 351.525(b)(6)(iv) by stating that it had not acquired any inputs from cross-owned companies.

Further, POSCO has argued in its case briefs that the inputs produced by the aforementioned suppliers were not primarily dedicated to subject merchandise, because only a small amount of the inputs were used in the production of the subject merchandise.

We disagree. In the recent *CORE from India* final determination,³¹⁸ the Department found that data submitted at verification regarding an unreported input supplier could not be considered complete and verified, as it did not learn about the consumption of the input until well into verification. Further, the Department found that its regulations do not contemplate the amount of the input provided by a supplier as a gauge for whether the company should submit a response.³¹⁹ Given the absence of information in that case, the Department found no basis on which to conclude that the inputs from the unreported company provided to the mandatory respondent constitute insignificant amounts.³²⁰ In the immediate investigation, we discovered the input suppliers at verification and were given data on the last day of verification to demonstrate that input amounts supplied to POSCO were "negligible." However, due to untimely presentation of this data and the large amount of analysis required to verify the data, we did not verify the validity of the input amounts as presented by POSCO at verification and as argued in its case brief. More importantly, the information on the cross-owned input suppliers should have been provided in POSCO's questionnaire response. The purpose of verification is to check the accuracy of factual information already submitted on the record; it is not an opportunity to provide new factual information as the deadlines to submit factual information are explicitly set forth under 19 CFR 351.301.

Further, we disagree with POSCO that we cannot attribute subsidies to its input suppliers pursuant to 19 CFR 351.525(b)(6)(iv) because the inputs provided are not primarily dedicated to the production of cold-rolled steel. The question is whether the input could have been used to produce the downstream products exported to the United States, not whether the inputs were actually used for that purpose during the POI. Specifically, the Department's standard, pursuant to 19 CFR 351.525(b)(6)(iv) is not whether an input is primarily dedicated to production of the subject merchandise, but to the downstream product (which could be subject merchandise, or

³¹⁷ *Id.*, at 73-75.

³¹⁸ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) (*CORE from India*), and accompanying IDM at Comment 11.

³¹⁹ See 19 CFR 351.525(b)(6).

³²⁰ See *CORE from India*, and accompanying IDM at Comment 11.

also an intermediate input to subject merchandise).³²¹ Therefore, it is our practice to include in our calculations subsidies provided to cross-owned companies on inputs that could be used in the production of the downstream product.³²² Thus, prior to verification, the Department requested full and complete information in the original and supplemental questionnaires from POSCO relating to all production facilities that provide inputs, in whole or in part, to the production of the downstream product, and the Department scheduled the verification based on the information provided by POSCO. The Department finds that POSCO's belated assertion that the inputs provided by four cross-owned input suppliers should not be considered as primarily dedicated to downstream product is unsubstantiated, unreliable, and does not conform to our regulatory standard, expressed above. Additionally, POSCO's argument that the inputs provided by the companies are negligible is irrelevant. Ultimately, the materials could have been used in the production of subject merchandise, as the raw materials are listed in a table that POSCO provided at verification, demonstrating that each raw material is used in the production of cold-rolled steel.³²³

Moreover, in *Coated Paper from the PRC*, the Department faced a similar issue of whether to trace subsidized inputs to merchandise sold to the United States and merchandise sold to other markets. The Department stated that it had "implemented tying regulations to attribute subsidies rather than tracing subsidies through the company. By analogy, we will not trace subsidized inputs through a company's production process."³²⁴ Additionally, as the Department noted in *Coated Paper from the PRC*, the Department also did not trace subsidized inputs in *IPA from Israel*, in which the Department attributed input subsidies to all downstream products that the input could have been used to produce, regardless of whether the input was actually used to produce subject merchandise.³²⁵ Furthermore, as the Department also noted in *Coated Paper from the PRC*, the CIT in *Fabrique* upheld the Department's position that it is not appropriate to trace the benefit of a particular subsidy to specific items actually imported into the United States.³²⁶

We disagree with POSCO that it acted to the best of its abilities to comply with the Department's request for information on whether the inputs were primarily dedicated. The Federal Circuit in *Nippon Steel* provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.³²⁷ The Federal Circuit acknowledged, however, that while there is no willfulness

³²¹ See *Supercalendered Paper From Canada*, and accompanying IDM at Comment 19.

³²² See, e.g., *Light-Walled Rectangular Pipe and Tube From The People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 16428 (June 24, 2008), and accompanying IDM at Comment 8.

³²³ See POSCO VE-3 at 73-75.

³²⁴ See *Coated Paper from the PRC*, and accompanying IDM at Comment 18.

³²⁵ *Id.*, citing *Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626 (March 20, 1998) (*IPA from Israel*).

³²⁶ *Id.*, citing *Fabrique*, 166 F. Supp. 2d at 603. The CIT in *Fabrique* also cited the Federal Circuit's decision that "{i}t would be burdensome and unproductive for the Department of Commerce to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise." See *Saarstahl A.G. v. United States* 78 F.3d 1539, 1543 (Fed. Cir. 1996).

³²⁷ See *Nippon Steel*, 337 F.3d at 1382.

requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.³²⁸ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.³²⁹ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.³³⁰ Accordingly, we find that POSCO did not act to the best of its abilities in responding to the Department’s questionnaire about the inputs provided. Because POSCO failed to report the necessary information and only after discovery at verification did it report on the last day that some of the inputs provided by the aforementioned affiliated companies were, in fact, used in the production of the subject merchandise,³³¹ the Department concludes that inputs produced by POSCO Chemtech, POSCO P&S, POSCO M-Tech, and POS-HiMetal are primarily dedicated to the production of the downstream product, within the meaning of 19 CFR 351.525(b)(6)(iv).

Lastly, in response to Petitioner’s request that the Department should have required a questionnaire response from POSCO Energy, the Department continues to disagree.³³² Based on POSCO’s explanation that POSCO Energy does not meet the criteria necessary for submitting a response pursuant to 19 CFR 351.525(b)(6), we do not find that POSCO Energy was required to submit a response. Further, the team fully verified the information submitted in POSCO’s PQR regarding transactions between POSCO Energy and POSCO,³³³ and determined that the transactions do not fall under any of the attribution rules as set forth under 19 CFR 351.525(b)(6).

Comment 6: Whether to Apply AFA to POSCO Global R&D Center

Petitioners argue:

- The Department discovered that a certain POSCO facility is listed on a government website as being located in an FEZ, although POSCO reported in its initial questionnaire response that it had no facilities located in an FEZ.³³⁴
- POSCO’s local counsel produced a map with “drawn” boundaries to demonstrate the FEZ, and the Department noted that the map “did not conform to the map on the GOK FEZ website.”³³⁵

³²⁸ *Id.* at 1380.

³²⁹ *Id.* at 1382.

³³⁰ *Id.*

³³¹ *See* POSCO VR at 5-17.

³³² *See* PDM at 3.

³³³ *See* POSCO VR at 20.

³³⁴ *See* POSCO PQR at 52 and POSCO VR at 38.

³³⁵ *See* POSCO VR at 38.

- The Department declined to accept the map and offered to go to the facility, but POSCO stated that “verification was concluded.”³³⁶
- Petitioners contend that as there are multiple programs related to FEZs under investigation, the Department should assign a rate of 1.83 percent to tax reduction and exemption programs, and 3.59 percent for exemptions and reductions of lease fees and grants. This would assign POSCO a total AFA rate of 18.09 percent.³³⁷

POSCO argues:

- The FEZ program was verified at POSCO and no issues had arisen.³³⁸
- The POSCO official present at the DWI verification was there only to observe and she did her best to respond to the Department’s “untimely” and “unexpected” questions regarding the facility.
- POSCO states that it strongly objects to the manner in which the verification was handled, and there was no time for POSCO to provide additional information in response to the surprise inquiries about the R&D Center.
- Even if the Department assumes that this R&D Center is part of POSCO, the record evidence demonstrates that POSCO did not receive any benefits for being located in an FEZ.³³⁹
- The GOK reported in its initial response that POSCO did not receive benefits under this FEZ program during the POI,³⁴⁰ and the Department verified the GOK’s response.³⁴¹
- The benefits provided in FEZs are designed to attract foreign or foreign invested companies, and Korean companies generally would not receive benefits.³⁴² Therefore, POSCO would not be eligible to receive benefits under this program.
- Any benefits POSCO would have received from the Incheon FEZ would be tied to the R&D activities at the Global R&D Center.

³³⁶ *Id.*

³³⁷ See *Dynamic Random Access Memory Semiconductors From the Republic of Korea*, 76 FR 2336 (January 13, 2011) (*DRAMS from Korea*) and accompanying IDM at section I; see also *Steel Beams from Korea*, and accompanying IDM at Section I.A.2.

³³⁸ See POSCO VR at 38.

³³⁹ See POSCO Case Brief at 25.

³⁴⁰ See GOK PQR at 108.

³⁴¹ See POSCO Case Brief at 25.

³⁴² *Id.*, at 26.

- POSCO does not produce cold-rolled steel or have any other production at the Song-do facility. Thus, none of the benefits received would be attributed to the sale or production of the subject merchandise.
- Benefits received from this FEZ would be tied to R&D activities at the Song-do facility, and, pursuant to 19 CFR 351.525(b)(5), the benefits would not be countervailable in this investigation.³⁴³
- Citing *NTN Bearing* and *Koyo Seiko*, POSCO states that any application of AFA to this program is an abuse of discretion and inconsistent with the Department's past practice.³⁴⁴
- Consistent with CIT decisions and the Department's past practice, the Department cannot rely on information as AFA that is directly contradicted by evidence on the record.³⁴⁵

Petitioners rebut:

- The Department did not verify the GOK's response regarding FEZ benefits; therefore, the Department cannot use the GOK's response to remedy POSCO's lack of cooperation.³⁴⁶
- While the Department did not verify the GOK's information regarding FEZs, the Department verified non-use of certain FEZ-related subsidies, and, as such, POSCO's reference to *OCTG from Turkey* is inaccurate.³⁴⁷
- The Department did not accept the GOK's statement regarding benefits in FEZs as accurate, and instead, verified the information at the respondent locations.
- Citing *Nippon Steel*, the Department should apply AFA to the GOK with regard to FEZ benefits as the GOK did not provide accurate responses in its PQR.³⁴⁸
- As a foreign-invested company, POSCO could have benefitted from an FEZ, and POSCO Manufacturing is listed as being located in an FEZ as reported in the GOK PQR.
- Article 16 of the Industrial Sites and Development Act demonstrates that POSCO could have been eligible for benefits pursuant to FEZ subsidy programs.³⁴⁹

³⁴³ See, e.g., *NOES from Korea* and accompanying IDM at 18-19, and *Carbon Steel from Korea* and accompanying IDM at 24-25.

³⁴⁴ See *NTN Bearing*, 74 F.3d 1204 at 1208 and *Koyo Seiko Co. v. United States*, 36 F.3d at 1565-1573 (Fed. Cir. 1994) (*Koyo Seiko*); see also *Freshwater Crawfish Tail Meat from the People's Republic of China*; *Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003) and accompanying IDM at Comment 6.

³⁴⁵ See, e.g., *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. 2000) (*F.Lii de Cecco*) and *Dongguan Sunrise Furniture Co. v. United States*, 931 F. Supp. 2d 1346 at 1353-54 (CIT 2013); see also *Line Pipe from Korea*, and accompanying IDM at Comment 2.

³⁴⁶ See section 782(i) of the Act.

³⁴⁷ See POSCO Case Brief at 25-26.

³⁴⁸ See GOK PQR at Exhibit FEZ-1, page. 13 and *Nippon Steel* at 1382-83.

- No record evidence demonstrates the facility's operations; therefore, as AFA, the Department must infer that it provides research and development services related to the production of cold-rolled steel and countervail benefits under the FEZ program.
- POSCO's citations from *F. Lli De Cecco v. United States* are moot, as the *American Trade and Enforcement Effectiveness Act of 2015* now allows the Department to select an AFA rate that further promotes company cooperativeness.³⁵⁰

POSCO rebuts:

- The GOK reported that POSCO did not receive any benefits under the FEZ program during the POI,³⁵¹ and, consistent with the Department's practice, the Department should accept the accuracy of the GOK's statement³⁵² and confirm that no benefit was received by POSCO for this program. Therefore, there is no basis to apply AFA to this program.
- Not relying on the GOK's statement (information on the record) would be inconsistent with section 776(c) of the Act, the SAA, and the Department's practice.³⁵³
- Petitioners' proposed AFA rates are overly punitive, and the Department should find that there is no basis to apply AFA as the programs from which POSCO would have received benefits were verified.³⁵⁴
- If the Department chooses not to rely on record information, it should apply tax and loan program rates calculated in the *Preliminary Determination*. As such, the Department should apply a rate of 0.05 percent (calculated for RSTA Article 26), 0.01 percent (calculated for RSTA Article 78(4)), 0.02 percent (calculated for the KEXIM Overseas Investment Credit Program), and 0.01 percent (calculated for RSTA Article 78(4)).³⁵⁵

Department's Position:

POSCO reported that it "has no facilities located in an FEZ" in its initial questionnaire response.³⁵⁶ At verification, however, we discovered that a POSCO facility, POSCO Global

³⁴⁹ *Id.*

³⁵⁰ See section 776(d) of the Act.

³⁵¹ See GOK PQR at 108.

³⁵² See, e.g., *OCTG from Turkey*, and accompanying IDM at Comment 9; *Line Pipe from Korea*, and accompanying IDM at 34.

³⁵³ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 870 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994) at 870; and *Crawfish from China*, *Administrative Review*, and accompanying IDM at Comment 6.

³⁵⁴ See POSCO VR at 39-40; see, e.g., *Line Pipe from Korea*, and accompanying IDM at Comment 2.

³⁵⁵ See Memorandum to the File from Emily Maloof, Re: Preliminary Determination Calculation Memorandum for POSCO and Daewoo International Corporation (DWI), dated December 15, 2015 (POSCO Preliminary Calculation Memorandum) at 4-7.

³⁵⁶ See POSCO PQR at 52.

R&D Center, was listed on the official Incheon FEZ government website as being located in the Incheon FEZ. We then asked POSCO officials for any information regarding the purpose and location of the facility, to which they stated that they would attempt to provide further details as they were currently unaware of the facility. Approximately two hours later, POSCO officials presented a map printed from a Korean website that had a hand-drawn border surrounding what they claimed to be the FEZ. The POSCO officials stated that the facility was located outside of the hand-drawn FEZ. To compare, we examined the FEZ map on the official Korean government website and found that the hand-drawn border did not conform to the map on the official government website. As such, we declined to accept the map presented by POSCO officials. We then offered repeatedly to visit the facility as depicted on the Korean government website in order to clarify its location and confirm non-use of the FEZ program, but POSCO officials declined.

Because we are unable to confirm POSCO's statement that it has no facilities located in an FEZ, and, therefore, did not receive benefits under this program, we are relying on adverse facts available to find that this program was used by POSCO. The AFA rate applied to this program is discussed in the "Adverse Facts Available" section, above.

For the reasons set forth in the Department's Position to Comment 5, above, we disagree with Petitioners that we should apply a rates of 1.83 percent and 3.59 percent to certain benefits provided under the program.

We disagree with POSCO's arguments regarding the verification of the FEZ program, and the validity of the information offered by POSCO to suggest that POSCO did not receive benefits under this program. POSCO argues that the FEZ program was verified at POSCO's location in Seoul and that the Department's questions regarding program-use while verifying DWI were untimely. We note however, that we indicated in the verification outline that we intended to verify program non-use. *See* Comment 10 for further discussion. While we agree with POSCO that the four facilities as reported in its PQR were verified as not being located in an FEZ during the POI,³⁵⁷ in verifying the response provided by DWI, we discovered that an additional facility for POSCO was not reported. As such, we followed-up on this discovery to confirm POSCO's statement that it had no facilities located in an FEZ during the POI. Further, the entirety of POSCO's verification consisted of only verifying responses submitted on behalf of itself and DWI. We were unable to verify any information with respect to subsidy use by POSCO Global R&D Center because POSCO provided no information in its questionnaire responses with respect to this entity. Therefore, POSCO's argument that the line of questioning was untimely lacks credibility, and POSCO's statement that we were in fact able to verify the response as it relates to POSCO and POSCO Global R&D Center is incorrect.

With regard to POSCO's claim that record evidence demonstrates that POSCO did not receive any benefits due to its location in an FEZ, we disagree. As discussed in Comment 8 below, the response submitted by the GOK states that "during the investigation period, none of the respondents received tax reductions or exemptions, lease-fee reductions or exemptions, or grants

³⁵⁷ *See* POSCO PQR at 5.

or financial support due to their location in an FEZ.”³⁵⁸ However, the GOK’s response does not clarify if the “investigation period” it refers to is the POI or the entire 15-year AUL. Therefore, we are unable to use the GOK’s response to fill this “gap” in the record. As such, we cannot determine that POSCO did not receive any benefits from this program. Due to this discrepancy in the GOK’s response, we do not agree with POSCO’s claim that there is not contradicting information on the record. Further, as discussed in Comment 8 below, POSCO’s cite to *F. Lli De Cecco* is inapplicable. Amendments to the Act arising from the TPEA are applicable to determinations made on or after August 6, 2015, and specifically state that the Department may assign the highest rate calculated for the same or similar program.³⁵⁹ As such, we are relying on our normal hierarchy for assigning AFA to POSCO’s use of this program.

Further, we disagree with POSCO that it could not have benefitted from this program because of the program’s designation to attract foreign investment. The information on the record demonstrates that certain shareholders of POSCO do in fact appear to be foreign. As such, POSCO could have been eligible to receive funding due to POSCO Global R&D Center’s location in an FEZ.

POSCO also argues that it does not produce cold-rolled or have any other production at the POSCO Global R&D Center facility, and that any benefits received would have been in relation to R&D activities. Therefore, it claims, none of the benefits received would be related to the sale or production of the subject merchandise, and attributable to POSCO.³⁶⁰ However, the purpose and operations of POSCO Global R&D Center were unverified despite repeated attempts to clarify such information. As such, we cannot solely rely on POSCO’s claim that the facility is not related to production of the subject merchandise, and is instead solely related to R&D activities, to determine that POSCO would not have received benefits under the FEZ program.

Comment 7: Whether to Apply AFA to Certain Loans Submitted at Verification

Petitioners argue:

- Petitioners state that at verification, POSCO tried to submit a list that contained a significant volume of new information that was omitted from POSCO’s questionnaire responses, as a minor correction.
- Petitioners argue that the Department should use the loan rate of 3.59 percent and apply it to each unreported loan for a total AFA rate of 78.98 percent.³⁶¹

³⁵⁸ See GOK PQR at 108.

³⁵⁹ See TPEA.

³⁶⁰ See POSCO PQR at 5.

³⁶¹ See Petitioners Case Brief at 67.

POSCO argues:

- DWI stated when it presented the minor corrections at verification, that it was “plain” that it included the loan disbursements related to the two separate overseas resource development projects.³⁶²
- Not only did the Department reject the loans a month after they had been accepted at verification, but also only did so after Petitioners filed a rejection request based on Petitioners’ interpretation of the loan chart.
- The Department did not raise any issues regarding the disbursements at verification.³⁶³
- POSCO requests that the Department use its discretion and reconsider its decision to reject the loans and use them as a basis for calculating any benefit.³⁶⁴
- The corrections presented by DWI at verification are minor in accordance with the Department’s framework and past practice, as they correct information on the record, do not undermine the validity of the information previously reported, and do not constitute a major change to the calculations.³⁶⁵
- The Department can use the benefits it calculated in the *Preliminary Determination* for the KORES loans that DWI reported in its initial response as a surrogate for determining any subsidy DWI received from the rejected loans. Accordingly, the Department would find that any benefit from these loans would be *de minimis*.³⁶⁶

Petitioners rebut:

- POSCO did not correct information already on the record by presenting the previously unreported loans.
- Due to the misunderstanding that DWI stated in presenting the minor corrections, the accuracy of DWI’s questionnaire response is brought into question.
- As the loan amounts are no longer on the record, the Department can no longer analyze whether the loans would have a meaningful impact on the benefit calculations.

³⁶² See POSCO Case Brief at 32.

³⁶³ *Id.*, at 33.

³⁶⁴ See, e.g., *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015), and accompanying IDM at Issue 8.

³⁶⁵ See POSCO Case Brief at 35-37; see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726 (January 13, 1997), and accompanying IDM at Comment 2.

³⁶⁶ See POSCO Case Brief at 37.

- The Department’s practice is to reject attempts to provide new factual information at verification.³⁶⁷

POSCO rebuts:

- The Department should reject Petitioners’ request to apply AFA to DWI’s loans and use the reported values in the calculation for the final determination. The Department verified the reported loan program, calculated a benefit in the *Preliminary Determination*, and accepted the unreported loans at verification.³⁶⁸
- If the Department chooses to apply AFA, the Department should apply the calculated rate of the KORES loan program from the Preliminary Determination, 0.01 percent, to each of the unreported loans, for a total of 0.22 percent.

Department’s Position:

At verification, DWI presented a list of loans that it characterized as a minor correction, claiming that it received “two loans,” under the KORES and KNOC lending programs. Upon further examination, we determined that the “two loans” initially presented were not, in fact, only two as reported, but rather significant additions to the reported amount of funding received under the program as reported in DWI’s questionnaire responses. As stated in the verification outline, we only accept information at verification as minor corrections that “corroborates, supports, and clarifies” factual information already on the record.³⁶⁹ Due to the magnitude of change in the reported lending under the specified program, we determined that the submission did not constitute a minor correction, and instead, consisted of new factual information. As such, we rejected the submission from the record.³⁷⁰ Therefore, because the extensive nature of the corrections presented at verification by DWI to its loans received under this program, we were not able to fully verify the use of this program.

Thus, we find that DWI withheld necessary information requested by the Department regarding its use of this program and that as a result, necessary information is missing on the record. In accordance with sections 776(a)(1) and 776(a)(2) of the Act, we determine that the use of FA is warranted in determining the countervailability of these programs for the companies listed above. Moreover, because DWI failed to provide necessary information regarding program use, despite the Department’s requests that it do so, we find that DWI failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

³⁶⁷ See, e.g., *PET Resin from China*, and accompanying IDM at 20; *Dry Containers from China*, and accompanying IDM at 45.

³⁶⁸ See PDM at 24.

³⁶⁹ See Memorandum to the File from Emily Maloof, “Request to Take Action on Certain Barcodes,” dated April 21, 2016.

³⁷⁰ *Id.*

With regard to POSCO's arguments that the loan program was verified and that the loans presented were "minor corrections," we disagree. As stated in POSCO's verification report, we verified the loans that had been previously reported in POSCO's PQR and 2SQR prior to verification.³⁷¹ In this process, we reconciled the previously reported loans to the trial balance summary in order to ensure the completeness of DWI's response as it relates to the information in its questionnaire response. At no point during verification did we verify the loans that DWI presented as minor corrections. Therefore, POSCO's claim that we verified the reported loan program in its entirety is simply incorrect.³⁷² We disagree further that the loans submitted by DWI constitute a minor correction. These "disbursements," as POSCO characterizes them, represented a significant change in the magnitude of the funding provided under the program as reported in the company's questionnaire responses. Consistent with past practice, the Department maintains the discretion to reject certain submissions if they are not minor in nature.³⁷³ Therefore, the Department properly rejected the newly presented loan information.

For the reasons set forth in the Department's Position to Comment 5, above, we disagree with Petitioners that an AFA rate of 3.59 percent should be used. The AFA rate applied to this program is discussed in the "Adverse Facts Available" section, above. We disagree with Petitioners that a rate should be assigned to each of the loans that DWI presented. It is the Department's practice to assign a single program rate when applying AFA with regard to loan programs used by respondents.³⁷⁴ However, we already applied an adverse facts available inference to POSCO for both of these programs due to its failure to report certain cross-owned input suppliers. See Comment 5 for further discussion.

Comment 8: Whether to Apply AFA to Hyundai Steel for Use of Certain Foreign Economic Zones (FEZs)

Petitioners argue:

- At verification, Hyundai Steel attempted to report the fact that one of its facilities was located in the Gwangyang Bay Area FEZ as a minor correction,³⁷⁵ whereas initially, Hyundai Steel reported that "it was not located" in an FEZ.³⁷⁶
- Petitioners argue that subsidies under the RSTLA 78 program regarding exemptions and reductions of lease fees, grants, and acquisition and property tax exemptions have not been verified.

³⁷¹ See POSCO VR at 25-26.

³⁷² *Id.*, at 26.

³⁷³ See, e.g., *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) (*PET Resin from the PRC*), and accompanying IDM at Comment 5; and *53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 50 FR 21209 (April 17, 2015) (*Dry Containers from the PRC*), and accompanying IDM at Comment 3.

³⁷⁴ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016), and accompanying IDM at 18-19.

³⁷⁵ See Hyundai Steel VR at 2.

³⁷⁶ *Id.*

- Accordingly, the Department should assign a rate of 3.59 percent for exemptions and reductions of lease fees and grants,³⁷⁷ and the Department should assign a rate of 1.83 percent for acquisition and property tax benefits. Petitioners argue that the total AFA rate assigned to Hyundai Steel should be 9.01 percent.

Hyundai Steel argues:

- The Department should rely on the evidence on the record and determine that Hyundai Steel reported all benefits it received under investigation. Hyundai Steel's error in originally reporting that it was not located in an FEZ has no impact on the investigation because the GOK has filled any gap in the record by providing complete information regarding the FEZ program.
- Both Hyundai Steel and the GOK reported that the only benefits that Hyundai Steel received pursuant to its location were exemptions of local and property taxes for facilities located in certain Industrial Complexes.³⁷⁸
- The GOK also reported that none of the respondents received any benefits for being located in an FEZ.³⁷⁹
- Record evidence also indicates that benefits provided in FEZs are established for and only available to foreign companies or foreign-invested companies and the foreigners that relocate to Korea to build and support these businesses.³⁸⁰
- The Department has previously clarified that, for unverified issues, it accepts the accuracy of the information submitted by that party.³⁸¹
- To the extent that the Department finds a gap in the record with regard to the FEZ program, Hyundai Steel should not be penalized as it has cooperated fully and acted to the best of its ability.
- Given the record evidence from the GOK, the Department has an obligation to determine subsidy margins as accurately as possible.³⁸²
- Not relying on record information in favor of AFA would be inconsistent with 19 U.S.C. 1677e(c), which requires the department to corroborate information from independent

³⁷⁷ See *Steel Beams from Korea*, and accompanying IDM at Section I.A.2.

³⁷⁸ See HS October QR at Exhibit N-11 and N-12. See also GOK October QR at 108.

³⁷⁹ *Id.*

³⁸⁰ See GOK's October QR at Exhibit FEZ-1.

³⁸¹ See *OCTG from Turkey*, and accompanying IDM at Comment 10.

³⁸² See, e.g., *NTN Bearing*, 74 F.3d at 1204 and 1208; *Koyo Seiko*, 36 F.3d 1565 at 1573 (Fed. Cir. 1994); *Allied Tube v. United States*, 127 F. Supp. 2d at 207, 218-219 (CIT 2000).

sources. The corroboration provision was not altered with the passage of the *American Trade and Enforcement Effectiveness Act* of 2015.

- Corroboration of information used as facts available is required by law.³⁸³ The Department has determined that this means it will “examine the reliability and relevance of information to be used” and “will consider information reasonably available to it to determine whether a margin continues to have relevance.”³⁸⁴
- The courts have established that a rate is punitive if it is not based on facts and has been discredited by the agency’s own investigation.³⁸⁵
- The courts have established that the Department is obligated to determine AFA rates that are supported by substantial evidence.³⁸⁶
- In prior cases, such as *Line Pipe from Korea*, the Department determined AFA was not warranted when a respondent failed to report certain local tax exemptions because the information required to calculate the benefit for these programs was placed on the record by the GOK.

Hyundai Steel rebuts:

- Hyundai Steel asserts that the verification supports its claim of no additional subsidies received pursuant to its zone location.
 - The maps show that Hyundai Steel’s Sunchon plant is in the Yulchon Industrial Complex, which is in the FEZ.³⁸⁷ This demonstrates that Hyundai Steel reported all benefits received pursuant to its location.
 - The Department verified Hyundai Steel’s tax return and reported property tax exemptions.
 - The Department verified non-use of additional subsidy programs.
- If the Department determines to apply AFA, it should reject the punitive rates suggested by Petitioners and should instead rely on rates calculated within this investigation.

³⁸³ See SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 870.

³⁸⁴ See *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying IDM at Comment 6.

³⁸⁵ See *F. Lli de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032-33 (Fed. Cir. 2000) (*F. Lli De Cecco*).

³⁸⁶ See *Dongguan Sunrise Furniture Co. v. United States*, 931 F. Supp. 2d 1346, 1353-54 (CIT 2013) and *Gallant Ocean (Thai) Co. v. United States*, 602 F.3d 1319, 1325 (Fed. Cir. 2010).

³⁸⁷ See Hyundai Steel VR at Exhibit 1.

Petitioners' rebut:

- Petitioners also note that Hyundai Steel's claim that only foreign enterprises could receive benefits under the FEZ program is undermined by the fact that it did receive benefits pursuant to its location in a special economic area.

The GOK rebuts:

- The Department should not penalize mandatory respondents for minor errors or omissions in their responses; showing zero tolerance for unintentional errors is unrealistic.
- The respondents went to extraordinary efforts to cooperate in the immediate investigation, and the Department should thus not apply AFA to certain unreported subsidies.
- Pursuant to 19 CFR 351.311(c), application of AFA for certain subsidies discovered at verification is not permissible.

Department's Position:

For this final determination, there is a gap in the record concerning non-use of the subsidies in FEZs program for Hyundai Steel, and we find that Hyundai Steel failed to act to the best of its ability in providing information that was requested of it. Therefore, we are relying on adverse facts available to find that this program was used by Hyundai Steel.

Hyundai Steel reported that it was not located in an FEZ in its initial questionnaire response. This affirmative claim was found to be incorrect. During our verification of Hyundai Steel, company officials stated that Hyundai Steel's Suncheon factory is located in an FEZ. This information was presented as a minor correction. At verification, the Department accepted evidence of the Suncheon factory's location in an FEZ (*i.e.*, a map); however, we did not accept Hyundai Steel's narrative claim that it received no benefits pursuant to its FEZ location.³⁸⁸

The subsidy programs alleged to exist for firms in an FEZ include exemptions and reductions of lease fees, grants and financial support, and acquisition and property tax exemptions. Because Hyundai Steel claimed it was not located in an FEZ in its questionnaire responses, we did not further examine the issue of whether it received exemptions or reduction of lease fees, grants and financial support pursuant to its location in an FEZ. Moreover, these kinds of programs may not necessarily be easily discerned during the course of verification because certain of these types of assistance, such as reductions of lease fees and financial assistance, are not explicitly identified in respondent's financial statements or income tax returns. Therefore, we disagree with Hyundai Steel's claim that non-use of the FEZ programs was verified. Moreover, the purpose of verification is to check the accuracy of the information on the record (*i.e.* the company's questionnaire response); it is not an opportunity to provide new factual information

³⁸⁸ See Hyundai Steel VR at 2.

In its questionnaire response, the GOK stated that, “During the investigation period, none of the respondents received tax reductions or exemptions, lease-fee reductions or exemptions, or grants or financial support due to their location in an FEZ.”³⁸⁹ However, the GOK uses the term “investigation period” throughout its initial questionnaire response to refer to the period of investigation. Therefore, we do not have an affirmative claim of non-use of this program for the remainder of the 15-year AUL period from the GOK.

We further disagree that we have record evidence that these subsidy programs would not have been available to Hyundai Steel. In the initial questionnaire, we asked the GOK to provide complete information, including eligibility, regarding subsidy programs in the FEZ. The GOK provided very little support or description about the subsidies available to producers located in an FEZ. The FEZ promotional brochure that was submitted by the GOK in its initial questionnaire response is largely illegible, because the character font consists of symbols, and it provides little to no information about the specific types of assistance that are available, nor does it provide information about program eligibility criteria.³⁹⁰ Similarly, neither of the other two submissions provided by the GOK, which consist of a translation of the law pertaining to property and acquisition tax exemptions and one article of the Special Act on Designation and Management of Free Economic Zones, provides information about program assistance or eligibility criteria.³⁹¹ Because both mandatory respondents to this proceeding made affirmative claims that they were not located in an FEZ, consistent with our normal practice in countervailing duty investigations, we did not require the GOK to submit additional information about the FEZ program.

As described above in the “Adverse Facts Available” section, given the record deficiencies listed above, we do not have the necessary record information to determine whether Hyundai Steel used the subsidy programs available to producers located in FEZs. These deficiencies resulted from Hyundai Steel’s affirmative claims that it was not located in an FEZ. Therefore, we are relying on AFA and finding that this program was used by Hyundai Steel. We disagree with Hyundai Steel’s reliance on *F. Lli De Cecco* for its argument that the AFA rate must accurately estimate the respondent’s actual rate as corroborated by record information. Amendments to the Act arising from the TPEA are applicable to determinations made on or after August 6, 2015, and specifically state that the Department may assign the highest rate calculated for the same or similar program.³⁹²

Under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. The TPEA also makes clear that when selecting an AFA rate, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate

³⁸⁹ See GOK PQR at 108.

³⁹⁰ *Id.*, at Exhibit FEZ-1.

³⁹¹ See GOK QR at Exhibit FEZ-2 and FEZ-3.

³⁹² See TPEA.

reflects an “alleged commercial reality” of the interested party. Moreover, the Federal Circuit recently clarified that that “accurate” represents no more than a “reliable guidepost{ }” for a determination.³⁹³ The Court held that a determination is “accurate” if it is correct as a mathematical and factual matter, thus supported by substantial evidence. As such, we are relying on our normal three-tiered hierarchy for assigning AFA to Hyundai Steel’s use of this program.

Comment 9: Whether Loans from KEXIM Were Verified

Petitioners argue:

- The Department was unable to verify non-use of all KEXIM lending programs because the GOK dismissed verification of other programs as a “fishing expedition.”³⁹⁴
- While non-use of certain programs could be verified at the respective companies, other programs may only appear on unrelated party’s books and records.³⁹⁵
- Petitioners request that the Department assign a rate of 3.59 percent to each program not verified,³⁹⁶ for a total AFA rate of 14.36 percent for both POSCO and Hyundai Steel.³⁹⁷

POSCO rebuts:

- The Department verified non-use of loan programs, as well as short and long-term borrowings at POSCO and DWI. If any of these programs were used during the POI, the Department would have discovered use while at the respective companies.³⁹⁸
- POSCO voluntarily reported assistance from other programs not alleged, and DWI reported that it had received no other forms of assistance.³⁹⁹ Disregarding these certified responses would be wholly inconsistent with section 776(c) of the Act.
- Requiring respondents to report assistance received from programs not alleged under the penalty of AFA is unlawful, as there is no basis to investigate programs that were not alleged and initiated upon, pursuant to section 702(b)(1) of the Act.
- Citing 19 CFR 351.311(c)(1) and (2), there is no lawful basis to apply AFA to POSCO as the appropriate procedure is either to permit petitioner to withdraw its petition and refile with a new allegation, or defer consideration of an additional program until the first administrative review.

³⁹³ See *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1343 (Fed. Cir. 2016).

³⁹⁴ See GOK VR at 7-10.

³⁹⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012; and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 1019 (January 8, 2015), and accompanying IDM at 39-44.

³⁹⁶ See GOK VR at 16.

³⁹⁷ See *Steel Beams from Korea*, and accompanying IDM at Section I.A.2.

³⁹⁸ See POSCO VR at 23-24, 39-41, and VE-2 at 17-28.

³⁹⁹ See POSCO PQR at 1-3 and 59.

- There is no evidence that either POSCO or DWI received benefits under the programs identified as unverified. As such, there is no basis to apply AFA to determine either company received benefits.⁴⁰⁰
- If the Department were to apply a rate to the unverified programs, as AFA, the Department should apply the rate calculated for POSCO in the *Preliminary Determination* under the KEXIM loan program, 0.02 percent, to each of the additional KEXIM financing programs as it was verified at POSCO and DWI.⁴⁰¹ The total AFA rate would then be 0.08 percent.

The GOK rebuts:

- The GOK had not prepared for questions about other programs that were not identified on the agenda. As such, there was no reason to believe that the records and officials necessary to provide a response to the Department's questions would be available in the short time the Department conducted verification at KEXIM.
- The Department should not put a respondent in a situation whereby it may fail verification because it did not have sufficient time to prepare a response to the verifiers' questions. KEXIM officials were able to show non-use of certain programs the verifiers asked about.⁴⁰²
- Under the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement), petitioners must establish evidence of a subsidy to warrant further investigation, not respondents or the Department. Petitioners did not provide such evidence prior to the issuance of the verification report.

Department's Position:

For the following reasons, we have determined not to apply AFA to the additional KEXIM loan programs which we were unable to review at verification. At verification, we asked KEXIM officials to demonstrate that companies did not receive other unreported assistance in order to ensure completeness of the company and government responses.⁴⁰³ To verify the reporting accuracy of respondents, we asked KEXIM officials to describe the manner in which they performed searches for companies identified as having received assistance in the KEXIM database, "EXIMIIS." KEXIM officials stated that each company is assigned a code, and when we requested information regarding a specific company, the KEXIM official used the code assigned to the firm. During the process of examining how officials search for specific companies through this coding system, we observed additional categories of financing programs that appeared to be export specific. As our initial request was to demonstrate that companies did

⁴⁰⁰ See POSCO VR at 24, 37, and 40-41.

⁴⁰¹ See PDM at 21-23; see also POSCO VR at 23-24.

⁴⁰² See GOK VR at 16-17.

⁴⁰³ See GOK VR at 15-16.

not receive funding under additional programs, we asked the KEXIM official to provide an explanation of the categories in order to confirm that the respondents completely reported their financing from KEXIM. However, counsel for the GOK then stated that they would not permit verifiers to go on “fishing expeditions,” and consequently declined to discuss further details with regard to the additional categories in question. Specifically, counsel stated that it is the GOK’s position to not discuss loan programs that were not alleged.⁴⁰⁴

While we were unable to verify the non-use of other KEXIM loans at the government, consistent with the CIT decision, *Fine Furniture*,⁴⁰⁵ and prior cases,⁴⁰⁶ we can examine the record for replacement information. In the instant investigation, the necessary information to confirm non-use was provided by both POSCO and Hyundai Steel at verification and is on the record of this case.⁴⁰⁷ Therefore, consistent with *Fine Furniture* and the recent Department determination in *Line Pipe from Korea*,⁴⁰⁸ we determine that we were able to confirm that the mandatory respondents did not receive unreported financing from KEXIM.

Comment 10: The Department’s Treatment of Unalleged Programs and Verification of Non-Use

The GOK argues:

- The “recent flood of cases” does not relieve the Department of its obligation to treat respondents with procedural and substantive fairness, as required by U.S. law and is codified in the SCM Agreement.
- The GOK argues that Article 11.2 of the SCM Agreement depicts certain conduct that the Department must maintain when carrying out an investigation.
- In the immediate investigation, Petitioners have made unreasonable requests of respondents that result in adverse consequences.
- The Department should ensure respondents are given an adequate opportunity to address issues over the course of the investigation and the Department must not close the record before the Department and parties follow up on such issues.
- The SCM Agreement does not permit the Department to require that companies self-report unalleged government programs.

⁴⁰⁴ See GOK VR at 15-17.

⁴⁰⁵ See *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1262 n.10 (CIT 2012) (“{I} in the context of a CVD investigation, an inference adverse to the interests of a non-cooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available.”)

⁴⁰⁶ See SAA at 870. See, e.g., *Line Pipe from Korea*, and accompanying IDM at Comment 2; and *Washers from Korea*, and accompanying IDM at

⁴⁰⁷ See POSCO VR at 22-24 and Hyundai Steel VR at 3.

⁴⁰⁸ See *Line Pipe from Korea*, and accompanying IDM at Comment 2.

- The Department's regulations⁴⁰⁹ provide procedures for addressing subsidies not alleged by petitioners, and, according to the GOK, do not demonstrate that respondents might be required to self-identify all assistance in their initial questionnaire responses, or that failure of a respondent to do so justifies the application of facts available.
- The GOK requests that the Department eliminate the request that the respondents self-identify government assistance that was not alleged by petitioners from its questionnaires. If the Department does not eliminate the aforementioned request, the Department must not penalize respondents that fail to identify subsidies that were not alleged.

Department's Position:

The Act and the implementing regulations are fully consistent with the United States' international obligations. During the course of this investigation, all interested parties were treated in accord with the standards set forth under U.S. law, and the Department granted both the respondent companies and the GOK numerous extension requests to respond to our requests for information. Interested parties had opportunities to file factual information not requested by the Department within regulatory deadlines and to comment on all aspects of our investigation and determinations. At no point during the course of this investigation did the GOK or the respondent companies request extensions to the deadlines to submit factual information as provided to them under 19 CFR.355.301 and 19 CFR 351.302 that were not granted, at least in part, by the Department, consistent with the deadlines contained within the Act to complete both the preliminary and final determinations.

The GOK also appears to take exception to comments and requests made by Petitioners during the investigation. However, all interested parties have similar rights under U.S. law to fully participate and provide factual information and comment on the investigation. Furthermore, while Petitioners may comment on alleged deficiencies of a respondent's questionnaire response and state that additional information is needed to allow the Department to fully analyze an alleged subsidy program; it is only the Department that determines the relevant information that is required from respondents.

With respect to comments regarding subsidies not alleged in the petition, section 775(1) of the Act explicitly provides that the Department may investigate any subsidy that it discovers during the course of the investigation. The Department is thus not prohibited from investigating and issuing a determination on a program that was unknown to it at the time of initiation. To that end, the Department's initial questionnaire instructs government and company respondents to report any forms of government-provided assistance.

In addition, section 351.311(b) of the Department's regulations state that "if during a countervailing duty investigation or a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, . . . the Secretary will examine the practice, subsidy, or subsidy program if the

⁴⁰⁹ See 19 CFR 351.311.

Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.” However, under section 351.311(c), the Secretary may also defer examination of a subsidy practice if insufficient time remains before the scheduled date of the final determination.

Comment 11: Whether to Apply AFA to the GOK with Regard to RSTA Article 120

The GOK argues:

- The GOK asserts that the Department applied AFA with respect to the specificity of this program in the *Preliminary Determination*.⁴¹⁰
- The GOK does not have the information requested by the Department regarding the usage of this tax deduction during the POI.
- The GOK does have information regarding the tax program use for certain prior periods, which was submitted in its supplemental questionnaire response. Therefore, the GOK has not withheld any information with respect to the usage of RSTA Article 120.

Department’s Position:

We disagree with the GOK’s assertion that we applied an adverse inference regarding the specificity of this program in the *Preliminary Determination*. The *Preliminary Determination* states,

we are resorting to the use of facts otherwise available within the meaning of section 776(a)(1) of the Act because the necessary information from the GOK concerning the manner in which this program is administered is not on the record. In *Line Pipe from Korea*, the Department determined, based on information provided by the GOK, that 265 companies were approved for assistance under this program in 2013, and 325 companies in 2014.⁴¹¹ As such, in the *Preliminary Determination*, we preliminarily concluded as facts otherwise available that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, because the GOK has previously reported that the actual number of recipients is limited in number.⁴¹²

We continue to find that such an analysis is appropriate absent the necessary information on the administrative record. Because we have relied on facts available, without an adverse inference, there is no merit to the GOK’s argument that we applied AFA.

⁴¹⁰ See PDM at 7 and 20.

⁴¹¹ See Memorandum to the File from Madeline Heeren, “Information Pertaining to RSTA Article 120,” dated December 10, 2015.

⁴¹² See PDM at 20.

Comment 12: Whether to Apply AFA to the GOK with Regard to DWI's Debt Workout

The GOK argues:

- The GOK does not have the information requested by the Department concerning the Creditor's Council for DWI's debt restructuring.
- The GOK understands that DWI provided such information to the Department, and as such, the Department could have asked follow-up questions to the GOK.
- The GOK believes the Department did not need any additional information with regard to the debt restructuring as the Department did not follow-up with the GOK after receiving DWI's response.

Department's Position:

Our finding that a financial contribution is provided under this program has previously been fully addressed in the *Preliminary Determination*.⁴¹³ As we noted, the GOK failed to provide requested information on this program and we relied on the facts available on the record under section 776(a) of the Act to determine that the creditors involved in the debt workout were “authorities” within the meaning of section 771(5)(B) of the Act.⁴¹⁴ With respect to the DWI Debt Workout program, we requested information relating to the Creditors' Council, debt amounts addressed in the workout, and other necessary information required to fully evaluate the program.⁴¹⁵ The GOK, in a submission that it certified was accurate and complete, stated in response to each of these questions: “The GOK does not possess, nor retain detailed information on the Daewoo Group's Debt Restructuring,” and “the GOK is not in a position to know the details of the debt work-out program for Daewoo International, and, accordingly, it is not able to provide information” regarding the requested information.⁴¹⁶

After having failed to provide requested information with respect to most aspects of the DWI Debt Workout program because it was “not in a position to know” such details, the GOK cannot now claim that no financial contribution was provided under this program. Importantly, we note that the GOK does not dispute the facts available determination that we relied upon in making our preliminary determination that a financial contribution was provided to DWI under this program. The GOK's argument that the Creditors' Council was not an “authority,” is irrelevant to our analysis, because our finding, based on the facts available, is that the actual creditors themselves, and not the Creditor's Counsel, participating in DWI's debt restructuring were “authorities” within the meaning of section 771(5)(B) of the Act. We are basing this finding on the information on the record regarding several of the major creditors, such as KAMCO, KEXIM, the KDB, and K-SURE. These are policy banks and policy institutions that fulfill

⁴¹³ *Id.*, at 25-30.

⁴¹⁴ *Id.*

⁴¹⁵ See GOK PQR Appendix at 96-97.

⁴¹⁶ *Id.*, at 97-98.

public functions in Korea.⁴¹⁷ Therefore, consistent with our prior determination in *Refrigerators from Korea*,⁴¹⁸ we continue to find that these policy banks and policy institutions are authorities under section 771(5)(B) of the Act that are capable of providing a financial contribution under section 771(5)(D) of the Act.

Comment 13: Whether the Department Finds Tax Programs *de facto* Specific

The GOK argues:

- The GOK contends that the tax deductions under the RSTA are not specific because only a portion of Korean tax-payers used the program.
- Multiple dispute-settlement bodies have ruled against disproportionate use in this context.⁴¹⁹
- The proper ratio should be the number of companies that took the deduction, not the number of taxpayers who were eligible for it.

Department's Position:

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. Further, section 771(5A) of the Act 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 states that "{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."⁴²⁰

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. 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. In order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy, 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

⁴¹⁷ See PDM at 25-28.

⁴¹⁸ See *Refrigerators from Korea*, and accompanying IDM at 16.

⁴¹⁹ See GOK Case Brief at 9.

⁴²⁰ 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 U.S.C. §1352(d).

number of corporate tax returns.⁴²¹ On this basis, we find that these programs benefitted only a limited number of users, and therefore they are *de facto* specific.

Comment 14: The Department Should Determine That The Local Tax Exemption Hyundai Received Under RSTA Article 120 Is Related To Cold-Rolling Assets Purchased From HYSCO And Is, Therefore, Attributable to Subject Merchandise

Hyundai Steel argues:

The Department should find that the tax exemption Hyundai Steel received in connection with its acquisition of Hyundai HYSCO's cold-rolling facilities is tied to cold-rolled products.

- The Department verified that the reported exemption under RSTA Article 120 was related to the acquisition of HYSCO's cold-rolled assets.⁴²²
- The Department should treat subsidies that are tied only to the production of specific products as benefiting sales of that specific product.⁴²³
- The Department should find that this tax exemption is a non-recurring subsidy, and benefits should be allocated over the 15-year AUL period.
- The acquisition of these facilities only occurred once and the exemption was received only once. Thus, these benefits should be considered non-recurring subsidies.⁴²⁴
- The tax exemption is tied to capital assets, which also indicates that this is a non-recurring subsidy.⁴²⁵
- The law under which the exemption was received provides that the properties must be acquired no later than December 31, 2014; thus, the exemption is by definition, a non-recurring subsidy.⁴²⁶

Petitioners rebut:

- Hyundai does not point to record information to demonstrate that the purpose of the tax exemptions at the time of bestowal by the GOK was to benefit the production of certain products only.

⁴²¹ See GOK PQR at Exhibit TAX-13.

⁴²² See Hyundai Steel VR at Exhibit 7-56 to 7-57, and Exhibit 7-87 to 7-91.

⁴²³ See 19 CFR 351.525(b)(5). See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011), and accompanying IDM at 9-10.

⁴²⁴ See 19 CFR 351.524(c)(2)(i).

⁴²⁵ See 19 CFR 351.524(c)(2)(iii). See, e.g., *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 IDM at 8.

⁴²⁶ See Hyundai Steel October QR at Exhibit N-1 (Article 120(1)).

- The tax exemptions were designed to benefit the company as a whole, not just certain segments based on the products they produce.
- In accordance with the *Preamble*, in analyzing whether a benefit exists, the Department should consider what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense of the term, and not what the company does with the subsidy.⁴²⁷
- The Department's practice is to treat income tax exemptions as recurring subsidies.⁴²⁸ This program was treated as a recurring subsidy in prior proceedings because this exemption is not exceptional.⁴²⁹ It can be claimed for a variety of reasons, including property taken over by a corporation surviving consolidation, property acquired by re-organization, property acquired through investment under other section of the Corporate tax act, property taken over through an asset exchange, real estate acquired by a special purpose company, property taken over by agricultural cooperatives and fisheries, a corporation becoming a certain type of holding company, and in cases where a person or corporation scraps an automobile.⁴³⁰

Department's Position:

In reaching a determination of whether a subsidy can be tied to a particular product under 19 CFR 351.525(b)(5), the Department analyzes the purpose of the subsidy based on the information available at the time of bestowal. A subsidy is only tied when the intended use is known to the subsidy giver (in this case the GOK) and so acknowledged prior to or concurrent with the bestowal of the subsidy.⁴³¹ The application and approval documents related to this exemption do not state that this exemption was approved or bestowed by the GOK for cold-rolled steel products or any other specific product. Therefore, this program is not tied to any particular product.

Furthermore, the Department does not tie subsidies to specific plants or entities within a firm. We have previously stated that the statute and the regulations do not provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.⁴³²

Because the benefit arising from this program is less than 0.5 percent, the Hyundai Steel's argument concerning the recurrence of this subsidy is moot, as it is the Department's practice to allocate the benefit of such subsidies to the year of receipt rather than the AUL.⁴³³

⁴²⁷ See *Preamble*, 63 FR at 65360.

⁴²⁸ *Id.*, at 65415.

⁴²⁹ See *Line Pipe from Korea*, and accompanying IDM at 12-13.

⁴³⁰ See *Hyundai Steel* October QR at Exhibit N-1.

⁴³¹ See *Washers from Korea*, and accompanying IDM at 41.

⁴³² See *Supercalendered Paper from Canada*, and accompanying IDM at 161.

⁴³³ See 19 CFR 351.524.

Comment 15: The Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under RSLTA 78

Hyundai Steel argues:

- The record evidence shows that the subject merchandise is not produced at Hyundai Steel's Pohang Works.
- Hyundai Steel reported that it only manufactures subject merchandise at its Dangjin and Suncheon facilities.⁴³⁴
- The Department verified that Hyundai Steel's Pohang Works production facility is not involved in the production of cold-rolled products.⁴³⁵
- In accordance with 19 CFR 351.525(b)(5) and the Department's practice, the Department should determine that benefits received under RSLTA Article 78 for the Pohang plant are tied to non-subject merchandise and are, thus, not countervailable.⁴³⁶

Petitioners rebut:

- Hyundai does not point to record information to demonstrate that the purpose of the tax exemptions at the time of bestowal by the GOK was to benefit the production of certain products only.
- The tax exemptions were designed to benefit the company as a whole, not just certain segments based on the products they produce.
- In accordance with the *Preamble*, in analyzing whether a benefit exists, the Department should consider what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense of the term, and not with what the company does with the subsidy.⁴³⁷

⁴³⁴ See HS October QR at 4.

⁴³⁵ See Hyundai Steel VR at Exhibit 2-7.

⁴³⁶ See, e.g., *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2172 (January 15, 2016), and accompanying IDM (January 8, 2016) at 38-39; *Non-Oriented Electrical Steel From the Republic of Korea: Final Negative Countervailing Duty Determination*, 79 FR 61605 (October 14, 2014), and accompanying IDM (October 6, 2014) at 18-19. In *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Fil, Sheet, and Strip from India*, 67 FR 34905 (May 16, 2002), and accompanying IDM (May 6, 2001), the Department determined that any benefit from deferred taxes that were related to investments in facilities for non-subject merchandise were tied to non-subject product and not countervailable.


⁴³⁷ See *Preamble*, 63 FR at 65360.

Department's Position:

As noted in our *Preliminary Determination*, this is a regional subsidy.⁴³⁸ In the *Preamble* to the CVD Regulations,⁴³⁹ the Department explicitly rejected the suggestion that regional subsidies should be tied to the production of products in that particular region. We stated that if such a practice was adopted by the Department, that foreign companies could then easily escape the payments of countervailing duties by selling products that were produced within a subsidized region domestically, while exporting from a facility in an unsubsidized region.⁴⁴⁰ Furthermore, the Department does not tie subsidies to specific plants or entities within a firm. We have previously stated that the statute and the regulations do not provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.⁴⁴¹

RECOMMENDATION

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

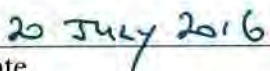


Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date

⁴³⁸ See PDM at 21.

⁴³⁹ See *Preamble*, 63 FR 65404.

⁴⁴⁰ See also *Supercalendered Paper from Canada*, and accompanying IDM at 161.

⁴⁴¹ *Id.*