



C-580-884

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August 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Hot-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 hot-rolled steel flat products (hot-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. ("Hyundai Steel").

- 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: The Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under RSTA 78
- Comment 10: The Department's Methodology For Attributing RSTA Article 22 Benefits Received by Hyundai Corporation to Hyundai Steel Was Incorrect



Comment 11: Whether Hyundai Steel Should Have Reported Additional ITIPA Grants
Comment 12: Whether Hyundai Steel Should Have Provided a Questionnaire Response for Hyundai Green Power

II. Background

A. Case History

On January 15, 2016, 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 April 20, 2016 and April 21, 2016, Nucor Corporation (Nucor, Petitioner), one of the petitioners in this investigation, submitted pre-verification comments on the record to this investigation.³ Between May 9, 2016, and May 20, 2016, we conducted verifications of the questionnaire responses submitted by the GOK, POSCO, and Hyundai Steel. We released verification reports on June 30, 2016, and July 5, 2016.⁴ On July 8, 2016, we released a Post-Preliminary Analysis Memo.⁵ On July 26, 2016, we held a hearing.⁶

On July 14, 2016, POSCO and Hyundai Steel submitted timely case briefs,⁷ and on July 15, 2016, Nucor submitted a timely case brief. On July 20, 2016, POSCO, Hyundai Steel, the GOK and Nucor submitted timely rebuttal briefs.⁸

¹ See *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) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*

³ See Letter from Nucor, “Certain Hot-Rolled Steel Flat Products from Korea: Pre-Verification Comments for POSCO and Hyundai Steel,” (April 20, 2016); “Certain Hot-Rolled Steel Flat Products from Korea: Pre-Verification Comments for the Government of Korea,” (April 21, 2016).

⁴ See Memoranda to the File, “Verification Report: Hyundai Corporation” (June 30, 2016) (HC VR); “Verification Report: Hyundai Steel” (June 30, 2016) (Hyundai Steel VR); “Verification Report: POSCO and Daewoo International Corporation” (June 30, 2016) (POSCO VR); “Verification Report: The Government of the Republic of Korea (July 5, 2016) (GOK VR).

⁵ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V, Re: Post-Preliminary Analysis of Countervailing Duty Investigation, dated July 8, 2016. (Post-Preliminary Analysis Memo).

⁶ See Letter from the Department to all Interested Parties, Re: Public Hearing, dated July 21, 2016.

⁷ See Letter from Nucor, Re: Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Case Brief of Nucor Corporation (July 14, 2016) (Petitioners Case Brief); see also Letter from POSCO, Re: Certain Hot-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-884: POSCO’s Case Brief (July 14, 2016) (POSCO Case Brief); see also Letter from Hyundai Steel, Re: Certain Hot-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-884: Hyundai Steel’s Case Brief (July 14, 2016) (Hyundai Steel Case Brief).

⁸ See Letter from Nucor, Re: Hot-Rolled Steel Flat Products from the Republic of Korea: Nucor Corporation’s Rebuttal Brief Regarding POSCO and DWI (July 20, 2016) (Petitioners Rebuttal Brief); see also Letter from Nucor, Re: Hot-Rolled Steel Flat Products from the Republic of Korea: Nucor Corporation’s Rebuttal Brief Regarding

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 hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. 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 thickness, and 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 of 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 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 unless the resulting measurement makes the product covered by the existing antidumping⁹ or countervailing duty¹⁰ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

(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

Hyundai Steel (July 20, 2016) (Petitioners Rebuttal Brief-Hyundai Steel); *see also* Letter from POSCO, Re: Certain Hot-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-884: POSCO’s Rebuttal Brief (July 20, 2016) (POSCO Rebuttal Brief); *see also* Letter from Hyundai Steel, Re: Certain Hot-Rolled Steel Flat Products from the Republic of Korea Case No. C-580-884: Hyundai Steel’s Rebuttal Brief (July 20, 2016) (Hyundai Steel Rebuttal Brief); *see also* Letter from the GOK, Re: Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Korea—Rebuttal Brief of the Government of Korea (July 20, 2016) (GOK Rebuttal Brief).

⁹ *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

¹⁰ *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

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, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, 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, the substrate for 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. The substrate for motor lamination steels contains 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 hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the hot-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 these investigations unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (i.e., hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and

- without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;¹¹
- Ball bearing steels;¹²
- Tool steels;¹³ and
- Silico-manganese steels;¹⁴

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

¹¹ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

¹² 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.

¹³ 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.

¹⁴ 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.

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*.¹⁵

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 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.¹⁶

As a result of verification and issues raised by Petitioner 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 made a change to the methodologies used in the *Preliminary Determination* for attributing subsidies received by DWI¹⁷ to POSCO. In the *Preliminary Determination*, we stated we were attributing subsidies received by DWI to POSCO pursuant to 19 CFR 351.525(c),

¹⁵ *See* PDM at 7-8.

¹⁶ *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

¹⁷ POSCO reported at verification that DWI changed its name to POSCO Daewoo Corporation (PDC) in March 2016. *See* POSCO/DWI Verification Report at 5 and DWI VE-3.

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, although for the reasons described below, we have not included this program in our net subsidy calculations for POSCO. 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.

Similarly, the Department has made a change to the methodology used in the *Preliminary Determination* for attributing subsidies received by Hyundai Corporation to Hyundai Steel. *See* Comment 10.

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.¹⁸

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 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

¹⁸ *See* Memorandum to Catherine Bertrand from Katie Marksberry, Re: Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination Calculations for Hyundai Steel Co., Ltd., dated August 4, 2016 (Hyundai Steel Final Calculation Memorandum); *see also* Memorandum to Catherine Bertrand from Katie Marksberry, Re: Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination Calculations for POSCO dated August 4, 2016 (POSCO Final Calculation Memorandum).

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.¹⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁰

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.²¹ 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.²²

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.²³ 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.²⁴

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.²⁵ 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

¹⁹ 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>.

²⁰ See *Applicability Notice*, 80 FR at 46794-95.

²¹ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²² See also 19 CFR 351.308(c).

²³ See also 19 CFR 351.308(d).

²⁴ See SAA at 870 (1994).

²⁵ See section 776(d)(1) of the Act; see also TPEA, section 502(3).

demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁶

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,²⁷ and with respect to Hyundai Steel’s and POSCO’s responses for their failure to report their location in a FEZ.²⁸

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.²⁹ When asked 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 the respondent, POSCO replied that there were no cross owned companies located in Korea that provided inputs to POSCO’s production of subject merchandise.³⁰

During the course of verification, we discovered that additional companies listed in POSCO’s affiliation chart provided raw material inputs that reportedly were used in production of hot-rolled.³¹ When asked why the company did not report purchases from the input suppliers, POSCO stated that only minimal trace amounts were used in subject merchandise production; therefore, the companies were not reported as input suppliers in POSCO’s questionnaire response.³²

Accordingly, given the information reported in its questionnaire response, 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. POSCO failed to identify or provide necessary information as to its respective cross-owned companies. Additionally, we find that POSCO failed to report that one of its facilities is located in a FEZ and that DWI failed to report certain loans. As a result, we find that POSCO did not act

²⁶ See section 776(d)(3) of the Act; *see also* TPEA, section 502(3).

²⁷ See Comment 7 below.

²⁸ See Comment 6 below with regard to POSCO’s use of the FEZ program.

²⁹ See Letter from POSCO, Re: Certain Hot-Rolled Steel Flat Products from Korea, Case No. C-580-884: Affiliated Companies Response dated October 13, 2015 (POSCO AQR) at 4.

³⁰ *Id.*, at 5.

³¹ See POSCO VR at 4-5, *see also* Verification Exhibit-5 (VE-5).

³² See POSCO AQR at 4-5.

to the best of its ability in this investigation. Accordingly, we find that an adverse inference that POSCO and its cross-owned input suppliers benefited from those subsidies 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.³³ 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.³⁴ Hyundai Steel’s claim that it was not in an economic zone was found to be incorrect at Hyundai Steel’s verification.³⁵ 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 ability 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 a benefit was bestowed.

Relying on AFA, we find, as discussed below under Comment 8, that Hyundai Steel benefited from a rate 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, including those that 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, facilities located in an 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 programs are specific within the meaning of section

³³ See Korea CVD Hot-Rolled Steel Flat Products Investigation Initiation Checklist, dated August 31, 2015.

³⁴ See Letter from Hyundai Steel, Re: Certain Hot-Rolled Steel Flat Products from Korea, Case NO. C-580-884: Section III Initial Questionnaire Response, dated October 30, 2015 (HS October QR) at 28.

³⁵ See Hyundai Steel VR at 2 and VE-1 and -6.

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.³⁶ 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 benefited 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 are 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, as cited below. These programs are therefore included in POSCO's overall subsidy rate.

- Sharing of Working Opportunities/Employment Creating Incentives³⁷
- Loans from the Industrial Base Fund³⁸
- GOK Subsidies for "Green Technology R&D" and its Commercialization³⁹
- Support for Small and Medium-Sized Enterprises (SME) "Green Partnerships"⁴⁰
- Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)⁴¹
- Various Grants in Contained in Financial Statements⁴²

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.⁴³ Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical

³⁶ See GOK PQR at 82, 95, and 112-113; see also GOK SQR at 91.

³⁷ See *Line Pipe from Korea*, and accompanying IDM at 9.

³⁸ 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.

³⁹ 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.

⁴⁰ *Id.*, at 21.

⁴¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016), and IDM at 31.

⁴² *Id.*, at 22.

⁴³ 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") (*Tow-Behind Lawn Groomers*); 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."

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.⁴⁴ Likewise, 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.

In applying AFA to Hyundai Steel and POSCO, we are guided by the Department's methodology detailed above. Because Hyundai Steel and POSCO failed to report their location in an FEZ, as discussed above, we made an adverse inference that Hyundai Steel and POSCO 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 and POSCO for each of the following programs:

- Exemptions and Reductions of Lease Fees in FEZs⁴⁵
- Grants and Financial Support in FEZs⁴⁶

As POSCO failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that certain cross-owned companies provided inputs that could have been used in the production of the downstream product and that DWI failed to report certain loans. 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:

- Energy Savings Program: Electricity Savings for Designated Period Program⁴⁷

⁴⁴ See, e.g., *Tow-Behind Lawn Groomers* and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences;" see also *Aluminum Extrusions from the PRC*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies;" 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."

⁴⁵ 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 16.

⁴⁶ *Id.*

⁴⁷ *Id.*

- Energy Savings Program: Electricity Savings through the Bidding Process Program⁴⁸
- Energy Savings Program: Electricity Savings upon an Emergency Reduction Program⁴⁹
- Energy Savings Program: Electricity Savings through General Management Program⁵⁰
- Energy Savings Program: Utilization of Capability of the Private Sector⁵¹
- Energy Savings Program: In Accordance with Prior Announcement⁵²
- Energy Savings Program: Intelligent Electricity Savings⁵³
- Power Generation Price Difference Payments⁵⁴
- GOK purchases of electricity from Hot-Rolled Producers for MTAR⁵⁵
- Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables⁵⁶
- Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)⁵⁷
- Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)⁵⁸
- RSTA Article 10(1)(1)⁵⁹
- RSTA Article 10(1)(2)⁶⁰
- Tax Credit for Investment in Facilities for Environment or Safety under RSTA Article 25⁶¹
- Tax Exemption on Investment in Overseas Resources Development under RSTA Article 22⁶²
- Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(3)⁶³
- GOK Facilities Investment Support under RSTA Article 26⁶⁴
- Tax Program for Special Depreciation under RSTA Article 30⁶⁵
- Tax Reduction and Exemption for Industrial Complexes under RSTA Article 78(4)⁶⁶
- Special Tax Credit for Payment Records under RSTA Article 104(5)⁶⁷

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Calculated for Hyundai Steel in this investigation.

⁵⁹ *See Washers from Korea*, and accompanying IDM at 15.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Calculated for Hyundai Steel in this investigation

⁶⁴ *See Washers from Korea*, and accompanying IDM at 15.

⁶⁵ *Id.*

⁶⁶ Calculated for Hyundai Steel in this investigation.

⁶⁷ *See Washers from Korea*, and accompanying IDM at 12.

- Tax Payment for Third-Party Logistics Operations under RSTA Article 104(14)⁶⁸
- Special Taxation for Investment in Development of Overseas Resources under RSTA Article 104(15)⁶⁹
- Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee
- Modal Shift Grants⁷⁰
- Article 9⁷¹
- Article 11⁷²
- Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA)⁷³
- KEXIM Short-Term Export Credits⁷⁴
- KEXIM Export Factoring⁷⁵
- KEXIM Export Loan Guarantees⁷⁶
- KEXIM Trade Bill Rediscounting Program⁷⁷
- KEXIM Import Financing⁷⁸
- KEXIM Overseas Investment Credit Program⁷⁹
- Industrial Base Fund Loans⁸⁰
- Green Subsidies: GOK Subsidies for "Green Technology R&D" and its Commercialization⁸¹
- Green Subsidies: Support for SME "Green Partnerships"⁸²
- Article 56(2) of the TERCL⁸³
- Exemptions and Reductions of Lease Fees in Free Economic Zones⁸⁴
- Grants and Financial Support in Free Economic Zones⁸⁵
- Tax Reductions and Exemptions in Free Economic Zones⁸⁶
- Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes⁸⁷
- RSTA Article 24⁸⁸
- RSTA Article 25-2⁸⁹

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See Refrigerators from Korea*, and accompanying IDM at 16.

⁷¹ *See Washers from Korea*, and accompanying IDM at 12.

⁷² *Id.*

⁷³ *See Refrigerators from Korea*, and accompanying IDM at 16.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Calculated for Hyundai Steel in this investigation.

⁸⁷ *Id.*

⁸⁸ *Id.*

- Sharing of Working Opportunities/Employment Creating Incentives⁹⁰

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.⁹¹

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, we have corroborated pursuant to section 776(c)(1) of the Act to the extent practicable for purposes of this investigation.

Hyundai Steel

Program	AFA Percent Subsidy Rate
Exemptions and Reductions of Lease Fees in FEZs	1.64%
Grants and Financial Support in FEZs	1.64%
Partial AFA Rate Sub-Total for Hyundai Steel	3.28%

POSCO

Program	AFA Percent Subsidy Rate
Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)	1.64%
Energy Savings Program: Electricity Savings for Designated Period Program	1.64%

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *See* Section 776(d)(3) of the Act.

Energy Savings Program: Electricity Savings through General Management Program	1.64%
Energy Savings Program: Electricity Savings through the Bidding Process Program	1.64%
Energy Savings Program: Electricity Savings upon an Emergency Reduction Program	1.64%
Energy Savings Program: In Accordance with Prior Announcement	1.64%
Energy Savings Program: Intelligent Electricity Savings	1.64%
Energy Savings Program: Utilization of Capability of the Private Sector	1.64%
Exemptions and Reductions of Lease Fees in Free Economic Zones	1.64%
GOK Facilities Investment Support under RSTA Article 26	1.05%
GOK Purchases of Electricity from Hot-Rolled Producers for MTAR	1.64%
Grants and Financial Support in Free Economic Zones	1.64%
Green Subsidies: Support for SME "Green Partnerships"	1.64%
Green Subsidies: GOK Subsidies for "Green Technology R&D" and its Commercialization	1.64%
Industrial Base Fund Loans	1.64%
KEXIM Export Factoring	1.64%
KEXIM Export Loan Guarantees	1.64%
KEXIM Import Financing	1.64%
KEXIM Overseas Investment Credit Program	1.64%
KEXIM Short-Term Export Credits	1.64%
KEXIM Trade Bill Rediscounting Program	1.64%
Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables	1.64%
Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee	1.64%
Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)	1.64%
Modal Shift Grants	1.64%
Power Generation Price Difference Payments	1.64%
Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA)	1.64%
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(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	0.23%
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	1.64%
Various Grants Contained in Financial Statements	1.64%
AFA Rate Sub-Total for POSCO	57.04%

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 Comments 5 through 8.⁹² 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*

⁹² See POSCO Final Calculation Memoranda at 2 and Hyundai Steel Final Calculation Memoranda at 2.

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.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.

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.⁹⁴ 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.

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.⁹⁵ 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: 0.23 percent *ad valorem*

⁹³ See PDM at 13.

⁹⁴ *Id.*, at 16.

⁹⁵ *Id.*, at 19.

9. Restriction of Special Local Taxation Act (RSLTA) Article 78(4): Reduction and Exemption for Industrial Complexes

In the *Preliminary Determination*, we found that this program is specific under section 771(5A)(D)(iv) of the Act and that it constitutes a financial contribution under section 771(5)(D)(ii) of the Act. The calculated rate for Hyundai Steel is unchanged from the *Preliminary Determination* as explained in the “Adverse Facts Available” section above and in Comment 5, we are applying to POSCO and as AFA, a rate of 0.08 percent *ad valorem* for this final determination.

Hyundai Steel: 0.09 percent *ad valorem*⁹⁶

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.⁹⁷ 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.⁹⁸ As explained in the “Adverse Facts Available” section above and in 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 “Denominators” section, we have modified the sales value used to calculate the benefit for this program.⁹⁹ 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

⁹⁶ Unchanged from the *Preliminary Determination*.

⁹⁷ *Id.*, at 22.

⁹⁸ *Id.*, at 23-24.

⁹⁹ See POSCO Final Calculation Memorandum at “Denominators,” and “DWI Debt Workout.”

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 2001.¹⁰⁰ 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.¹⁰¹ KPX is wholly-owned by KEPCO.

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.¹⁰² 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 was to be an “authority” within the meaning of section 771(5)(B) of the Act.¹⁰³ 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. However, as AFA, we have determined that POSCO benefited from the subsidy, and 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 and POSCO 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.

¹⁰⁰ 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.

¹⁰¹ See GOK PQR at 31.

¹⁰² See GOK PQR at 146.

¹⁰³ See PDM 29.

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 2001.¹⁰⁴ 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.¹⁰⁵

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, because it only applies to registered companies who are able to reduce their electric power consumption by a certain level¹⁰⁶ 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.¹⁰⁷ 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 benefited from the subsidy, and are 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 which we have determined 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

¹⁰⁴ See GOK PQR at Exhibit E-5 and E-22.

¹⁰⁵ See GOK PQR at 29.

¹⁰⁶ See GOK PQR at 146.

¹⁰⁷ See PDM at 29.

through Articles 48 and 49 the Electric Business Law in 2001.¹⁰⁸ KEPCO 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 participants the fixed annual discount rate is 500 KRW per kilowatt-hour of the committed amount of emergency reduction.¹⁰⁹

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.¹¹⁰ Specifically, according to the parameters of the program itself, companies must first enter into an agreement and then meet the specific criteria set forth by KEPCO to benefit from the program. 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.¹¹¹ 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 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 and POSCO 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 the Department has determined 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.

¹⁰⁸ See GOK PQR at Exhibit E-5 and E-22.

¹⁰⁹ *Id.*, at 31-32.

¹¹⁰ See GOK PQR at 146.

¹¹¹ See PDM at 29.

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 2001.¹¹² 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. 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.¹¹³

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.¹¹⁴ Specifically, under the parameters of the program, only companies supplied with high-voltage electricity and whose electricity usage can be remotely monitored, and who enter into an agreement with KEPCO, can benefit from this program. 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.¹¹⁵ 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 benefited from the subsidy, and 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 and POSCO 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 the Department has determined received a measureable benefit under this program. The

¹¹² See GOK PQR at Exhibit E-5 and E-22.

¹¹³ See GOK PQR at 31.

¹¹⁴ *Id.*, at 146.

¹¹⁵ See PDM at 29.

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.¹¹⁶

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.¹¹⁷ Specifically, the subsidy is only available to companies that import essential goods or natural resources. 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.¹¹⁸ To calculate the 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 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 hot-rolled steel 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.¹¹⁹

¹¹⁶ See GOK PQR at 64.

¹¹⁷ *Id.*, at 75.

¹¹⁸ See PDM at 26.

¹¹⁹ See GOK PQR at 93.

In our *Preliminary Determination*, we determined KDB be an “authority” within the meaning of section 771(5)(B) of the Act.¹²⁰ 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 benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

B. 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. GOK Granting of Rights to POSCO to Import, Store, and/or Re-export LNG¹²¹

C. 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.

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.¹²² 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.¹²³ 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.

¹²⁰ *See* PDM at 26.

¹²¹ *See Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Hot-Rolled Steel Flat Products from the Republic of Korea* (July 8, 2016). No interested parties filed case or rebuttal comments on the Department’s Post-Preliminary analysis of this program. Therefore, the Department’s determination with respect to this program remains unchanged for this final determination.

¹²² *See* GOK PQR at 44.

¹²³ *Id.*, at 49.

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.

D. Other Programs

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*¹²⁴

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 2001.¹²⁵ 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.¹²⁶

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.¹²⁷ Specifically, only companies which have

¹²⁴ We initiated on a program titled Power Business Law Subsidies. However, assistance under the referenced Articles of the Power Business Law (or Electricity Business Law) is provided under the Energy Savings Programs. As such, we have not included this program separately in POSCO’s overall subsidy rate. See GOK PQR at 26-27.

¹²⁵ See GOK PQR at Exhibit E-5 and E-22.

¹²⁶ *Id.*, at 29-30.

¹²⁷ See GOK PQR at 146.

certain electrical generation capacity and enter into an agreement in advance with KEPCO can benefit from this program. 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.¹²⁸ In the *Preliminary Determination*, we found that POSCO received no measureable benefit from this program. However, as AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

2. Electricity Savings: 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 2001.¹²⁹ 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.¹³⁰ 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.¹³¹ As AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

3. Energy Savings: 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 2001.¹³² 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”

¹²⁸ See PDM at 29.

¹²⁹ See GOK PQR at Exhibit E-5 and E-22.

¹³⁰ *Id.*, at Appendix A.3, 146 which provides the number of recipients under this program.

¹³¹ See PDM at 29.

¹³² See GOK PQR at Exhibit E-5 and E-22.

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 a 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 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.¹³³ Specifically, only those companies that meet certain specific criteria can receive benefits under this program. 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.¹³⁴ As AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

4. Energy Savings: 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 2001.¹³⁵ 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.¹³⁶ Specifically, only those companies that meet certain specific criteria can receive benefits under this program. 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.¹³⁷ As AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

¹³³ *Id.*, at Appendix A.3, 146.

¹³⁴ *See* PDM at 29.

¹³⁵ *See* GOK PQR at Exhibit E-5 and E-22.

¹³⁶ *Id.*, at Appendix A.3, 146.

¹³⁷ *See* PDM at 29.

KEXIM Export Loan Programs

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

Under each of these four programs, KEXIM extends short-term export financing, export loan guarantees, or the discounting of trade bills for exporters.¹³⁸ 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.¹³⁹ Therefore, as AFA, we have determined that POSCO 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. K-SURE Export Credit Guarantees

K-SURE provides both pre-shipment and post-shipment export credit guarantee programs.¹⁴⁰ 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. In the *Preliminary Determination* we determined that K-SURE was an “authority” within the meaning of 771(5)(B) of the Act.¹⁴¹ As AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

10. K-SURE Short-Term Export Credit Insurance

The Korea Export Insurance Corporation, the predecessor of the Korea Trade Insurance Corporation (K-SURE), was established in 1992. In 2010, when the Export Insurance Act was replaced by the Trade Insurance Act,¹⁴² the name was changed accordingly. As guided by the Trade Insurance Act, K-SURE administers import and export insurance programs.¹⁴³ 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.”¹⁴⁴ Specifically, the agency’s

¹³⁸ See GOK PQR at 42-43.

¹³⁹ See PDM at 26.

¹⁴⁰ See GOK PQR at 127.

¹⁴¹ *Id.*, at 26.

¹⁴² *Id.*, at Exhibit K-SURE-1.

¹⁴³ *Id.*, at 4.

¹⁴⁴ *Id.*

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.¹⁴⁵

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.¹⁴⁶ As such, we have not included this program in POSCO's overall AFA rate.

Income Tax Programs

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

This program was first introduced in 1982 and revised 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 enhance the competitiveness of the national economy. Through the revision in 2010, the tax reduction rates for investments made on core technologies and in new growth engine industries were increased to twenty percent.¹⁴⁷

The language of the implementing provisions and related appendices for this tax program limits eligibility for the use of this program to "new growth engines."¹⁴⁸ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

12. 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

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*, at 84. As this analysis includes the GOK's proprietary information, *see* POSCO Final Calculation Memorandum for further discussion.

¹⁴⁷ *See* GOK PQR at 171.

¹⁴⁸ *Id.*

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.”¹⁴⁹

The language of the implementing provisions and related appendices for this tax program limits eligibility for the use of this program to “core technologies.”¹⁵⁰ 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 benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

13. 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.¹⁵¹

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.”¹⁵² 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 POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

14. RSTA Article 11

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

¹⁴⁹ *Id.* at 189.

¹⁵⁰ *Id.*

¹⁵¹ See GOK 1SQR at Exhibit GSQ1R-TAX2.

¹⁵² *Id.*

of research and manpower.¹⁵³ The deduction amount received by companies is determined based on company size.¹⁵⁴

Information provided by the GOK demonstrates that only a limited number of companies claimed this tax credit in 2014.¹⁵⁵ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

15. 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.¹⁵⁶ 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.¹⁵⁷ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

16. 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.¹⁵⁸ 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.¹⁵⁹ Through this program, a manufacturing company which conducts its own logistics business operations may receive tax deductions for outsourcing such operations to non-interested third parties.

¹⁵³ See GOK PQR at 219.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*, at 231.

¹⁵⁶ See GOK 2SQR at 18.

¹⁵⁷ See 2014 Statistical Yearbook of National Tax; HS Initial Questionnaire Response at Exhibit H-15, at page 274.

¹⁵⁸ *Id.*, at Appendix at 295.

¹⁵⁹ *Id.*

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.¹⁶⁰ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

17. RSTA Article 104(8): Special Tax Credit for Payment Records

Under Article 104(8) 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 aforementioned eligibility criteria is met as established by Article 104-5 of the RSTA and Article 104-5 of its Enforcement Decree.¹⁶¹

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.¹⁶² 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

18. *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 a 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.¹⁶³ 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 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 benefited from this subsidy during the POI; we are thus including this program in Hyundai Steel's and POSCO's overall subsidy rates.

¹⁶⁰ *Id.*, at Appendix at 306.

¹⁶¹ See GOK 2SQR at Appendix at 31.

¹⁶² See GOK 2SQR at Appendix at 38.

¹⁶³ See GOK Initial Questionnaire at 67.

Grants

19. R&D Grants under the Industrial Technology Innovation Promotion Act (ITIPA)¹⁶⁴

This program, which is regulated and operated by MOTIE, 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.¹⁶⁵

The program is operated pursuant to Article 11 of the ITIPA. 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 GOK provides the fund according to the agreement.¹⁶⁶

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), MOTIE provides grants of up to 75 percent of total project costs; (2) for other companies, MOTIE grants 50 percent of total project costs; (3) for projects with more than one participant, MOTIE grants 75 percent of the total project cost if two thirds of the participants are SMEs; (4) otherwise, MOTIE provides 50 percent of project costs.¹⁶⁷

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 the program determines will support the industrial technologies for the national interest of Korea. 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

¹⁶⁴ 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.

¹⁶⁵ See GOK PQR at 373-388.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

20. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰ 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.¹⁷¹

In order to receive this support, companies submit an application to the relevant government agency, which reviews and evaluates the applicant’s business plan and selects entities to become candidates for the program.¹⁷² Once the agency confirms that the obligations under the program have been fully executed, the support is provided.¹⁷³

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.¹⁷⁴ Furthermore, a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. As AFA, we have determined that POSCO benefited from the subsidy; we are thus including this program in POSCO’s overall subsidy rate.

Purchases for More Than Adequate Remuneration (MTAR)

21. The GOK Purchases Electricity from Hot-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.¹⁷⁵ 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

¹⁶⁸ *Id.*, at 389.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*, at 391.

¹⁷² *Id.*, at 394.

¹⁷³ *Id.*

¹⁷⁴ *Id.*, at 399.

¹⁷⁵ See PDM at 36.

Utility market.¹⁷⁶

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.¹⁷⁷ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

22. Power Generation Price Difference Payments (PGPDP)

In the *Preliminary Determination*, we found that POSCO received non-measurable benefits from the Electrical Industry Foundation Fund.¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰ 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 benefited from the subsidy; we are thus including this program in POSCO's overall subsidy rate.

XII. ANALYSIS OF COMMENTS

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

Petitioner argues:

- 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.¹⁸¹
- For the Department to find that a party has failed to cooperate to the best of its ability, there is no requirement of intent or bad faith.¹⁸²

¹⁷⁶ See GOK PQR at Appendix at 411.

¹⁷⁷ *Id.*, at 426.

¹⁷⁸ See PDM at 36.

¹⁷⁹ See GOK PQR at Appendix at 17.

¹⁸⁰ *Id.*, at 426.

¹⁸¹ See Petitioner Case Brief at 4,5 (citing *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 Countervailing Duty Administrative Review: Certain Pasta from Italy*, 80 FR 11172 (March 2, 2015) (*Pasta from Italy*), and accompanying IDM).

¹⁸² See Petitioner Case Brief at 3 (citing *Nippon Steel* at 1373, and 1382-83).

- 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.¹⁸³ Additional information on the record demonstrates the full extent of GOK political interference in KEPCO's price-setting procedures.¹⁸⁴
- The *CORE VR* and other submitted information further support the lack of record evidence with regard to the consultations between KEPCO and government entities that prevent the Department from analyzing the price-setting philosophy with any accuracy.¹⁸⁵
- The Petitioner also notes the GOK did not provide requested audit reports, cost data, and other electricity specific data.¹⁸⁶
- The Department should select an adverse rate to ensure the GOK does not benefit from its failure to cooperate in this investigation.¹⁸⁷ As such, the Department should use the Italian electricity rate for industrial users in 2014, which is a contemporary and comparative benchmark.

The GOK rebuts:

- The GOK has fully responded to the Department's requests and questions. In regard to this program, the GOK provided the regulations and cost data to the Department to confirm its price-setting philosophy. Similar arguments from Petitioner were rejected by the Department in *CORE from Korea*.¹⁸⁸
- Petitioner's cite to a missing exhibit, Exhibit GSQRE-1, is inapposite as the information was actually provided in Exhibit E-25 of the GOK IQR.

¹⁸³ See Petitioner Case Brief at 6, 7.

¹⁸⁴ See Petitioner Case Brief at 7 (citing GOK IQR at 22 – 23 and Exhibit E-3 at 5).

¹⁸⁵ See Petitioner Case Brief at 7,8 (citing Letter from GOK, RE: Hot-Rolled Steel Flat Products from the Republic of Korea: Electricity Verification Report and relevant Exhibits from the Countervailing Duty Investigation on Certain Corrosion Resistant Steel Products (April 26, 2016, we note the document contains an incorrect date of November 30, 2015 on the cover letter.) (*CORE VR*) at 21 and Letter from Petitioner, RE: Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Submission of Factual Information – Benchmark Data at Exhibit 12 at 2).

¹⁸⁶ See Petitioner Case Brief at 9,10, 11 (citing GOK IQR at 3, 9, 71 – 72, Exhibit E-11, Exhibit E-23, and Appendix volume at 412 – 413 and GOK ISQR at 3 and 15).

¹⁸⁷ See Petitioner Case Brief at 13 (citing *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; *CORE from Korea*, 81 FR 35310, 35312, *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) (*Cold Rolled Preliminary Determination*) and accompanying Preliminary Decision Memorandum at 34).

¹⁸⁸ See GOK Rebuttal Brief at 4,5.

- The GOK provided the 2012 and 2014 cost data, which were verified by the Department. The GOK also did not refuse to provide data for “individual consumers,” but does not retain such data and explained in its response why it could not obtain this type of data.
- Petitioner’s claim of unreported data involve another alleged subsidy program. However, the GOK did explain why it could not provide the requested data for this program.¹⁸⁹

POSCO and Hyundai Steel rebut:

- The GOK fully responded to the Department’s requests and provided a voluminous amount of information on the electricity tariff setting process and costs.¹⁹⁰
- This program was fully verified in *CORE from Korea* and this investigation.¹⁹¹
- Citing 19 U.S.C. §§ 1677(m)(d) and 1677e(b), the Department must inform the respondent of the nature of the deficiency and provide an opportunity to cure the deficiency if time permits and can apply an “adverse inference” if it determines that an interested party has failed to cooperate to the best of its ability. Respondents note Commerce’s “discretion...is not unbounded.”¹⁹²
- Petitioner cannot point to any failure to cooperate on the part of the GOK. Furthermore, citing *Borusan*, respondents argue the Department is obligated to ask follow-up questions before resorting to adverse facts available.¹⁹³

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

¹⁸⁹ See GOK Rebuttal Brief at 6,7.

¹⁹⁰ See POSCO Rebuttal Brief at 45 – 46 and Hyundai Rebuttal Brief at 18 – 19.

¹⁹¹ See POSCO Rebuttal Brief at 46 and Hyundai Steel Rebuttal Brief at 19 – 20.

¹⁹² See POSCO Rebuttal Brief at 47 and Hyundai Steel Rebuttal Brief at 20 (citing *F.Lii de Cecco di Flippo Fara S. Martino S.p.A. v United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

¹⁹³ See POSCO Rebuttal Brief at 50 and Hyundai Steel Rebuttal Brief at 23 (citing *Borusan Mannesmann Boru Sanayi ve Tacaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1348 (CIT 2015)).

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.

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.¹⁹⁴ 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.

Petitioner's reliance on *Boltless Shelving Units*¹⁹⁵ and *Pasta from Italy*¹⁹⁶ 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 November 4, 2015, and December 21, 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. Although Petitioner points to a missing exhibit and a "refusal" to provide requested electricity information on the record, we note the GOK did provide documentation made in regard to the tariff increases in Exhibit E-25 of GOK IQR and the requested information for another alleged subsidy program, not the provision of electricity for LTAR. In this regard, the Department has the discretion to request additional information from an interested party if we believe it has provided a deficient response. Here, the GOK provided the information requested by the Department or explained why it was unable to provide the requested information.

Furthermore, as noted in *CORE VR* and the GOK Verification Report, the Department conducted an extensive verification of this information in *CORE* and this proceeding, including the data underlying the calculations used by KEPCO to set the electricity prices in effect during the POI.¹⁹⁷ At both verifications, the Department was able to fully verify KEPCO's standard

¹⁹⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD CVD Preamble*).

¹⁹⁵ 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. See IDM at 7-8. Therefore, pursuant to sections 776(a) and (b) of the Act, an adverse inference was applied to the GOC with respect to the provision of electricity for LTAR.

¹⁹⁶ In *Pasta from Italy*, the Government of Italy (GOI) failed to respond or submitted incomplete and untimely responses to the Department's supplemental questionnaires with respect to numerous programs. Therefore, an adverse inference was applied to the GOI with respect to the program at issue. See IDM at 11-12.

¹⁹⁷ See *CORE VR* and GOK Verification Report.

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. Therefore, we disagree with Petitioner's 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. For all these reasons, the use of AFA, as advocated by Petitioner, is not warranted.

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

Petitioner argues:

- The Department's preliminary finding of no benefit under the program is inconsistent with the current statute and regulations.¹⁹⁸ In particular, the Department's reliance on *Magnesium from Canada*¹⁹⁹ is misplaced. *Magnesium from Canada* was guided by the old statute and focused on the provision of goods and services in terms of "preferential" treatment rather than whether the goods or services were provided for less than adequate remuneration.²⁰⁰ Petitioner adds even *Magnesium from Canada* did not rely on the existence of a standard pricing mechanism, but only in cases where the rate schedule did not apply to a respondent.²⁰¹
- *Softwood Lumber from Canada* established that there are several important differences between the discarded preferentiality standard and the current adequate remuneration standard.²⁰² Preferentiality is a measure of price discrimination, *i.e.*, whether a government is favoring some buyers over others with lower prices. Thus, the first choice of benchmark under this methodology was to use another government price as a benchmark to determine whether the investigated program provides a benefit. This did not measure the adequacy of remuneration, and the price discrimination test was dropped with the adoption of the URAA. It is no longer sufficient to say that the government does not discriminate; rather, the Department must determine whether the government is receiving adequate remuneration, *i.e.*, a market-based price.

¹⁹⁸ See Petitioner Case Brief at 15 (citing Section 771(5)(E)(iv) of the Act ('the provision of goods and services will have conferred a benefit if they are provided for less than adequate remuneration.'), 19 CFR 351.511(a)(2) and CVD Preamble at 65360 (Under the regulations, the Department "will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.")).

¹⁹⁹ See Petitioner Case Brief at 16 (citing *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) (*Magnesium from Canada*)).

²⁰⁰ See Petitioner Case Brief at 16 (citing section 771(5)(a)(ii)(II) of the Act (1998)).

²⁰¹ See Petitioner Case Brief at 19 (citing *Magnesium from Canada* at FR 30946, 30949-50).

²⁰² See Petitioner Case Brief at 17 (citing *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43196 (August 17, 2001) (*Softwood Lumber from Canada Prelim*) and *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada Final*), and accompanying Issues and Decision Memorandum, at 42).

- Pursuant to 19 CFR 351.511, the Department’s analysis should focus on market principles.²⁰³ In the *Preliminary Determination*, the Department focused on “preferential treatment” rather than the current methodology articulated in *Softwood Lumber from Canada*.²⁰⁴ Thus, the Department should analyze the tariff setting process in terms of market principles and whether the prices are market based.
- Consistent with *Wire Rod from Trinidad and Tobago*,²⁰⁵ *Softwood Lumber from Canada*,²⁰⁶ and *Royal Thai Government*,²⁰⁷ the Department should find that KEPCO’s prices are not market-based because they do not allow for an appropriate recovery of costs. Substantial record evidence submitted by the GOK indicates that KEPCO does not cover its cost for providing electricity to its customers. This case stands in contrast to the countervailing duty investigation of *Wire Rod from Trinidad and Tobago*, where the Department found no benefit where it requested and received studies indicating that the respondent’s customer category was profitable and that marginal costs were covered.²⁰⁸
- The Petition and record information, and specifically the industrial tariff schedule and the distribution of nuclear-generated electricity, indicate that KEPCO’s electricity tariff prices are not set in accordance with market principles.²⁰⁹ All electricity in Korea is sold through KPX, which charges a flat fee for costs (capacity price) and uses a merit system to assign a price for variable costs. The tariff prices charged to industrial companies provide a benefit because the prices do not cover the actual costs incurred by the nuclear generators.
- The Department should disregard KEPCO’s comments concerning alleged defects in the National Assembly Report. Information on the record clearly demonstrates that the system assigns the same fixed costs and uses the merit system to favor generators using cheaper fuel sources. Thus, although nuclear energy is cheap to produce, its overall costs are the most expensive in comparison to industrial tariffs rates. However, KEPCO’s own data and the National Assembly audit demonstrate that costs for other types of generation in Korea are also skewed. Moreover, the Korean National Assembly Report from 2012 (an examination of electricity usage of the 100 biggest corporations in Korea)

²⁰³ See Petitioner Case Brief at 17 (citing *CVD CVD Preamble* at 65378).

²⁰⁴ See Petitioner Case Brief at 17, 18 (citing *Final Rule: Countervailing Duties*, 54 FR 23366, 23372 (May 31, 1989) and *Softwood Lumber from Canada Prelim, Softwood Lumber from Canada Final* and accompanying Issues and Decision Memorandum at 42).

²⁰⁵ See Petitioner Case Brief at 25 (citing *Steel Wire Rod from Trinidad and Tobago*, 65 FR 55003 (October 22, 1997)).

²⁰⁶ See Petitioner Case Brief at 25 (citing *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA-CDA-2002-1904-03 NAFTA Binational Panel Review at 9-10).

²⁰⁷ See Petitioner Case Brief at 25, 26 (citing *Royal Thai Government v. Unites States*, 441 F. Supp. 2d 1350, 1359-62 (CIT 2006) (*Royal Thai Government*)).

²⁰⁸ See Petitioner Case Brief at 27 (citing *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55810 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 6).

²⁰⁹ See Petitioner Case Brief at 27-31.

demonstrates that “the government subsidizes and charges less-than-normal electricity cost to the steel industries for their exceeding use of electricity.”²¹⁰

- The Department did not address specificity in the preliminary determination. However, substantial evidence on record demonstrates the alleged program may be found *de facto* specific under any of the relevant statutory provisions.²¹¹

The GOK rebuts:

- The relevant data to examine is the 2012 and 2014 cost data, and the fact that industrial tariff rates have increased three times since August 2012. Additionally, Petitioner’s argument on the system’s marginal price is misplaced as this price, the variable cost, is equally paid to all generators that generate and sell electricity at a certain time.
- In accordance with the *CVD Preamble*, the Department correctly applied the adequacy of remuneration standard and not the preferentiality standard under the tier “three” analysis.²¹² The Department’s analysis considered price setting philosophy, costs, and price discrimination.²¹³
- The 2014 cost data sheet is accurate and is the basis to analyze costs.²¹⁴
- Petitioner’s statements about purchasing generated electricity are mistaken. There is not a one-to-one correlation between a generator and an end user. Electricity is purchased from all types of generators and provided to all users based on the specific tariff rate. The fact that the tariff decreases when the peak is low is truly a market oriented characteristic.²¹⁵
- Petitioner did not take the adjustment coefficient that KEPCO pays for electricity into account when arguing electricity tariff rates do not cover all fixed and variable costs.²¹⁶
- Petitioner’s cites to record to record information do not support a finding that electricity tariff rates are not based on market principles.²¹⁷
- Korean law and regulations do not allow tariff rates to provide preferential treatment to industrial class users and the merit order system, by design, does not allow any discretion with regard to the source of generating electricity or enable large customers to consume large amounts of electricity at off-peak times.

²¹⁰ See Petitioner Case Brief at 33-34.

²¹¹ See Petitioner Case Brief at 36 – 47.

²¹² See GOK Rebuttal Brief at 9 (citing *CVD CVD Preamble* at 65377 – 65378).

²¹³ See GOK Rebuttal at 12 (citing PDM at 32).

²¹⁴ See GOK Rebuttal Brief at 13.

²¹⁵ See GOK Rebuttal Brief at 14.

²¹⁶ See GOK Rebuttal Brief at 14 - 15.

²¹⁷ See GOK Rebuttal Brief at 16 – 17.

POSCO and Hyundai Steel rebut:

- 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 *CVD 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.²¹⁸
- The Department's analysis is consistent with the statute, regulations, and the *CVD Preamble*, and Petitioner has 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 *CVD Preamble*.
- The *CVD Preamble*²¹⁹ specifically cites to *Magnesium from Canada*²²⁰ 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.²²¹
- 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.²²²
- Petitioner's 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.²²³

²¹⁸ See POSCO Rebuttal Brief at 52 – 53 and Hyundai Steel Brief at 25 – 26 (citing *CVD CVD Preamble*, 63 FR at 65378).

²¹⁹ See POSCO Rebuttal Brief at 53 - 54 and Hyundai Steel Brief at 26 – 27 (citing *CVD CVD Preamble*, 63 FR at 65378).

²²⁰ See POSCO Rebuttal Brief at 53 - 54 and Hyundai Steel Brief at 26 – 27 (citing *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) (*Magnesium from Canada*)).

²²¹ See POSCO Rebuttal Brief at 54 and Hyundai Steel Brief at 27 (citing *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).

²²² See POSCO Rebuttal Brief at 57 and Hyundai Steel Brief at 30 (citing GOK IQR at Exhibit E-3, F-9 and F-41).

²²³ See POSCO Rebuttal Brief at 58 - 59 and Hyundai Steel Brief at 31 – 32.

- The fact respondents operate their production facilities 24 hours a day and consume 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 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. Finally, as long as KEPCO covers its costs and has a reasonable rate of return, how KPX purchases electricity from generators is not relevant to the analysis.
- 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 the *CORE from Korea* verification, the KEPCO official explained that this report had nothing to do with prices in Korea.
- There is no basis to Petitioner's *de facto* arguments as the respondents purchase electricity from the published tariff schedule that was established by KEPCO's standard pricing mechanism.

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 we have determined the provision of electricity in this case 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.²²⁴

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 to our investigated respondents to determine whether the price charged is consistent with the

²²⁴ See *CVD CVD Preamble*, 63 FR at 65378.

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.²²⁵

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.²²⁶ 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.²²⁷ 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.²²⁸ 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.²²⁹ 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*. Petitioner argues 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.

Petitioner contends that the Department's application of its standard pricing mechanism, set forth in *Magnesium from Canada*,²³⁰ 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. Petitioner is 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 351.511, regarding the provision of a good or service, were enacted with reference to the

²²⁵ See discussion of *Magnesium from Canada* in PDM at footnote 204.

²²⁶ See GOK IQR at 13 and Exhibit E-13.

²²⁷ See GOK IQR at Exhibit E-23 and GOK Verification Report at Exhibit VE-5.

²²⁸ See GOK IQR at 15 – 17 and Exhibit E-11.

²²⁹ See GOK IQR at 12.

²³⁰ See Petitioner Case Brief at 16.

methodology developed in *Magnesium from Canada* to analyze whether the provision of a good or service such as electricity is provided at adequate remuneration.²³¹

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.²³² 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.²³³ 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.²³⁴ Petitioner notes *Magnesium from Canada* involved a company whose rate did not apply to the rate schedule.²³⁵ However, we have applied the standard set forth in *Magnesium from Canada* in investigations where the respondent’s rate did not deviate from the tariff rate.²³⁶

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 the preferentiality methodology flipped the regulatory hierarchy, with market prices from the country under investigation and world market prices moving up the

²³¹ See *CVD Preamble*, at 63 FR 65348; 65378 (“Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely). See, e.g., *Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) and *Venezuelan Wire Rod*”).

²³² See *CVD Preamble*, at 63 FR 6538.

²³³ See *Magnesium from Canada*, 57 FR at 30949-50.

²³⁴ See *CVD Preamble*, at 63 FR 65378.

²³⁵ See Petitioner Case Brief at 19.

²³⁶ See e.g., *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (Oct. 13, 2015).

hierarchy, and other considerations, including price discrimination, remaining potentially relevant only if the preferred data are unavailable.²³⁷ However, Petitioner's argument, citing *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."²³⁸ 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."²³⁹

Cost Recovery as a Measure of Adequate Remuneration

Petitioner argues 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.²⁴⁰ Therefore, under the CVD law, the Department may determine the adequacy of remuneration by assessing whether the government's price for 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.²⁴¹

²³⁷ 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 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 CVD Preamble*, with respect to assessing a government price under a "tier three" analysis.

²³⁸ See *CVD Preamble*, 63 FR at 65378.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

Therefore, the argument by Petitioner 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.

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.²⁴² 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.²⁴³ 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.²⁴⁴ 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, Petitioner's 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 are applicable to CVD investigations initiated on the basis of petitions filed after December 28, 1998.²⁴⁵ Therefore, the analysis of adequacy of remuneration cited by Petitioner in *Wire Rod from Trinidad and Tobago* did not involve the assessment of the adequacy of remuneration under 19 CFR 351.511. Moreover,

²⁴² 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."

²⁴³ *Id.*

²⁴⁴ *Id.*, and accompanying IDM at Comment 12.

²⁴⁵ See *CVD Preamble*, 63 FR at 65348.

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).²⁴⁶

Petitioner also argues 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, Petitioner has 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. Petitioner has 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.²⁴⁷

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.²⁴⁸ For the POI, KEPCO more than fully covered its cost for the industry tariff applicable to our respondents.²⁴⁹

²⁴⁶ See *Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) (*Melamine from Trinidad and Tobago*), and accompanying IDM at 13.

²⁴⁷ See *Line Pipe from Korea*, and accompanying IDM at 27.

²⁴⁸ See GOK IQR at 15-16; see also *CORE VR* at 12-18.

²⁴⁹ See GOK IQR at Exhibit E-23 and GOK Verification Report at Exhibit VE-5.

The National Assembly Report

Finally, Petitioner argues 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.”

The National Assembly Report relied upon by Petitioner 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 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.²⁵⁰

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

Petitioner argues:

- 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.²⁵¹
- 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*²⁵², the Department had a similar situation and used

²⁵⁰ See GOK IQR at Exhibit E-3 at page 50-51.

²⁵¹ See Petitioner Case Brief at 48 (citing GOK IQR at 9-10).

comparable market-based prices in a country “at a comparable level of economic development that is reasonably proximate to, but outside, of China.”²⁵³ The Department should use the same methodology for this program, using Japan as the comparable country.²⁵⁴

- Alternatively, the Department may also use data on the record to approximate the benefit conferred by the program.²⁵⁵

POSCO and Hyundai Steel rebut:

- 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.²⁵⁶ This is in line with the Department’s past practice.²⁵⁷
- 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*.²⁵⁸
- The Department needs to analyze the prevailing market conditions in the country under investigation pursuant to section 771(5)(E) of the Act.
- Petitioner’s suggested use of KEPCO data provided for the National Assembly Report, in the alternative, should be rejected as the report has been discredited by KEPCO and described as inaccurate.

²⁵² As a result of WTO Appellate Body’s Finding in WTO DS 379, the analysis of land in *Laminated Sacks from China* was modified in a Section 129 Determination. For further information, see *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People’s Republic of China*, 77 FR 52683 (August 30, 2012) and accompanying IDM *Final Determinations; Section 129 Proceedings Pursuant to the WTO Appellate Body’s Findings in the WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People’s Republic of China*.

²⁵³ See Petitioner Case Brief at 50 (citing *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).

²⁵⁴ See Petitioner Case Brief at 50 – 52.

²⁵⁵ Petitioner Case Brief at 53-54.

²⁵⁶ See POSCO Rebuttal Brief at 71 and Hyundai Steel Rebuttal Brief at 46 (citing GOK IQR at 11).

²⁵⁷ See POSCO Rebuttal Brief at 71 and Hyundai Steel Rebuttal Brief at 46 (citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55104, 55021-22 (October 22, 1997) (*Wire Rod From Venezuela*)).

²⁵⁸ See POSCO Rebuttal Brief at 72 and Hyundai Steel Rebuttal Brief at 45 (citing *Supercalendered Paper From Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper From Canada*)).

Department's Position:

Petitioner has 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 and 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.²⁵⁹ 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.²⁶⁰ 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*²⁶¹, 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.²⁶² 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

²⁵⁹ 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).

²⁶⁰ See *CVD Preamble*, 63 FR at 65378.

²⁶¹ As a result of WTO Appellate Body's Finding in WTO DS 379, the analysis of land in *Laminated Sacks from China* was modified in a Section 129 Determination. For further information, see *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683 (August 30, 2012) and accompanying *IDM Final Determinations; Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in the WTO DS 379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People's Republic of China*.

²⁶² See *Laminated Sacks from China*, and accompanying *IDM* at 16.

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.

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

Petitioner argues:

- 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.²⁶³
- 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.
- The Department determined not to investigate the provision of natural gas because Nucor did not provide any world market and domestic price schedules or any other information support the allegation that retail prices are set at LTAR. However, the assertion that the urban gas suppliers provide special discounts at their discretion was the best information reasonably available.

²⁶³ See Petitioner Case Brief at 81 (Citing *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 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.

POSCO rebuts:

- The Department correctly determined to limit the scope of the investigation to the provision of LNG from KOGAS for LTAR and not broaden the investigation, based on Petitioner's deficient new subsidy allegation, to cover natural gas in its gaseous form.

Department's Position:

We continue to find that the LNG for LTAR program was not used for this final determination. In addition, we continue to find that Petitioner's new subsidy allegation²⁶⁴ was deficient and we will not initiate an investigation into whether other forms of natural gas were provided at LTAR.²⁶⁵

In the *Preliminary Determination*, the Department determined that this program was not used.²⁶⁶ There is no information on the record that warrants our reconsideration of this finding. Unlike *Supercalendered Paper from Canada*, in the instant proceeding there was no specific allegation on whether the GOK entrusted or directed the urban gas suppliers to provide natural gas at LTAR, until the new subsidy allegations were filed,²⁶⁷ and the Department declined to conduct such an investigation because the allegation was not adequately supported.²⁶⁸

Petitioner further contends 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 initiate an investigation into 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.

Petitioner argues that they provided information reasonably available to support their new subsidy allegation. However, Petitioner did not provide any evidence to support its allegation. For example, Petitioner did not provide domestic or world-market price information, or evidence

²⁶⁴ See The Petitioner's Letter to the Department, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: New Subsidy Allegations," dated November 30, 2015 ("NSA Allegation").

²⁶⁵ See Memorandum to James C. Doyle, Director, Office V, from Katie Marksberry, International Trade Compliance Analyst, Re: Analysis of New Subsidy Allegations, dated April 5, 2016 ("NSA Memorandum").

²⁶⁶ See PDM 40.

²⁶⁷ See NSA Allegation at 5-8.

²⁶⁸ See NSA Memorandum at 4.

that the GOK is entrusting and directing private companies to sell natural gas for less than adequate remuneration. Therefore, we find that we appropriately determined not to initiate an 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, need not need to address Petitioner's arguments on the other forms of natural gas that were supplied by these urban gas suppliers.

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

Petitioner argues:

- In spite of Petitioner's repeated requests that the Department request information on POSCO Energy, the Department failed to do so.
- Citing *Refrigerators from Korea* and *Washers from Korea*,²⁶⁹ Petitioner contends 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.
- Petitioner argues that at verification, the Department discovered that POSCO failed to report full questionnaire responses for four cross-owned affiliates that supplied inputs for POSCO's production of subject merchandise: POSCO Chemtech Company, Ltd. (POSCO Chemtech), POS-HiMetal Co., Ltd. (POS-HiMetal), POSCO P&S, POSCO M-Tech Co., Ltd. (POSCO M-Tech).²⁷⁰ Further, Petitioner contends that the Department appropriately did not verify input purchase quantities that POSCO attributed to hot-rolled steel production.²⁷¹
- The Department cannot accept POSCO's legal justification for withholding information regarding its cross-owned input suppliers. It is the Department, and not respondents, which determines what information is necessary and relevant, and the Department has previously found that a respondent's refusal to provide information prior to the verification precludes the investigation of related issues and prevents the Department from relying on that information for the final determination.²⁷²

²⁶⁹ See Petitioner Case Brief at 60-61 (Citing *Refrigerator-Freezers From Korea*, and accompanying IDM at 93; citing also *Washers from the Republic of Korea*, and accompanying IDM).

²⁷⁰ See POSCO VR at 5 and Exhibit VE-5.

²⁷¹ *Id.*

²⁷² See Petitioner Case Brief at 65-66 (Citing *Supercalendared Paper from Canada*, and accompanying IDM at 153-154).

- 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.²⁷³
- Petitioner states 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 unreported affiliate for a total AFA rate of 453.88 percent.²⁷⁴
- Alternately, the Department may apply these rates only to the programs it determines are countervailable. In that case the total subsidy rate would be 20.55 percent for each unreported input supplier, or 82.20 percent.

POSCO argues:

- Citing the *CVD 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.²⁷⁵ 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 and therefore not primarily dedicated to the production of the downstream product.
- 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 Chemtec, POS-HiMetal, or POSCO P&S as the inputs they provided to POSCO were not primarily dedicated to the production of the downstream product.²⁷⁶
- POSCO states that POSCO M-Tech is not cross-owned with POSCO, because there is no majority ownership interest between the two companies, but even if they were cross-

²⁷³ See Petitioner Case Brief at 70-71 (Citing, 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).

²⁷⁴ See Petitioner Case Brief at 73-74 (Citing *Washers from Korea*, 80 FR 55336 (September 15, 2015) (*Washers from Korea; 2012-13*) and accompanying IDM at 12-13).

²⁷⁵ See POSCO Case Brief at 6-7 (Citing *CVD 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)).

²⁷⁶ See POSCO Case Brief at 10, 12-14 (Citing *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).

owned, the ferro-molybdenum that POSCO M-Tech sold to PSOCO was not primarily dedicated.

- 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.²⁷⁷
- POSCO accurately identified its affiliation with each of these companies in its responses, and neither the Department nor Petitioner raised issue 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.

Petitioners rebut:

- POSCO did not just refuse to provide questionnaire responses; it concealed the fact that they were input suppliers, preempting any rebuttal arguments or factual information regarding this issue until verification. POSCO affirmatively stated that there were no cross-owned companies located in Korea that provided inputs to POSCO's production of subject merchandise.²⁷⁸
- POSCO's decision to not report the aforementioned input suppliers was "willful non-compliance" and a conscious decision made by POSCO.²⁷⁹
- POSCO attempts to shift responsibility for its failure to cooperate to the Department by claiming that all of the cross-owned affiliates were fully disclosed in its original affiliation response. However, the Department has found that a respondent's refusal to provide information based on its unilateral rejection of Commerce's practice and its interpretation of how Commerce should alternatively evaluate a subsidy program constitutes willful non-compliance.²⁸⁰
- POSCO argues that subsidies received by POSCO P&S cannot be attributed to POSCO because POSCO P&S does not actually produce steel scrap, and that cross-ownership does not exist between POSCO and POSCO M-Tech. However, the Department has attributed subsidies received by non-producing input suppliers to the respondent,²⁸¹ and

²⁷⁷ See POSCO Case Brief at 17 (Citing *Nippon Steel* at 1373,1383).

²⁷⁸ Citing POSCO SQR at 5.

²⁷⁹ See Petitioner Rebuttal Brief at 3 (Citing *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States; Maverick Tube Corp v. United States*, Consol. Ct. No. 14-00229, 61 F Supp. 3d 1306 and Slip Op. 15-159 (August 31, 2015) (*Borusan Remand*)).

²⁸⁰ See Petitioner Rebuttal Brief at 9 (Citing *Borusan Remand* at 25).

²⁸¹ See Petitioner Rebuttal Brief at 13-14 (Citing *Certain Polyethylene Terephthalate Resin from the People's Republic of China*, 81 FR 13337 (March 14, 2016) and accompanying IDM at 47).

POSCO's voting interest in POSCO M-Tech supports a finding that cross-ownership exists.

- There is no information on which the Department can rely to determine whether the inputs are primarily dedicated, and thus countervailable, under the Department's attribution regulations. A respondent's refusal to provide information prior to verification precludes investigation of related issues and prevents the Department from relying on that information in reaching a final determination.²⁸² Therefore, the Department cannot base its final determination on the information found at verification, as argued by POSCO.

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.
- POSCO correctly did not submit questionnaire responses for the five companies mentioned by Petitioner.
 - 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.²⁸³ The *CVD 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 *CVD 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. 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.²⁸⁴
 - 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.²⁸⁵ Consistent with *Washers from Korea*, POSCO Chemtech's sales of limestone are not primarily dedicated to the production of the downstream product.²⁸⁶

²⁸² See Petitioner Rebuttal Brief at 14-15 (citing *Supercalendared Paper from Canada*, and accompanying IDM at 153-154).

²⁸³ Citing section 776(b)(1) of the Act.

²⁸⁴ Citing 19 CFR 351.525(6)(iv).

²⁸⁵ See *Refrigerators from Korea*, and accompanying IDM at 2-4.

²⁸⁶ See POSCO Rebuttal Brief at 13-14 (Citing *Washers from Korea*, and accompanying IDM at 3; see also *Softwood Lumber from Canada*, and accompanying IDM at Comment 1).

- POSCO P&S - Raw materials sold to POSCO are not primarily dedicated to the production of the downstream product, so consistent with *Softwood Lumber from Canada*, POSCO P&S was not required to submit a response.²⁸⁷ Additionally, in *Pet Resin from the PRC* the Department found that cross-owned input suppliers that were not producers of those inputs did not meet the criteria for having to submit complete questionnaire responses.²⁸⁸
 - POSCO M-Tech - There is no majority ownership interest between POSCO M-Tech and POSCO, and thus, cross-ownership is not presumed.²⁸⁹ Additionally, the inputs supplied were not primarily dedicated, so consistent with *Softwood Lumber from Canada*, POSCO M-Tech was not required to submit a response.²⁹⁰
 - POS-HiMetal - Consistent with *Softwood Lumber from Canada*, POS-HiMetal was not required to submit a response.²⁹¹
- The Department does not have to verify every piece of information that it relies on in making a final determination, but has discretion to determine which information to verify.
 - Even if the Department determines that it cannot rely on information regarding the value of the inputs supplied by the cross-owned input suppliers, other information on the record substantiates that the inputs were not primarily dedicated.
 - Petitioner's attempt to undermine POSCO's argument that the inputs supplied were not primarily dedicated using *Shrimp from Thailand*²⁹² is misplaced as that case does not address POSCO's argument with respect to the input suppliers' sales of the inputs to POSCO as a percentage of that input suppliers' total sales. Additionally, *Lined Paper Products from Indonesia*²⁹³ is not relevant because the issue of input suppliers' sales was not presented. *Seamless Pipe from China*²⁹⁴ is similarly irrelevant because it only addresses whether the downstream product is broader than subject merchandise, which is not at issue here.

²⁸⁷ See *Softwood Lumber from Canada*, and accompanying IDM at Comment 1.

²⁸⁸ See POSCO Rebuttal Brief at 20-21 (citing *Countervailing Duty Investigation of 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)).

²⁸⁹ Citing 19 CFR 351.525(b)(6)(vi).

²⁹⁰ See POSCO Rebuttal Brief at 16-17 (Citing *Softwood Lumber from Canada*, and accompanying IDM at Comment 1).

²⁹¹ *Id.*

²⁹² See Petitioner Case Brief at 71 (Citing *Shrimp from Thailand*).

²⁹³ *Id.* (citing *Lined Paper from Indonesia*).

²⁹⁴ *Id.* (citing *Certain Seamless Carbon Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic*, 75 FR 57444 (September 21, 2010) (Seamless Pipe from China)).

- 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.²⁹⁵
- Petitioner’s 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.
- The Department must calculate CVD margins as accurately as possible,²⁹⁶ 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.²⁹⁷
- Petitioner’s 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.²⁹⁸
- Pursuant to section 776(c) of the Act, the Department could apply the rate calculated, 0.06 percent, for POSCO’s cross-owned affiliate, DWI, to any cross-owned affiliates that the Department determines should have submitted a response. Alternatively, the Department has numerous calculated, above-zero rates in this investigation that can be used.

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.²⁹⁹

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*,³⁰⁰ 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

²⁹⁵ See POSCO Rebuttal Brief at 28 (citing *Nippon Steel* at 1382-83).

²⁹⁶ *Id.* (citing, e.g. *NTN Bearing Corp. v. United States* 74 F.3d 1204, 1208 (Fed. Circ. 1995) (*NTN Bearing*)).

²⁹⁷ *Id.* (citing, 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).

²⁹⁸ *Id.* (citing, e.g. *Steel Beams from Korea*, and accompanying IDM at 22).

²⁹⁹ See POSCO AQR at 4-5.

³⁰⁰ 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, S.p.A. v. United States*, 628 F. Supp. 198, 205-06 (CIT 1986) (“It is Commerce, not the respondent, that determines what information is to be provided for an administrative review.”).

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.”³⁰¹ 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.³⁰² 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 prohibited the opportunity to carefully examine the full extent to which POSCO and all of its cross-owned 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 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. Each of the four aforementioned affiliated companies is listed as providing inputs in the “Inputs for Hot-Rolled” exhibit submitted by POSCO at verification.³⁰³ In POSCO’s AQR, it lists that three of the four companies are cross-owned

³⁰¹ See “Use of Facts Otherwise Available and Adverse Inferences” section above, and POSCO AQR at 4-5.

³⁰² See POSCO AQR at 4-5.

³⁰³ *Id.*, at 73.

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 *CVD Preamble* to our regulations further clarifies our cross-ownership standards. According to the *CVD 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.³⁰⁴

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.³⁰⁵

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.³⁰⁶ 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. Petitioner proposes multiple rates that the Department should assign as AFA. The Department notes that use of company-specific rates is not consistent with its practice,³⁰⁷ 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.³⁰⁸ The 3.59 percent rate cited by Petitioner 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

³⁰⁴ See *CVD CV Preamble*, 63 FR at 65401.

³⁰⁵ See *Fabrique*, 166 F. Supp. 2d at 600-604.

³⁰⁶ See POSCO Final Calculation Memorandum at 4, *see also* POSCO VR at 5.

³⁰⁷ See “Adverse Facts Available” section above.

³⁰⁸ 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).

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 Petitioner, in *Washers from Korea* and *Refrigerators from Korea*,³⁰⁹ 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.³¹⁰ 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.³¹¹

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. POSCO only provided information at verification which would have allowed the Department to investigate further regarding the inputs provided by the companies. The team was unable to verify this information, a document that listed inputs used in the production of hot-rolled and providers of the inputs,³¹² 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,³¹³ 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

³⁰⁹ See Petitioner Rebuttal Brief at 6-7.

³¹⁰ See *OCTG from Turkey*, and accompanying IDM at 55.

³¹¹ See POSCO VR at 5-17.

³¹² *Id.*, at VE-5.

³¹³ 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.

the input provided by a supplier as a gauge for whether the company should submit a response.³¹⁴ 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.³¹⁵ In the immediate investigation, we discovered the input suppliers at verification, and due to untimely presentation of the 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 hot-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 also an intermediate input to subject merchandise).³¹⁶ 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.³¹⁷ 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 hot-rolled steel.³¹⁸

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

³¹⁴ See 19 CFR 351.525(b)(6).

³¹⁵ See *CORE from India*, and accompanying IDM at Comment 11.

³¹⁶ See *Supercalendered Paper From Canada*, and accompanying IDM at Comment 19.

³¹⁷ 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.

³¹⁸ See POSCO VE-5 at 3-11.

inputs through a company's production process.”³¹⁹ 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.³²⁰ 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.³²¹

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.³²² The Federal Circuit acknowledged, however, that while there is no willfulness 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.³²³ 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.³²⁴ 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.³²⁵ 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,³²⁶ the Department concludes, as AFA, pursuant to sections 776(a) and (b) of the Act, 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.³²⁷ Based on

³¹⁹ See *Coated Paper from the PRC*, and accompanying IDM at Comment 18.

³²⁰ *Id.*, citing *Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626 (March 20, 1998) (*IPA from Israel*).

³²¹ *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).

³²² See *Nippon Steel*, 337 F.3d at 1382.

³²³ *Id.* at 1380.

³²⁴ *Id.* at 1382.

³²⁵ *Id.*

³²⁶ See POSCO VR at 5-17.

³²⁷ See PDM at 3.

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 PQR³²⁸ regarding transactions between POSCO Energy and POSCO,³²⁹ 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

Petitioner argues:

- Not until verification did POSCO discover that it has a Global R&D Center in Songdo International City, which is part of the Incheon FEZ.
- As POSCO withheld this information for the duration of the investigation the Department should not have accepted this information as a minor correction, however, the Department appropriately refused to verify the use or non-use of alleged FEZ programs. The Department should rely on AFA and presume that programs related to FEZs were used.
- Petitioner contends 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.³³⁰

POSCO argues:

- The GOK reported in its initial response that POSCO did not receive benefits under this FEZ program during the POI,³³¹ and the fact that the Department did not specifically verify this information does not call into question the accuracy or completeness.
- The benefits provided in FEZs are designed to attract foreign or foreign invested companies, and Korean companies generally would not receive benefits. Therefore, because it is not a foreign company, 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. POSCO does not produce hot-rolled steel or

³²⁸ See Letter from POSCO, Re: Initial Questionnaire Response, dated November 2, 2016 (PQR).

³²⁹ See POSCO VR at 5 and VE-5 at 14-15.

³³⁰ 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.

³³¹ See GOK PQR at 68.

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.³³²
- 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.³³³
- 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.³³⁴

Petitioner rebuts:

- 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.³³⁵
- It was appropriate for the Department to examine whether POSCO received benefits from being located in an FEZ based on information provided by POSCO rather than the GOK, because respondents are most likely to possess relevant information regarding the location of their own facilities.
- Respondents' failure to provide verifiable information regarding the claim that they have no facilities located in FEZs calls into question the veracity of the identical claim made by the GOK in its questionnaire response.
- POSCO is a foreign invested company and thus its claims that it could not benefit from the programs which intended to benefit foreign, or foreign-invested companies, are false. Further, there is no record evidence to support POSCO's claim that the FEZ programs are specific to foreign or foreign-invested companies.
- 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.³³⁶

³³² See POSCO Case Brief at 22 (citing, e.g., *NOES from Korea* and accompanying IDM at 18-19; and *Carbon Steel from Korea* and accompanying IDM at 24-25).

³³³ See POSCO Case Brief at 22 (Citing *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*); *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).

³³⁴ See POSCO Case Brief at 23 (citing, e.g., *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 36 F.3d 1027 (Fed. Cir. 2000) (*F.Lii de Cecco*) and *Dongguan Sunrise Furniture Co. v. United States*, 931 F. Supp. 2d 1346, 1353-54 (CIT 2013); see also *Line Pipe from Korea*, and accompanying IDM at Comment 2.

³³⁵ See Petitioner Rebuttal Brief at 17 (citing 19 U.S.C. § 1677m(i)(1)).

³³⁶ *Id.* at 19 (Citing GOK PQR at Exhibit FEZ-1, page. 13 and *Nippon Steel* at 1382-83).

- 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.
- 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 hot-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.³³⁷

POSCO rebuts:

- The GOK reported that POSCO did not receive any benefits under the FEZ program during the POI,³³⁸ and, consistent with the Department's practice, the Department should accept the accuracy of the GOK's statement³³⁹ 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.³⁴⁰
- Petitioner's 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.³⁴¹
- 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)), 0.015 percent (calculated for the KEXIM Overseas Investment Credit Program), and 0.01 percent (calculated for RSTA Article 78(4)).³⁴²

Department's Position:

POSCO reported that it "has no facilities located in an FEZ" in its initial questionnaire

³³⁷ *Id.* at 21 (Citing section 776(d) of the Act).

³³⁸ *See* POSCO Rebuttal Brief at 34 (citing GOK PQR at 108).

³³⁹ *Id.* at 34-35, (citing, e.g., *OCTG from Turkey*, and accompanying IDM at Comment 9; *Line Pipe from Korea*, and accompanying IDM at 34).

³⁴⁰ *Id.* at 35-36 (citing 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.A.N. 4040, 4199 (1994) at 870; and *Crawfish from China*, *Administrative Review*, and accompanying IDM at Comment 6).

³⁴¹ *Id.* at 39 (citing POSCO VR at 15; also citing e.g., *Line Pipe from Korea*, and accompanying IDM at Comment 2).

³⁴² *Id.* at 39 (citing Memorandum to the File from Katie Marksberry, Re: Preliminary Determination Calculation Memorandum for POSCO and Daewoo International Corporation (DWI), dated January 8, 2015 (POSCO Preliminary Calculation Memorandum) at Attachment 3.

response.³⁴³ At verification, however, POSCO presented, as a minor correction, information demonstrating that it has a Global R&D Center in Songdo International City, which is part of the Incheon FEZ. As explained in the verification report, Department officials explained to company officials and counsel for POSCO that we would not verify as to the use or non-use of alleged FEZ programs as its response only stated the company had no facilities located in a FEZ.³⁴⁴ Additionally, in verifying non-use at POSCO, we did not review any information at POSCO with regard to its use or non-use of alleged programs in a FEZ.³⁴⁵ Because POSCO did not reveal the fact that it had a facility located in an FEZ until verification, the Department did not have an opportunity to follow up on its claim, or the GOK's claim prior to verification. Instead, POSCO and the GOK responded affirmatively that POSCO did not have any facilities in an FEZ, precluding the Department from investigating the use or non-use of subsidies related to FEZs prior to verification. Accordingly, as described above, the application of facts available, pursuant to section 776(a)(1) and 776(a)(2)(A),(C) and (D) is warranted with respect to this program, and an adverse inference should be applied to POSCO, in accordance with section 776(b) of the Act, because POSCO did not act to the best of its ability in providing this information to the Department.

However, for the reasons set forth in the Department's position to Comment 5, above, we disagree with Petitioner that we should apply rates of 1.83 percent and 3.59 percent to certain benefits provided under the program.

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 an {sic} benefit under this program."³⁴⁶ 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.³⁴⁷ 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.³⁴⁸ As such,

³⁴³ See POSCO PQR at 52.

³⁴⁴ See POSCO/DWI Verification Report at 3

³⁴⁵ *Id.* at 15.

³⁴⁶ See GOK PQR at 68.

³⁴⁷ See TPEA.

³⁴⁸ See POSCO Affiliation Response at Exhibit 1,

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 hot-rolled steel 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.³⁴⁹ However, the purpose and operations of POSCO Global R&D Center were not verified by the Department. 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

Petitioner argues:

- Petitioner states 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.
- Petitioner argues 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.³⁵⁰
- The GOK did not properly report a loan to POSCO and failed to report export factoring by DWI.

POSCO argues:

- POSCO and DWI disagree with the Department's decision not to accept the minor correction at verification and request that the Department reconsider.
- The Department has discretion to accept factual information at any time during an investigation pursuant to 19 C.F.R. 351.301(c)(4).
- 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.³⁵¹

³⁴⁹ See POSCO Case Brief at 21.

³⁵⁰ See Petitioner Case Brief at 76.

³⁵¹ See POSCO Case Brief at 27-28; (citing, 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).

- The Department was able to fully verify selected KORES loan information during verification in accordance with its verification outline, substantiating DWI's response.
- Application of AFA in this case would be an abuse of the Department's discretion, especially because the Department has already verified other similar loans received by DWI from KORES and calculated *de minimis* benefits.

Petitioner rebuts:

- POSCO did not correct information already on the record by presenting the previously unreported loans.
- The minor correction directly undermines the validity and accuracy of DWI's questionnaire response.
- 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.
- The Department's practice is to reject attempts to provide new factual information at verification.³⁵²

POSCO rebuts:

- The Department should reject Petitioner's 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.
- 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.
- The fact that the GOK did not report export factoring by DWI is immaterial because 1) DWI reported the export factoring in its response, and 2) the Department was able to verify the information at the GOK. Further, even when the Department applies AFA to a government's failure to report certain programs, the AFA is limited to financial contribution and specificity. Here, DWI reported and the Department verified that its export factoring was tied to exports of non-subject merchandise.
- The fact that the GOK failed to report one of POSCO's loans in its initial questionnaire response is not a basis for the application of AFA because the Department verified the loan and collected the loan approval documents at verification.

³⁵² See POSCO Rebuttal Brief at 25 (citing, e.g., *Dry Containers from China*, and accompanying IDM at 45).

Department's Position:

At verification, DWI presented a list of KORES loans that it had not previously reported as a minor correction. 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 did not accept the correction as minor.³⁵³ Additionally, we did not 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 the existence of a benefit.

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 SQR³⁵⁴ prior to verification.³⁵⁵ However, at no point during verification did we verify the loans that DWI presented as minor corrections.³⁵⁶ Therefore, POSCO's claim that we verified the reported loan program in its entirety is simply incorrect.³⁵⁷ 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.³⁵⁸ 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 Petitioner 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 Petitioner 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

³⁵³ See POSCO VR at 3.

³⁵⁴ See POSCO PQR; see also Letter from POSCO, Re: Supplemental Questionnaire Response, dated December 4, 2016 (SQR).

³⁵⁵ See POSCO VR at 25-26.

³⁵⁶ *Id.* at 8.

³⁵⁷ *Id.*, at 26.

³⁵⁸ 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.

programs used by respondents.³⁵⁹ 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.

With respect to the export factoring reported by DWI and not the GOK, we agree with POSCO that there is no basis for applying AFA to the GOK's response. We were able to fully verify that the lending was tied to exports of non-subject merchandise.³⁶⁰ Additionally, the GOK provided a reasonable explanation for not including DWI's reported export factoring in its questionnaire responses, and Department officials were able to verify the lending approval documents at KEXIM.³⁶¹ Additionally, the Department was able to verify the full universe of loans received by POSCO at KEXIM.³⁶²

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

Petitioner argues:

- 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, whereas initially, Hyundai Steel reported that "it was not located" in an FEZ.³⁶³
- Petitioner argues that some of Hyundai Steel's income tax exemptions related to the FEZ may have been verified, but subsidies regarding exemptions and reductions of lease fees, grants, and acquisition and property tax exemptions have not.
- Accordingly, the Department should assign a rate of 3.59 percent for exemptions and reductions of lease fees and grants,³⁶⁴ and the Department should assign a rate of 1.83 percent for acquisition and property tax benefits. Petitioner argues 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.

³⁵⁹ *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.

³⁶⁰ *See* POSCO/DWI VR at 8.

³⁶¹ *See* GOK VR at 12.

³⁶² *See* GOK VR at Exhibit 9.

³⁶³ *See* Petitioner Case Brief at 79.

³⁶⁴ *See Steel Beams from Korea*, and accompanying IDM at Section I.A.2.

- 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.
- The GOK also reported that none of the respondents received any benefits for being located in an FEZ.
- Record evidence submitted by the GOK 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.
- The Department has previously clarified that, for unverified issues, it accepts the accuracy of the information submitted by that party.³⁶⁵
- 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.³⁶⁶
- 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 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.³⁶⁷ 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.”³⁶⁸
- 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.³⁶⁹ Further, the courts have established that the Department is obligated to determine AFA rates that are supported by substantial evidence.³⁷⁰

³⁶⁵ See Hyundai Case Brief at 5 (citing *OCTG from Turkey*, and accompanying IDM at Comment 10).

³⁶⁶ *Id.* at 8 (citing, e.g., *NTN Bearing*, 74 F.3d at 1204 and 1208; *Koyo Seiko*, 36 F.3d 1565, 1573 (Fed. Cir. 1994); *Allied Tube v. United States*, 127 F. Supp. 2d 207, 218-219 (CIT 2000)).

³⁶⁷ *Id.* at 9 (citing SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 870).

³⁶⁸ *Id.* at 8-9 (citing *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).

³⁶⁹ *Id.* at 9-10 (citing *F. Lii 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*)).

³⁷⁰ *Id.* at 9 (citing *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)).

- 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:

- Relying on the GOK's assertion that Hyundai Steel received no FEZ benefits would be consistent with Department practice in other cases.³⁷¹
- Hyundai Steel accurately reported that the only benefits it received under the FEZ that were under investigation were exemptions of local property and acquisition taxes for being located in a designated Industrial Complex. Additionally, record evidence also indicates that benefits provided in FEZs are established for and only available to foreign companies or foreign-invested companies and such would not be available to Korean companies.
- If the Department determines to apply AFA, it should reject the punitive rates suggested by Petitioner and should instead rely on rates calculated within this investigation.

Petitioner Rebutts:

- Hyundai Steel provided information that could not be verified and it did not exert maximum effort to extract information from its records. Therefore it did not act to the best of its ability and the Department should make an adverse inference.
- Petitioner 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.

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, pursuant to sections 776(a) and (b) of the Act, 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 later found to be incorrect at verification. 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

³⁷¹ See Hyundai Rebuttal Brief at 6-7 (citing, *e.g.*, *Line Pipe from Korea* and accompanying IDM at Comment 2).

not accept Hyundai Steel's narrative claim that it received no benefits pursuant to its FEZ location.³⁷²

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 a respondent's financial statements or income tax returns. Therefore, we disagree with Hyundai Steel's claim that verified record evidence substantiates its claim that it reported all received benefits. 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.

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."³⁷³ 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. As discussed above, the GOK provided sufficient information for the Department to find that programs in the FEZ are specific and provide a financial contribution. However, 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 provided little to no information about the specific types of assistance that are available, nor does it provide information about program eligibility criteria.³⁷⁴ 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. Accordingly, as described above, the application of facts available, pursuant to section 776(a)(1) and 776(a)(2)(A),(C) and (D) is warranted with respect to this program, and an adverse inference

³⁷² See Hyundai Steel VR at 3.

³⁷³ See GOK PQR at 68.

³⁷⁴ *Id.*, at Exhibit FEZ-1.

should be applied to Hyundai Steel, in accordance with section 776(b) of the Act, because Hyundai Steel did not act to the best of its ability in providing this information to the Department. As AFA, we are 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.³⁷⁵

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 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.³⁷⁶ 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 hierarchy for assigning AFA to Hyundai Steel's use of this program.

Comment 9: The Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under RSTA 78

Hyundai Steel argues:

- The record evidence shows that the subject merchandise is not produced at Hyundai Steel's Pohang Works. Therefore, 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.³⁷⁷

³⁷⁵ See TPEA.

³⁷⁶ See *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1343 (Fed. Cir. 2016).

³⁷⁷ See Hyundai Steel's Case Brief at 14-15 (citing, 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 Film, 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).

Petitioner rebuts:

- 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 *CVD 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.³⁷⁸

Department's Position:

As noted in our *Preliminary Determination*, this is a regional subsidy.³⁷⁹ In the *CVD Preamble*,³⁸⁰ 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.³⁸¹ 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.³⁸²

Comment 10: The Department's Methodology For Attributing RSTA Article 22 Benefits Received by Hyundai Corporation to Hyundai Steel Was Incorrect

Hyundai Steel argues:

- The Department improperly attributed the benefit received by Hyundai Corporation, a trading company of Hyundai Steel which is not cross-owned. The Department divided the amount of the tax savings by the combined sales of Hyundai Corporation and Hyundai Steel, instead of attributing the amount to Hyundai Steel based on the ratio of Hyundai Corporation's exports to the United States of subject merchandise that was produced by Hyundai Steel during the POI.

³⁷⁸ See *CVD Preamble*, 63 FR at 65360.

³⁷⁹ See PDM at 20.

³⁸⁰ See *CVD Preamble*, 63 FR 65404.

³⁸¹ See also *Supercalendered Paper from Canada*, and accompanying IDM at 161.

³⁸² *Id.*

- The Department's preliminary calculation memorandum correctly reflected the Department's practice,³⁸³ but the actual calculation did not reflect the memorandum narrative.
- Using the correct calculation methodology, the benefit attributable to Hyundai Steel is zero, and the Department should revise its benefit calculation for Hyundai Steel under this program and determine that no benefit from this program is attributable to Hyundai Steel.

Petitioner Rebutts:

- The Department should reject Hyundai Steel's argument because the Department's calculation comports with 19 C.F.R. 351.525(c). The Department used the same methodology to attribute benefits between POSCO and DWI.³⁸⁴ There is no reason for the Department to depart from its preliminary methodology.

Department's Position:

The Department inadvertently did not follow the methodology it outlined in its preliminary determination calculation memorandum in calculating the amount of the benefit received by Hyundai Corporation that is attributable to Hyundai Steel. In our preliminary determination calculation memorandum for Hyundai Steel we stated that:

Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are cumulating the benefits from subsidies received by Hyundai Corp with the benefits from subsidies received by Hyundai Steel based on the ratio of Hyundai Corp's exports to the United States of subject merchandise that was produced by Hyundai Steel during the POI (based on value).³⁸⁵

Accordingly, we agree with Hyundai Steel that the Department should revise its calculation of Hyundai Corporation's benefits that are attributable to Hyundai Steel. Therefore, consistent with the methodology described above, we attributed a portion of this subsidy rate to Hyundai Steel as represented by Hyundai Corp's exports of Hyundai Steel's subject merchandise (by value). The revised calculation of the benefit resulted in a rate that is less than 0.005 percent,³⁸⁶ and therefore there is no benefit from this program is attributable to Hyundai Steel. Additionally, with respect

³⁸³ See Hyundai Steel Case Brief at 16-17 (citing *Line Pipe from Korea IDM* at 5).

³⁸⁴ See Memorandum from Katie Marksberry, to Catherine Bertrand, Program Manager, Re: Countervailing Duty Investigation: Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Determination Calculation Memorandum for POSCO and Daewoo International Corporation, dated January 8, 2016.

³⁸⁵ See Memorandum to Catherine Bertrand, Program Manager, from Bob Palmer, Senior International Trade Compliance Analyst, Re: Preliminary Determination Calculations for Hyundai Steel Co., Ltd., dated January 8, 2016, at 2.

³⁸⁶ See Hyundai Steel Final Calculation Memorandum.

to Petitioner's argument that we used the same methodology in the *Preliminary Determination* with respect to POSCO and DWI, we have corrected this in this final determination.³⁸⁷

Comment 11: Whether Hyundai Steel Should Have Reported Additional ITIPA Grants

Petitioner Argues:

- Hyundai Steel failed to report its involvement in three R&D projects under the Research and Development Grants under the Industrial Technology Innovation Promotion Act (ITIPA) program during the POI.
- The Department did not discover this failure until verification. Therefore, because the information was not disclosed to the Department and could not be verified, the Department should apply AFA to these grants.

Hyundai Steel Rebutts:

- As part of its verification of the ITIPA R&D program, the Department verified completeness by examining the clearance account and searching for government funded R&D programs.
- The Department fully verified the amounts received as well as the fact that they were all received prior to the POI in 2012 and 2013.
- Whether these grants were treated as recurring or non-recurring they would be expensed in the year of receipt under the Department's 0.5 percent test and thus provide no benefits that would need to be reported for this investigation that covers 2014.

Department's Position:

In its initial questionnaire response, Hyundai Steel stated that "Hyundai Steel was involved in the following five R&D projects under the ITIPA for which Hyundai Steel received grants from the GOK during the POI."³⁸⁸ The Department did not ask any supplemental questions regarding this response, and did not request a response from Hyundai Steel for additional years in the 15-year AUL. As stated by Petitioner, at verification, in order to test completeness, the Department queried Hyundai Steel's accounting system and determined that there were three additional projects which were not previously reported by Hyundai Steel. Company officials explained at verification that the three additional projects were for the prior year and were paid at that time.³⁸⁹ The Department did not discover any additional ITIPA projects during the POI.

The Department agrees with Hyundai Steel that the amounts received under these three additional projects were fully verified by the Department. Verifiers observed in Hyundai Steel's

³⁸⁷ See Attribution of Subsidies Section above.

³⁸⁸ See Hyundai Steel Initial Questionnaire Response at 34.

³⁸⁹ See Hyundai Steel Verification Report at 7.

accounts the amounts received as well as the dates. Accordingly, because the information is on the record and verified, the Department is able to determine that the projects would have been expensed in the year of receipt (*e.g.* 2012 and 2013). Therefore, in calculating a benefit for these grants to Hyundai Steel, we determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, these grants received by Hyundai Steel offered zero measurable benefit during the AUL.³⁹⁰

Comment 12: Whether Hyundai Steel Should Have Provided a Questionnaire Response for Hyundai Green Power

Petitioner Argues:

- Hyundai Steel submitted a correction at verification regarding a previously unreported affiliated company, Hyundai Green, which is 15 percent owned by Hyundai Steel.
- Hyundai Green Power's main business activities involve the production and sale of electricity and steam, and Hyundai Green Power produces steam that it sells to Hyundai Steel. As such, Hyundai Steel should effectively have control over Hyundai Green Power.
- Hyundai Green Power should have been included in this investigation based on the Department's regulations.³⁹¹

Hyundai Steel Rebuts:

- Nucor makes a factual error in conflating Hyundai Green Power and Hyundai Green, which are two separate companies. Hyundai Steel's minor correction presented at verification related to Hyundai Green, which is a different company than Hyundai Green Power, which was originally reported in Hyundai Steel's affiliation response.
- As explained by Hyundai Steel at verification, Hyundai Green was inadvertently not earlier reported because it is not listed as a related party in Hyundai Steel's financial statements.³⁹²
- Hyundai Steel was not required to submit questionnaire responses for either Hyundai Green Power or Hyundai Green. Neither company is cross-owned under the Department's regulations. Specifically, Hyundai Steel has only a 29 percent ownership share in Hyundai Green Power, and only a 15 percent ownership share in Hyundai Green. There is no evidence on the record that indicates that Hyundai Steel could use or direct the assets of either company as required by 19 C.F.R. 351.525(b)(6)(vi).

³⁹⁰ See Hyundai Steel Final Calculation Memo.

³⁹¹ See Petitioner Case Brief at 78 (citing 19 C.F.R. 351.525(b)(6)(ii)-(iv)).

³⁹² See Hyundai Steel Rebuttal Brief at 15 (citing Hyundai Steel VE-1).

Department's Position:

As a preliminary matter, the record is clear that Hyundai Green Power and Hyundai Green are two separate companies. Hyundai Steel reported that it is affiliated with Hyundai Green Power in its first affiliation questionnaire response,³⁹³ and at verification reported that there was an additional, previously unreported affiliate named Hyundai Green.³⁹⁴ In spite of the similarity between the two company names, Petitioner has not pointed to any evidence that these two companies are in fact, the same entity.³⁹⁵ Additionally, there is no evidence on the record to support Petitioner's assertion that Hyundai Green or Hyundai Green Power should be considered cross-owned companies or be required to submit questionnaire responses. With respect to Hyundai Green, there is evidence on the record as to Hyundai Steel's 15 percent ownership,³⁹⁶ and no other information that would indicate that it should have been reported as a cross-owned company. As for Hyundai Green Power, based on Hyundai Steel's explanation that Hyundai Green Power does not meet the criteria necessary for submitting a response pursuant to 19 CFR 351.525(b)(6), as well as the evidence verified by the Department,³⁹⁷ we do not find that Hyundai Green Power was also required to submit a response. Specifically, the Department fully verified the information submitted in Hyundai's questionnaire responses with regard to the ownership percentages, as well as Hyundai Green Power's articles of association,³⁹⁸ and confirmed that the company was properly not considered cross-owned.

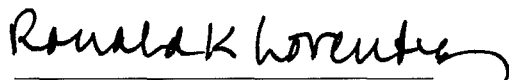
RECOMMENDATION

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*.

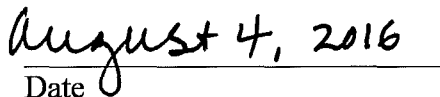
✓

Agree

Disagree



Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



Date

³⁹³ See Hyundai Steel Affiliation Response at 4.

³⁹⁴ See Hyundai Steel Verification Report at 3.

³⁹⁵ See Petitioner Case Brief at 77-78.

³⁹⁶ *Id.* at VE-1, Attachment 6.

³⁹⁷ *Id.* at 4.

³⁹⁸ *Id.* at 4.