



C-580-888
Investigation
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DATE: March 29, 2017

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

FROM: Gary Taverman
Associate 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 Carbon and Alloy
Steel Cut-to-Length Plate 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 carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Petitioners in this matter are ArcelorMittal USA LLC, Nucor Corporation (Nucor), and SSAB Enterprises, LLC (collectively, Petitioners). The mandatory respondent is POSCO.¹ Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether the Department Should Consider POSCO Energy's Sales of Electricity under the Government of Korea's (GOK's) Purchases of Electricity for More Than Adequate Remuneration (MTAR) Program
- Comment 2: Whether the Department Should Find That the Provision of Electricity for Less Than Adequate Remuneration (LTAR) is a Countervailable Subsidy
- Comment 3: Whether the Department Should Apply Adverse Facts Available (AFA) with Respect to POSCO Chemtech's Unreported Port Usage Grants
- Comment 4: Whether the Department Should Apply AFA with Respect to POSCO M-Tech's Unreported Subsidies
- Comment 5: Whether the Department Should Apply AFA with Respect to POSCO Chemtech's R&D Grant Program

¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Respondent Selection," dated May 31, 2016 (Respondent Selection Memorandum).

- Comment 6: Whether the Department Should Apply AFA with Respect to Hyundai Corporation's (Hyundai) Unreported Tax Exemption
- Comment 7: Whether the Department Should Find Have Initiated Nucor's Allegation that the GOK Provides the Provision of Natural Gas in All Forms for LTAR
- Comment 8: Whether the Department Should Revise its Calculation Regarding Benefit to POSCO under Restriction of Special Taxation Act (RSTA) Article 9
- Comment 9: Whether the Department Verified that POSCO Did Not Receive any Benefit under the Free Economic Zone (FEZ) Programs
- Comment 10: Whether the Department Finds Tax Programs *de facto* Specific

II. BACKGROUND

A. Case History

On April 8, 2016, the Department received countervailing duty (CVD) and antidumping duty (AD) Petitions concerning imports of CTL plate from Korea, filed in proper form by Petitioners.² On April 28, 2016, the Department initiated the CVD investigation.³ POSCO and Daewoo International Corp. (DWI) accounted for the largest volume of exports of the merchandise under consideration during the period of investigation (POI), and these companies were selected as mandatory respondents.⁴

On June 1, 2016, the Department issued a CVD questionnaire to the GOK, with instructions to forward the questionnaire to POSCO and DWI.⁵ On June 17, 2016, POSCO and POSCO Daewoo Corporation (PDC), which is a cross-owned and affiliated trading company that exported CTL plate produced by POSCO to the United States during the POI, submitted a joint affiliation questionnaire response.⁶ In that jointly submitted response, POSCO stated that DWI officially changed its name to PDC on March 14, 2016.⁷ Pursuant to POSCO and PDC's response, the Department incorporated its analysis of PDC into its analysis of POSCO.⁸ On July 1, 2016, Nucor submitted comments regarding the POSCO-PDC AQR.⁹

² See "Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey – Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 8, 2016 (Petition).

³ See *Carbon and Alloy Steel Cut-to-Length Plate from Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations*, 81 FR 27098 (May 5, 2016) (*Initiation Notice*).

⁴ See Respondent Selection Memorandum; see also Memorandum from Gary Taverman to Christian Marsh, "Decision Memorandum for the Preliminary Negative Determination: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea," dated September 6, 2016 (PDM) at 2.

⁵ See Countervailing Duty Questionnaire from the Department to Mr. Sung Jun Choi, Commercial Attaché, Embassy of the Republic of Korea, Washington, D.C., dated June April 1, 2016 (initial questionnaire).

⁶ See Letter from POSCO and PDC, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Response to 'Other Companies Subject to Investigation' Questions of Initial Questionnaire," dated June 9, 2016 (POSCO-PDC AQR).

⁷ *Id.*, at 1. We, therefore, have used the company name PDC for purposes of this investigation.

⁸ See PDM at 13.

⁹ See Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea: Nucor's Comments on POSCO's Affiliation Questionnaire Response," dated July 1, 2016.

On July 13, 2016, POSCO and PDC submitted a joint response to the Department's initial questionnaire.¹⁰ On that same day, Hyosung Corporation (Hyosung) and Hyundai, two unaffiliated trading companies which exported CTL plate produced by POSCO to the United States during POI, also submitted initial questionnaire responses.¹¹ On July 15, 2016, the GOK filed its initial questionnaire response.¹² On July 18, 2016, POSCO Chemtech, POS Hi-Metal, and POSCO Nippon RHF Joint Venture Co., Ltd. (PNR), three cross-owned input suppliers¹³ that could have supplied inputs for the CTL plate produced by POSCO during the POI, submitted initial questionnaire responses.¹⁴ Between July 25, 2016, and August 3, 2016, three additional cross-owned input suppliers, POSCO M-Tech, POSCO Processing & Service (POSCO P&S), and Pohang Scrap Recycling Distribution Center Co., Ltd. (PSRDC),¹⁵ each submitted initial questionnaire responses.¹⁶

Between June 28 and September 21, 2016, the Department issued supplemental questionnaires to POSCO, PDC, POSCO's unaffiliated trading companies, and POSCO's cross-owned input suppliers. From July 5, 2016, through October 4, 2016, responses to our supplemental questionnaires were filed. Between August 5, 2016, and September 23, 2016, the Department issued supplemental questionnaires to the GOK. The GOK submitted its responses to those questionnaires between August 15, 2016, and October 4, 2016.¹⁷ Between August 4, 2016, and

¹⁰ See Letter from POSCO and PDC, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 13, 2016 (POSCO-PDC IQR).

¹¹ See Letter from Hyosung Corporation, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 13, 2016 (Hyosung IQR); and Letter from Hyundai Corporation, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 13, 2016 (Hyundai IQR).

¹² See Letter from the GOK, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Response," dated July 15, 2016 (GOK IQR).

¹³ See "Attribution of Subsidies" section below.

¹⁴ See Letter from POSCO Chemtech, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 18, 2016 (POSCO Chemtech IQR); Letter from POS Hi-Metal, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 18, 2016; and Letter from PNR, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 18, 2016.

¹⁵ See "Attribution of Subsidies" section below.

¹⁶ See Letter from POSCO M-Tech, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated July 25, 2016 (POSCO M-Tech IQR); Letter from POSCO P&S, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated August 3, 2016; and Letter from PSRDC, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Initial Questionnaire Response," dated August 3, 2016.

¹⁷ See Letter from the GOK, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Response," dated August 15, 2016 (GOK SQR). On August 15, 2016, the GOK requested and received an extension from the Department to submit portions of this response for which it required additional time. The GOK timely filed the remaining portions of its response on August 17, 2016. We consider both submissions to constitute a single response and refer to the second portion as GOK SQRA for pagination purposes only; *see also* Letter from the GOK, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Response," dated August 18, 2016 (GOK 2SQR); *see also* Letter from the GOK, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: 3rd Supplemental Questionnaire Response," dated September 27, 2016 (GOK 3SQR); *see also* Letter from the GOK, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy

October 18, 2016, Nucor submitted comments on the aforementioned questionnaire responses.¹⁸ POSCO submitted a response to Nucor's October 18, 2016 comments on October 19, 2016.¹⁹ Nucor submitted a response to POSCO's comments on October 21, 2016.²⁰

On July 26, 2016, Petitioners timely alleged that critical circumstances exist with respect to imports of CTL plate from Korea, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206.²¹ Between August 15, 2016, and October 17, 2016, POSCO timely submitted quantity and value data regarding exports of POSCO-produced subject merchandise to the United States made between October 2015 and September 2016, as requested by the Department.²² On August 31, 2016, the Department issued its preliminary negative critical circumstances determination with respect to Korea.²³

On July 28, 2016, Nucor timely submitted a new subsidy allegation (NSA).²⁴ On August 25, 2016, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion antidumping duty investigation.²⁵ On September 21, 2016, the

Steel Cut-to-Length Plate from the Republic of Korea: 4th Supplemental Questionnaire Response," dated October 4, 2016 (GOK 4SQR).

¹⁸ See Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Comments on the Government of Korea's Initial Questionnaire Response," dated August 4, 2016; *see also* Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Comments on POSCO's Questionnaire Responses," dated August 19, 2016; *see also* Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Comments on the Government of Korea's Supplemental Questionnaire Response," dated August 29, 2016; *see also* Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Comments on POSCO and GOK Supplemental Questionnaire Responses," dated October 18, 2016.

¹⁹ See Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Response to Petitioner's Comments," dated October 19, 2016.

²⁰ See Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Reply to POSCO Response to Nucor's Comments," dated October 21, 2016.

²¹ See Letter from Petitioners, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations," dated July 26, 2016.

²² See Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for October 2015-July 2016," dated August 15, 2016; *see also* Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for August 2016," dated September 15, 2016; *see also* Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for September 2016," dated October 17, 2016.

²³ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey; Antidumping and Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 81 FR 61666 (September 7, 2016) (*Preliminary Critical Circumstances Determination*); *see also* Memorandum to Brian C. Davis, Program Manager, Office VI, Antidumping and Countervailing Duties Operations, "Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea," dated August 30, 2016.

²⁴ See Letter from Petitioner, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, New Subsidy Allegations," dated July 28, 2016 (NSA Submission).

²⁵ See Letter from Petitioners, "Re: Carbon Alloy Steel Cut-to-Length Plate from the People's Republic of China and the Republic of Korea – Petitioner's Request to Align the Countervailing Duty Final Determinations with the Companion Antidumping Final Duty Determinations," dated August 25, 2016.

Department also placed publicly available information regarding POSCO Energy on the record.²⁶

On September 14, 2016, the Department issued its *Preliminary Determination* in this matter.²⁷ We preliminarily determined that countervailable subsidies were not being provided to producers and exporters of CTL plate from Korea. On October 14, 2016, Nucor and POSCO requested that the Department hold a hearing.²⁸

On October 21, 2016, the Department declined to initiate on the subsidy alleged in Nucor's NSA Submission.²⁹ On November 14, 2016, the Department issued its *Preliminary Determination* in the concurrent AD investigation, and thereby postponed the final determinations of both proceedings until not later than March 29, 2017.³⁰

On November 3, 2016, POSCO submitted new factual information to the record of this investigation.³¹ On November 4, 2016, Nucor requested that the Department reject that information and POSCO subsequently requested that the Department retain it.³² On November 4, 2016, the Department rejected POSCO's submission of new factual information.³³ On November 7, 2016, POSCO resubmitted that new factual information. On November 10, 2016, the Department rejected this submission.³⁴

Between November 10, 2016, and November 21, 2016, we conducted verifications of the questionnaire responses submitted by the GOK, POSCO, and Hyundai. We released verification

²⁶ See Memorandum to the File from Yasmin Bordas, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Placing Information on the Record," dated September 21, 2016.

²⁷ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016) (*Preliminary Determination*) and accompanying PDM.

²⁸ See Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Request for Hearing," dated October 14, 2016; see also Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea" Case No. C-580-888: Hearing Request," dated October 14, 2016.

²⁹ See Memorandum to Scot Fullerton, Director, Office VI, Antidumping and Countervailing Duty Operations, "Re: Countervailing Duty Investigation: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, New Subsidy Allegation," dated October 21, 2016 (NSA Memorandum).

³⁰ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79441 (November 14, 2016).

³¹ See Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Submission of Additional Factual Information," dated November 2, 2016.

³² See Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Request to Reject POSCO's New Factual Information," dated November 4, 2016; see also Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea. Case No. C-580-888: Response to Nucor's Request to Reject POSCO's Submission of New Factual Information," dated November 4, 2016.

³³ See Letter to POSCO, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rejection of POSCO's Submission of Additional Factual Information," dated November 4, 2016.

³⁴ See Letter to POSCO, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rejection of POSCO's Resubmission of Additional Factual Information," dated November 10, 2016; see also Letter from Nucor, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Second Request to Reject POSCO's New Factual Information," dated November 8, 2016.

reports on January 10, 2017³⁵ and on February 10, 2017, we issued an addendum to the verification report of POSCO.³⁶

On December 6, 2016, the Department issued its post-preliminary analysis, in which it addressed certain subsidy programs about which additional information was required following the *Preliminary Determination*.³⁷

On January 17, 2017, Nucor, the GOK, POSCO, and Hyundai timely submitted case briefs,³⁸ and certain parties also timely submitted rebuttal briefs between January 25, 2017, and February 3, 2017.³⁹ On March 9, 2017, we held a hearing.⁴⁰

The “Analysis of Programs” and “Subsidies Valuation” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each program. For details of the resulting revisions to the Department’s rate calculations resulting from those modifications, *see* the POSCO final calculation memorandum.⁴¹

B. Period of Investigation

The POI is January 1, 2015, through December 31, 2015.

³⁵ See Memoranda to the File, “Verification of the Questionnaire Responses of the Government of the Republic of Korea,” dated January 10, 2017 (GOK VR); “Verification of the Questionnaire Responses of POSCO,” dated January 10, 2017 (POSCO VR); “Verification of the Questionnaire Responses of Hyundai Corporation,” dated January 10, 2017 (Hyundai VR).

³⁶ See Memorandum to the File, “Addendum to Verification Report of the Questionnaire Responses of POSCO,” dated February 10, 2017 (POSCO VR Addendum).

³⁷ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Re: Countervailing Duty Investigation on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Post-Preliminary Analysis Memorandum,” dated December 1, 2016 (Post-Preliminary Analysis Memorandum); *see also* PDM at 37.

³⁸ See Letter from Nucor, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief of the Nucor Corporation,” dated January 17, 2017 (Nucor Case Brief); *see also* Letter from the GOK, “Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Brief,” dated January 17, 2017 (GOK Case Brief); *see also* Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Case Brief,” dated January 17, 2017 (POSCO Case Brief); *see also* Letter from Hyundai, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Case Brief,” dated January 17, 2017 (Hyundai Case Brief).

³⁹ See Letter from Nucor, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief of Nucor Corporation,” dated February 3, 2017 (Nucor Rebuttal Brief); *see also* Letter from the GOK, “Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Case Brief,” dated January 25, 2017 (GOK Rebuttal Brief); *see also* Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Rebuttal Brief,” dated February 3, 2017 (POSCO Rebuttal Brief).

⁴⁰ See Letter from the Department to all Interested Parties, dated February 17, 2017.

⁴¹ See Memorandum from John Corrigan to Brian C. Davis, “Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: POSCO Final Determination Calculation Memorandum,” dated March 29, 2017 (POSCO Final Calculation Memorandum).

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

The Department preliminarily determined that critical circumstances did not exist with respect to POSCO/PDC, and all-other producers/exporters from Korea.⁴² Our analysis and conclusion concerning critical circumstances remain unchanged for our final determination.⁴³

Based on examinations of monthly shipment data placed on the record by POSCO after the *Preliminary Determination*, as requested by the Department,⁴⁴ and of the most recent available monthly shipment data from Global Trade Atlas (GTA), we are not changing our critical circumstances determination. We continue to determine that critical circumstances do not exist for POSCO or for all-other producers/exporters from Korea.

Consistent with the *Preliminary Determination*, we continue to find evidence of countervailable subsidies that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). For this final determination, in accordance with 19 CFR 351.206(h), we analyzed monthly shipment data from GTA for the period October 2015, through September 2016. We adjusted the data to reflect the additional three months of sales data provided by POSCO following the *Preliminary Determination*.⁴⁵ These data do not indicate that a massive increase in exports existed for POSCO relative to the six-month period preceding the filing of the petition.⁴⁶ Nor did the data indicate that there was a massive increase (*i.e.*, greater than 15 percent) in shipments, as defined by 19 CFR 351.206(h), for all-other producer/exporters.⁴⁷

Thus, we maintain our negative finding of critical circumstances with respect to POSCO and all-other producers/exporters.

⁴² See *Preliminary Critical Circumstances Determination*.

⁴³ See Memorandum to the File, “Re: Critical Circumstances Shipment Data Analysis for Final Determination,” dated March 29, 2017 (Final Critical Circumstances Memorandum). As discussed in Section II, we incorporated our analysis of PDC into our analysis of POSCO. Thus, for this final determination, we are limiting our critical circumstances analysis to POSCO.

⁴⁴ See Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for October 2015-July 2016,” dated August 15, 2016; see also Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for August 2016,” dated September 15, 2016; see also Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea. Case No. C-580-888: Submission of Quantity and Value Shipment Data for September 2016,” dated October 17, 2016.

⁴⁵ See, e.g., *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

⁴⁶ See Final Critical Circumstances Memorandum.

⁴⁷ *Id.*

IV. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the “SCOPE COMMENTS” section, below, appears in Appendix II of the accompanying *Federal Register* notice.

V. SCOPE COMMENTS

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, the Department modified the language of the scope to clarify the exclusion for stainless steel plate and to correct two misidentified HTSUS item numbers. Following the *Preliminary Determination*, the Department modified the language of the scope to clarify language pertaining to existing steel plate and hot-rolled flat-rolled steel orders.⁴⁸

In October and November 2016, we received scope case and scope rebuttal briefs. On November 29, 2016, we issued a final scope memorandum in response to these comments in which we determined not to change the scope of this investigation.⁴⁹

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to the allocation period used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.⁵⁰

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.⁵¹ For a description of the methodology used for this

⁴⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, “Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated September 6, 2016, and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, “Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs,” dated October 13, 2016.

⁴⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Final Scope Comments Decision Memorandum,” dated November 29, 2016.

⁵⁰ See PDM at 12.

⁵¹ *Id.*, at 12 – 14.

final determination, *see* POSCO Final Calculation Memorandum.

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 Department has made no changes to the denominators used in the *Preliminary Determination* to calculate the countervailable subsidy rates for the various subsidy programs and no issues were raised by interested parties with respect to the denominators. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the POSCO Preliminary Calculation Memorandum.⁵²

D. Loan Benchmarks and Interest Rates

The Department has made no changes to benchmarks or interest rates used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding benchmarks or interest rates. For a description of the benchmarks and interest rates used for these final results, *see* the *Preliminary Determination*.⁵³

E. Discount Rates

The Department has made no changes to the discount rates used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding discount rates. For a description of the discount rates used for this final determination, *see* the *Preliminary Determination*.⁵⁴

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: withholds information that has been requested; 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; significantly impedes a proceeding; or 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

⁵² See Memorandum from John Corrigan, International Trade Compliance Analyst, to the File, "Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Determination Calculations for POSCO," dated September 6, 2016 (POSCO Preliminary Calculation Memorandum).

⁵³ See PDM at 15 – 17.

⁵⁴ *Id.*, at 17.

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.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and countervailing duty (CVD) laws were made. Amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act were included.⁵⁵ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁵⁶

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.⁵⁷ 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.⁵⁸

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 a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁵⁹ 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.⁶⁰ Further, under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁶¹

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

⁵⁵ 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>.

⁵⁶ See *Applicability Notice*, 80 FR at 46794 – 95.

⁵⁷ See Section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁵⁸ See also 19 CFR 351.308(c).

⁵⁹ See also 19 CFR 351.308(d).

⁶⁰ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, Vol. 1 at 870 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).

⁶¹ See Section 776(c)(2) of the Act; TPEA, section 502(2).

considers reasonable to use.⁶² The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁶³

Consistent with section 776(d) of the Act and our established practice, when choosing a rate to apply as AFA, we select the highest calculated rate for the same or similar program.⁶⁴ When selecting rates, we first determine if there is an identical program in the investigation and, if so, use the highest calculated rate for the identical program (excluding zero rates). If there is no identical program with a rate above zero in the investigation, we then determine if an identical program was examined in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*).⁶⁵ If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country, and apply the highest calculated rate for the similar/comparable program.⁶⁶

As discussed below, we find the application of AFA is warranted with respect to POSCO Chemtech’s failure to timely report port usage grants, POSCO M-Tech’s failure to report certain government subsidies, and Hyundai’s use of RSTA Article 22.

A. Application of AFA: Port Usage Grants for Pohang Youngil Port

Application of AFA for Benefit with Respect to POSCO Chemtech

As discussed in detail at Comment 3 below, POSCO Chemtech attempted to submit information regarding its receipt of port usage grants from Pohang Youngil Port during all years from 2011 through 2015 as a minor correction at verification.⁶⁷ We did not accept this submission because the information did not constitute a minor correction to POSCO Chemtech’s questionnaire response, in which POSCO Chemtech did not disclose its receipt of port usage grants.⁶⁸ Consequently, record information indicates that POSCO Chemtech benefited from a subsidy that it failed to timely report in response to the Department’s initial questionnaire, pursuant to 19 CFR 351.102(b)(21)(i). For further discussion regarding the benefit portion of our countervailability analysis, and our determination, as AFA, that POSCO Chemtech benefited from this program during the POI, *see* Comment 3.

⁶² See Section 776(d)(1) of the Act; TPEA, section 502(3).

⁶³ See Section 776(d)(3) of the Act; TPEA, section 502(3).

⁶⁴ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying issues and decision memorandum (Shrimp IDM) at 13; *see also* *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (*Essar Steel*) (upholding “hierarchical methodology for selecting an AFA rate”).

⁶⁵ See *Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying IDM at 13.

⁶⁶ See Shrimp IDM at 13 – 14.

⁶⁷ See POSCO VR at 2 and 4.

⁶⁸ See POSCO Chemtech IQR at 31.

POSCO M-Tech self-reported use of port usage grants during the AUL, but prior to the POI, and POSCO self-reported use of port usage grants during the POI.⁶⁹ We preliminarily determined that the benefits each company received did not have an impact on POSCO's overall subsidy rate because (1) POSCO M-Tech's calculated benefit would be expensed to the year of receipt, pursuant to 19 CFR 351.524(b)(2), and (2) POSCO's calculated benefit resulted in a rate that is less than 0.005 percent *ad valorem*, *i.e.* it was not measurable.⁷⁰ Further, we did not request information from the GOK regarding port usage grants because our calculations of non-measurable benefit for both POSCO M-Tech and POSCO precluded the need to conduct separate analyses regarding financial contribution and specificity.

Application of Neutral Facts Available with Respect to Financial Contribution and Specificity

Port usage grants were not alleged in the petition, and, as noted above, both POSCO and POSCO M-Tech self-reported receipt of these grants in amounts which the Department preliminarily determined to be non-measurable. Thus, necessary information from the GOK to analyze whether these grants constitute a financial contribution and are specific is not available on the record. For this final determination, we, therefore, are relying on neutral facts available in the form of record information POSCO M-Tech and/or POSCO provided to determine whether port usage grants constitute a financial contribution, within section 771(5) of the Act, and are specific under section 771(5A) of the Act.

In its response, POSCO M-Tech provided all the information about port usage grants that POSCO provided in its response, as well as certain additional information. Specifically, POSCO M-Tech states that, "POSCO M-Tech received port usage grants from the Pohang Youngil Port during 2010, 2011, and 2012. It qualified for receipt of these grants because it is an export-import company located in Pohang."⁷¹ Additionally, we collected documentation regarding POSCO M-Tech and POSCO's receipt of port usage grants as exhibits during verification.⁷²

With respect to facts available regarding financial contribution, neither POSCO nor POSCO M-Tech address the ownership of Pohang Youngil Port in their responses, *i.e.* whether the entity which they state provided the grants which they received is a public or private entity. However, proprietary record information indicates that the grants were, in fact, disbursed by a local government authority in a location in which POSCO, POSCO M-Tech, and POSCO Chemtech operate.⁷³ Thus, we determine based upon neutral facts available that these grants constitute a financial contribution within the meaning of section 771(5)(d)(i) of the Act.

⁶⁹ See POSCO M-Tech IQR at 29 – 30; *see also* Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Fifth Supplemental Questionnaire Response," dated August 10, 2016 (POSCO 5SQR) at 3.

⁷⁰ See PDM at 35.

⁷¹ See POSCO M-Tech IQR at 29. In its response, POSCO identifies Pohang Youngil Port as the provider of the grant, but does not address qualification criteria for receipt of the grant. See POSCO 5SQR at 3.

⁷² See POSCO VR at Exhibits 19 and 36.

⁷³ *Id.* See also POSCO Final Calculation Memorandum for detailed discussion of the business proprietary information upon which the Department is basing its finding.

With respect to specificity, record information provided by POSCO M-Tech indicates that a company can qualify to receive port usage grants from Pohang Youngil Port by being an export-import company located in Pohang.⁷⁴ At verification, we examined documentation that POSCO M-Tech provided regarding its qualifications for receipt of these grants.⁷⁵ That documentation indicates that a limited number export and import companies located in Pohang entered into agreement with a local government authority, amongst other entities, as part of this program, in which certain companies received port usage grants.⁷⁶ Thus, we determine based upon neutral facts available that this program is *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, as the actual recipients of the subsidy are limited in number.

B. Application of AFA: Unreported Government Subsidies Indicated on POSCO M-Tech's Income Tax Return

Application of AFA with Respect to POSCO M-Tech

As discussed in detail at Comment 4 below, at verification, the Department discovered POSCO M-Tech's treatment of certain unreported government subsidies on its 2014 income tax return filed during the POI. POSCO M-Tech did not report the receipt or use of these subsidies in its questionnaire response. Consequently, record information indicates that POSCO M-Tech used, and thus benefited, from a subsidy or subsidies during the AUL or POI that it failed to timely report in response to the Department's initial questionnaire.

For further discussion regarding our determination, as AFA, that POSCO M-Tech benefited from unreported government subsidies during the AUL or POI, and that the related government subsidies constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific pursuant to section 771(5A) of the Act, see Comment 4.

C. Application of AFA: Use of RSTA Article 22

Application of AFA for Benefit with Respect to Hyundai

As discussed in detail at Comment 6 below, at verification, the Department discovered that Hyundai used RSTA Article 22 during the POI.⁷⁷ The Department did not initiate an investigation of the RSTA Article 22 program. However, PDC reported use of RSTA Article 22 during the POI as part of its response to the "Income Tax Programs" section of the initial questionnaire.⁷⁸ We, therefore, obtained information about this program from the GOK, which the GOK timely provided.⁷⁹ Hyundai failed to report its use of RSTA Article 22 during the POI in its questionnaire response, either as part of the "Income Tax Programs" section or in response to the Department's question pertaining to "Other Subsidies."⁸⁰ Consequently, record information indicates that Hyundai benefited from a subsidy that it failed to timely report in

⁷⁴ See POSCO M-Tech IQR at 29.

⁷⁵ See POSCO VR Exhibit 36.

⁷⁶ *Id.*, at pages 6 – 7.

⁷⁷ See Hyundai VR at 2 and 8.

⁷⁸ See POSCO-PDC IQR at 62.

⁷⁹ See GOK SQR at 18.

⁸⁰ See Hyundai IQR at 26 and 33 – 34.

response to the Department's initial questionnaire.

For further discussion regarding the benefit portion of our countervailability analysis, and our determination, as AFA, that Hyundai benefited from RSTA Article 22 during the POI and that the benefit provided to Hyundai is cumulated with benefits provided to POSCO, pursuant to 19 CFR 351.525(c), *see* Comment 6. For further discussion regarding our determinations that this program constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act and is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, *see* Section IX at "Other Programs Found to be Countervailable as AFA."

D. 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.⁸¹ Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.⁸²

As POSCO Chemtech, POSCO M-Tech, and Hyundai failed to act to the best of their ability in this investigation, we made an adverse inference in selecting from the facts available that those companies, and thereby POSCO, benefitted from certain subsidy programs, pursuant to 19 CFR 351.525(b)(6) and (c). For further information, *see* Comments 3, 4, and 6 below.

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

⁸¹ *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

⁸² *Id.*; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

- Port Usage Grants for Pohang Youngil Port⁸³
- Unreported Government Subsidies Indicated on POSCO M-Tech's Income Tax Return⁸⁴
- RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development⁸⁵

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.⁸⁶

Regarding 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.

VIII. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(ii) of the Act states that if the Department limits its investigation to particular respondents in accordance with 777A(e)(2)(B) of the Act, the Department will determine a single estimated country-wide subsidy rate applicable to all exporters and producers. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any rates that are zero or *de minimis* or any rates determined entirely on facts available. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or

⁸³ 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.

⁸⁴ 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 15.

⁸⁵ *Id.*

⁸⁶ See section 776(d)(3) of the Act.

de minimis rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated.

As indicated by the scope of the investigation, at the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea.⁸⁷ The scope of the instant investigation covers only (1) subject CTL plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea CVD Order regardless of producer or exporter, and (2) CTL plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea CVD Order as of April 8, 2016. The only revoked or excluded company is POSCO.

POSCO is the only mandatory respondent in the instant investigation. We, therefore, are applying the countervailable subsidy rate calculated for POSCO to all-other producers/exporters not individually investigated. The Department has taken this approach to calculating the all-others rate in other CVD investigations.⁸⁸ In accordance with the scope of this investigation, this application of POSCO's subsidy rate to all-other producers/exporters applies only to subject CTL plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea CVD Order.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

The Department made no changes to its *Preliminary Determination* or post-preliminary analysis regarding the methodology used to calculate the subsidy rates for the following programs, except as noted under a specific program below. For the descriptions, analyses, and calculation methodologies of the unchanged programs, *see* the *Preliminary Determination* and the Post-Preliminary Analysis Memorandum. No issues were raised by interested parties in case briefs regarding the unchanged programs. The final program rates are as follows:

1. Energy Savings Program Subsidies: Demand Response Market Program

POSCO: 0.01 percent *ad valorem*.⁸⁹

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

⁸⁷ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 6587 (December 29, 1999), as amended, 65 FR 6587 (February 10, 2000) (1999 Korea CVD Order).

⁸⁸ See, e.g. *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014) and accompanying IDM at 12.

⁸⁹ See PDM at 17.

POSCO: 0.11 percent *ad valorem*.⁹⁰

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

POSCO: 0.02 percent *ad valorem*.⁹¹

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

POSCO: 0.03 percent *ad valorem*.⁹²

5. RSTA Article 26: GOK Facilities Investment Support

POSCO: 0.27 percent *ad valorem*.⁹³

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

POSCO: 0.03 percent *ad valorem*.

7. RSTA Article 9: Reserve for Research and Human Resources Development

As discussed in detail at Comment 8 below, we are revising our calculation methodology with respect to this program based upon comments received from interested parties.

POSCO: 0.03 percent *ad valorem*.⁹⁴

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

POSCO: 0.03 percent *ad valorem*.⁹⁵

9. R&D Grants under the ITIPA

POSCO: 0.02 percent *ad valorem*.⁹⁶

⁹⁰ *Id.*, at 19.

⁹¹ We re-calculated this subsidy rate, which remained unchanged, based upon a minor correction POSCO submitted at verification, and which we accepted. *See* POSCO VR at 4 and Exhibit 1; *see also* POSCO Final Calculation Memorandum.

⁹² We re-calculated this subsidy rate, which remained unchanged, based upon corrective information identified during verification of POSCO Chemtech's questionnaire responses. *See* POSCO VR at 29; *see also* POSCO Final Calculation Memorandum.

⁹³ We re-calculated this subsidy rate, which remained unchanged, based upon a minor correction POSCO submitted at verification, and which we accepted. *See* POSCO VR at 3 and Exhibit 1; *see also* POSCO Final Calculation Memorandum.

⁹⁴ *See* POSCO Final Calculation Memorandum.

⁹⁵ We re-calculated this subsidy rate, which remained unchanged, based upon minor corrections POSCO and POSCO Chemtech submitted at verification, and which we accepted. *See* POSCO VR at 3 – 4 and Exhibits 1 and 38; *see also* POSCO Final Calculation Memorandum.

⁹⁶ *See* PDM at 25 – 27. Following the *Preliminary Determination*, POSCO timely submitted grant amounts received

10. RSTA Article 10-2: Special Taxation for Contribution, etc. for R&D

POSCO: 0.01 percent *ad valorem*.⁹⁷

11. Asset revaluations pursuant to Article 56(2) of the Tax Reduction and Exemption Control Act

POSCO: 0.01 percent *ad valorem*.⁹⁸

B. Other Programs Found to be Countervailable as AFA

As mentioned in Section VII, “Adverse Facts Available,” above, we are applying AFA to POSCO for this final determination with respect to three programs. In the *Preliminary Determination*, we did not analyze whether Port Usage Grants from Pohang Youngil Port and RSTA Article 22, the first and third programs discussed below, were countervailable because the programs did not provide measurable benefits to any of the respondents.⁹⁹ However, as explained in the aforementioned “Adverse Facts Available,” section and in Comments 3 and 6, we are applying AFA to POSCO in this final determination due to POSCO Chemtech’s failure to timely report receipt of port usage grants and Hyundai’s failure to timely report use of RSTA Article 22. The GOK, in its response, provided sufficient information to analyze whether the latter program is specific and provides a financial contribution. Thus, we are now analyzing whether RSTA Article 22 is countervailable.

1. Port Usage Grants for Pohang Youngil Port

We determine, as AFA, that POSCO Chemtech, and thereby POSCO, benefited from port usage grants during the POI. For further discussion, *see* Section VII above and Comment 3 below.

As AFA, we are applying the 1.64 percent *ad valorem* subsidy rate calculated in *Refrigerators from Korea*.¹⁰⁰

2. Unreported Government Subsidies Indicated on POSCO M-Tech’s Income Tax Return

We determine, as AFA, that POSCO M-Tech, and thereby POSCO, benefited from unreported government subsidies during the AUL or POI that are indicated as used on POSCO M-Tech’s

under the ITIPA program during the AUL, but prior to the POI. We determine that the amounts received during each of those years shall be expensed to the year of receipt, pursuant to 19 CFR 351.524(b)(2). Thus, the subsidy rate calculated for POSCO under the ITIPA program remains unchanged. *See* Letter from POSCO, “Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Sixth Supplemental Questionnaire Response,” dated October 4, 2016, (POSCO 6SQR) at Exhibit L-10. *See also* POSCO Final Calculation Memorandum.

⁹⁷ *See* Post-Preliminary Analysis Memorandum at 4.

⁹⁸ *Id.*, at 5.

⁹⁹ *See* PDM at 34 – 35.

¹⁰⁰ *See Refrigerators from Korea*, and accompanying IDM at 16.

income tax return filed during the POI. For further discussion, *see* Section VII above and Comment 4 below.

As AFA, we are applying the 1.05 percent *ad valorem* subsidy rate calculated in *Washers from Korea*.¹⁰¹

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

As discussed in section VII above and at Comment 6 below, we determine, as AFA, that Hyundai benefited from RSTA Article 22 during the POI. Under this program, a domestic corporation whose income (for each business year ending before December 31, 2015) includes any dividend income from investments in overseas resource development projects as prescribed by Enforcement Decree, is exempt from corporate tax for the portion of such dividend income that is exempted from the tax of the host country where the investment occurred.¹⁰² Article 19 of the Enforcement Decree of the RSTA prescribes the following investment projects as being eligible for this tax exemption: Agricultural products, Animal products, Fishery products, Forest products, and Mineral products.¹⁰³

We determine that the tax exemption that Hyundai received under RSTA Article 22 constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act and confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). Furthermore, consistent with *CORE from Korea 2010*,¹⁰⁴ we preliminarily determine that the tax exemption Hyundai received under Article 22 of the RSTA is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because Article 19 of the Enforcement Decree of the RSTA expressly limits access to the Article 22 tax exemption to firms with overseas investment projects in agricultural, animal, fishery, forest, or mineral products.

As AFA, we are applying the 1.05 percent *ad valorem* subsidy rate calculated in *Washers from Korea* to Hyundai, and thereby attributing the entirety of that subsidy rate to POSCO pursuant to 19 CFR 351.525(c).¹⁰⁵

C. Programs Determined to Be Not Countervailable

1. Provision of Electricity for LTAR

We preliminarily determined that this program did not confer a measurable benefit during the POI, *i.e.* that the benefit amount calculated was less than 0.005 percent and therefore not included in POSCO's net subsidy calculation.¹⁰⁶ For this final determination, we determine that there is no benefit provided under this program within the meaning of with section 771(5)(E)(iv)

¹⁰¹ See *Washers from Korea* and accompanying IDM at 15.

¹⁰² See GOK SQR at 245.

¹⁰³ *Id.*, at Exhibit TX13.

¹⁰⁴ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013) (*CORE from Korea 2010*), and accompanying IDM at 22.

¹⁰⁵ See *Washers from Korea* and accompanying IDM at 15.

¹⁰⁶ See PDM at 28 – 29.

of the Act and 19 CFR 351.511. Specifically, and as discussed in further detail at Comment 2 below, record information indicates that this program provides no benefit to POSCO because the prices charged to POSCO during the POI under the applicable industrial tariff were consistent with the Korea Electric Power Corporation (KEPCO's) standard pricing mechanism. Thus, consistent with the Department's recent determinations in *Cold-Rolled Steel from Korea*, and *Hot-Rolled Steel from Korea*, and because information on the record of this investigation indicates that the provision of electricity for LTAR operates in the same manner as those proceedings, we determine that this program is not countervailable.¹⁰⁷

2. Value-Added Tax (VAT) Exemption for Purchases of Anthracite Coal

We preliminarily determined that this program conferred no benefit, and thus, is not countervailable.¹⁰⁸ No interested parties filed case or rebuttal comments regarding the Department's preliminary analysis of this program. Information on the record of this investigation indicates that the VAT exemptions on anthracite coal operate in the same manner as those previously determined not to confer a benefit.¹⁰⁹ Specifically, we determine that there is no benefit under this program within the meaning of 19 CFR 351.510(a), because the net VAT incidence to the producer is ultimately zero both under the program and in the absence of the program.¹¹⁰ Therefore, consistent with the Department's recent final determinations in *Cold-Rolled Steel from Korea* and *Hot-Rolled Steel from Korea*, we determine that this program is not countervailable.¹¹¹

3. Granting of Rights to Import, Store and/or Re-Export Liquefied Natural Gas (LNG)

No interested parties filed case or rebuttal comments regarding the Department's preliminary analysis of this program. Therefore, the Department's determination with respect to this program remains unchanged for this final determination.¹¹²

D. Programs Determined Not to Have Conferred a Benefit or Not to Be Used

No interested parties filed case or rebuttal comments regarding the Department's preliminary or

¹⁰⁷ *Id.*; see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 45 (finding that the Provision of Electricity for LTAR program provided no benefit because the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO's standard pricing mechanism); see also *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea*), and accompanying IDM at 44 – 45 (same).

¹⁰⁸ See PDM at 32.

¹⁰⁹ See GOK IQR at 68.

¹¹⁰ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 76567 (December 22, 2015) and accompanying PDM at 34; unchanged in *Cold-Rolled Steel from Korea*.

¹¹¹ See *Cold-Rolled Steel from Korea* and accompanying IDM at 38; see also *Hot-Rolled Steel from Korea* and accompanying IDM at 25.

¹¹² See PDM at 27.

post-preliminary analysis regarding the following programs. Thus, the Department's determination with respect to these programs remains unchanged for this final determination.¹¹³

1. Energy Savings Program Subsidies - Demand Adjustment Program of Emergency Load Reduction
2. Provision of Electricity for MTAR¹¹⁴
3. Power Generation Price Difference Payments
4. Korea Export-Import Bank (KEXIM) Import Financing
5. KEXIM Overseas Investment Credit Program
6. Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables
7. Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)
8. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities
9. PDC's Debt Workout
10. Modal Shift Program
11. Various Government Grants Contained in Financial Statements
12. RSTA Article 7-2: Tax Credit to Improve Corporate Payment System Including Negotiable Instruments
13. RSTA Article 8-3: Tax Credit when Making Contributions to Funds for Collaborative Cooperation between Large Enterprises and SMEs
14. RSTA Article 24: Investment in Productivity Improving Facilities
15. RSTA Article 25: Investment in Certain Enumerated Safety Facilities
16. RSTA Article 30: Investment in Certain Fixed Assets for Use for Business Purposes
17. RSTA Article 94: Acquisition of Facilities to Improve Corporate Welfare
18. RSTA Article 104(15): Development of Overseas Resources
19. RSTA Article 104(8)(1): Tax Credits for Electronic Returns
20. RSTA Article 121(2): Corporate Tax Reductions or Exemptions for Foreign Investment
21. Pre-1992 Directed Credit Loans
22. R&D and Other Subsidies in AUL Period¹¹⁵
23. Grants from the Korea Workers' Compensation & Welfare Service
24. Grants Under the Human Resources Consortium Program

Provision of Inputs for Less Than Adequate Remuneration

25. Power Business Law Subsidies
26. Provision LNG for LTAR

KEXIM Countervailable Subsidy Programs

27. Short-Term Export Credits

¹¹³ *Id.*, at 28 – 35; see also Post-Preliminary Analysis Memorandum at 5 – 6.

¹¹⁴ See Comment 1.

¹¹⁵ POSCO submitted revised information regarding these grants following the *Preliminary Determination*. We, therefore, re-calculated the benefit amounts for each year during the AUL but continue to find that all grants would be expensed to the year of receipt, pursuant to 19 CFR 351.524(b)(2). See Letter from POSCO, "Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: Sixth Supplemental Questionnaire Response," dated October 4, 2016, (POSCO 6SQR) at Exhibit M-8. See also POSCO Final Calculation Memorandum.

- 28. Export Factoring
- 29. Export Loan Guarantees
- 30. Trade Bill Rediscounting Program

KDB and Industrial Base Fund Loans

- 31. Loans under the Industrial Base Fund

K-SURE – Export Insurance and Export Credit Guarantees

- 32. Export Credit Guarantees

Energy and Resource Subsidies

- 33. Special Accounts for Energy and Resources (SAER) Loans
- 34. Clean Coal Subsidies

Green Subsidies

- 35. GOK Subsidies for “Green Technology R&D” and its Commercialization
- 36. Support for SME “Green Partnerships”

Income Tax Programs

- 37. Research, Supply, or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)
- 38. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
- 39. Adjustment for any Foreign Source Income under Article 57 of the Corporate Tax Act

Subsidies to Companies Located in Certain Economic Zones

- 40. Tax Reductions and Exemptions in Free Economic Zones
- 41. Exemptions and Reductions of Lease Fees in Free Economic Zones
- 42. Grants and Financial Support in Free Economic Zones

Grants

- 43. Sharing of Working Opportunities/Employment Creating Incentives
- 44. Dongbu’s Debt Restructuring

Other Subsidies

- 45. PDC – Various Transactions with KDB During 2015
- 46. Hyosung – Korea Finance Corporation/KDB Facility Loans
- 47. Hyosung – KDB Usance Loans
- 48. Hyosung – Industrial Bank of Korea Short-Term Discounted Loans for Export Receivables
- 49. PNR – Long-Term Facility and General Loans from KDB

X. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Should Consider POSCO Energy's Sales of Electricity under the GOK's Purchases of Electricity for MTAR Program

Nucor's Comments:

- The GOK's purchases of electricity for MTAR constitute a countervailable subsidy. The Department should measure the benefit using the price respondents paid for electricity as a benchmark.¹¹⁶
- POSCO Energy's benefits under this program should be attributed to POSCO because the GOK's purchases of electricity for MTAR from POSCO Energy satisfy the attribution of subsidies as established by 19 CFR 351.525(b)(6).¹¹⁷
- POSCO's questionnaire responses about POSCO Energy's integration with POSCO's steel mills were incomplete and misleading.¹¹⁸
- POSCO Energy's purchasing arrangements from POSCO allows POSCO to maximize its benefits from the MTAR subsidy by selling its electricity to the government at an inflated price and buying it back at an artificially low price.¹¹⁹
- POSCO's claim that the KPX meter that theoretically effectuates a title transfer of POSCO Energy's electricity to the GOK is undermined by the facts concerning the physical transfer of POSCO Energy's electricity.¹²⁰

GOK's Rebuttal Comments:

- POSCO Energy does not sell electricity generated for its own use, and, thus, it uses the general electricity sales scheme and not the MTAR program when it sells its electricity to the KEPCO.¹²¹
- The rules for measuring benefit of the alleged program that are established in 19 CFR 351.503(i) and (ii)(1) do not apply because there is not a specific rule to measure an MTAR benefit and because KEPCO's payment does not take the form of reduced input costs or enhanced revenues. Thus, section 771(5)(E)(iv) of the Act applies for measuring benefit, which states that the adequacy of remuneration shall be determined in relation to prevailing market conditions. Because the suppliers' market and the end-users market have different price setting philosophy, price setting mechanisms, and different market

¹¹⁶ See Nucor Case Brief at 2 – 4.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, at 5.

¹¹⁹ *Id.*, at 8.

¹²⁰ *Id.*

¹²¹ See GOK Rebuttal Brief at 4 – 5.

conditions, the electricity price in the end-user market cannot be used as benchmark.¹²²

- The requirements of 19 CFR 351.525(b)(6)(iv) and (v) have not been met because POSCO Energy is not an input supplier of the subject merchandise and there is no information on the record that supports POSCO Energy's transfer of a subsidy to POSCO.¹²³

POSCO's Rebuttal Comments:

- POSCO did not purchase any electricity from POSCO Energy and there is no evidence of any transfer of a subsidy from POSCO Energy to POSCO. There is no basis under the Department's regulations to attribute any alleged subsidy received by POSCO Energy to POSCO.¹²⁴
- The Department should follow its recent decisions in the *Cold-Rolled Steel from Korea* and *Hot-Rolled Steel from Korea* investigations.¹²⁵

Department's Position:

The Department fully verified the information submitted in POSCO's questionnaire responses regarding transactions between POSCO Energy and POSCO.¹²⁶ Information on the current record indicates that the electricity generated by POSCO Energy is sold to KPX prior to transmission to the POSCO substation.¹²⁷ Further, the Department verified that KPX assumes and maintains title of the electricity it purchases from POSCO Energy at the point of sale, i.e. when the electricity reaches the KPX meter.¹²⁸ POSCO Energy is prohibited by Article 31 of the Electricity Utility Act from selling electricity to another party.¹²⁹ Because the electricity is sold to KPX, and not to POSCO directly, the cross-ownership attribution criteria have not been met, as set forth under 19 CFR 351.525(b)(6).¹³⁰ Information on the record also shows that POSCO Energy does not fall under any other cross-ownership attribution criteria, as set forth under 19 CFR 351.525(b)(6). Thus, any benefits received by POSCO energy cannot be attributed to POSCO.

¹²² *Id.*, at 5 – 7.

¹²³ *Id.*, at 8.

¹²⁴ See POSCO Rebuttal Brief at 2 – 10.

¹²⁵ See POSCO Rebuttal Brief at 2 – 10 (citing *Cold Rolled Steel from Korea* and accompanying IDM at Comment 5; *Hot-Rolled Steel from Korea* and accompanying IDM at Comment 5).

¹²⁶ See POSCO VR at 6-7 and 11 – 16.

¹²⁷ See POSCO-PDC 6SQR at 3 – 4.

¹²⁸ See POSCO VR at 12.

¹²⁹ *Id.*, at 14 – 15.

¹³⁰ *Id.*, at 11 – 16.

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

Nucor's Comments:

- The provision of electricity for LTAR is a countervailable subsidy.¹³¹
- The GOK concluded in 2013 that the steel industry is subsidized through low electricity costs, and that KEPCO incurs a loss because of the heavily discounted prices benefitting large corporations.¹³²
- The record demonstrates that Korean electricity tariffs are not set in accordance with market principles. Rather, the GOK intervenes directly and extensively in the market in order to provide below-cost energy, especially to Korean steel producers.¹³³
- Prices that are not preferential may still be subsidized if they are not market based, as determined in *Softwood Lumber from Canada*.¹³⁴
- The Department cannot rely on the preferentiality standard alone to determine adequacy of remuneration. Further, a lack of preferential pricing does not show that prices were market based.¹³⁵
- The Korean National Assembly, and thereby the GOK itself, has concluded that industrial users in Korea benefit from subsidized electricity within a report issued by the National Assembly.¹³⁶
- The Department should reject the GOK's attempt to use pre-POI KEPCO cost data to support its claim that KEPCO fully covered its costs during the POI. Instead, the Department should look to the contemporaneous data provided by Nucor to demonstrate that KEPCO did not cover its cost of supplying industrial electricity during the POI.¹³⁷
- To measure the benefit, the Department may 1) use a market determined price from a similarly situated third country; 2) use the 2015 total sales cost for industrial electricity as reported by the KPX plus an amount for profit; or 3) use the KPX system marginal price plus an amount for profit.¹³⁸

¹³¹ See Nucor Case Brief at 10.

¹³² *Id.*, at 10 – 25.

¹³³ *Id.* at 15.

¹³⁴ *Id.* at 13 (citing to *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 2002*) and accompanying IDM at 42. See Nucor Case Brief at 10-25).

¹³⁵ *Id.*

¹³⁶ *Id.*, at 16.

¹³⁷ *Id.*, at 22.

¹³⁸ *Id.*, at 23 – 24.

- The record demonstrates that the price of electricity does not reflect a market price and does not fully compensate generators for the actual cost of producing electricity. KEPCO explains that the capacity price is applied equally to all generation units, regardless of fuel types used. Nucor notes that actual fixed costs vary substantially based on the type of generator, such that applying the same capacity price to all generators results in substantial distortions in electricity prices paid to generators with the highest fixed costs.¹³⁹
- In its response, the GOK explains that the electricity tariff decreases at night since the electricity could be generated by those using cheap fuels, such as nuclear power generators. The distortedly low capacity prices applicable to base load, and especially nuclear, generators thus result in a benefit to industrial consumers that consume most or their electricity during off-peak hours, such as steel producers.¹⁴⁰
- POSCO's off-peak electricity prices indicate that industrial users are rewarded for consuming large amounts of electricity at certain times of the day.¹⁴¹
- Provision of electricity is *de facto* specific because the record demonstrates that the Korean steel industry is a predominant user of the subsidy and it receives a disproportionately large amount of the subsidy. Alternatively, information in the petition demonstrates that the steel industry receives a disproportionately large amount of electricity for LTAR subsidy.¹⁴²
- Documentation on the record demonstrates that the GOK has the authority to exercise discretion, consistent with section 771(5A)(D)(iii)(IV) of the Act, in setting electricity tariff rates and can take into consideration nonmarket factors.¹⁴³

POSCO's Rebuttal Comments:

- Section 771(5)(E)(iv) of the Act does not require any particular methodology in measuring the adequacy of remuneration. Under *Chevron*, the Department has adopted a reasonable method under 19 CFR 351.511(2)(a)(iii). The *Preamble* states that the Department will analyze factors such as the government price setting philosophy, costs, and possible price discrimination to determine whether prices were set according to market principles.¹⁴⁴
- The Department's analysis is consistent with the statute, regulations, and the *Preamble*,

¹³⁹ *Id.*, at 19.

¹⁴⁰ *Id.*, 20

¹⁴¹ *Id.*, at 21.

¹⁴² *Id.*, 25 – 26.

¹⁴³ *Id.*, at 25.

¹⁴⁴ See POSCO Rebuttal Brief at 13-14 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*Preamble*)). See also POSCO Rebuttal Brief at 13 – 14 (citing *Chevron, U.S.A, Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) (*Chevron*)).

and Petitioners have not demonstrated the analysis is unreasonable under *Chevron*. Moreover, the Department did not treat the use of a standard pricing mechanism as dispositive, but determined there was no price discrimination, consistent with the *Preamble*.¹⁴⁵

- The *Preamble* specifically cites to *Magnesium from Canada* 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.¹⁴⁶
- 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.¹⁴⁷
- Petitioners' assertion that the price paid by KEPCO through KPX to nuclear facilities does not allow these generators to recover their costs is incorrect. The merit order system accounts for its lower costs to produce electricity and, thus, receives a higher premium on its purchase than other types of generators. Moreover, the capacity price must also cover the fixed costs of nuclear facilities as they continue to be built in Korea.¹⁴⁸
- The fact POSCO operates its production facilities 24 hours a day and consumes large amounts of electricity during the evening hours is more evidence of supply and demand than any preference. Additionally, the merit system is a rational and market based system 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.¹⁴⁹
- The National Assembly Report is an inappropriate basis to calculate KEPCO's POI costs because it is based on costs in year 2012.¹⁵⁰
- These same arguments from Nucor have been considered and rejected in several of the past CVD investigations of this exact same program in Korea, including *Cold-Rolled Steel from Korea* and *Hot-Rolled Steel from Korea*.¹⁵¹

¹⁴⁵ See also POSCO Rebuttal Brief at 13 – 14.

¹⁴⁶ See POSCO Rebuttal Brief at 13-16 (citing *Preamble*, 63 FR at 65378; *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) (*Magnesium from Canada*); *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.

¹⁴⁷ See POSCO Rebuttal Brief at 14 – 21 (citing GOK PQR, Exhibit E-3 and E-8).

¹⁴⁸ See POSCO Rebuttal Brief at 20 – 21.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 17.

¹⁵¹ *Id.*

GOK's Rebuttal Comments:

- The Department made a determination concerning the issue of whether electricity in Korea was supplied for adequate remuneration in the *Line Pipe from Korea*, *CORE from Korea*, *Cold-Rolled Steel from Korea*, and *Hot-Rolled Steel from Korea* investigations. After these investigations, there was no change in U.S. law in relation to the adequacy of remuneration standard and no new factual information that was not on the record of the aforementioned investigations has been newly filed onto the record of this investigation.¹⁵²
- Nucor's conclusion that the equality of capacity prices paid to all generation units leads to price distortion does not consider KEPCO's marginal price formula, which does reflect cost differences between electricity generation units.¹⁵³
- Materials that contain a mere allegation without support, are irrelevant to the POI, or those that could have bias should be disregarded.¹⁵⁴
- The GOK acted to the best of its ability to comply with the Department's request for KEPCO's cost data during the POI. If the Department decides not to use KEPCO's overall cost data for supplying electricity in 2015, it should use KEPCO's verified cost data for industrial electricity in 2014, which is on the record of this investigation.¹⁵⁵
- As affirmed by the CIT in *Bethlehem Steel*, the fact that the Korean steel industry is a large industrial consumer of electricity is not evidence alone to determine that the subsidy as alleged *de facto* specific.¹⁵⁶
- KEPCO's electricity pricing schedule is applied evenly to all industries. As such, the government's discretion in establishing the pricing schedule is not relevant in determining specificity.¹⁵⁷

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 because the provision of electricity is not for LTAR; therefore, the program is not countervailable.

¹⁵² See GOK Rebuttal Brief at 9 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea*), *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination*, and *Final Affirmative Critical Circumstances Determination*, in Part, 81 FR 35310 (June 2, 2016) (*CORE from Korea*), *Cold Rolled Steel from Korea*, and *Hot-Rolled Steel from Korea*).

¹⁵³ *Id.*, at 11 – 13.

¹⁵⁴ *Id.*, at 13 – 14.

¹⁵⁵ *Id.*, at 14 – 16.

¹⁵⁶ See GOK Rebuttal Brief at 16 – 17 (citing *Bethlehem Steel v. United States*, 140 F. Supp. 2d 1354, 1369-70 (CIT 2001) (*Bethlehem Steel*)).

¹⁵⁷ *Id.*, at 18.

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.¹⁵⁸

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 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.¹⁵⁹

In the instant investigation, POSCO 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.¹⁶⁰ 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.¹⁶¹ The GOK provided KEPCO’s data that were submitted to the Ministry of Trade, Industry, and Energy (MOTIE) in 2013 for the tariff in effect during the POI, as well as an explanation of its calculations and recovery costs.¹⁶² We verified 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.¹⁶³ In addition, there is no information on the record that POSCO is 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 because the prices charged to POSCO under the applicable industrial tariff were consistent with KEPCO’s standard pricing mechanism.

¹⁵⁸ See *Preamble*, 63 FR at 65378.

¹⁵⁹ See discussion of *Magnesium from Canada* in PDM at footnote 127.

¹⁶⁰ See GOK PQR at 15-16 and Exhibit E; see also GOK 2SQR at Exhibit SR1-KEPCO-1 and SRI-KEPCO-2.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*, at 12.

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

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

Petitioners contend that the Department's application of its standard pricing mechanism, set forth in *Magnesium from Canada*,¹⁶⁴ is contrary to law because that administrative determination was made pursuant to a prior version of the U.S. CVD law, under which subsidies included the provision of goods or services at preferential rates. Petitioners are incorrect, as demonstrated by the fact that the current CVD regulations that implemented the statutory changes as a result of the URAA, and in particular 19 CFR 351.511, regarding the provision of a good or service, were enacted with reference to the methodology developed in *Magnesium from Canada* to analyze whether the provision of a good or service such as electricity is provided at adequate remuneration.¹⁶⁵

Indeed, when the *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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

¹⁶⁴ See Petitioners Case Brief at 12.

¹⁶⁵ Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely). See, e.g., *Magnesium from Canada*, 57 FR at 30946 and 54; see also *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).

¹⁶⁶ *Id.*

¹⁶⁷ See *Magnesium from Canada*, 57 FR at 30949 – 50.

¹⁶⁸ See *Preamble*, at 63 FR 65378.

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

The URAA's move away from preferentiality methodology flipped the regulatory hierarchy, with market prices from the country under investigation and world market prices moving up the hierarchy, and other considerations, including price discrimination, remaining potentially relevant only if the preferred data are unavailable.¹⁶⁹ However, Petitioners' 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."¹⁷⁰ 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."¹⁷¹

Cost Recovery as a Measure of Adequate Remuneration

Petitioners argue that cost recovery is the only basis to measure the adequacy of remuneration; however, this contention is incorrect as a matter of law. As clearly set forth under 19 CFR 351.511(a)(2)(iii), the Department will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, cost, or possible price discrimination. These factors are not put in any hierarchy, and we may rely on one or more of these factors in any particular case.¹⁷² Therefore, under the CVD law, the Department may determine the adequacy of remuneration by assessing whether the government price of electricity is in accordance with market prices by analyzing: (1)

¹⁶⁹ 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 Preamble*, with respect to assessing a government price under a "tier three" analysis.

¹⁷⁰ See *Preamble*, 63 FR at 65378.

¹⁷¹ *Id.*

¹⁷² *Id.*

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 a 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.¹⁷³ Therefore, the argument by Petitioners that we may only use cost in assessing the adequacy of remuneration is unsupported by the statute and the regulations governing the provision of a good or service.

Petitioners also argue that electricity tariffs do not include the full cost of generation, including electricity from nuclear generators, because steel producers purchase electricity predominantly during off-hours where electricity is primarily generated from nuclear generation units. However, Nucor has not provided 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. Nucor has also not adequately supported 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.¹⁷⁴

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

¹⁷³ *Id.*

¹⁷⁴ See *Line Pipe from Korea* and accompanying IDM at 27.

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.¹⁷⁵ For the POI, KEPCO more than fully covered its cost for the industry tariff applicable to our respondents.¹⁷⁶

The National Assembly Report

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

The National Assembly Report relied upon by Petitioners is not relevant to our analysis as to whether KEPCO provides electricity to our respondents for LTAR. The National Assembly Report provides information on the electricity consumption pattern of Korea’s largest 100 corporations. While the losses incurred by KEPCO, as shown in the National Assembly 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 three years prior to our POI, 2015. Since the date of the Report, 2012, KEPCO electricity industrial tariffs have been increased three different times.¹⁷⁷

Under our regulations, we must determine whether the rates paid during the POI, the 2015 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 2015, not the industrial tariffs that pre-dated the POI by at least three 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 Apply AFA with Respect to POSCO Chemtech’s Unreported Port Usage Grants

Nucor’s Comments:

- One week prior to verification, POSCO reported that its cross-owned affiliate POSCO Chemtech used an unreported new subsidy program. The Department correctly rejected POSCO’s submission as untimely filed new factual information which, pursuant to 19 CFR 351.102(b)(21)(i), should have been submitted in POSCO Chemtech’s original

¹⁷⁵ See GOK PQR at 13-15 and GOK 2SQR at 6 – 9.

¹⁷⁶ See GOK PQR at Exhibit E-23.

¹⁷⁷ See GOK PQR at Exhibit E-3 at page 50 – 51.

questionnaire response.¹⁷⁸

- The Department was also correct to reject POSCO's submission of this information as a minor correction at verification, because the information was a significant revision to POSCO's responses.¹⁷⁹
- Consequently, the Department should apply AFA using the 1.65 percent *ad valorem* rate used in *Washers from Korea 2012-2013* under "Grants Discovered at Verification."¹⁸⁰

POSCO's Comments:

- POSCO Chemtech attempted on two occasions, one week prior to verification and then during verification, to submit information regarding its receipt of port usage grants. These efforts demonstrate POSCO Chemtech's acting to the best of its ability, and there is therefore no basis to apply AFA.¹⁸¹
- The Department should use the factual information POSCO Chemtech submitted on November 2, 2016, to determine that these grants provide no measurable benefit.¹⁸²
- POSCO disagrees with the Department's decision to reject POSCO's November 2, 2016 submission as untimely filed, and notes that the Department must determine, pursuant to sections 776(a)-(c) of the Act, that POSCO Chemtech failed to act to the best of its ability and satisfy countervailability requirements using record information regarding these port usage grants.¹⁸³
- POSCO is unaware of information on the record which would support findings of financial contribution or specificity with respect to this program, nor is there evidence of benefit to POSCO Chemtech because the Department rejected all attempts by POSCO Chemtech to submit benefit information.¹⁸⁴
- The Department could obviate the need to analyze the financial contribution and specificity elements of this program by placing POSCO Chemtech's November 2, 2016 submission on the record and using the included benefit amounts as basis to determine that the benefit to POSCO Chemtech was non-measurable.¹⁸⁵

¹⁷⁸ See Nucor Case Brief at 30 – 31.

¹⁷⁹ *Id.*, at 31.

¹⁸⁰ *Id.*, at 31 (citing *Large Residential Washers from the Republic of Korea; Final Results of Countervailing Duty Administrative Review; 2012-2013*, 80 FR 55336 (September 15, 2015) (*Washers from Korea 2012-2013*) and accompanying IDM at 8).

¹⁸¹ See POSCO Case Brief at 16 – 17.

¹⁸² *Id.*, at 20.

¹⁸³ *Id.*, at 19 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, slip op. 16-121 at 24-25 (CIT 2016) (*Changzhou Trina*)).

¹⁸⁴ *Id.*, at 20.

¹⁸⁵ *Id.*

- Application of AFA in these circumstances would amount to punishment for POSCO Chemtech, which has never participated in a U.S. CVD investigation, and which twice attempted to rectify its inadvertent mistake of not reporting these subsidies in its initial questionnaire response. This would defeat the purpose of applying AFA.¹⁸⁶
- POSCO Chemtech's failure to report these grants was the result of human error and not an attempt to obtain a more favorable result. The company had no incentive not to report these grants.¹⁸⁷
- Should the Department apply AFA, it must present analysis as to how its selected AFA rate comports with the statute.¹⁸⁸ POSCO is not aware that the Department has previously countervailed port usage grants and believes the Department can satisfy its legal requirements by using rates calculated for similar grant programs in Korea.¹⁸⁹

Nucor's Rebuttal Comments:

- With respect to POSCO's first argument that these grants were only discovered while preparing for verification, the timing of the discovery is irrelevant. POSCO Chemtech's failure to report these grants at an earlier date denied the Department time to investigate the receipt of these grants and consider comments and rebuttals from interested parties.¹⁹⁰
- With respect to POSCO's second argument that it twice attempted to submit information about these grants, the Department properly rejected both of POSCO's attempts to submit the information.¹⁹¹
- Specifically, there was no basis to permit POSCO Chemtech's submission prior to verification because, pursuant to 19 CFR 351.301(c)(5), the deadline for new factual information passed 30 days prior to the scheduled date of the preliminary determination. Further, the Department followed past practice in rejecting the grants as minor corrections at verification.¹⁹²
- POSCO incorrectly argues that there is no record evidence to support a countervailability finding regarding these grants. POSCO and POSCO M-Tech reported receiving subsidies from the GOK under this program, thereby identifying a financial contribution. A benefit was conferred in the amount of the grant. The grants are contingent upon

¹⁸⁶ *Id.*, at 21 – 22.

¹⁸⁷ *Id.*, at 22 – 23.

¹⁸⁸ *Id.*, at 23 (citing *Changzhou Trina*, slip op. 16-121 at 28).

¹⁸⁹ *Id.* (citing *Washers from Korea* and accompanying IDM at 22-23; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: CORE from Korea 2010* and accompanying IDM at 11; *CORE from Korea 2011* and accompanying IDM at 3).

¹⁹⁰ See Nucor Rebuttal Brief at 9 – 10.

¹⁹¹ *Id.*, at 10.

¹⁹² *Id.*, at 10 – 11 (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 China*) and accompanying IDM at 52 – 53).

exports and geographically specific to enterprises located in Pohang.¹⁹³

- The Department should apply AFA and use the 1.65 percent *ad valorem* rate indicated in the Nucor Case Brief.¹⁹⁴

POSCO's Rebuttal Comments:

- Nucor is incorrect to argue that POSCO attempted to report an entirely uninvestigated subsidy program. POSCO and POSCO M-Tech reported receipt of port usage grants and neither Nucor nor the Department raised any issues about this program.¹⁹⁵
- The Department is aware of the amount of the benefit POSCO Chemtech received based on POSCO Chemtech's November 2, 2016 submission.¹⁹⁶
- The Department should reject Nucor's calls for the application of AFA, place POSCO Chemtech's November 2, 2016 submission on the record to determine no measurable benefit was received, or alternatively, use one of the rates for similar programs indicated in the POSCO Case Brief.¹⁹⁷

Department's Position:

We agree with Nucor. In its July 18, 2016, initial questionnaire response, POSCO Chemtech failed to report port usage grants in response to the Department's question regarding "Other Subsidies," which requests:

Does the GOK (or entities owned directly, in whole or in part, by the GOK or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company during POI and entire the AUL period? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.¹⁹⁸

On July, 25, 2016, POSCO M-Tech, in its first response to a U.S. CVD questionnaire, reported port usage grants in response to this question.¹⁹⁹ Subsequently, on August 10, 2016, *i.e.* approximately three weeks after POSCO Chemtech submitted its initial questionnaire response, POSCO reported port usage grants within its sixth supplemental questionnaire response.²⁰⁰ On November 2, 2016, the deadline for the submission of new factual information to the record of

¹⁹³ *Id.*, at 11 – 12.

¹⁹⁴ *Id.*, at 12.

¹⁹⁵ See POSCO Rebuttal Brief at 27.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*, at 28.

¹⁹⁸ See initial questionnaire.

¹⁹⁹ See POSCO M-Tech IQR at 29 – 30.

²⁰⁰ See POSCO 5SQR at 3.

this proceeding passed, pursuant to the verification outline issued to the GOK.²⁰¹

As discussed in Section VII above, approximately one week prior to verification, the Department rejected POSCO Chemtech's two attempts to submit information regarding port grants received during the POI.²⁰² In the first instance, POSCO failed to provide a written explanation identifying the subsection of 19 CFR 351.102(b)(21) under which the information was being submitted.²⁰³ In the second instance, the Department rejected POSCO's submission because it contained untimely filed new factual information, which, based upon POSCO's characterization of the information, was required to be provided in response to the aforementioned question in the Department's initial questionnaire, pursuant to 19 CFR 351.102(b)(21)(i). Thus, we disagree with POSCO that there is cause under the Department's regulations to reconsider POSCO Chemtech's pre-verification submissions regarding port usage grants on the record of this proceeding.

At verification, POSCO Chemtech attempted to submit information regarding its receipt of port usage grants for all years from 2011 through 2015.²⁰⁴ We did not accept this submission because it did not constitute a minor correction to POSCO Chemtech's response. Consequently, necessary information regarding POSCO Chemtech's receipt of port usage grants is not available on the record. Pursuant to sections 776(a)(2)(A), (2)(B), (2)(C), and (2)(D) of the Act, when an interested party withholds information that has been requested by the administering authority, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, and/or provides information that cannot be verified, the Department uses facts otherwise available to reach its determination. We determine that necessary information is not on the record because POSCO Chemtech withheld information, failed to timely provide that information, impeded the proceeding, and provided information that could not be verified regarding its receipt of port usage grants.

In its case brief, POSCO contends that POSCO Chemtech's inadvertent error in failing to report its receipt of port usage grants resulted in part from its inexperience in responding to U.S. CVD questionnaires.²⁰⁵ However, and as noted above, POSCO M-Tech timely reported its receipt of port usage grants from Pohang Youngil Port in its first U.S. CVD questionnaire response. Further, weeks after POSCO Chemtech submitted its initial questionnaire response, POSCO reported the port usage grants that it received during the POI.²⁰⁶ POSCO Chemtech did not report its receipt of port usage grants at that time. Thus, we disagree with POSCO's argument that the application of facts available with respect to POSCO Chemtech's failure to report receipt

²⁰¹ See Letter to the GOK, "Re: Verification of Government of the Republic of Korea's Questionnaire Responses Submitted in the Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea," dated November 2, 2016.

²⁰² See Memorandum to the File from John Corrigan, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Request to Take Action on Certain Barcodes," dated November 10, 2016.

²⁰³ See Letter to POSCO from Brian C. Davis, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rejection of POSCO's Submission of Additional Factual Information," dated November 4, 2016.

²⁰⁴ See POSCO VR at 2 and 4.

²⁰⁵ See POSCO Case Brief at 17.

²⁰⁶ See POSCO 5SQR at 3.

of a subsidy is not warranted in this instance.

As discussed in section VII above, we determine, based upon neutral facts available, that port usage grants from Pohang Youngil Port constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and are specific, according to section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients are limited in number. Further, pursuant to section 776(b) of the Act, we find that POSCO Chemtech failed to cooperate by not acting to the best of its ability to comply with our requests for information regarding its receipt of assistance that is addressed by the question pertaining to “Other Subsidies” in the Department’s questionnaire. Accordingly, we find that the application of AFA is warranted with respect to the benefit provided to POSCO Chemtech under this program and is applicable to POSCO, pursuant to 19 CFR 351.525(b)(6)(iv).

Consistent with the CVD AFA hierarchy, we first sought to apply, where available, the highest calculated rate above zero for the identical program from this proceeding. However, there is no calculated subsidy rate above zero for an identical or similar program from within this investigation. Thus, our application of this rate is consistent with our CVD AFA hierarchy, which, as explained in Section VII at “Selection of the AFA Rate,” directs us to seek the highest non-*de minimis* rate calculated for the same or similar program in another CVD proceeding involving Korea. We determine that it is appropriate to apply, as AFA, a rate of 1.64 percent *ad valorem* to this grant program. This rate was originally calculated for Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd. under the Korea Trade Insurance Corporation (K-SURE) short-term export insurance program in *Refrigerators from Korea*.²⁰⁷

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, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. In selecting an AFA rate, section 776(d)(i) of the Act states that the Department may “use a countervailable subsidy rate applied” for a “similar program in a countervailing duty proceeding involving the same country.” With regard to the reliability aspect of corroboration, we are relying on a subsidy rate calculated in another CVD proceeding. Further, under our CVD AFA methodology, if using secondary information, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax). Here, because the calculated rate was based on information about a same or similar program, it reflects the actual behavior of the GOK with respect to these similar subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, 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. With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA,

²⁰⁷ See *Refrigerators from Korea* and accompanying IDM at 16.

the Department will not use it.²⁰⁸

For these reasons, this rate has been corroborated to the extent practicable pursuant to section 776(c)(1) of the Act and we find that the rate is reliable and relevant for use as an AFA rate for the Port Usage Grants program.

Comment 4: Whether the Department Should Apply AFA with Respect to POSCO M-Tech's Unreported Subsidies

Nucor's Comments:

- At verification, the Department discovered unreported tax subsidies used by two companies that POSCO's cross-owned affiliate, POSCO M-Tech, acquired within the AUL but prior to the POI, Ricco Metal Co. (Ricco Metal) and Nine-Digit Co. (Nine-Digit).²⁰⁹
- POSCO officials stated to the Department's verifiers that POSCO exercised its discretion and did not report subsidies that Ricco Metal and Nine-Digit received because the value of those subsidies was small.²¹⁰
- Subsidies received over the AUL must be reported, pursuant to 19 CFR 351.524. POSCO failed to report these subsidies. The Department, therefore, should apply AFA using the above *de minimis* calculated rate from a "same or similar" tax reduction and exemption program of 1.05 percent *ad valorem*, calculated in *Washers from Korea 2012-2013*.²¹¹

POSCO's Comments:

- The Department did not request information regarding grants received by companies POSCO M-Tech acquired prior to the POI. Therefore, there is no basis to apply AFA, as it cannot be found that POSCO M-Tech failed to cooperate by not acting to the best of its ability.²¹²
- POSCO M-Tech was not required, pursuant to the instructions within the Department's CVD questionnaire, to report subsidies received by Ricco Metal and Nine-Digit because these two acquired companies received the subsidies, not POSCO M-Tech, and because neither Ricco Metal nor Nine-Digit exist as ongoing entities.²¹³

²⁰⁸ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

²⁰⁹ See Nucor Case Brief at 31.

²¹⁰ *Id.*, at 31 – 32.

²¹¹ *Id.* (citing *Washers from Korea 2012-2013* and accompanying IDM at 8).

²¹² See POSCO Case Brief at 6.

²¹³ *Id.*, at 7.

- There is no basis to make any factual finding that POSCO M-Tech failed to cooperate because it was never asked to provide information regarding the aforementioned subsidies. The Department, therefore, cannot lawfully apply AFA in this instance.²¹⁴
- However, should the Department apply AFA, it must make factual findings to satisfy countervailability requirements, *i.e.* that the unreported grants constitute a financial contribution, are specific, and provide a benefit.²¹⁵
- There is no record information to make the necessary factual findings regarding countervailability of the grants in question. The Department, therefore, should not consider these AUL grants to be unreported other assistance under the facts of this case and POSCO M-Tech should not be punished for not providing unrequested information.²¹⁶
- There is record information to determine that any benefit from these grants is non-measurable. Specifically, Verification Exhibit 33 includes the deduction amount from taxable income that POSCO M-Tech received under “government subsidies.” This amount, divided by POSCO M-Tech’s sales denominator, results in a benefit of less than 0.005 percent, *i.e.* a non-measurable benefit.²¹⁷

Nucor’s Rebuttal Comments:

- POSCO’s argument that POSCO M-Tech was not required to report subsidies received by Ricco Metal and Nine-Digit during the AUL period relies only upon language in the Department’s questionnaire and ignores contrary precedent and practice.²¹⁸
- The Department has established that it, and not respondents, determines what information is necessary, relevant, and must be provided.²¹⁹ The courts have affirmed this reasoning.²²⁰ The Department has rejected similar arguments from POSCO in recent investigations.²²¹
- POSCO’s argument that respondents are not required to report subsidies received by

²¹⁴ *Id.*, at 8.

²¹⁵ *Id.* (citing *Changzhou Trina*, slip op. 16-121 at 24-25).

²¹⁶ *Id.*, at 9.

²¹⁷ *Id.*, at 9 – 10.

²¹⁸ See Nucor Rebuttal Brief at 2 – 3.

²¹⁹ *Id.*, at 3 (citing *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013) (*OCTG from China 2011*) and accompanying IDM at Comment 5).

²²⁰ *Id.* (citing *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) and *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that “{Regardless of whether {the respondent} deemed the . . . information relevant, it nonetheless should have produced it in the event that Commerce reached a different conclusion.”)).

²²¹ *Id.*, at 3 – 4 (citing *Cold-Rolled Steel from Korea* and accompanying IDM at Comment 5 and *Hot-Rolled Steel from Korea* and accompanying IDM at Comment 5).

acquired companies during the AUL period, based upon instructions in the Department's questionnaire, is incorrect. The statute provides that, even if changes in ownership are accomplished through an arm's-length transaction, the administering authority is not required to determine whether a past countervailable subsidy received by an enterprise no longer continues to be countervailable.²²²

- The baseline presumption under the Department's practice is that non-recurring subsidies can continue to benefit a company after an ownership change.²²³
- In *SC Paper from Canada*, the Department found grants received by an acquired company to be countervailable, even though that company had ceased to be a separate entity, because the Department deemed the acquired assets to be a "going concern" even though they were being operated by a new owner. The facts in the instant investigation are similar.²²⁴
- The baseline assumption is, therefore, that subsidies received by Ricco Metal and Nine-Digit during the AUL are countervailable and should have been reported. POSCO M-Tech's exercising is discretion in not reporting these subsidies impeded the Department's investigation.²²⁵
- Factual record information supports findings of financial contribution, specificity, and benefit with respect to these unreported subsidies.²²⁶
- At verification, POSCO officials characterized the grants as "government subsidies," meaning there was a financial contribution. The amount of the grants constitutes a benefit. Lastly, the grants were provided under the ITIPA program, which the Department found to be de jure specific in the *Preliminary Determination*.²²⁷
- The Department should apply AFA using the 1.05 percent *ad valorem* rate indicated in the Nucor Case Brief.²²⁸

POSCO's Rebuttal Comments:

- The Department should reject Nucor's call to apply AFA, as POSCO M-Tech had a tax loss in fiscal year 2014 and the amounts reported on Form 15 could not constitute a countervailable benefit.²²⁹

²²² *Id.*, at 4; (citing section 771(5)(F) of the Act).

²²³ See Nucor Rebuttal Brief at 4.

²²⁴ *Id.*, at 5 (citing *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*SC Paper from Canada*) and accompanying IDM at 17-20).

²²⁵ *Id.*, at 5.

²²⁶ *Id.*, at 6.

²²⁷ *Id.*

²²⁸ *Id.*, at 7 (citing Nucor Case Brief at 32).

²²⁹ See POSCO Rebuttal Brief at 29.

- Should the Department treat this program as unreported R&D grants, it should not use the 1.05 percent *ad valorem* rate that Nucor argues for, but rather, per Department practice, the 0.02 percent *ad valorem* rate calculated for POSCO's ITIPA grants at the *Preliminary Determination*.²³⁰

Department's Position:

At verification, the Department reviewed Tax Form 15, which itemizes deductions from taxable income.²³¹ Company officials explained that once POSCO uses a subsidy, the company considers subsidy usage to be an expense and reports that usage on Form 15 as a deduction from income for tax purposes. Upon review of the deductions that POSCO M-Tech reported on its 2014 income tax return filed during the POI, we noted two amounts entitled "government subsidies."²³² POSCO M-Tech officials provided two different, contradictory explanations concerning these subsidies.²³³ POSCO M-Tech also explained that it exercised its discretion and did not report these subsidies because the value of the subsidies was small.²³⁴

We disagree with POSCO M-Tech's contention that it had discretion to not report these subsidies. As upheld in *Ansaldo Componenti*, and discussed in a recent *OCTG from China Administrative Review*,²³⁵ it is the Department, not interested parties, which determines whether a response is required. As such, the respondents cannot unilaterally decide to withhold information from the Department that may require further analysis. This is necessary to ensure that interested parties do not prevent the Department from conducting an accurate and complete investigation by deciding not to 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 allow the Department to take necessary action in response.

Without the complete, accurate, and reliable information about government subsidies that POSCO M-Tech disclosed only at verification and in response to the Department's questions, the Department cannot accurately calculate POSCO's CVD subsidy rate for this final determination. Because POSCO M-Tech is a cross-owned input producer and the production of the input is primarily dedicated to the production of CTL plate, in accordance with 19 CFR 351.525(b)(6)(iv), subsidies received by POSCO M-Tech are attributed to the combined sales of POSCO and POSCO M-Tech. As explained above, the Department discovered unreported government subsidies, which POSCO M-Tech should have reported in its response to our countervailing duty questionnaire, that were reported as used on POSCO M-Tech's Tax Form 15

²³⁰ *Id.*, at 29 – 30 (citing *Cold-Rolled Steel from Korea* and accompanying IDM at 12 and *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, FR 50389 (August 19, 2013) (*Shrimp from Ecuador*) and accompanying IDM at 12).

²³¹ See POSCO VR at 26.

²³² *Id.*, at 28.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ See *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 49475 (February 8, 2013), and accompanying IDM at Comment 5; and *Ansaldo Componenti*, 628 F. Supp. at 205.

that was part of the 2014 income tax return filed during the POI. Further, although POSCO M-Tech provided two explanations about these subsidies, because it did not timely inform the Department about these government subsidies, the Department was not provided the opportunity to carefully examine the full extent to which POSCO M-Tech benefitted from these subsidies. The purpose of verification is not to gather new information about previously unreported government subsidies.²³⁶ Thus, neither POSCO M-Tech's explanations concerning the nature of these government subsidies nor the amounts of the subsidies were verified.

POSCO's claim that the subsidies in question were bestowed to acquired companies prior to the POI is not persuasive. Because POSCO did not provide information regarding the type of subsidies it received, or when they were used, the Department could not verify any information related to the subsidies, including when they were used..²³⁷ Further, POSCO's claim that we should rely upon information derived from the income tax statement to calculate a benefit overlooks the fact that the Department did not accept information regarding the amount reported in the "government subsidies" rows of POSCO M-Tech's Tax Form 15 and thus did not verify the amount of the subsidies as reflected in POSCO M-Tech's Tax Form 15.²³⁸

In light of the above, we find that necessary information is not available on the record, pursuant to section 776(a)(1) of the Act. Moreover, pursuant to section 776(a)(2) of the Act, the Department finds that POSCO M-Tech 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 its government subsidies. Consequently, we determine 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 M-Tech did not act to the best of its ability in responding to the Department's information requests because it did not report the receipt of this assistance prior to verification in its initial questionnaire response and subsequent "other subsidies" response. These subsidies are indicated in POSCO M-Tech's income tax return filed during the POI, and, therefore, should have been examined prior to verification.²³⁹ Because POSCO M-Tech impeded the investigation and precluded the Department from an adequate examination of the subsidies (*i.e.*, the Department was unable to issue a supplemental questionnaire to the GOK concerning the extent to which these programs constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act), the application of AFA is warranted pursuant to section 776(b) of the Act and as discussed above in Section VII.

Consistent with *SC Paper Canada*,²⁴⁰ as AFA, we find each of the unreported subsidies meet the financial contribution and specificity criteria under sections 771(5)(D) and 771(5A), respectively. At verification, POSCO M-Tech itself characterized its income tax treatment of the subsidies in question as constituting the use of "government subsidies," which we interpret, as

²³⁶ See Letter to POSCO, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; Verification of POSCO's Questionnaire Responses," dated November 4, 2016 ("Please note that verification is not intended to be an opportunity for the submission of new factual information.").

²³⁷ See POSCO VR at 28; see also POSCO VR Addendum.

²³⁸ See POSCO VR Addendum.

²³⁹ See POSCO VR Exhibit 33 at 2 – 3.

²⁴⁰ See *SC Paper from Canada* and accompanying IDM at 17 – 20 and 153 – 154.

AFA, to mean that there was a financial contribution.²⁴¹ As addressed above, we are finding, as AFA, that these subsidies are specific. Further, as AFA, we find that these subsidies confer a benefit under section 771(5)(E) of the Act.

Consistent with the CVD AFA hierarchy, which directs us to seek the highest non-*de minimis* rate calculated for the same or similar program in another CVD proceeding involving Korea if there is no identical program in this proceeding, we determine that it is appropriate to apply, as AFA, a rate of 1.05 percent *ad valorem*, the subsidy rate calculated for an income tax program in *Washers from Korea*.²⁴²

Because this rate constitutes secondary information, we have, pursuant to section 776(c)(1) of the Act, corroborated the rate to the extent practicable. With regard to the reliability aspect of corroboration, we are relying on a subsidy rate calculated in another CVD proceeding. Further, under our CVD AFA methodology, if using secondary information, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax). Here, because the calculated rate was based on information about a same or similar program, it reflects the actual behavior of the GOK with respect to these similar subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, 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.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.²⁴³ For these reasons, this rate has been corroborated to the extent practicable pursuant to section 776(c)(1) of the Act and we find that the rate is reliable and relevant for use as an AFA rate for these subsidies.

Comment 5: Whether the Department Should Apply AFA with Respect to POSCO Chemtech's R&D Grant Program

Nucor's Comments:

- At verification, the Department discovered that POSCO Chemtech used unreported ITIPA grant subsidies related to R&D projects within the AUL but prior to the POI. POSCO Chemtech officials confirmed receipt of grant funds.²⁴⁴
- POSCO Chemtech was required to report these subsidies pursuant to 19 CFR 351.524.

²⁴¹ See PSOCO VR at 28 – 29.

²⁴² See *Washers from Korea* and accompanying IDM at 15.

²⁴³ See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

²⁴⁴ See Nucor Case Brief at 32.

The Department should apply AFA because POSCO Chemtech did not report these subsidies, using the above *de minimis* calculated rate from a “same or similar” program of 1.65 percent *ad valorem* rate used for “Grants Discovered at Verification” in *Washers from Korea 2012-2013*.²⁴⁵

POSCO’s Comments:

- POSCO Chemtech stated in its initial questionnaire response that it considered ITIPA grants to be recurring and, therefore, did not consider it necessary to report grants received prior to the POI.²⁴⁶
- The Department never requested additional information from POSCO Chemtech regarding grants received under this program during the AUL period, despite POSCO Chemtech’s statement that it considered the grants to be recurring and questionnaire response indicating that the grant received during the POI was for the third year of the project.²⁴⁷
- The Department also did not indicate to POSCO Chemtech that it disagreed with its reporting of these grants as recurring benefits.²⁴⁸
- There is no legal basis to apply any form of facts available should the Department determine that these ITIPA grants in the AUL period should have been reported.²⁴⁹
- Specifically, the Department is required by the statute to inform parties of any deficiencies in their submissions and provide parties with the opportunity to remedy or explain those deficiencies.²⁵⁰
- The Department did not do so with respect to POSCO Chemtech, and therefore cannot apply facts available in the instant investigation.²⁵¹
- If the Department applies facts available, it should use neutral facts available on the record from POSCO Chemtech’s response, *i.e.* use the benefit amount reported for the third year of the project during the POI, as factual basis for the amounts of grants received in the project’s first and second years. The resulting benefit would be non-measurable.²⁵²
- There is no basis to find that POSCO Chemtech failed to cooperate by not acting to the

²⁴⁵ *Id.*, at 33 (citing *Washers from Korea 2012-2013* and accompanying IDM at 8).

²⁴⁶ See POSCO Case Brief at 11.

²⁴⁷ *Id.*, at 12 – 13.

²⁴⁸ *Id.*, at 13.

²⁴⁹ *Id.*

²⁵⁰ *Id.*, at 14.

²⁵¹ *Id.*

²⁵² *Id.*, at 14 – 15.

best of its ability, as it reported correctly and consistently with questionnaire instructions.²⁵³

- Should the Department apply AFA, it should use the highest above zero rate calculated in the instant proceeding for the same program.²⁵⁴ That is the 0.02 percent *ad valorem* rate calculated for POSCO for receipt of ITIPA grants in the *Preliminary Determination*.²⁵⁵

Nucor's Rebuttal Comments:

- POSCO's arguments that the Department should not apply AFA should be rejected because the Department stated in the *Preliminary Determination* that it considers ITIPA grants to be non-recurring benefits and that POSCO and its affiliates' reporting to the contrary was incorrect.²⁵⁶
- The Department issued a supplemental questionnaire to POSCO following the *Preliminary Determination* requesting information about ITIPA grants for the AUL period. POSCO Chemtech was therefore on notice that its questionnaire response was deficient.²⁵⁷
- As AFA, the Department should use the 1.64 percent *ad valorem* AFA rate applied in *Hot-Rolled Steel from Korea*, *i.e.* the highest above *de minimis* rate a similar program in another CVD proceeding involving the same country where, as here, there is no rate for the identical program for another respondent in the same investigation.²⁵⁸

POSCO's Rebuttal Comments:

- The fact that POSCO Chemtech did not report subsidies, which it described in its response as recurring and which it received during the AUL period, warrants no further action by the Department.²⁵⁹
- Should the Department apply AFA, its AFA methodology requires it to use the 0.02 percent *ad valorem* rate calculated for POSCO at the *Preliminary Determination*.²⁶⁰

Department's Position:

We agree with POSCO. In their initial questionnaire responses, each of the three respondents that reported use of the ITIPA program during the POI, *i.e.* POSCO, POSCO M-Tech, and

²⁵³ *Id.*, at 15.

²⁵⁴ *Id.*, at 16 (citing *Shrimp from Ecuador* and accompanying IDM at 12).

²⁵⁵ *Id.*

²⁵⁶ See Nucor Rebuttal Brief at 7.

²⁵⁷ *Id.*, at 8.

²⁵⁸ *Id.*, at 9 (citing *Hot-Rolled Steel from Korea* and accompanying IDM at 16).

²⁵⁹ See POSCO Rebuttal Brief at 31.

²⁶⁰ *Id.* (citing *Cold-Rolled Steel from Korea* and accompanying IDM at 12).

POSCO Chemtech, timely responded that they considered grants received under this program to be recurring.²⁶¹ The Department preliminarily determined that the grants provided under the ITIPA program are non-recurring, in accordance with 19 CFR 351.524(c).²⁶² As Nucor points out, the Department also stated in the PDM that we intended to request additional information about these grants following the *Preliminary Determination*.²⁶³

On September 21, 2016, the Department issued a supplemental questionnaire, in which we requested information for all amounts received under the ITIPA program during the AUL.²⁶⁴ However, we inadvertently addressed this questionnaire only to POSCO and not to any other firm which submitted a complete questionnaire response to the Department. POSCO timely responded to this questionnaire to report, *inter alia*, its receipt of ITIPA grants during the AUL.²⁶⁵

Given that the Department did not address the supplemental questionnaire to POSCO Chemtech and that in the course of this investigation the Department issued questionnaires directly to POSCO's cross-owned companies, the Department determines that POSCO Chemtech did not have notice that it was required to respond to the supplemental questionnaire concerning the ITIPA program. Consequently, consistent with section 782(d) of the Act, we determine that the application of AFA in this instance is unwarranted. As discussed above, POSCO, POSCO M-Tech, and POSCO Chemtech timely responded to the Department's initial questionnaire to state that they considered grants received under the ITIPA to be recurring. For example, each company stated that the grants under this program span multiple years and that the funds received each year from the government are set out in the original contract.²⁶⁶ Because there is no other information on the record with respect to POSCO Chemtech's use of the ITIPA program, the Department finds that, with respect to POSCO Chemtech only, it is appropriate to treat these grants as recurring. Accordingly, with respect to the benefits POSCO received from 2001 through 2014, we performed the "0.5 percent test" pursuant to 19 CFR 351.524(b). We determine that the amounts received during each of those years shall be expensed to the year of receipt, pursuant to 19 CFR 351.524(b)(2). We make this same determination regarding the benefits that POSCO M-Tech received under this program during the AUL and prior to the POI based upon our calculations performed at verification.²⁶⁷ Thus, the subsidy rate calculated for POSCO under the ITIPA program remains unchanged.²⁶⁸

²⁶¹ See POSCO-PDC IQR at Exhibit L-2, POSCO M-Tech IQR at Exhibit L-1, and POSCO Chemtech IQR at Exhibit L-3.

²⁶² See PDM at 27.

²⁶³ *Id.*, at footnote 149.

²⁶⁴ See Letter to POSCO, "Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Sixth Supplemental Questionnaire for POSCO," dated September 21, 2016, at 4.

²⁶⁵ See POSCO 6SQR at Exhibit L-10.

²⁶⁶ See POSCO-PDC IQR at Exhibit L-2, POSCO M-Tech IQR at Exhibit L-1, and POSCO Chemtech IQR at Exhibit L-3.

²⁶⁷ See POSCO VR at 32.

²⁶⁸ See POSCO Final Calculation Memorandum.

Comment 6: Whether the Department Should Apply AFA with Respect to Hyundai's Unreported Tax Credits

Nucor's Comments:

- The Department discovered at verification that Hyundai submitted the incorrect tax return within its response, *i.e.* its 2015 income tax return rather than the requested 2014 income tax return filed during the POI.²⁶⁹
- The Department's examination of Hyundai's 2014 income tax return indicated that Hyundai used RSTA Article 22 during the POI. Hyundai stated in its response that the only tax program it used during the POI was Article 57 of the Corporate Tax Act.²⁷⁰
- Hyundai should have reported in its response that it used RSTA Article 22 during the POI. Because it did not, the Department should apply AFA in accordance with the AFA hierarchy and use the tax deduction exemption rate of 1.05 percent *ad valorem* calculated in *Washers from Korea 2012-2013*.²⁷¹

POSCO's Comments:

- The Department cannot lawfully apply AFA to Hyundai and attribute any of the subsidy received under RSTA Article 22 to POSCO because Hyundai is an unaffiliated trading company over which POSCO has no control.²⁷²
- The courts have explicitly limited the Department's statutory ability to apply an adverse inference when record information is missing due to an unaffiliated party's failure to respond.²⁷³
- To apply AFA, the Department must determine that POSCO, not Hyundai, failed to cooperate, *i.e.* the Department cannot "bootstrap" an AFA determination made with respect to Hyundai onto POSCO.²⁷⁴
- There is no factual evidence which indicates that POSCO did not act to the best of its ability.²⁷⁵
- Should the Department determine there is a gap in the record regarding benefits Hyundai

²⁶⁹ See Nucor Case Brief at 33.

²⁷⁰ *Id.*

²⁷¹ *Id.* (citing *Washers from Korea 2012-2013*, and accompanying IDM at 8).

²⁷² See POSCO Case Brief at 24.

²⁷³ *Id.*, at 25 (citing *GPX International Tire Corp. v. United States*, 942 F. Supp. 2d1343, 1359 (CIT 2013) (*GPX*); *SKF USA Inc. v. United States*, 675 F. Supp. 2d1264, 1268 (CIT 2009) (*SKF*); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Federal Circuit 2003) (*Nippon Steel*); *Tianjin Magnesium International Co., Ltd. v. United States*, 33 International Trade Rep. (BNA) 1150 at 9 (CIT 2011) (*Tianjin Magnesium*)).

²⁷⁴ *Id.*, at 26.

²⁷⁵ *Id.*

received under RSTA Article 22, it can, as neutral facts available, use the 0.01 percent *ad valorem* rate calculated for this same program in *NOES from Korea*.²⁷⁶

Hyundai's Comments:

- Inadvertent human error resulted in Hyundai's failure to place its 2014 tax return on the record and the Department should rely on neutral facts available to fill the gap for missing record information regarding Hyundai's usage of RSTA Article 22 during the POI.²⁷⁷
- The statute provides that the Department may apply an adverse inference only when an interested party has failed to act to the best of its ability.²⁷⁸ The Court of International Trade (CIT) has clarified that, "{the} statute does not support the use of AFA on the basis of an inadvertent failure to cooperate."²⁷⁹
- Hyundai clearly intended to cooperate in this proceeding and it was only during verification that its inadvertent mistake was identified by the Department. Consequently, the Department should find that this was a mistake.²⁸⁰
- The Department should fill the gap on the record regarding Hyundai's usage of RSTA Article 22 using the 0.01 percent *ad valorem* rate calculated in *NOES from Korea* for this same program.²⁸¹
- The application of AFA in this instance would serve none of the purposes of AFA and it is not credible to conclude that Hyundai was motivated by the prospect of obtaining a more favorable result through submitting its incorrect tax return.²⁸²

Nucor's Rebuttal Comments:

- Hyundai's argument that application of AFA is unwarranted because it did not intend to mislead the Department is incorrect. The result of Hyundai's failure to report received subsidies was the Department not having an opportunity to investigate and receive comments from interested parties.²⁸³
- POSCO's argument that application of AFA to Hyundai must not be attributed to POSCO is flawed. Rather, the Department should apply AFA to measure the benefits received by

²⁷⁶ *Id.*, at 27 (citing *Non-Oriented Electrical Steel from the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 79 FR 61605 (October 14, 2014) (*NOES from Korea*) and accompanying IDM at 14).

²⁷⁷ See Hyundai Case Brief at 3.

²⁷⁸ See section 776(b)(1) of the Act.

²⁷⁹ See Hyundai Case Brief at 4 (citing *Changzhou Trina*, slip op. 16-121 at 17).

²⁸⁰ *Id.*, at 5 (citing *Nippon Steel* 37 F.3d at 1382).

²⁸¹ *Id.*, at 6 (citing *NOES from Korea* and accompanying IDM at 14).

²⁸² *Id.*

²⁸³ See Nucor Rebuttal Brief at 12.

Hyundai and then attribute those benefits to POSCO, pursuant to the Department's regulations.²⁸⁴

- The cases that POSCO cites in support of its argument are inapposite to this proceeding.²⁸⁵
- The Department should apply AFA to Hyundai for its failure to cooperate, cumulate the benefits Hyundai received with POSCO, and use the 1.05 percent *ad valorem* rate indicated in the Nucor Case Brief.²⁸⁶

POSCO's Rebuttal Comments:

- Hyundai's inadvertent human error is no indication of a failure to cooperate and does not meet the legal standard for applying AFA. The Department should rely upon neutral facts available and use the 0.01 percent *ad valorem* rate calculated in *NOES from Korea* for this identical program.²⁸⁷
- There is no legal basis to apply AFA to POSCO for Hyundai's error in responding, much less the rate proposed by Nucor.²⁸⁸

Department's Position:

We agree with Nucor, both with respect to the application of AFA to Hyundai and to the cumulation of the benefit provided to Hyundai with POSCO's subsidy rate, pursuant to the Department's regulations.²⁸⁹

As discussed in Section VII above, Hyundai failed to report its usage of RSTA Article 22 during the POI. The Department's initial questionnaire requested the following of respondents prior to questions pertaining to specific income tax programs upon which the Department initiated an investigation:

Please provide complete, translated tax returns filed during the POI (preferably a copy of the tax return stamped by the government).²⁹⁰

Later in the initial questionnaire, at the Income Tax Programs Appendix, the Department again requested:

If your company used this program to take deductions from taxable income, credit toward

²⁸⁴ *Id.*, at 13 – 14 (citing 19 CFR 351.525(c); *Preamble*, 63 FR at 65348 and 65404).

²⁸⁵ See Nucor Rebuttal Brief at 13 – 14 (citing *SKF*, 675 F. Supp. 2d 1264, 1274-75; *Tianjin Magnesium*, 2011 WL 637623 at 2; *GPX*, 942 F. Supp. 2d 1343, 1359-60).

²⁸⁶ *Id.*, at 14.

²⁸⁷ See POSCO Rebuttal Brief at 31 – 32.

²⁸⁸ *Id.*, at 32.

²⁸⁹ See 19 CFR 351.525(c).

²⁹⁰ See initial questionnaire.

taxes payable, exemptions from taxes owed, accelerated depreciation or other tax benefits on the tax return *filed during the POI* (the tax period covered by this tax return does not have to correspond with the period of investigation), please answer the following questions.²⁹¹

Hyundai stated in its narrative response that the only income tax program it used during the POI was Article 57 of the Corporate Tax Act, a program on which the Department did not initiate an investigation.²⁹² Further, in response to the Department's questions regarding each of the eight income tax programs under investigation, Hyundai stated that in response to questions regarding all eight programs that it "did not claim any tax deduction... on its 2014 tax return filed during the POI."²⁹³ Thus, Hyundai's narrative response indicated that the firm specifically examined the income tax return that the Department requested, *i.e.* Hyundai's tax return filed during the POI, as the basis for its response to all questions regarding income tax programs in the initial questionnaire. In its narrative response, Hyundai did not report usage of RSTA Article 22.

Hyundai indicated in the exhibit list of its initial response that the included income tax return was the "2014 Income Tax Return."²⁹⁴ The cover page of Exhibit 4, *i.e.* the exhibit containing Hyundai's income tax return, indicates that the exhibit contains "Hyundai Corp.'s 2014 Income Tax Return."²⁹⁵ Further, a second cover page to this exhibit, which contains business proprietary information, refers to the income tax return requested by the Department, including additional detail about the ending and starting days and months of the tax year in question.²⁹⁶ Certain headings on the original *Korean versions* of the enclosed documents within the exhibit are the only indications, within the entirety of Exhibit 4 and thereby Hyundai's response, that Hyundai submitted an incorrect tax return which was inconsistent with its narrative response.²⁹⁷ Consequently, Hyundai's narrative questionnaire response regarding its usage of income tax programs during the POI, and moreover, all *translated* documentation accompanying its exhibit, included no indication that Hyundai submitted the incorrect tax return. As such there was an insufficient basis for the Department to determine that Hyundai had failed to comply with the Department's requests for information by filing an income tax return other than the one requested by the Department.

At verification, Hyundai presented two minor corrections, both of which the Department accepted.²⁹⁸ Neither of these minor corrections pertained to income tax programs. Later at verification, the Department examined Hyundai's original, stamped 2014 income tax return filed during the POI in order to verify Hyundai's narrative response regarding income tax program usage. Upon examining the original, stamped 2014 income tax return, we observed that it did not match the tax return in Exhibit 4 of the Hyundai IQR. Hyundai officials then stated that they had inadvertently included Hyundai's 2015 tax return filed during 2016 within Exhibit 4 of the

²⁹¹ *Id.* (emphasis added).

²⁹² See Hyundai IQR at 26 – 27.

²⁹³ *Id.*, at 27 – 29.

²⁹⁴ *Id.*, at 1 (immediately following page 34).

²⁹⁵ *Id.*, at Exhibit 4.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ See Hyundai VR at 2 – 3.

Hyundai IQR. At that time, we also noted in our examination of the requested 2014 income tax return filed during the POI that, in addition to the reported use of Article 57 of the Corporate Tax Act, Hyundai also used RSTA Article 22 during the POI.²⁹⁹ We further noted that neither this correct tax return, nor Hyundai's incorrect and mislabeled tax return submitted as Exhibit 4 of the Hyundai IQR, completely supported Hyundai's narrative responses regarding income tax program usage. Consequently, and according to the Department's practice, we concluded that the requested 2014 income tax return filed during the POI was new factual information and did not collect information regarding the benefit Hyundai received under this unreported program because the stated purpose of verification is to verify information already on the record.³⁰⁰

As discussed in Section VII above, we determine that RSTA Article 22 constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act and confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). Further, in accordance with sections 776(a)(2)(B) and (C) of the Act, we determine that information that the Department requested of Hyundai is not available on the record because Hyundai withheld information and failed to provide information by established deadlines. The statutory provisions governing the use of facts available do not provide for consideration of the respondent's intent, and thus we have not considered Hyundai's claim that its failure to provide the information was inadvertent in our analysis of whether AFA is warranted. Consequently, we find that Hyundai failed to cooperate to the best of its ability to comply with the Department's requests for information by not reporting its usage of RSTA Article 22, and therefore, that an adverse inference is warranted in accordance with section 776(b) of the Act with respect to the benefit Hyundai received under RSTA Article 22.

The Department disagrees with POSCO that it is unlawful to attribute Hyundai's failure to report use of a subsidy to POSCO because the two companies are unaffiliated and because POSCO has no control over Hyundai. First, 19 CFR 351.525(c) provides that “[b]enefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company, regardless of whether the trading company and the producer are affiliated.” Thus, this regulatory provision directs the Department to cumulate the benefit amount received by Hyundai with the benefits received by POSCO. Second, the Department's regulations and the *Preamble* are equally clear that affiliation status has no bearing upon how subsidy benefits are to be cumulated.³⁰¹ Third, we agree with Nucor that *GPX*, *SKF*, and *Tianjin Magnesium* are not relevant to this proceeding.³⁰² Although POSCO cites these cases for the

²⁹⁹ *Id.*, at 2 and 8.

³⁰⁰ See Letter to Hyundai, “Re: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; Verification of Hyundai Corporation's Questionnaire Responses,” dated November 4, 2016. The Department states, “Please note that verification is not intended to be an opportunity for the submission of new factual information. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by the verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.”

³⁰¹ See *Preamble* 63 FR at 65404.

³⁰² See *GPX Int'l*, 942 F. Supp. 2d at 1359 (concerning the countervailing duty investigation of certain pneumatic off-the-road tires from the People's Republic of China and discussing Commerce's application of AFA in the CVD context); *Nippon Steel*, 337 F.3d at 1382–83 (concerning the antidumping duty investigation of hot rolled, flat rolled

proposition that the courts have explicitly limited the Department's statutory ability to apply an adverse inference when record information is missing due to an unaffiliated party's failure to respond, POSCO ignores that the Federal Circuit has addressed this issue in *Mueller*.³⁰³ In *Mueller*, the Federal Circuit explained that, if a cooperating respondent is in a position to induce a non-cooperating party to supply needed information, the Department may rely on adverse inferences for an unaffiliated party's failure to cooperate and include that inference in determining the rate for a cooperating respondent, as long as the application of the inference is reasonable given the particular facts of the proceeding and the predominate interest in accuracy is properly taken into account. Here, POSCO produces all of the CTL plate that Hyundai exported to the United States during the POI;³⁰⁴ as a result, we determine that POSCO was in a position to induce Hyundai to cooperate with the Department's requests for information to the best of its ability and failed to do so. Consequently, consistent with *Mueller*, and in light of 19 CFR 351.525(c) (which directs the Department to cumulate the benefit amount received by Hyundai with the benefits received by POSCO), we find that applying AFA to Hyundai as a result of its failure to cooperate and assigning this rate as POSCO's subsidy rate for this program, is permissible.

Consistent with the CVD AFA hierarchy, which directs us to seek the highest non-*de minimis* rate calculated for the same or similar program in another CVD proceeding involving Korea if there is no identical program in this proceeding, we determine that it is appropriate to apply, as AFA, a rate of 1.05 percent *ad valorem*, the subsidy rate calculated for an income tax program in *Washers from Korea* as POSCO's subsidy rate for this program.³⁰⁵

Because this rate constitutes secondary information, we have, pursuant to section 776(c)(1) of the Act, corroborated the rate to the extent practicable. With regard to the reliability aspect of corroboration, we are relying on a subsidy rate calculated in another CVD proceeding. Further, under our CVD AFA methodology, if using secondary information, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax). Here, because the calculated rate was based on information about a same or similar program, it reflects the actual behavior of the GOK with respect to these similar subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, 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.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used

carbon quality steel from Japan and discussing the standard for making an adverse inference in the AD context); *Tianjin Magnesium*, 33 I.T.R.D. (BNA) 1150, at *2 (concerning the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China and reviewing Commerce's application of AFA in the AD context).

³⁰³ See *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*).

³⁰⁴ See Hyundai IQR at 5.

³⁰⁵ See *Washers from Korea* and accompanying IDM at 15.

to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.³⁰⁶ For these reasons, this rate has been corroborated to the extent practicable pursuant to section 776(c)(1) of the Act and we find that the rate is reliable and relevant for use as an AFA rate for these subsidies.

Comment 7: Whether the Department Should Find Have Initiated Nucor's Allegation that the GOK Provides the Provision of Natural Gas in All Forms for LTAR

Nucor's Comments:

- The Department did not address the evidence that Nucor provided showing a persistent discrepancy between Japanese and Korean natural gas prices, despite the fact that Japan and Korea pay nearly identical prices to import natural gas.³⁰⁷
- Nucor provided world market prices for natural gas in its benchmark submission, and POSCO and the Korean government provided information regarding the prices charged by the regional gas distributors in Korea.³⁰⁸
- The Department's explanation for declining to initiate this program because (1) evidence that KOGAS operated at a loss was insufficient to support the allegation and (2) Nucor did not provide world market or Korean natural gas price schedules specific to the POI was, therefore, in error.³⁰⁹

GOK's Rebuttal Comments:

- Nucor's evidence of a discrepancy between Japanese and Korean natural gas prices does not support Nucor's allegation.³¹⁰
- The world market price that Nucor submitted is the price for liquefied natural gas, not natural gas in gaseous form.³¹¹
- The data submitted by POSCO and the GOK were also for liquefied natural gas, and not natural gas in gaseous form.³¹²

POSCO's Rebuttal Comments:

- Even if the Department did not fully address each and every piece of benefit information

³⁰⁶ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

³⁰⁷ See Nucor Case Brief at 34 – 35.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ See GOK Rebuttal Brief at 18.

³¹¹ *Id.*

³¹² *Id.*, at 19.

that Nucor submitted in support of its allegation, the absence of any evidence to support a claim that the GOK provided financial contribution renders any such shortcomings harmless.³¹³

Department's Position:

We continue to find that Nucor did not adequately support its allegation.³¹⁴ We declined to initiate this allegation in *Hot-Rolled from Korea*. In *Hot-Rolled from Korea*, Petitioner argued that the level of government influence in Korea's natural gas market may make it impossible to use an in-country benchmark to measure the adequacy of remuneration. Petitioner did not submit any evidence to support its allegation that KOGAS and/or regional gas distributors provide natural gases at LTAR.³¹⁵ Notwithstanding the Department's determination in that proceeding, Nucor provided the same evidence as it did in *Hot-Rolled from Korea* in this proceeding but still did not provide any world market or retail domestic natural gas price schedules specific to the POI, but rather general natural gas market data for years preceding the POI, to support the benefit component of its allegation.³¹⁶ We note that the world market and Japanese prices that Nucor submitted are for liquefied natural gas, not natural gas in gaseous form.

In addition to submitting the same evidence as it did in *Hot-Rolled from Korea*, Nucor also submitted new evidence with the intent to show that Korea Gas Corporation (KOGAS's) suffered financial loss. We carefully examined the allegation and the new evidence submitted by Nucor. The fact that KOGAS suffered financial loss during a given year could result from any number of accounting decisions and circumstances. Further, information submitted by Nucor indicates that KOGAS maintained a positive total comprehensive income in 2014.³¹⁷

Therefore, the record does not contain evidence that the GOK is directly providing natural gas at preferential or discounted prices during the POI. Furthermore, as in *Hot-Rolled from Korea*, Nucor has not provided evidence to support its argument that the GOK is entrusting or directing private companies to sell natural gas for LTAR.³¹⁸

Comment 8: Whether the Department Should Revise its Calculation Regarding Benefit to POSCO under RSTA Article 9

POSCO's Comments:

- At the *Preliminary Determination*, the Department incorrectly calculated the benefit POSCO received under RSTA Article 9.³¹⁹

³¹³ See POSCO Rebuttal Brief at 33 – 34.

³¹⁴ See NSA Memorandum at 3.

³¹⁵ See *Hot-Rolled Steel from Korea* and accompanying IDM at 54 – 55.

³¹⁶ See NSA Memorandum at 3.

³¹⁷ See GOK IQR at Exhibit KOGAS-2.

³¹⁸ See NSA Memorandum at 3.

³¹⁹ See POSCO Case Brief at 28.

- For the final determination, the Department should correct its calculation by determining that POSCO's contingent tax liability consists only of the amount of taxes not yet paid in its outstanding reserve.³²⁰
- Consequently, the amount of the interest-free contingent liability loan used to calculate the benefit would consist of the amount of income taxes that would be due on the amount in the reserve in future years.³²¹

Nucor's Rebuttal Comments:

- POSCO's arguments that the Department overstated the benefit received under this program and that the Department should treat only the amount of taxes not yet paid on the outstanding balance as an interest free loan should be rejected.³²²
- For the final determination, the Department should use the same calculation methodology it did in the *Preliminary Determination* because the Department then appropriately used the balance that POSCO maintained in its reserves as identified "on its tax return filed during the POI" to calculate the benefit.³²³
- The Department's regulations state that "a benefit exists to the extent that appropriate interest charges are not collected."³²⁴ The Department correctly found at the *Preliminary Determination* that the benefit amount is based upon the reserves amount listed on POSCO's tax form.³²⁵

Department's Position:

We agree with POSCO. With respect to the deferral of direct taxes, the Department's regulations indicate that a benefit exists to the extent that appropriate interest charges are not collected.³²⁶ 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.³²⁷ POSCO, therefore, was able to defer payment of certain income tax during the POI by the rate at which the total amount in its reserves would normally be taxed, *i.e.* the corporate income tax rate in Korea applicable to POSCO. In the *Preliminary Determination*, the Department did not base its calculation upon the rate at which the correct amount of funds within POSCO's reserves were taxed, and therefore, did not correctly calculate the appropriate interest charges that were not collected.³²⁸

³²⁰ *Id.*, at 29 – 30.

³²¹ *Id.*, at 30.

³²² See Nucor Rebuttal Brief at 14.

³²³ *Id.*, at 15.

³²⁴ See Nucor Rebuttal Brief at 15 (citing 19 CFR 351.509(a)(2)).

³²⁵ *Id.*

³²⁶ See 19 CFR 351.509(a)(2).

³²⁷ See GOK SQR at Exhibit GSQR1-TX3; see also GOK SQR Appendices Volume at 124.

³²⁸ See PDM at 24.

As Article 9 of the RSTA permits a tax deduction to be used during a tax year, we continue to treat the benefit amount as a short-term, interest-free, contingent liability loan, pursuant to 19 CFR 351.509(a)(2), and use a short-term interest rate as the benchmark to calculate the interest charges which were not collected on the deferred tax amount. Thus, we calculated the benefit for POSCO by multiplying the total amount in its reserves by the applicable corporate income tax rate in Korea, and then multiplied that product by our short-term loan benchmark. We then divided the resulting benefit amount by POSCO's total POI sales. On this basis, we determine that POSCO received a countervailable subsidy rate of 0.03 percent *ad valorem*.³²⁹

Comment 9: Whether the Department Verified that POSCO Did Not Receive any Benefit under the FEZ Programs

GOK's Comments:

- The GOK contends that the Department verified that POSCO did not meet the investment requirements to avail itself of subsidy programs offered in the FEZs.³³⁰
- The Department verified at POSCO that it did not receive any benefits pursuant to its location in the FEZ.³³¹

Department's Position:

We agree with the GOK. We verified that POSCO did not receive any benefits pursuant to its location in the FEZ during the POI. As described in the verification report, we reviewed online maps, maps sourced from companies' official websites, and correspondence with GOK officials to determine the complete list of where POSCO's facilities, and those of its cross-owned input suppliers, are located. We saw no indication that POSCO or its cross-owned input suppliers have facilities located in any free economic zone (FEZ) in Korea, *i.e.*, geographic regions to which certain subsidy programs reported as not used are limited, other than the reported location of the POSCO Global R&D Center within the Incheon FEZ.³³² We also queried the Korean Financial Supervisory Service Data Analysis, Retrieval and Transfer System and found no indication that POSCO, or any of its subsidiaries, were foreign-invested enterprises and thereby qualified to received benefits within FEZs.³³³

Comment 10: Whether the Department Finds Tax Programs *de facto* Specific

GOK's Comments:

- The GOK contends that the tax deductions under the RSTA are not specific because only

³²⁹ See POSCO Final Calculation Memorandum.

³³⁰ See GOK Case Brief at 5 – 6.

³³¹ *Id.*

³³² See POSCO VR at 34.

³³³ *Id.* at 35.

a portion of Korean tax-payers used the program.³³⁴

- The CIT has ruled against disproportionate use in this context and the Department’s interpretation of the phrase “actual recipients are limited in number” in section 771(5A)(D)(iii)(I) is not in accordance with the interpretation made by the CIT or the SAA.³³⁵
- The proper ratio should be the number of companies that took the deduction, not the number of taxpayers who were eligible for it.³³⁶

Nucor’s Rebuttal Comments:

- The Department considered and rejected the GOK’s argument in *Cold-Rolled Steel from Korea*, and should do so again here.³³⁷
- The GOK has presented no new arguments in its Case Brief, and provided no basis for the Department to depart from recent findings. Therefore, the Department should continue to find that the RSTA tax programs are *de facto* specific because actual recipients of subsidies are limited in number.³³⁸

Department’s Position:

Regarding the GOK’s argument concerning the *de facto* specificity determination made with respect to RSTA tax programs, generally, section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that “any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries.” The SAA states that “[t]he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.”³³⁹

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. The RSTA tax incentives at issue in this investigation are tax incentives that are available to all types of businesses and corporations in Korea.

Thus, it is appropriate to include all corporate tax returns in our analysis of *de facto*

³³⁴ See GOK Case Brief at 6 – 12.

³³⁵ *Id.* at 7 – 12.

³³⁶ *Id.* at 6 – 7.

³³⁷ See Nucor Rebuttal Brief at 15 (citing *Cold-Rolled Steel from Korea* and accompanying IDM at 88 – 89).

³³⁸ *Id.*, at 16.

³³⁹ See SAA at 929. The SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act...” 19 U.S.C. §1352(d).

specificity.³⁴⁰ In order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy, we examined both the nominal number of recipients of each of these RSTA tax incentives, other than those determined to be either regionally specific or *de jure* specific, and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns.³⁴¹ On this basis, we find that these programs benefitted only a limited number of users, and therefore they are *de facto* specific.

XI. RECOMMENDATION

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



Agree



Disagree

3/29/2017

X

Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

³⁴⁰ See, e.g. *Cold-Rolled Steel from Korea* and accompanying IDM at 88.

³⁴¹ See GOK IQR at Exhibit TAX-15; see also PDM at 19 – 20, in which our analysis, for example, indicates that users of RSTA Article 10(1)(3) constituted 0.24 percent of all corporate tax filers and users of RSTA Article 11 constituted 0.06 percent of all corporate tax filers.