



C-580-898  
Investigation  
**Public Document**  
E&C/VIII: GA/RJP/IG

**DATE:** June 19, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Affirmative Preliminary  
Determination of the Countervailing Duty Investigation of Large  
Diameter Welded Pipe from the Republic of Korea

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## **I. SUMMARY**

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## **II. BACKGROUND**

### **A. Case History**

On January 17, 2018, Commerce received a countervailing duty (CVD) petition concerning imports of welded pipe from Korea, filed in proper form on behalf of American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp, Dura-Bond Industries, Skyline Steel, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., and Trinity Products LLC (collectively, the petitioners).<sup>1</sup> We describe the supplements to the petition and our

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<sup>1</sup> See petitioners' letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties," dated January 17, 2018 (Petition).



consultations with the Government of the Republic of Korea (GOK) in the Initiation Checklist.<sup>2</sup> On February 20, 2018, we published the initiation of a CVD investigation on welded line pipe from Korea.<sup>3</sup>

On February 1, 2018, we released U.S. Customs and Border Protection (CBP) entry data under the Administrative Protective Order (APO), and requested comments regarding the data and respondent selection.<sup>4</sup> We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on CBP entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On February 23, 2018, the petitioners filed comments on respondent selection.<sup>5</sup> No other interested party submitted comments regarding respondent selection.

On March 6, 2018, we selected Husteel Co., Ltd. (Husteel), Hyundai Steel Company (Hyundai Steel), and SeAH Steel Corporation (SeAH Steel), as mandatory respondents in this investigation.<sup>6</sup> On March 7, 2018, we issued a CVD questionnaire to the GOK, and requested that the GOK to forward the questionnaire to the selected mandatory respondents.<sup>7</sup> On April 5, 2018, we received an affiliation response from Husteel, Hyundai Steel and SeAH Steel.<sup>8</sup> On April 23, 2018, the GOK, Husteel, Hyundai Steel and SeAH Steel filed their respective responses to the countervailing duty questionnaire.<sup>9</sup>

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<sup>2</sup> See CVD Initiation Checklist: Large Diameter Welded Pipe from the Republic of Korea, dated February 9, 2018 (CVD Initiation Checklist).

<sup>3</sup> See *Large Diameter Welded Pipe from India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 83 FR 7148 (February 20, 2018) (*Initiation Notice*).

<sup>4</sup> See Memorandum, "Large Diameter Welded Pipe from the Republic of Korea Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated February 1, 2018.

<sup>5</sup> See petitioners' letter, "Large Diameter Welded Pipe from the Republic of Korea: Comments on Respondent Selection," dated February 23, 2018.

<sup>6</sup> See Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Respondent Selection," dated March 6, 2018 (Respondent Selection Memo).

<sup>7</sup> See Commerce's letter, "Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Questionnaire," dated March 7, 2018.

<sup>8</sup> See Husteel's letter, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Affiliated Companies Questions of Initial Questionnaire" (Husteel Affiliation Response), Hyundai Steel's letter, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Affiliated Companies Questions of Initial Questionnaire" (Hyundai Steel Affiliation Response), and SeAH Steel's letter, "Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – Identification of Other Companies Subject to Investigation" (SeAH Steel Affiliation Response), all dated April 5, 2018.

<sup>9</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Response to Section II of the Questionnaire" (GOK Questionnaire Response), Husteel's letter, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Affiliated Companies Questions of Initial Questionnaire" (Husteel Questionnaire Response), Hyundai Steel's letter, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Section III of Initial Questionnaire" (Hyundai Steel Questionnaire Response), and SeAH Steel's letter, "Large Diameter Welded Pipe from Korea – Response to Section III of Department's Countervailing Duty Questionnaire" (SeAH Steel Questionnaire Response), all dated April 23, 2018.

Between April 17, 2018 and June 8, 2018, we issued supplemental questionnaires to the GOK, Husteel, Hyundai Steel and SeAH Steel.<sup>10</sup> Responses to these questionnaires were timely received between April 23, 2018 and June 18, 2018.<sup>11</sup> Currently, the response to a supplemental questionnaire issued to SeAH Steel on June 8, 2018, is due after the preliminary determination.<sup>12</sup> Hyundai Steel reported that it exported sales through its affiliated trading company Hyundai Corporation (Hyundai Corp).<sup>13</sup> SeAH Steel reported that ESAB SeAH Corporation (SeAH ESAB) provided consumable supplies in the production of welded pipe.<sup>14</sup> Accordingly, Hyundai Corp and SeAH ESAB submitted separate questionnaire responses.<sup>15</sup>

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<sup>10</sup> See Commerce's letters to the GOK, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Section II Supplemental Questionnaire," dated May 14, 2018, and "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Section II Second Supplemental Questionnaire," dated May 25, 2018; Commerce's letters to Husteel, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Supplemental for Initial Questionnaire Response," dated May 10, 2018, and "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Second Supplemental Questionnaire," dated May 23, 2018; Commerce's letters to Hyundai Steel, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Affiliation Supplemental Questionnaire," dated April 18, 2018, "Countervailing Duty Investigation of Large Diameter Welded Pipe: Supplemental Questionnaire for Hyundai Steel Co., Ltd.," dated May 3, 2018, and "Countervailing Duty Investigation of Large Diameter Welded Pipe: 2nd Supplemental Questionnaire for Hyundai Steel Co., Ltd.," dated May 21, 2018; Commerce's letters to SeAH Steel, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Affiliation Supplemental Questionnaire," dated April 17, 2018, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Section III Supplemental Questionnaire," dated May 1, 2018 (SeAH Steel Supplemental Questionnaire), "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Section III Second Supplemental Questionnaire," dated May 18, 2018 and May 23, 2018, and "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Section III Third Supplemental Questionnaire, dated June 8, 2018 (SeAH Steel Third Supplemental Questionnaire).

<sup>11</sup> See GOK's letters, "Large Diameter Welded Pipe from the Republic of Korea, Response," dated May 23, 2018, May 25, 2018, and May 30, 2018 (GOK Supplemental Questionnaire Response), and "Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire," dated June 4, 2018, June 7, 2018, June 11, 2018, June 14, 2018, and June 18, 2018 (GOK Second Supplemental Questionnaire Response); Husteel's letters, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Supplemental Questionnaire Response," dated May 17, 2018 (Husteel Supplemental Questionnaire Response), and "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Second Supplemental Questionnaire Response," dated May 31, 2018 (Husteel Second Supplemental Questionnaire Response); Hyundai Steel's letters, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Affiliation Supplemental Questionnaire," dated April 27, 2018 (Hyundai Steel Affiliation Supplemental Response), "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to First Supplemental Questionnaire," dated May 21, 2018 (Hyundai Steel Supplemental Questionnaire Response), and "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Second Supplemental Questionnaire," dated June 5, 2018 (Hyundai Steel Second Supplemental Questionnaire Response); and SeAH Steel's letters, "Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – Response to Affiliation Supplemental Questionnaire," dated April 23, 2018 (SeAH Steel Affiliation Supplemental Response), "Large Diameter Welded Pipe from Korea – Response to Department's Countervailing Duty Supplemental Questionnaire," dated May 15, 2018 (SeAH Steel Supplemental Response), and "Large Diameter Welded Pipe from Korea – Response to Department's Section III Second Supplemental Countervailing Duty Questionnaire," dated May 30, 2018 (SeAH Steel Second Supplemental Questionnaire Response).

<sup>12</sup> See SeAH Steel Third Supplemental Questionnaire.

<sup>13</sup> See Hyundai Steel Affiliation Response at 2.

<sup>14</sup> See SeAH Steel Affiliation Supplemental Response at 7.

<sup>15</sup> See Hyundai Corp's letters, "Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to Section III of Initial Questionnaire," dated April 23, 2018 (Hyundai Corp Questionnaire Response), and

On May 10, 2018, the petitioners filed three new subsidy allegations (NSA),<sup>16</sup> one of which relates to a subsidy program which was already under investigation as a self-reported program by one of the respondents.<sup>17</sup>

#### B. *Postponement of Preliminary Determination*

On March 20, 2018, the petitioners requested that Commerce postpone the deadline for the preliminary determination.<sup>18</sup> Commerce granted the petitioners' request and, on April 2, 2018, published the notification of postponement of the preliminary determination, until June 19, 2018, in the *Federal Register*, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).<sup>19</sup>

#### C. *Period of Investigation*

The period of investigation (POI) is January 1, 2017, through December 31, 2017.

### III. INJURY TEST

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On March 6, 2018, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded pipe from Korea.<sup>20</sup>

### IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner

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"Large Diameter Welded Pipe from the Republic of Korea, Case No. C-580-898: Response to First Supplemental Questionnaire," dated May 21, 2018 (Hyundai Corp Supplemental Questionnaire Response); *see also* SeAH Steel Questionnaire Response at Volume II.

<sup>16</sup> *See* petitioners' letter, "Large Diameter Welded Pipe from Korea: New Subsidies Allegations," dated May 10, 2018.

<sup>17</sup> *See* Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: New Subsidy Allegations," dated June 19, 2018.

<sup>18</sup> *See* petitioners' letter, "Large Diameter Welded Pipe from the Republic of Korea: Petitioners' Request for Postponement of the Preliminary Determination," dated March 20, 2018.

<sup>19</sup> *See Large Diameter Welded Pipe from India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 83 FR 13946 (April 2, 2018).

<sup>20</sup> *See Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: Investigation Nos. 701-TA-593-596 and 731-TA-1401-1406 (Preliminary)*, Publication 4768, March 2018; *see also Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey Determinations*, 83 FR 10748 (March 12, 2018).

requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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, Commerce 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.<sup>21</sup> 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.<sup>22</sup>

Section 776(c) of the Act provides that, in general, when Commerce 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.<sup>23</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>24</sup>

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce 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 Commerce considers reasonable to use.<sup>25</sup> When selecting from the facts otherwise available with an adverse inference, Commerce 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.<sup>26</sup>

As discussed below, for the preliminary determination, we find it appropriate to use an adverse inference, in part, when selecting from the facts otherwise available (AFA) with respect to SeAH

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<sup>21</sup> See section 776(b)(1)(B) of the Act.

<sup>22</sup> See also 19 CFR 351.308(c).

<sup>23</sup> See also 19 CFR 351.308(d).

<sup>24</sup> See Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.

<sup>25</sup> See section 776(d)(1) of the Act.

<sup>26</sup> See section 776(d)(3) of the Act.

Steel regarding SPP Steel Pipe, a company that SeAH Steel purchased during the AUL.

### *SPP Steel Pipe*

We preliminarily find that the use of facts available is appropriate with respect to SeAH Steel because it withheld information and failed to provide such information in the form or manner requested in response to our request for necessary information related to the receipt of subsidies by SPP Steel Pipe during the AUL.

In its section III affiliation response, SeAH Steel reported that in March 2012, it acquired the plants and facilities of SPP Steel Pipe, a Korean steel pipe manufacturer.<sup>27</sup> In a supplemental questionnaire, we directed SeAH Steel to provide a section III questionnaire response on behalf of SPP Steel Pipe for the AUL.<sup>28</sup> In response to our supplemental questionnaire, in lieu of a full section III questionnaire response, SeAH Steel provided the following explanation of its purchase of SPP Steel Pipe. SeAH Steel stated that SPP Steel Pipe was created on July 20, 2011, when its welded pipe operations were spun-off from its parent company, SPP Resources, through a division of assets and liabilities.<sup>29</sup> As part of a restructuring agreement with Woori Bank, a GOK-owned bank, SPP Resources agreed to dispose of non-core assets such as its welded pipe manufacturing operations.<sup>30</sup> Accordingly, SPP Resources created SPP Steel Pipe as a standalone company and contacted the accounting firm Horwath Choongjung LLC to manage the sale.<sup>31</sup> The accounting firm contacted potential buyers and distributed an offering memorandum in September 2011.<sup>32</sup> SeAH Steel participated in the bidding process for SPP Steel Pipe, where it was the highest bidder out of two bids.<sup>33</sup> Subsequently, SPP Steel Pipe was renamed SeAH Steel Pipe and merged into SeAH Steel effective January 1, 2013.<sup>34</sup> SeAH Steel also stated that it did not have access to internal company information regarding any subsidies SPP Resources may have received during the AUL and that SPP Resources was currently in bankruptcy proceedings.<sup>35</sup> Additionally, SeAH Steel asserted that under Commerce practice, any subsidies received by SPP Steel Pipe prior to its purchase by SeAH steel would be extinguished by the sale.<sup>36</sup> In a second supplemental questionnaire, Commerce requested that SeAH Steel respond to the Change in Ownership Appendix regarding SPP Steel Pipe, currently due after the preliminary determination.<sup>37</sup>

With respect to SeAH Steel's assertion that its purchase of SPP Steel Pipe extinguished all of the subsidies it may have received prior to the purchase, for purposes of determining whether any prior subsidy benefits received by SPP Steel Pipe are extinguished as a result of the change in

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<sup>27</sup> See SeAH Steel Affiliation Response at 10.

<sup>28</sup> See SeAH Steel Supplemental Questionnaire.

<sup>29</sup> See SeAH Steel Supplemental Questionnaire Response at 3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6.

<sup>37</sup> See SeAH Steel Third Supplemental Questionnaire.

ownership, we rely upon the *Notice of Final Modification* and *Pasta from Italy* in evaluating SeAH Steel's argument.<sup>38</sup> As stipulated in the *Notice of Final Modification*, the "baseline presumption" is that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period.<sup>39</sup> However, an interested party may rebut this baseline presumption by demonstrating that a change in ownership occurred in which the former owner sold "all or substantially all" of a company or its assets, and that the sale was at arm's length and for fair market value.<sup>40</sup> Further, in accordance with the *Notice of Final Modification* and *Pasta from Italy*, if the evidence presented does not demonstrate that the change in ownership was at arm's length and for fair market value, the baseline presumption will not be rebutted and we will find that the pre-change-in-ownership benefits were not extinguished.<sup>41</sup> In considering whether the transaction is an arm's-length transaction, the *Notice of Final Modification* and *Pasta from Italy* point to the SAA, which defines an arm's-length transaction as a transaction between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.<sup>42</sup> There is no statutory definition of fair market value, and no discussion of fair market value in the SAA, so we rely upon the *Notice of Final Modification* and *Pasta from Italy*, which provide relevant guidance. Specifically, both documents state that "in analyzing whether the transaction was for fair market value, the basic question is whether the full amount that the company or its assets was actually worth under the prevailing market conditions was paid. In making this determination, we normally will examine whether the seller acted in a manner consistent with the normal sales practices of private, commercial sellers in that country."<sup>43</sup> Further, the *Notice of Final Modification* provides a non-exhaustive list of factors that Commerce may consider, such as whether the highest bid price was accepted.

In this case, we find that SeAH Steel failed to provide a section III response for SPP Steel Pipe. Commerce specifically requested in a supplemental questionnaire that SeAH Steel submit a response to section III of the questionnaire on behalf of SPP Pipe, but SeAH Steel failed to submit such a response. Although SeAH Steel claimed, in response to Commerce's request to provide a complete section III response for SPP Steel Pipe, that the purchase of SPP Steel Pipe was an arm's-length transaction for fair market value, SeAH Steel did not provide any documentary evidence to support this claim. Instead, SeAH submitted unsubstantiated assertions regarding the nature of the sale, rather than the requested questionnaire response for SPP Steel Pipe. Therefore, we find that necessary information is missing from the record within the meaning of section 776(a)(1) of the Act, and that SeAH Steel withheld information and failed to provide such information in the form or manner requested, within the meaning of section

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<sup>38</sup> See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act Section 123 Modification*, 68 FR 37125 (June 23, 2003) (*Notice of Final Modification*). The *Notice of Final Modification* explicitly addresses full privatization, but Commerce later determined to apply this methodology to private-to-private sales. See, e.g., *Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 at 17972 (April 8, 2005), unchanged in *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005) (*Pasta from Italy*).

<sup>39</sup> See *Notice of Final Modification*, 68 FR at 37127.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*; see also *Pasta from Italy*, 70 FR at 17972.

<sup>43</sup> See *Notice of Final Modification*, 68 FR at 37127.

776(a)(2)(A)-(B) of the Act. Consequently, we find it appropriate to use facts available, pursuant to section 776(a) of the Act, with respect to SPP Steel Pipe for this preliminary determination.

Further, we preliminarily find that the use of an adverse inference with respect to the facts available for SPP Steel Pipe is appropriate, because SeAH Steel did not act to the best of its ability in responding to requests for information by Commerce. The Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel* provided an explanation of the meaning of act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”<sup>44</sup> Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.<sup>45</sup> The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.<sup>46</sup> Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.<sup>47</sup>

Here, we find that SeAH Steel did not act to the best of its ability to comply with Commerce’s request for information, because SeAH Steel failed to submit a response to Commerce’s section III questionnaire regarding SPP Steel Pipe. Although “the best-of-its-ability standard requires that Commerce examine respondent’s abilities, efforts, and cooperation in responding to Commerce’s requests for information,” we note that the CAFC in *Nippon Steel* also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”<sup>48</sup> In lieu of a response to the section III questionnaire, SeAH Steel should have at a minimum been able to provide documentation to support its claim that the purchase of SPP Steel Pipe was an arm’s-length transaction for fair market value. SeAH Steel did not provide the level of detail and any supporting documentation needed for us to conduct the necessary analysis to determine the accuracy and reliability of SeAH Steel’s assertion.<sup>49</sup> Further, we note that SeAH Steel only noted that it had acquired SPP Steel Pipe in a footnote in its initial affiliation questionnaire response,<sup>50</sup> and when we issued the request for a section III questionnaire response on behalf of SPP Steel Pipe, SeAH Steel requested an extension before ultimately providing an unsubstantiated explanation in lieu of a section III response. As a result, we were precluded from requesting the information required to complete an analysis of SeAH Steel’s acquisition of SPP Steel Pipe and receiving a response before the fully extended preliminary determination deadline. Accordingly, because we determine that SeAH Steel did not act to the best of its ability in providing the requested questionnaire response or evidence for its assertions regarding why it did not provide a full response, we have applied an adverse inference, pursuant to section 776(b) of the Act, for the preliminary determination.

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<sup>44</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1380.

<sup>47</sup> *Id.* at 1382.

<sup>48</sup> *Id.*

<sup>49</sup> See SeAH Steel Supplemental Questionnaire Response at 3-6.

<sup>50</sup> See SeAH Steel Affiliation Response at 10

Although we preliminarily determine to apply AFA to SPP Steel Pipe, we have issued a supplemental questionnaire requesting that SeAH Steel respond to the Change in Ownership Appendix, which is currently due after the preliminary determination, to provide SeAH Steel with a final opportunity to submit the information needed to complete an analysis of whether subsidies received by SPP Steel Pipe prior to its acquisition by SeAH Steel were extinguished.<sup>51</sup> Additionally, following the preliminary determination, we intend to allow SeAH Steel a final opportunity to respond to the section III questionnaire on behalf of SPP Steel Pipe in the event that Commerce determines in the final determination that such subsidies were not extinguished.

### Selection of the AFA Rate

When selecting AFA rates, section 776(d) of the Act provides that Commerce 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 countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. It is Commerce's practice in CVD proceedings to compute a total 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.<sup>52</sup> Specifically, Commerce selects 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, Commerce 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, Commerce will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in a CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, Commerce 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.<sup>53</sup>

In applying AFA to SeAH Steel, we are guided by the statute and Commerce's methodology detailed above. Because SeAH Steel failed to act to the best of its ability in this investigation regarding subsidies conferred upon SPP Steel Pipe during the AUL, as discussed above, we made an adverse inference that it used and benefitted from the non-recurring programs appearing below. We have not included the programs under investigation which provided recurring

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<sup>51</sup> See SeAH Steel Third Supplemental Questionnaire.

<sup>52</sup> 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 Issues and Decision Memorandum (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."

<sup>53</sup> *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."

benefits, because SPP Steel Pipe was fully merged into SeAH Steel in 2013, prior to the POI, and thus could not have received any subsidies separate from SeAH Steel during the POI.

For programs for which we did not calculate an above-zero rate for the other mandatory respondents in this investigation, we are applying the highest subsidy rate calculated for the same or, if lacking such rate, for a similar program in a CVD investigation or administrative review involving Korea. We are able to match based on program name, description, and treatment of the benefit, the following programs to the same programs from other Korean CVD proceedings:

<b>Program</b>	<b>AFA Rate</b>	<b>Export Subsidy</b>
<b>Grants to Companies in Free Economic Zones</b> <sup>54</sup>	1.64 percent	No
<b>Industrial Grants Pursuant to the Industrial Technology Innovation Promotion Act (ITIPA)</b> <sup>55</sup>	1.64 percent	No

Based on the above analysis, and based on AFA, we determine the total countervailable subsidy rate for SPP Steel Pipe to be 3.28 percent *ad valorem*.

#### Corroboration of AFA Rate

Section 776(c) of the Act provides that, in general, when Commerce 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. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>56</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>57</sup> Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>58</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous Korean CVD investigations or administrative reviews. Further, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are selecting as AFA. With

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<sup>54</sup> See *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 16, where we determined the countervailable subsidy rate of 1.64 percent *ad valorem* for respondent POSCO.

<sup>55</sup> *Id.*

<sup>56</sup> See SAA, at 870.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 869-870.

respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>59</sup>

In the absence of record evidence from SeAH Steel concerning the program subsidies conferred upon SPP Steel Pipe during the AUL, Commerce reviewed the information concerning Korean subsidy programs in this and other cases. Where we have a program-type match, we find that, because these are the same programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for Korean programs, from which the non-cooperative respondent could receive a benefit. Due to the lack of record information for SPP Steel Pipe concerning these non-recurring grant programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

## **V. SUBSIDIES VALUATION**

### **A. Allocation Period**

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>60</sup> Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>61</sup> Commerce notified the respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period. Consistent with past practice, in order to appropriately measure any allocated subsidies, Commerce will use a 15-year AUL period in this investigation.<sup>62</sup>

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

### **B. Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by

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<sup>59</sup> See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>60</sup> See 19 CFR 351.524(b).

<sup>61</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>62</sup> See *Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005) and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.<sup>63</sup> The Court of International Trade (CIT) has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>64</sup>

#### *Husteel*

Husteel reported that it is a publicly traded company engaged in the production and sale of steel pipe products, including welded pipe.<sup>65</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Husteel to its own sales.<sup>66</sup>

#### *Hyundai Steel*

Hyundai Steel reported that it is a publicly traded company engaged in the production and sale of steel products, including welded pipe.<sup>67</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Hyundai Steel to its own sales. Hyundai Steel reported that it made some export sales of welded pipe to the United States through an affiliated trading company, Hyundai Corp.<sup>68</sup> In accordance with Commerce's questionnaire, Hyundai Corp submitted a complete questionnaire response and responded to a supplemental questionnaire.<sup>69</sup>

Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm

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<sup>63</sup> See, e.g., *Countervailing Duties*, 63 FR 65348 at 65401 (November 25, 1998).

<sup>64</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>65</sup> See Husteel Questionnaire Response at 5.

<sup>66</sup> For the denominators used in the preliminary calculations, see Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination Calculations for Husteel," dated concurrently with this memorandum (Husteel Preliminary Calculation Memo).

<sup>67</sup> See Hyundai Steel Questionnaire Response at 5-6.

<sup>68</sup> See Hyundai Steel Affiliation Response at 2.

<sup>69</sup> See Hyundai Corp Questionnaire Response; Hyundai Corp Supplemental Questionnaire Response.

that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are preliminarily cumulating the benefits from subsidies received by Hyundai Corp with the benefits from subsidies received by Hyundai Steel based on the ratio of Hyundai Corp's exports to the United States of subject merchandise that was produced by Hyundai Steel during the POI (based on value).<sup>70</sup>

### *SeAH Steel*

SeAH Steel reported that it is a publicly traded company engaged in the production and sale of steel products, including welded pipe.<sup>71</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by SeAH Steel to its own sales. SeAH Steel also reported that it purchased welding wire and welding flux from SeAH ESAB, its cross-owned affiliate, during the POI.<sup>72</sup> SeAH Steel explained that welding wire and welding flux are used in the process of producing welded pipe.<sup>73</sup> Therefore, in accordance with Commerce's questionnaire, SeAH ESAB submitted a complete questionnaire response and responded to a supplemental questionnaire.<sup>74</sup>

Pursuant to 19 CFR 351.525(b)(6)(iv), for subsidies received by an input supplier whose production of inputs is primarily dedicated to the production of the downstream merchandise by a cross-owned producer, Commerce attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding the sales between the two corporations. Accordingly, pursuant to 19 CFR 351.525(b)(6)(iv), we are preliminarily attributing subsidies received by SeAH ESAB to its total sales plus the sales of SeAH Steel, net of inter-company sales.<sup>75</sup>

In its affiliation questionnaire response, SeAH Steel stated that it requested to be exempted from reporting on behalf of an unaffiliated welded pipe producer.<sup>76</sup> Based on the reported quantities of welded pipe that were exported by SeAH from this unaffiliated producer, we did not require SeAH Steel to submit questionnaire responses for this producer.<sup>77</sup>

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<sup>70</sup> For the denominators used in the preliminary calculations, *see* Memorandum. "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination Calculations for Hyundai Steel," dated concurrently with this memorandum (Hyundai Steel Preliminary Calculation Memo).

<sup>71</sup> *See* SeAH Steel Questionnaire Response at 11-12.

<sup>72</sup> *See* SeAH Steel Affiliation Supplemental Response at 7.

<sup>73</sup> *Id.*

<sup>74</sup> *See* SeAH Steel Supplemental Questionnaire Response at Volume II; SeAH Steel Second Supplemental Questionnaire Response.

<sup>75</sup> For the denominators used in the preliminary calculations, *see* Memorandum "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination Calculations for SeAH Steel Corporation," dated concurrently with this memorandum (SeAH Steel Preliminary Calculation Memo).

<sup>76</sup> *See* SeAH Steel Affiliation Response at 2.

<sup>77</sup> *See Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Amended Affirmative Preliminary Determination*, 79 FR 31088 (May 30, 2014) and accompanying PDM at 10, unchanged in *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014).

### C. *Denominators*

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

### D. *Loan Benchmarks and Interest Rates*

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

#### Short-Term U.S. Dollar (USD) and Korean Won (KRW)-Denominated Loans

Husteel, Hyundai Steel, and SeAH Steel reported receiving short-term financing from the Korean Export-Import Bank (KEXIM) during the POI.<sup>78</sup> Husteel, Hyundai Steel and SeAH Steel provided information about short-term loans from commercial banks for consideration as comparable commercial loans for purposes of identifying an interest rate benchmark.<sup>79</sup> We preliminarily determine that some of the loans Husteel, Hyundai Steel, and SeAH Steel identified constitute comparable commercial loans, and it is appropriate to use these loans to calculate a weighted-average benchmark interest rate, pursuant to 19 CFR 351.505(a)(2)(iv).<sup>80</sup> However, Husteel reported that it did not have any short-term loans from a commercial bank that were comparable to the KEXIM loan at issue which had a loan agreement date in 2016. Accordingly, we relied on data from the International Monetary Fund's (IMF) *International Financial Statistics* for the year in which the terms of the loan were agreed upon (*i.e.*, 2016) to identify comparable interest rates. This is consistent with the approach Commerce took in *Large Residential Washers from Korea*.<sup>81</sup>

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<sup>78</sup> See Husteel Questionnaire Response at 11; Hyundai Steel Questionnaire Response at 16 and Exhibit KEXIM-1; SeAH Steel Questionnaire Response at 24-25 and Appendices 8B and 9B.

<sup>79</sup> See Husteel Second Supplemental Questionnaire Response at Exhibit B-6; Hyundai Steel Questionnaire Response at Exhibit KEXIM-3; SeAH Steel Questionnaire Response at Appendix 8E; SeAH Steel Second Supplemental Questionnaire Response at Appendix 2S-3.

<sup>80</sup> See Husteel Preliminary Calculation Memo; Hyundai Steel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>81</sup> See *Large Residential Washers from the Republic of Korea: Preliminary Affirmative Countervailing Duty*

## Long-Term KRW-Denominated Loans

SeAH Steel reported that it had outstanding countervailable long-term KRW-denominated loans from KEXIM during the POI.<sup>82</sup> As noted above, as benchmarks for countervailable subsidies in the form of long-term loans, we typically use, where available, the company-specific interest rates on the company's comparable commercial loans.<sup>83</sup> SeAH Steel provided information about its long-term loans from commercial banks for consideration as comparable commercial loans for purposes of identifying an interest rate benchmark.<sup>84</sup> We preliminarily determine that some of the loans SeAH Steel identified constitute comparable commercial loans, and it is appropriate to use these loans as a comparable benchmark interest rate, pursuant to 19 CFR 351.505(a)(2)(iii).<sup>85</sup>

### D. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Husteel Preliminary Calculation Memo, Hyundai Steel Preliminary Calculation Memo, and SeAH Steel Preliminary Calculation Memo.<sup>86</sup>

## VI. ANALYSIS OF PROGRAMS

Based upon our analysis and the responses to our questionnaires, we preliminarily determine the following:

### A. *Programs Preliminarily Determined to Be Countervailable*

#### 1. Demand Response Resources Program

The Trading of Demand Response Resources (DRR) Program was developed in November 2014 to allow the Korea Power Exchange (KPX) to respond in a timely manner to any imbalance between supply and demand of electricity in the market, curb peak demand, optimize the construction of additional generators, and save the supply cost of electricity.<sup>87</sup> The program contains two sub-programs, the DRR Program for Peak Curtailment and the DRR Program for Electricity Price Curtailment.<sup>88</sup> The former program is designed to curtail load during peak

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*Determination and Alignment of Final Determination with Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers from Korea*), and accompanying Preliminary Decision Memorandum (PDM) at 6, unchanged in *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012).

<sup>82</sup> See SeAH Steel Questionnaire Response at 25-26 and Appendix 9B.

<sup>83</sup> See 19 CFR 351.505(a)(3).

<sup>84</sup> See SeAH Steel Questionnaire Response at Appendix 9G.

<sup>85</sup> See SeAH Steel Preliminary Calculation Memo.

<sup>86</sup> See Husteel Preliminary Calculation Memo, Hyundai Steel Preliminary Calculation Memo, and SeAH Steel Preliminary Calculation Memo.

<sup>87</sup> See GOK Questionnaire Response at 6.

<sup>88</sup> *Id.*

electricity demand periods, and the latter is intended to minimize power generation costs through price competition.<sup>89</sup> The KPX, which manages the DRR Program, pays multiple private Demand Management Business Operators, also called “aggregators,” which have direct, contractual relationships with end users of the program.<sup>90</sup> End users receive cash payments from those aggregators.<sup>91</sup> Prior to that exchange between the KPX and the aggregators, the Korea Electric Power Corporation (KEPCO) pays the KPX for the latter’s role in demand curtailment under the program.<sup>92</sup> KPX is majority-owned by KEPCO, which is, in turn, majority-owned by the GOK.<sup>93</sup> The legal basis for this program is Article 31(5) of the Electricity Business Law (EBL) and Chapter 12 of the Rules on Operation of Electricity Utility Market (ROEUM).<sup>94</sup>

SeAH Steel and its cross-owned input supplier SeAH ESAB, as well as Hyundai Steel, each reported being end users under the DRR Program during the POI.<sup>95</sup> Consistent with our prior findings, we preliminarily find KEPCO and KPX to each be an “authority” within the meaning of section 771(5)(B) of the Act.<sup>96</sup> Therefore, we determine that a financial contribution in the form of a direct transfer of funds from KPX is provided to companies participating in this program under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided to Hyundai Steel and SeAH Steel in accordance with 19 CFR 351.504(a). Our findings in this regard are consistent with Commerce’s practice.<sup>97</sup>

The implementing law and rules for this program do not expressly limit eligibility to a specific enterprise or industry or group thereof, in accordance with section 771(5A)(D)(i) of the Act. However, the GOK submits that 3,580 companies were approved for the assistance under this program in 2017, while 9 participants were rejected.<sup>98</sup> Therefore, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number. Our findings in this regard are consistent with Commerce’s approach in prior CVD proceedings involving Korea.<sup>99</sup>

Because we found no evidence on the record indicating that subsidies under the DRR Program were tied to export sales, we used the total sales of Hyundai Steel and SeAH Steel, respectively,

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<sup>89</sup> *Id.* at 6-7.

<sup>90</sup> *Id.* at 8.

<sup>91</sup> *Id.* at 5.

<sup>92</sup> See GOK Supplemental Questionnaire Response at 3.

<sup>93</sup> See GOK Questionnaire Response at 11.

<sup>94</sup> *Id.* at 8.

<sup>95</sup> See Hyundai Steel Questionnaire Response at 11; SeAH Steel Questionnaire Response at 22; SeAH Steel Supplemental Questionnaire Response at Volume II page 12.

<sup>96</sup> See e.g., *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying Issues and Decision Memorandum (IDM) at 13-15; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*CTL Plate from Korea 2015*) and accompanying IDM at 20.

<sup>97</sup> See e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent to Rescind in Part: Calendar Year 2015*, 82 FR 13792 (March 15, 2017), and accompanying PDM at 13, unchanged in *CTL Plate from Korea 2015* IDM at 20-22.

<sup>98</sup> See GOK Questionnaire Response at 15.

<sup>99</sup> See e.g., *Welded Line Pipe from Korea* IDM at 36; see also *CTL Plate from Korea 2015* IDM at 19-22.

as a denominator to determine the countervailable benefit under this program during the POI. For SeAH ESAB, we divided SeAH ESAB's calculated benefit by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales, then summed both companies' benefits. On this basis, we preliminarily determine the net subsidy rate that Hyundai Steel and SeAH Steel received under this program to be 0.06 percent and 0.01 percent *ad valorem*, respectively.

## 2. KEXIM Bank Subsidy Programs

The GOK reported that this program is divided into several types of trade financing products, of which the respondents reported using the following three: the Import Financing Loan program, the Overseas Investment Loan program, and the Export Growth Loan program.<sup>100</sup> The Import Financing Loan program assists companies that import essential goods or natural resources that are important to the Korean economy by extending loans up to 80 percent of the transaction value for a maximum of two years.<sup>101</sup> The Overseas Investment Loan program allows KEXIM to extend loans up to 80 percent of the investment amount for a maximum period of 30 years to Korean companies that make investments overseas.<sup>102</sup> Under the Export Growth Loan program, KEXIM supports small and medium enterprises that have a record of exporting eligible goods or supplying materials for the production of exported goods by extending loans from 50 to 100 percent of the export amount for up to three years, depending on size of the enterprise, export volume, and preferential eligibility.<sup>103</sup>

Hyundai Steel reported that it received Import Financing Loans from KEXIM.<sup>104</sup> SeAH Steel reported that it received both Import Financing Loans and Overseas Investment Loans from KEXIM.<sup>105</sup> To calculate the benefit under this program, we used the benchmarks described in the "Loan Benchmarks and Interest Rates" section above, as well as the methodology described in 19 CFR 351.505(c) to calculate the interest that Hyundai Steel and SeAH Steel would have paid on comparable commercial loans during the POI and divided that benefit by total sales. The calculation of the benefits for both Hyundai Steel and SeAH Steel resulted in a rate that is less than 0.005 percent and would therefore not result in any measurable benefits during the POI.<sup>106</sup>

Husteel reported that it participated in KEXIM's Export Growth Loan program.<sup>107</sup> The GOK submits that KEXIM calculates the borrowing enterprise's interest rate by amending a base rate to reflect factors such as the funding cost, administrative fees, and the expected profit.<sup>108</sup> As of December 31, 2017, KEXIM was a government-owned entity, through 66.3 percent ownership by the GOK.<sup>109</sup> The GOK submits that this program is administered by KEXIM, pursuant to Article 18(1)(3) of the KEXIM Act, and Chapter 2 of KEXIM's internal "Regulations Governing

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<sup>100</sup> See GOK Questionnaire Response at 25.

<sup>101</sup> *Id.* at 26.

<sup>102</sup> *Id.* at 35.

<sup>103</sup> *Id.* at 43-45.

<sup>104</sup> See Hyundai Steel Questionnaire Response at 16.

<sup>105</sup> See SeAH Steel Questionnaire Response at 24-25.

<sup>106</sup> See Hyundai Steel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>107</sup> See Husteel Questionnaire Response at Exhibit B-1.

<sup>108</sup> See GOK Questionnaire Response at 43.

<sup>109</sup> *Id.* at 45.

Financing Operations.”<sup>110</sup> Through this statutory and regulatory framework, when an applicant submits an application and the supporting documents for financing, the KEXIM loan officer reviews the materials to determine the eligibility based on the merits of the application, after which, if the application meets all the requirements and completes the internal credit extension evaluations process successfully, approval is granted.<sup>111</sup>

We preliminarily determine that this program is specific within the meaning of section 771(5A)(B) of the Act because eligibility for this program is contingent upon export performance of small and medium enterprises that export eligible items that contribute to the growth of the economy pursuant to Article 18(1)(3) of the KEXIM Act and Chapter 2 of KEXIM’s “Regulation Governing Financing Operations.”<sup>112</sup>

Consistent with our prior findings, we also preliminarily determine that KEXIM is an “authority” under section 771(5)(B) of the Act.<sup>113</sup> Therefore, this program results in a financial contribution in the form of a direct transfer of funds through loans under section 771(5)(D)(i) of the Act. Accordingly, we preliminary determine that the program results in a financial contribution, which confers a benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505 in the amount of the difference between the amount of interest Husteel paid on the KEXIM loan and the amount the recipient would pay on a comparable commercial loan.

To calculate a benefit under this program, we compared the amount of interest Husteel paid on these loans during the POI to the amount they would have paid under the benchmark interest rate prescribed above. We then divided Husteel’s calculated benefit by its export sales. On this basis, we preliminarily calculate a subsidy rate of 0.01 percent *ad valorem* for Husteel.<sup>114</sup>

### 3. Restriction of Special Taxation Act (RSTA) Article 25(2)

Hyundai Steel and SeAH ESAB, SeAH Steel’s cross-owned input supplier, reported receiving tax deductions under RSTA Article 25(2).<sup>115</sup> The purpose of this program is to facilitate the enhancement of energy efficiency in business sectors through a deduction from corporate or income taxes payable.<sup>116</sup> The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Ministerial Decree of RSTA.<sup>117</sup> The eligible types of facilities investment are identified in Article 22(2) of the RSTA, while Appendix 8-3 of Ministerial Decree of the RSTA lists energy-related facilities

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<sup>110</sup> *Id.* at 44-45.

<sup>111</sup> *Id.* at 47.

<sup>112</sup> *Id.* at Exhibit KEXIM-1 and KEXIM-12.

<sup>113</sup> See e.g., *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 2172 (January 15, 2016) and accompanying PDM at 22, unchanged in *Hot-Rolled Steel from Korea*.

<sup>114</sup> See Husteel Preliminary Calculation Memo.

<sup>115</sup> See Hyundai Steel Questionnaire Response at 24; SeAH Steel Supplemental Questionnaire Response at Volume II page 24.

<sup>116</sup> See GOK Second Supplemental Questionnaire Response at 19.

<sup>117</sup> *Id.* at 21.

which are eligible for this program, and Appendix 8-4 lists the facilities that are treated as manufacturing facilities for renewable energy production.<sup>118</sup>

The GOK agency that administers this program is the National Tax Service (NTS), under the direction of the Ministry of Strategy and Finance (MOSF).<sup>119</sup> In order to obtain the tax deduction, the GOK notes that an applicant is required to submit (i) an application for the tax deduction and (ii) the report of the taxation scale to the NTS which then reviews the materials submitted to determine the eligibility pursuant to the relevant laws and regulations.<sup>120</sup> Article 25(2) of the RSTA stipulates that ten percent of the eligible investment can be deductible from the taxes payable by a corporation or an individual taxpayer.<sup>121</sup>

According to the *Statistical Yearbook 2017*, there were 645,061 corporate tax returns filed in 2016, 681 of which claimed the Article 25(2) tax deduction.<sup>122</sup> Accordingly, we preliminarily determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited. This finding is consistent with *Large Residential Washers from Korea*, in which we relied on information that is comparable to that which the GOK provided in the current investigation.<sup>123</sup> This program results in a financial contribution from the GOK to recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed.

To calculate the benefit, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POI. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.02 percent *ad valorem* under this program.<sup>124</sup> For SeAH ESAB, we divided SeAH ESAB's calculated benefit by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent and would therefore not result in any measurable benefits during the POI.<sup>125</sup>

#### 4. RSTA Article 25(3)

Introduced in 2007, RSTA Article 25(3) aims to motivate investments in facilities that are constructed for the purpose of preserving the environment.<sup>126</sup> The GOK submits that any entity making an investment in facilities under this program may apply for a ten percent income or

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<sup>118</sup> *Id.* at 22-30.

<sup>119</sup> *Id.* at 30.

<sup>120</sup> *Id.* at 32.

<sup>121</sup> *Id.* at 33.

<sup>122</sup> See GOK Questionnaire Response at Exhibit Tax-1 Table 8-1-1; GOK Second Supplemental Questionnaire Response at 36.

<sup>123</sup> See *Large Residential Washers from Korea* and accompanying PDM at 13-14, unchanged in final.

<sup>124</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>125</sup> See SeAH Steel Preliminary Calculation Memo.

<sup>126</sup> See GOK Second Supplemental Questionnaire Response at 40.

corporate tax deduction.<sup>127</sup> Administered by the NTS, under the direction of the MOSF, Article 25(3) of the RSTA is the law authorizing the deduction, which is implemented through Article 22(3) of the Enforcement Decree of the RSTA.<sup>128</sup> Hyundai Steel made investments in its facilities for environmental conservation and claimed the tax deduction in 2016.<sup>129</sup>

According to the *Statistical Yearbook 2017*, there were 645,061 corporate tax returns filed in 2016, 311 of which claimed the Article 25(3) tax deduction.<sup>130</sup> Because only 311 companies benefitted from this program in 2016, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited.

This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed.

To calculate the benefit, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POI. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.05 percent *ad valorem* under this program.<sup>131</sup>

## 5. RSTA Article 26

Hyundai Steel reported receiving benefits under this program.<sup>132</sup> Article 26 was first introduced through the RSTA in 1982 to encourage companies to make investments out of the overcrowding control region of the Seoul Metropolitan Area in their respective fields of business by providing them with tax incentives.<sup>133</sup> Eligible companies are able to claim a tax credit of up to ten percent in eligible investments in facilities.<sup>134</sup> The GOK states that Article 26 was revised on December 27, 2010, adding job creation as a requirement for companies to qualify for tax deductions for facilities investments, and that the article has been renamed “tax credit for employment-creating investments.”<sup>135</sup>

The relevant law authorizing the credit, RSTA Article 26, limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy. Accordingly, Commerce preliminarily determines that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act. This finding is consistent with our determination in *Welded Line Pipe from Korea* and *Large Residential*

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 40-44.

<sup>129</sup> See Hyundai Steel Questionnaire Response at Exhibit TAX-8.

<sup>130</sup> See GOK Questionnaire Response at Exhibit Tax-1 Table 8-1-1; GOK Second Supplemental Questionnaire Response at 51.

<sup>131</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>132</sup> See Hyundai Steel Questionnaire Response at 24.

<sup>133</sup> See GOK Questionnaire Response at 144-145.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

*Washers from Korea*.<sup>136</sup> The tax credits are a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program, pursuant to 19 CFR 351.509(a)(1).

To calculate the benefit received by Hyundai Steel, we divided the amount of the tax savings received by Hyundai Steel by Hyundai Steel's total sales. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.28 percent *ad valorem* under this program.<sup>137</sup>

6. Acquisition and Property Tax Benefits to Companies in Industrial Complexes (Restriction of Special Local Taxation Act (RSLTA) Article 78)

Husteel, Hyundai Steel, SeAH ESAB, and SeAH Steel all reported receiving exemptions from local acquisition taxes and local property taxes under paragraph (4) of RSLTA Article 78.<sup>138</sup> Article 78 provides that any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax.<sup>139</sup> In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 50 percent on the real estate for five years from the date the tax liability becomes effective. The tax exemption is increased to 100 percent if the relevant land, buildings, or facilities are located in an industrial complex outside of the Seoul metropolitan area.<sup>140</sup> However, properties located in industrial complexes outside Seoul that were purchased during or after 2015 only qualify for a 75 percent tax exemption of property taxes and a 50 percent exemption of acquisition taxes.<sup>141</sup> The program is administered by the local governments in Korea.<sup>142</sup> The purpose of the program is to promote the development of the underdeveloped areas in Korea and to appropriately allocate the industries nationwide.<sup>143</sup> The GOK also stated that under the Local Tax Act Article 151, a 20 percent local education tax is levied on the amount of the property tax due.<sup>144</sup> Therefore, any exemption from property tax automatically results in a reduction in the education tax due.

We preliminarily determine that the tax reductions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the

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<sup>136</sup> See *Welded Line Pipe from Korea* IDM at 10; *Large Residential Washers from Korea* PDM at 14, unchanged in final; upheld in *Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321, 1329 (CIT 2014).

<sup>137</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>138</sup> See Husteel Questionnaire Response at 18; Hyundai Steel Questionnaire Response at 26; SeAH Steel Supplemental Questionnaire Response at Appendix II page 20; SeAH Steel Questionnaire Response at 32.

<sup>139</sup> See GOK Questionnaire Response at 189-190.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*; see also SeAH Steel Second Supplemental Questionnaire Response at 4-5.

<sup>142</sup> See GOK Questionnaire Response at 180.

<sup>143</sup> *Id.*

<sup>144</sup> See GOK Supplemental Questionnaire Response at 37.

Act because benefits are limited to enterprises located within designated geographical regions within their respective jurisdictions.

Hyundai Steel and SeAH Steel reported their tax benefits including the required Special Rural Development Tax that must be paid in order to receive the acquisition tax benefit, claiming the payment of Special Rural Development Tax as an offset in their benefit calculations.<sup>145</sup> However, we previously found that the “Special Rural Development Tax” does not meet the statutory requirement to be recognized as an offset.<sup>146</sup> Specifically, we stated that:

The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit conferred from a countervailable subsidy program, the Department does not consider the tax consequences of the benefit.<sup>147</sup>

Accordingly, we calculated the tax benefits to Hyundai Steel and SeAH Steel without including the offset for the “Special Rural Development Tax.” To calculate the benefits for Husteel, Hyundai Steel, and SeAH Steel, we divided the total amount of the property, acquisition, and education tax savings by each company’s total sales during the POI. For SeAH ESAB, we divided SeAH ESAB’s calculated benefit by SeAH ESAB and SeAH Steel’s combined total sales, less intercompany sales, then summed SeAH Steel’s and SeAH ESAB’s benefits. On this basis, the calculation of the benefit for Husteel and SeAH ESAB resulted in a subsidy rate that is less than 0.005 percent.<sup>148</sup> For Hyundai Steel and SeAH Steel, we preliminarily determine that each respondent received a countervailable subsidy rate of 0.02 percent *ad valorem* under this program.<sup>149</sup>

## 7. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector.<sup>150</sup> Specifically, through this program, the GOK aims to increase the transport volume by railroad and vessels in order to decrease the transport volume by heavy freight motorized vehicles.<sup>151</sup> Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport (MOLIT) to administering agencies for truck-to-rail “modal shift” entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight “modal shift” entities.<sup>152</sup> The legal framework

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<sup>145</sup> See Hyundai Steel Questionnaire Response at Exhibit LTAX-1; SeAH Steel Questionnaire Response at Appendix 11-D.

<sup>146</sup> See *Large Residential Washers from Korea* IDM at 16 and Comment 10.

<sup>147</sup> *Id.*

<sup>148</sup> See Husteel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>149</sup> See Hyundai Steel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>150</sup> See GOK Questionnaire Response at 209.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 213.

for this program is Article 21 of the Sustainable Transportation Logistics Development Act, Article 24 of its Enforcement Decree, and Article 9 of the Regulations on Modal Shift Agreement (MSA).<sup>153</sup> Participating companies must submit a business plan for truck-to-rail or truck-to-marine freight “modal shift” to the evaluation committee of the relevant agency. When the relevant agency confirms that the obligations under the MSA are being executed by the applicant, support is provided. As the effective period of the MSA is generally one year, support under this program is provided one year after the conclusion of the MSA.<sup>154</sup>

We preliminarily determine that a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. In the years 2014-2017, only five, five, six, and four companies, respectively, participated in this program.<sup>155</sup> Therefore, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the number of companies that received assistance under this program was limited. Our findings are consistent with Commerce’s practice.<sup>156</sup>

Hyundai Steel reported that it used this program and received a grant during the POI.<sup>157</sup> The criterion that Hyundai Steel had to meet to qualify for assistance was to shift some of its truck transportation to boat transportation in order to promote a low-carbon transportation logistics system by reducing greenhouse gas emissions. Because the proposals were consistent with the Sustainable Transportation Logistics Development Act, the proposals were approved by the Korean Shipping Association.<sup>158</sup> To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel’s total sales. Accordingly, we preliminarily determine the net subsidy rate that Hyundai Steel received under this program is 0.01 percent *ad valorem*.<sup>159</sup>

B. *Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit or Not to Have Conferred a Benefit During the POI*

We have preliminarily determined that the following programs did not confer a measurable benefit during the POI. Therefore, we do not reach a preliminary determination as to whether there is financial contribution or specificity for these programs.

1. Management of the Electricity Factor Load Program

Husteel and Hyundai Steel reported that they used this program.<sup>160</sup> To calculate the benefit, we divided the amount of the assistance received by each respective company under this program by their total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005

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<sup>153</sup> *Id.* at 210.

<sup>154</sup> *Id.* at 212.

<sup>155</sup> *Id.* at 216.

<sup>156</sup> See e.g., *Welded Line Pipe from Korea* IDM at 36.

<sup>157</sup> See Hyundai Steel Questionnaire Response at 33.

<sup>158</sup> *Id.* at Exhibit MODAL-1.

<sup>159</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>160</sup> See Husteel Questionnaire Response at 11; Hyundai Steel Questionnaire Response at 14.

percent for both companies.<sup>161</sup>

## 2. RSTA Article 10

SeAH Steel and its cross-owned input supplier SeAH ESAB reported that they used this program.<sup>162</sup> To calculate the benefit, we divided the amount of assistance received by SeAH Steel by its total sales. For SeAH ESAB, we divided SeAH ESAB's calculated benefit by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales, then summed both companies' benefits. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>163</sup>

## 3. RSTA Article 11

SeAH ESAB reported that it used this program.<sup>164</sup> To calculate the benefit, we divided SeAH ESAB's amount of assistance received by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>165</sup>

## 4. RSTA Article 24

Hyundai Steel and SeAH ESAB reported that they used this program.<sup>166</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel by its total sales. For SeAH ESAB, we divided SeAH ESAB's calculated benefit by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent for both companies.<sup>167</sup>

## 5. RSTA Article 25

Hyundai Steel reported that it used this program.<sup>168</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>169</sup>

## 6. Industrial Grants under the Industrial Technology Innovation Promotion Act (ITIPA)

Husteel, Hyundai Steel, SeAH ESAB, and SeAH Steel all reported receiving benefits under the

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<sup>161</sup> See Husteel Preliminary Calculation Memo; Hyundai Steel Preliminary Calculation Memo.

<sup>162</sup> See SeAH Steel Questionnaire Response at 29; SeAH Steel Supplemental Questionnaire Response at Volume II page 18.

<sup>163</sup> See SeAH Steel Preliminary Calculation Memo.

<sup>164</sup> See SeAH Steel Supplemental Questionnaire Response at Volume II page 23.

<sup>165</sup> See SeAH Steel Preliminary Calculation Memo.

<sup>166</sup> See Hyundai Steel Questionnaire Response at 23; SeAH Steel Supplemental Questionnaire Response at Volume II page 18.

<sup>167</sup> See Hyundai Steel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>168</sup> See Hyundai Steel Questionnaire Response at 24.

<sup>169</sup> See Hyundai Steel Preliminary Calculation Memo.

ITIPA program during the AUL.<sup>170</sup> As described above, we are relying on AFA to determine the benefit from this program with respect to SeAH Steel (which includes SeAH ESAB). To calculate the benefit under this program for Husteel and Hyundai Steel, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Husteel and Hyundai Steel, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Husteel and Hyundai Steel offered no allocable benefit during the POI. Further, Husteel reported receiving no benefits for ITIPA grants during the POI.

Under the ITIPA program, Hyundai Steel was awarded specific grants under separate criteria for a variety of programs during the POI. Therefore, consistent with Commerce’s practice to treat each ITIPA grant as a separate program whose benefits are attributable to total sales, we divided each ITIPA grant by the total sales of Hyundai Steel in order to determine whether these individual programs conferred a countervailable benefit during the POI. Accordingly, we preliminarily determine that the net subsidy rates that Hyundai Steel received under these programs during the POI, when analyzed separately, resulted in a subsidy rate that is less than 0.005 percent.<sup>171</sup>

#### 7. High Efficiency Energy Market Project

Husteel reported that it used this program.<sup>172</sup> To calculate the benefit under this program, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Husteel, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Husteel offered no allocable benefit during the POI. To calculate the benefit during the POI, we divided the amount of the assistance received by Husteel by the company’s total sales. The calculation of the benefit resulted in a rate that is less than 0.005 percent.<sup>173</sup>

#### 8. Grants from Ministry of Employment and Labor (MOEL)

Husteel reported that it received benefits under this program during the AUL, but that it received no benefits during the POI.<sup>174</sup> As these grants are recurring subsidies under 19 CFR 351.524(c), we preliminarily determine that Husteel did not receive a benefit under this program during the POI.

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<sup>170</sup> See Husteel Questionnaire Response at 18; Hyundai Steel Questionnaire Response at 30; SeAH Steel Supplemental Questionnaire Response at Appendix II page 21; SeAH Steel Questionnaire Response at 32.

<sup>171</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>172</sup> See Husteel Questionnaire Response at 19.

<sup>173</sup> See Husteel Preliminary Calculation Memo.

<sup>174</sup> See Husteel Questionnaire Response at 19.

9. RSLTA Article 19

Hyundai Steel reported that it used this program.<sup>175</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>176</sup>

10. RSLTA Article 31

Hyundai Steel reported that it used this program.<sup>177</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>178</sup>

11. RSLTA Article 46

Hyundai Steel and SeAH ESAB reported that they used this program.<sup>179</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. For SeAH ESAB, we divided SeAH ESAB's calculated benefit by SeAH ESAB and SeAH Steel's combined total sales, less intercompany sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent for both companies.<sup>180</sup>

12. RSLTA Article 84

Hyundai Steel reported that it used this program.<sup>181</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>182</sup>

13. Local Tax Act Article 109

Hyundai Steel reported that it used this program.<sup>183</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>184</sup>

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<sup>175</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>176</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>177</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>178</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>179</sup> See Hyundai Steel Questionnaire Response at 27; SeAH Steel Second Supplemental Questionnaire Response at Appendix 2S-7-A.

<sup>180</sup> See Hyundai Steel Preliminary Calculation Memo; SeAH Steel Preliminary Calculation Memo.

<sup>181</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>182</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>183</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>184</sup> See Hyundai Steel Preliminary Calculation Memo.

#### 14. Local Tax Act Article 112

Hyundai Steel reported that it used this program.<sup>185</sup> To calculate the benefit, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>186</sup>

#### 15. Incentives for Usage of Yeongil Harbor in Pohang City

Hyundai Steel reported receiving benefits under this program.<sup>187</sup> To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>188</sup>

#### 16. Incentives for Usage of Gwangyang Port

Hyundai Steel reported receiving benefits under this program.<sup>189</sup> To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>190</sup>

#### 17. Incentives for Natural Gas Facilities

Hyundai Steel reported receiving benefits under this program.<sup>191</sup> To calculate the benefit under this program, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Hyundai Steel, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Hyundai Steel offered no allocable benefit during the POI. To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>192</sup>

#### 18. Subsidies for Construction and Operation of Workplace Nursery

Hyundai Steel reported receiving benefits under this program.<sup>193</sup> To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>194</sup>

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<sup>185</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>186</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>187</sup> See Hyundai Steel Questionnaire Response at 35.

<sup>188</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>189</sup> See Hyundai Steel Questionnaire Response at 36.

<sup>190</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>191</sup> See Hyundai Steel Questionnaire Response at 37.

<sup>192</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>193</sup> See Hyundai Steel Questionnaire Response at 40.

<sup>194</sup> See Hyundai Steel Preliminary Calculation Memo.

## 19. Suncheon Harbor

Hyundai Steel reported that it used this program.<sup>195</sup> To calculate the benefit during the POI, we divided the amount of assistance received by Hyundai Steel's total sales. The calculation of the benefit resulted in a subsidy rate that is less than 0.005 percent.<sup>196</sup>

## 20. Hyundai Land Purchases

Hyundai Steel reported that it purchased land from the GOK Ministry of National Defense in 2016.<sup>197</sup> Hyundai Steel reports that GOK-owned property necessary for public works is disposed under the "State Property Act" which is regulated by the "Act on Acquisition of and Compensation for Land, etc. for Public Works Projects."<sup>198</sup> Hyundai Steel reports that if parties cannot agree on a price, the price of the disposed land shall be determined based on the average of the values appraised by two appraisal business operators.<sup>199</sup> Hyundai Steel reports further that the price for the land purchased from the Ministry of National Defense in 2016 was determined by Chungchung Nam-Do Land Expropriation Committee and the compensation for the land was determined on the average of the values appraised by multiple appraisal business operators.<sup>200</sup>

The current information on the record regarding this program is limited. However, given that the reported price paid for the land is based on an average of appraisal prices, which are similar to market prices, in the absence of a benchmark, we can use the purchase price as a basis to determine whether this program confers a benefit (in effect, treating the program as a grant). For the purpose of the preliminary determination, we note that if the land purchase in 2016 was treated as a grant, the benefit amount would not exceed 0.5 percent of Hyundai Steel's total sales in that year and would therefore be considered expensed in the year of receipt in accordance with 19 CFR 351.524(b)(2). As a result, no benefit would be allocable to the POI. However, we intend to seek further information with respect to the countervailability of Hyundai Steel's purchase of land in 2016 for consideration in the final determination.

### C. *Programs Preliminarily Determined to Be Not Used*

The following programs were reported by the respondents as tied to the production of non-subject merchandise or not used during the POI or the AUL. We intend to verify the respondents' claims of non-use.

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<sup>195</sup> See Hyundai Steel Questionnaire Response at 27.

<sup>196</sup> See Hyundai Steel Preliminary Calculation Memo.

<sup>197</sup> See Hyundai Steel's letter, "Response to Petitioners' Comments on Hyundai Steel's Initial Questionnaire Response and Supplemental Affiliation Questionnaire Response," dated May 17, 2018, at 5.

<sup>198</sup> *Id.* at 3 and Attachment 1.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 4-5.

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

Hyundai Steel and Hyundai Corp reported purchasing export credit insurance from K-SURE during the POI.<sup>201</sup> However, both respondents claim they did not use this credit insurance for shipments of subject merchandise to the United States during the POI.<sup>202</sup> Therefore, pursuant to 19 CFR 351.525(b)(5), we preliminarily determine that Hyundai Steel's and Hyundai Corp's use of this program during the POI was tied to non-subject merchandise.

2. K-SURE Export Credit Guarantees

Hyundai Corp reported receiving export credit guarantees from K-SURE during the AUL.<sup>203</sup> Hyundai Corp claims these export credit guarantees were tied to overseas investments in non-subject merchandise.<sup>204</sup> Therefore, pursuant to 19 CFR 351.525(b)(5), we preliminarily determine that Hyundai Corp's use of this program during the AUL was tied to non-subject merchandise.

3. Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)

Hyundai Corp reported receiving long-term loans from KNOC during the POI.<sup>205</sup> Hyundai Corp claims these loans are tied to oil and gas exploration.<sup>206</sup> Therefore, pursuant to 19 CFR 351.525(b)(5), we preliminarily determine that Hyundai Corp's use of this program during the POI was tied to non-subject merchandise.

We also preliminarily determine that respondents did not apply for or receive countervailable benefits during the POI under the following programs:

1. Short-Term Discounted Loans for Export Receivables from the Korea Development Bank and the Industrial Base Fund
2. RSTA Article 22
3. RSTA Article 120
4. Tax Reductions and Exemptions for Companies Located in Free Economic Zones (FEZs)
5. Exemptions and Reductions of Lease Fees for Companies Located in FEZs
6. Grants to Companies Located in FEZs<sup>207</sup>
7. Sharing of Working Opportunities/Employment Creating Incentives
8. Fast Track Restructuring Program

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<sup>201</sup> See Hyundai Steel Questionnaire Response at 19; Hyundai Corp Questionnaire Response at 16.

<sup>202</sup> *Id.*

<sup>203</sup> See Hyundai Corp Questionnaire Response at 18.

<sup>204</sup> *Id.*

<sup>205</sup> See Hyundai Corp Questionnaire Response at 18-19.

<sup>206</sup> *Id.*

<sup>207</sup> Our finding with respect to this program applies to Husteel and Hyundai Steel. As described above, we are applying AFA and countervailing this program with respect to SeAH Steel.

## VII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

6/19/2018

X 

Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance